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DEPARTMENT OF  
WATER RESOURCES

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

FRANK ASTORQUIA,	)	
	)	Case No. CV WA 12 14102
Petitioner,	)	
	)	<b>PETITIONER ASTORQUIA'S</b>
vs.	)	<b>STATEMENT OF ISSUES</b>
	)	
STATE OF IDAHO, DEPARTMENT OF	)	
WATER RESOURCES, an agency of the	)	
State of Idaho,	)	
	)	
Respondent.	)	
_____	)	
	)	
IN THE MATTER OF WATER RIGHT	)	
LICENSE NO. 37-7460 IN THE NAME	)	
OF FRANK ASTORQUIA AND/OR	)	
JOSEPHINE ASTORQUIA	)	
_____	)	

COMES NOW Petitioner Frank Astorquia, by and through his attorneys, Beeman & Associates, P.C., and hereby provides his Statement of Issues for the August 6, 2012 Petition for Review of the Amended Preliminary Order in the matter of Water Right License No. 37-7460 in the name of Frank and/or Josephine Astorquia, by Respondent, State of Idaho, Department of Water Resources (IDWR), signed on June 22, 2012, and issued on June 25, 2012.

## STATEMENT OF ISSUES

1. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 is arbitrary, capricious, or an abuse of discretion.
2. Based on IDWR's determination -- that the Astorquias were the only applicants for an extension to file proof of beneficial use who were granted less than the timeframe requested during the Swan Falls embargo -- was there a rational basis for IDWR's refusal to grant the five-year extension requested by the Astorquias?
3. Was it an error of law for IDWR to determine that a challenge based on arbitrary or capricious actions could only be made in 1981?
4. Whether IDWR erroneously or mistakenly caused the entire water right permit no. 37-7460 to lapse when it is undisputed from the records contained in the IDWR permit file that 200 acres, out of the 320 acres authorized under the permit, had in fact been developed during the authorized time of development.
5. Whether, pursuant to Idaho Code § 42-218a(3), the original November 26, 1975, priority date for 37-7460 should be reinstated for the 200 acres.
6. Whether the issue of the rate of diversion for 37-7460 should be remanded for consideration of information that became available after the March 2012 hearing but before the August 6, 2012 appeal deadline for IDWR's final order.
7. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 constitutes a violation of the Equal Protection Clauses of the United States Constitution, U.S. CONST. AMEND. XIV, § 1, and Idaho Constitution, ID CONST. ART. 1, § 2, because there is no rational basis for the difference in treatment of similarly situated water users.

8. Whether IDWR's refusal to reinstate the original November 26, 1975, priority date for 37-7460 constitutes an unlawful taking without compensation under the United States Constitution, U.S. CONST. AMEND. V, and Idaho Constitution, ID CONST. ART. 1, § 14.
9. Whether the substantial rights of the Petitioner have been prejudiced by the advancement of the priority date for 37-7460 from November 26, 1975 to July 3, 2002?
10. Whether this Petition for Judicial Review should be stayed pending the final determination of SRBA claim 37-7460 because the SRBA court has equitable jurisdiction to confirm the 1975 priority date for the 200 acres that were developed during the authorized time of development under permit 37-7460. Pursuant to Rule 84(d)(5), the Petitioner reserves the right to assert later discovered issues.

RESPECTFULLY SUBMITTED this 20<sup>th</sup> day of August 2012.

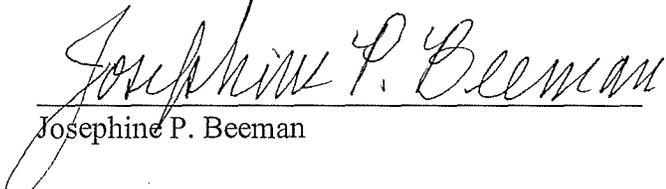
Beeman & Associates  
Attorneys for Frank Astorquia

By Josephine P. Beeman  
Josephine P. Beeman

CERTIFICATE OF MAILING

I hereby certify that on this 20<sup>th</sup> day of August 2012, the foregoing document was served upon the following by U.S. Mail, postage prepaid:

Garrick Baxter  
Deputy Attorney General  
Idaho Department of Water Resources  
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