

MAY 26 2004

DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA	)	Subcase <u>29-13425</u>
	)	(Insert water right number)
	)	
Case 39576	)	STANDARD FORM 4
	)	
	)	MOTION TO FILE:
	)	☐ LATE NOTICE OF CLAIM
	)	☒ AMENDED NOTICE OF CLAIM

INSTRUCTIONS

This form is used to file a late Notice of Claim or an amendment to a Notice of Claim in a reporting area where the Director's Report has been filed. Forms may be obtained from the SRBA Court, the Idaho Department of Water Resources (IDWR), or you may copy or reproduce this blank form. If you copy or reproduce this form, please copy on both sides with the even-number pages upside down.

The water right number for your late or amended claim must be indicated above in the blank space following "Subcase." You must use a **separate form for each** late or amended Notice of Claim.

This form has been adopted by the court in ***SRBA Administrative Order 1, Rules of Procedure*** (amended Sept. 30, 1996), Section 4, which may be consulted for further information.

By filing a *Motion to File a Late Notice of Claim* or a *Motion to File an Amended Notice of Claim*, you certify that it is well-grounded in fact; is warranted by existing law or a good-faith argument for the extension, modification or reversal of existing law; and is not filed for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.

☒ I have read **SRBA Administrative Order 1, Rules of Procedure** (amended Sept. 30, 1996).

My name is _____

My address is _____

My phone number is: Work _____ Home _____

I am an attorney representing Spartan Portneuf, LLC

My name is Scott Smith of the law firm of Racine Olson Nye Budge & Bailey, Chartered

My address is 201 East Center St., Pocatello, ID 83201

My phone number is (208) 232-6101

MOTION TO FILE A LATE NOTICE OF CLAIM

A *Motion to File a Late Notice of Claim* will require a hearing before the Presiding Judge.

☐ I did not file a Notice of claim to the use of water in the SRBA because:

☐ I filed a Notice of Claim and elected to defer judicial proceedings on my domestic or stock watering use. I desire to reinstate my Notice of Claim for domestic or stock watering use.

☐ I am providing legal and factual documentation for my claimed use of water. You must describe these documents and attach a readable copy. (You do not need to fill this out if you are reinstating a Notice of Claim for domestic or stock watering use, but you **must** attach a copy of your Notice of Claim.)

I have attached:

- ☐ A fully completed Notice of Claim (available from IDWR).
- ☐ A claim filing fee for a domestic and stock watering use. IDWR may charge this fee pursuant to I.C. § 42-1414. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.
- ☐ A claim filing fee and a late claim fee for those claims other than a domestic or stock watering use for which a notice of claim was not filed. To determine this amount, contact IDWR at (800) 451-4129. I have enclosed a check payable to: State of Idaho Department of Water Resources in the amount of \$ _____.

Follow these instructions regarding the hearing on this motion.

1. Contact the Clerk of the SRBA Court (208-736-3011) to request a hearing date and time.
2. Fill in the following information:

This motion will be heard on _____
(Insert Date and Time)
at the SRBA courthouse, 253 Third Avenue North, Twin Falls, Idaho.

MOTION TO FILE AN AMENDED NOTICE OF CLAIM

A *Motion to File an Amended Notice of Claim* may require a hearing before the Presiding Judge or Special Master or may be granted by leave of the court or by written consent of the parties and the Idaho Department of Water Resources. Leave to amend a claim shall be freely given when justice so requires.

- ☒ I must amend my Notice of Claim to the use of water in the SRBA because:
- This claim is for a change in ownership in water license (29-2309) caused by a split in ownership. Although the license expressly included beneficial uses for irrigation and stockwater, this claim (29-13425) inadvertently claimed only irrigation. This claim should also include stockwater as a beneficial use.

- ☒ I am providing legal and factual documentation to support my amended Notice of Claim. You must describe these documents and attach a readable copy.

Affidavit of Tom Katsilometes

Amended Notice of Claim

I have attached:

- ☒ An amended Notice of Claim (available from IDWR).

