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MAR 26 2008

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 )

Case No. 39576 )

A. Subcase 37-22261  
(Insert water right number)

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 Amended Notice of Claim*, you certify that 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.

X 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 Casa del Norte, LP

My name is Bruce M. Smith

My address is 950 W. Bannock St., Suite 520, Boise, ID 83702

My phone number is 208-331-1800

### **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.

X 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 water use, but you **must** attach a copy of your Notice of Claim.)

See Attached Affidavit of John B. McCallum, Statements of Michael Hobdey. C. Michael Kast, and K. Lynn Bennett and Claim No. 37-22261

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 \$ 808.40.

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 Tuesday, June 17, 2008 at 1:30 p.m.  
(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:

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

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I have attached:

- ☐ An amended Notice of Claim (available from IDWR).
- ☐ Payment of the following additional fees required by IDWR:

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**VERIFICATION** (must be completed)

State of Idaho )  
County of Ada ) ss.

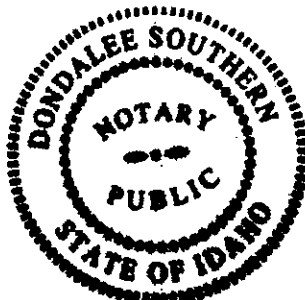
Bruce Smith, duly sworn, upon oath, deposes and says:  
(Name of person filing objection)

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: March 21<sup>st</sup>, 2008  
(Insert Date)



Dondalee South  
Notary Public for Idaho  
Residing at: Boise  
My Commission Expires: 5/31/2012

## CERTIFICATE OF MAILING

I certify that on March 21, 2008, 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:

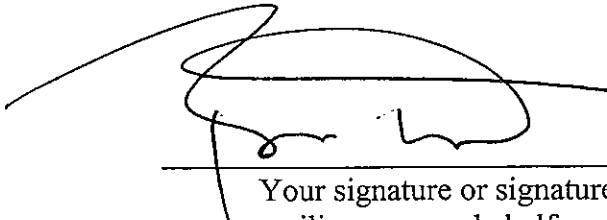
IDWR Document Depository  
PO Box 83720  
Boise, ID 83720-0098

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

United States Department of Justice  
Environment & Nat'l Resources Div  
550 W. 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 Special Master, you must serve a copy on all parties to that subcase.

(Insert Names/address of parties)

A handwritten signature in black ink, consisting of a large, stylized 'S' or 'R' shape followed by a horizontal line and some smaller, less distinct markings.

Your signature or signature of attorney  
mailing on your behalf

**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                 | ) | A. Subcase 37-821B                  |
|                            | ) |                                     |
| Case No. 39576             | ) | <b>AFFIDAVIT OF JOHN McCALLUM</b>   |
| <hr style="width: 100%;"/> | ) | <b>IN SUPPORT OF MOTION TO FILE</b> |
|                            | ) | <b>LATE CLAIM</b>                   |

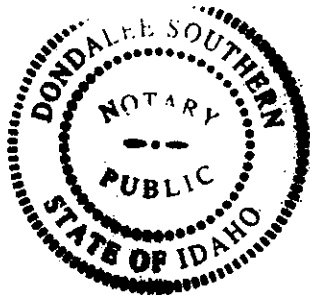
1. I am the general partner of Casa del Norte, L.P., an Idaho Limited Partnership.
2. I make this statement in support of a Motion to File a Late Claim in this proceeding.
3. Through Casa del Norte, I acquired certain property in 2002. I filed several claims for the water rights associated with the property. As these claims were processed by IDWR, one claim, No. 37-821B, was recommended by the IDWR while two other claims were denied. It is my understanding that the IDWR made its recommendations based on the 1920 *Bray v. Ferguson* decree. However, the actual use of water on this property was different from the findings in the decree in that some rights were not included in the decree.
4. In order to fully claim the use of water as has historically occurred, it is necessary to file a late claim in the SRBA. I have worked with IDWR to compile the information needed to support the claim, including obtaining affidavits or statements from historical owners of the property.
5. I believe that the use of water under Water Right 37-821B, coupled with the use as indicated in this claim, claim 37-22261 reflects the historical use of water on this particular piece of property from at least 1920 if not before. It also reflects the use of water by me since the time I acquired the property.
6. Included with this affidavit are statements I obtained from Michael Hobdey, C. Michael Kast, and K. Lynn Bennett that describe historical use of water.

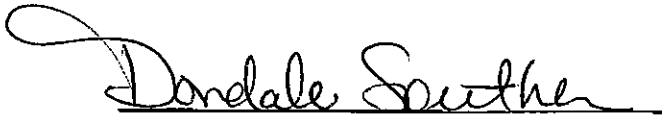
Further your Affiant, saith not.

DATED this 21<sup>st</sup> day of March, 2008.

  
John B. McCallum

SUBSCRIBED AND SWORN to before me this 21<sup>st</sup> day of March, 2008.



  
Notary Public for Idaho  
Residing at: Boise, Idaho  
My Commission Expires: 5/31/2012

RESPECTFULLY SUBMITTED this 21 day of March, 2008.

  
Bruce M. Smith  
Attorney for \_\_\_\_\_

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21<sup>st</sup> day of March, 2008, I caused to be served a true and correct copy of the foregoing Withdraw of Objections by the method indicated below, and addressed to the following:

1. Original to:

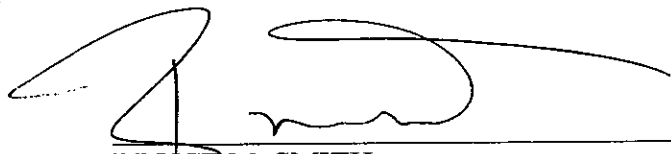
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

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