- ☐ Payment of the following additional fees required by IDWR:

N/A

VERIFICATION (Must be completed)

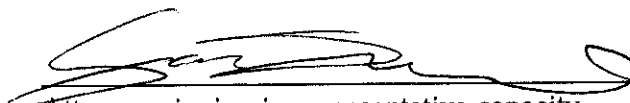
State of Idaho

County of Bannock

Scott J. Smith, being first duly sworn, upon oath, deposes and says:
(Insert name of person filing form)

That I am the party/claimant filing this motion for late or amended claim (as listed on Page 2) as defined by I.C. §§ 42-1401A(1) and (7) or that I am the attorney for the party/claimant filing this motion for late or amended claim and that I have read this motion, know its contents, and believe that the statements are true to the best of my knowledge.

Signature of person filing motion



Attorney signing in representative capacity

Subscribed and sworn to before me on May 19, 2004
(Insert Date)



Julie J. Martin
Notary Public for Idaho
Residing at: Blackfoot
My Commission expires: 11-01-06

INSTRUCTIONS FOR MAILING

You must mail this form, including all attachments, to the Clerk of the SRBA Court. **FAX filings will not be accepted by the SRBA Clerk of the Court.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

CERTIFICATE OF MAILING

I certify that on May 20, 2004 ~~1999~~, I mailed the original and copies of this form, including all attachments, to the following persons by mailing the original and/or copies, postage prepaid and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. Copies to:

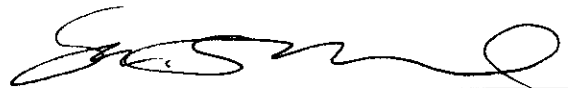
IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
PO Box 44449
Boise, ID 83711-4449

United States Department of Justice
Environment and Natural Resource Division
550 West Fort Street, MSC 033
Boise, ID 83724

3. If you are filing an amended Notice of Claim in a subcase being heard before the Presiding Judge or a Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)



Signature of person or attorney mailing the form

Scott J. Smith (ISB 6014)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208) 232-6101
Fax: (208) 232-6109

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

In Re SRBA

) Subcase No. 29-13425
)
)

Case 39576

) **AFFIDAVIT OF**
) **THOMAS J. KATSILOMETES**
)
)
)

STATE OF IDAHO)

: ss

County of Bannock)

I, THOMAS J. KATSILOMETES, after first being duly sworn on oath, deposes and states as follows:

1. I am currently a resident of Pocatello, Idaho. I am of legal age and am competent to testify from personal knowledge to the truthfulness of the statements contained in this affidavit.

2. I am a duly authorized member of Spartan Portneuf, LLC, a family owned Idaho limited liability company. In the year 1990, M. Anne Katsilometes, filed a claim in the Snake River Basin Adjudication ("SRBA") for herself and on behalf of the co-owners of a water license, which claim is being adjudicated as Subcase Number 29-13425.

4. The history leading up to the filing of this claim is very straightforward. On October

TJK

31, 1957, a water license was decreed to Black Rock Sheep Company with a priority date of September 5, 1951. This license provided a right to divert water "for the purposes of irrigation, stockwater, domestic use." A true and correct copy of said license is attached hereto as Exhibit A.

5. Because the Black Rock Sheep Company was a partnership comprised of a number of members of the extended Katsilometes family, the death of partner Peter G. Katsilometes in 1970 caused the dissolution of the partnership. At that time, the water license and the real property were transferred jointly to Peter Katsilometes' widow Aunt Lucille, to my parents James G. and Maria Katsilometes, to my Uncle Bill and to my Aunt Anne.

6. My parents, James G. and Maria Katsilometes, created the Spartan Portneuf, LLC, to own and hold their portion of the water right and corresponding real property. In the normal course of business, Spartan Portneuf, LLC sought and obtained from the IDWR a separation of the water license in proportion to its ownership of the portion of the original real property.

7. With the initiation of the SRBA, it was determined that a claim should be filed to have the partitioned water license recognized by the Court as being formally split between the family. My aunt, M. Anne Katsilometes, signed and filed the claim, which is now the subject of the instant subcase 29-13425. My Aunt Anne passed away in 2002.

8. As a result of inadvertence, Aunt Anne failed to ensure that the SRBA claim matched in all respects the 1951 water license except for the change in ownership. As a result, my aunt made an excusable clerical mistake on the SRBA by listing irrigation as the only beneficial use when the 1951 water license and subsequent use of the water supported beneficial uses for irrigation, stockwater, and domestic.

TJK

9. SRBA Administrative Order 1, Rules of Procedure 4(d)(2)(k) provides: "Leave to amend a notice of claim shall be freely given when justice so requires."

10. Because of my Aunt Anne's excusable mistake and inadvertence, justice requires that this Court grant leave to amend Claim 29-13425 for the limited purpose of adding stockwater and domestic as beneficial uses as expressly provided by the 1951 water license and as the water was used after the issuance of said water license. No other amendment to Claim 29-13425 is requested.

FURTHER SAITH AFFIANT NAUGHT.

DATED this 16 day of April, 2004.

By: Thomas J. Katsilometes
THOMAS J. KATSILOMETES

SUBSCRIBED AND SWORN TO before me on this 16 day of April, 2004.

By: She Maria Aponte
NOTARY PUBLIC FOR CONNECTICUT
Residing at: Danbury
Commission expires: Dec 31, 2005

(SEAL)

SCANNED

MAY 01 2001

State of Idaho

License and Certificate of Water Right

Water License No. G-22358Amount 2.88 c.f.s.

Water District No. _____

Priority September 5, 1951THIS IS TO CERTIFY that BLACK ROCK SHEEP COMPANY

of Pocatello, Idaho, made application for a permit to appropriate the public waters of the State of Idaho, dated September 5, 1951; that Permit No. G-22358 was issued under said application; that Certificate of Completion of works, with a carrying capacity of 2.88 second feet, was issued thereunder on October 31, 1957, showing that said works were completed on the 5th day of September, 1956; and that on the 5th day of September, 1956, BLACK ROCK SHEEP COMPANY
By: William G. Katsilometes

of Pocatello, State of Idaho, made proof to the satisfaction of the State Reclamation Engineer of Idaho, of the right to use the waters of a well, a tributary of subterranean, for the purpose of Irrigation, stockwater, domestic use, under Use Permit No. G-22358 of the Department of Reclamation and that said right to the use of said waters has been perfected in accordance with the laws of Idaho, and is hereby confirmed by the State Reclamation Engineer of Idaho and entered of record in Volume 10 of Licenses at page 618, on the 31st day of October, 1957;
The right hereby confirmed dates from September 5, 1951;

The Point of Diversion is located

in the NW 1/4 SW 1/4, Sec. 16, Tp. 7 S., R. 35 E., B. M. County Bannock

That the amount of water to which such right is entitled and hereby confirmed, for the purposes aforesaid, is limited to an amount actually needed and beneficially used for said purposes, and shall not exceed 2.88 cubic feet per second.

Description and location of use:

Twp.	Range	Sec.	Forty-acre Tract	No. Acres Described in Permit	No. Acres Actually Irrigated
7 S	35 E.	16	NW 1/4 NW 1/4	40	40
			SW 1/4 NW 1/4	40	40
			SE 1/4 NW 1/4	40	10
			NE 1/4 SW 1/4	40	40
			NW 1/4 SW 1/4	40	20
			SE 1/4 SW 1/4	40	20
			NW 1/4 SE 1/4	40	10
			SW 1/4 SE 1/4	40	40
			NW 1/4 NE 1/4	10	20
			Total number of acres irrigated	- -	240
		21			

The right to the use of the water aforesaid hereby confirmed is restricted to the lands or place of use herein described, as provided by the laws of Idaho.

WITNESS the seal and signature of the State Reclamation Engineer, affixed at Boise, Idaho, this 31st day of October, 1957.

/s/ Mark B. Kulp

State Reclamation Engineer.

(SEAL)

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

IN RE THE GENERAL ADJUDICATION
OF RIGHTS TO THE USE OF WATER FROM
THE SNAKE RIVER BASIN WATER SYSTEM

CIVIL CASE NUMBER: 39576

Ident. Number _____

Date Received _____

Receipt Number _____

AMENDED
**NOTICE OF CLAIM
TO A
WATER RIGHT
ACQUIRED UNDER STATE LAW**

Please type or print clearly

1. Name of Claimant (s) Spartan Portneuf, LLC Phone (208) 251-5287

Mailing Address 639 University Dr., Pocatello, Idaho Zip 83201

2. Date of Priority (Only one (1) per claim) 9/05/1951

3. Source of water supply (a) Groundwater
which is tributary to (b) _____

4. a. Location of existing point of diversion is: Township 07 S Range 35 E Section 16,
NW 1/4 of SW 1/4 of _____ 1/4, Govt. Lot, _____ B.M., County of Bannock

Additional points of diversion if any: _____

b. If instream flow, beginning point of claimed instream flow is:

Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of _____ 1/4,

Govt. Lot _____ B.M., County of _____

ending point is: Township _____ Range _____ Section _____, _____ 1/4 of _____ 1/4 of
_____ 1/4, Govt. Lot _____ B.M., County of _____

5. Description of existing diversion works (Dams, Reservoirs, Ditches, Wells, Pumps, Pipelines, Headgates, Etc),
including the dates of any changes or enlargements in use, the dimensions of the diversion works as
constructed and as enlarged and the depth of each well. See original filed Claim

6. Water is claimed for the following purposes:

(both dates are inclusive)

(cfs)

(acre feet)

For irrigation purposes from 03/15 to 11/15 amount 0.602 or _____

For stock water purposes from 01/01 to 12/31 amount 0.074 or _____

For _____ purposes from _____ to _____ amount _____ or _____

For _____ purposes from _____ to _____ amount _____ or _____

7. Total quantity claimed (a) 0.676 (cfs) and/or (b) _____ (acre feet)

8. Total consumptive use claimed is 77.2 acre feet per annum.

9. Non-irrigation uses; describe fully (eg. Domestic: Give number of households served; Stockwater: Type and number of livestock Etc.) Stockwater = sheep (2000 head)

10. Description of place of use:

a. If water is for irrigation, indicate acreage in each subdivision in the tabulation below.

b. If water is used for other purposes, place a symbol of use (example: D for Domestic) in the corresponding place of use below. See instructions for standard symbols.

TWP	RNG	SEC	NE 1/4				NW 1/4				SW 1/4				SE 1/4				Totals
			NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	NE1/4	NW1/4	SW1/4	SE1/4	
07S	35E	16							.2		3	7.6		.4			6		17.2
07S	35E	21		19			2.4												21.4

Total number of acres irrigated 38.6

11. In which county (ies) are lands listed above as place of use located? Bannock

12. Do you own the property listed above as place of use? Yes X No _____
If your answer is No, describe in Remarks below the authority you have to claim this water right.

13. Describe any other water rights used at the same place and for the same purposes as described above.
_____ or None ()

14. Remarks: This claim is the result of a split due to change in ownership for a
portion of license 29-2309.

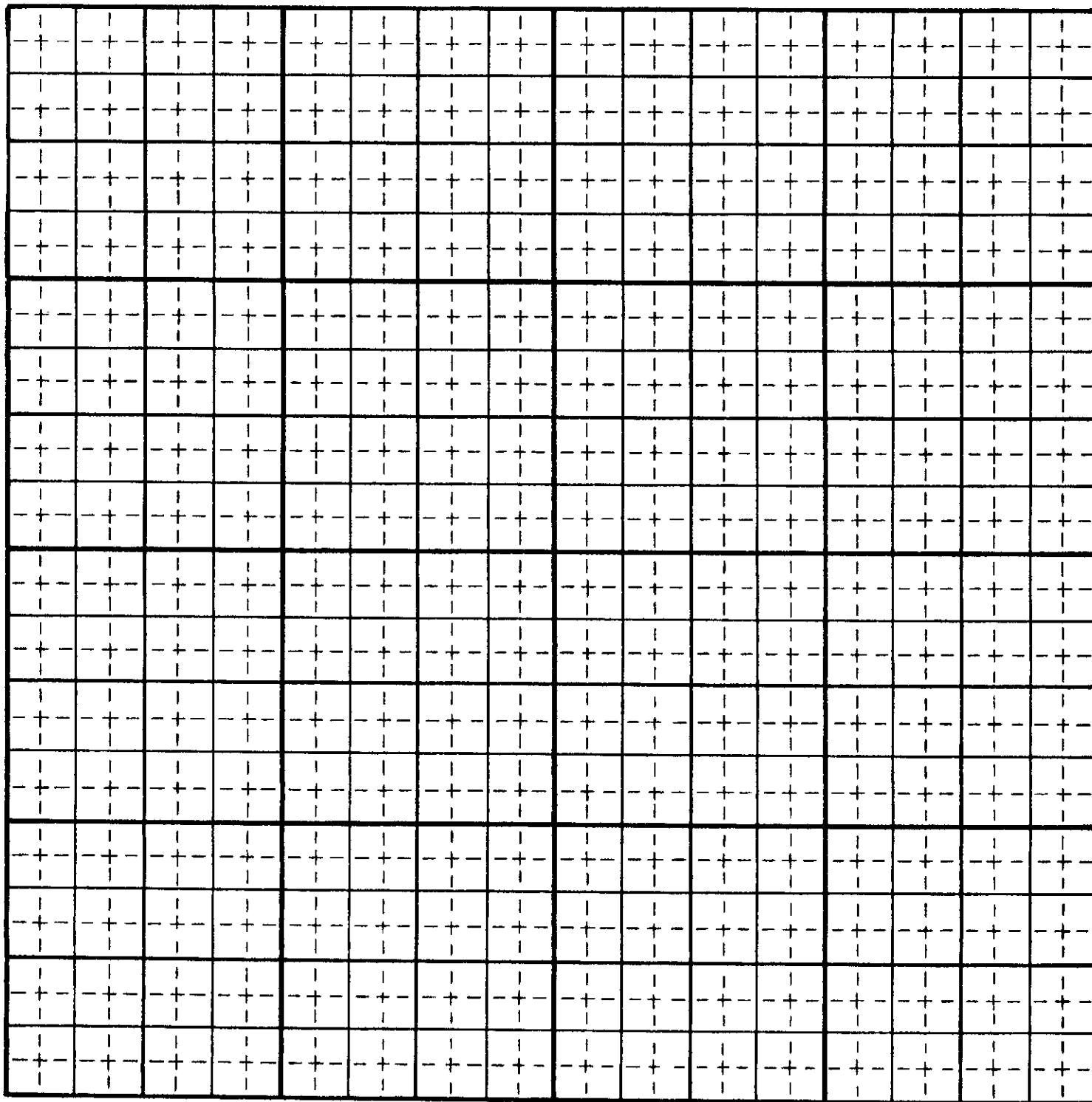
This amended claim is filed to ensure it is identical in all material
aspects to license 29-2309.

Last Name _____ Ident No. _____

Map of Project: show clearly the point of diversion, place of use, section number, township, and range number.

Scale: 2 inches equals 1 mile

SEE ORIGINAL FILED NOTICE OF CLAIM-



Last Name Spartan Portneuf, LLC Ident No. _____

15. Basis of Claim (check one) Beneficial Use _____ Posted Notice _____ License X Permit _____
Decree _____

If applicable provide IDWR Water Right Number 29-2309

Court _____ Case Number _____ Decree Date _____

Plaintiff vs Defendant _____

16. Signature (s)

(a.) By signing below, I/We acknowledge that I/We have received, read, and understand the form entitled "How you will receive notice in the Snake River Basin Adjudication." (b.) I/We do X do not _____ wish to receive and pay a small annual fee for monthly copies of the docket sheet.

Number of attachments 1

For Individuals: I do solemnly swear or affirm that the statements contained in the foregoing document are true and correct.

Signature of Claimant (s) _____ Date _____

_____ Date _____

For Organizations: I do solemnly swear or affirm that I am a member

Title _____

of Spartan Portneuf, LLC , that I have signed the foregoing

Organization

document in the space below as Member of Spartan Portneuf, LLC

Title

Organization

and that the statements contained in the foregoing document are true and correct.

Signature of Authorized Agent

Thomas J. Katschometes

Title and Organization

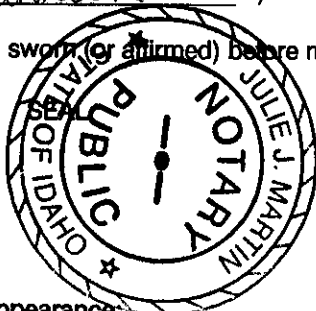
SPARTAN PORTNEUF, LLC

Date MAY 11, 2004

State of Idaho/or _____)

County of Bannock) SS.

Subscribed and sworn (or affirmed) before me this 11th day of May, 2004



Notary Public

Julie J. Martin

Residing at

Blackfoot, Idaho

My Commission Expires

11-01-06

Please Print Name

17. Notice of Appearance:

Notice is hereby given that I, SCOTT J. SMITH will be acting as attorney at law on behalf of the claimant signing above, and that all notices required by law to be mailed by the director to the claimant signing above should be mailed to me at the address listed below.

Signature

[Signature]

of Racine Olson Nye Dodge & Bailey
Chartered

Address 201 E. Center St., Pocatello ID 83201

Date May 19, 2004

Last Name Spartan Portneuf, LLC Ident. Number _____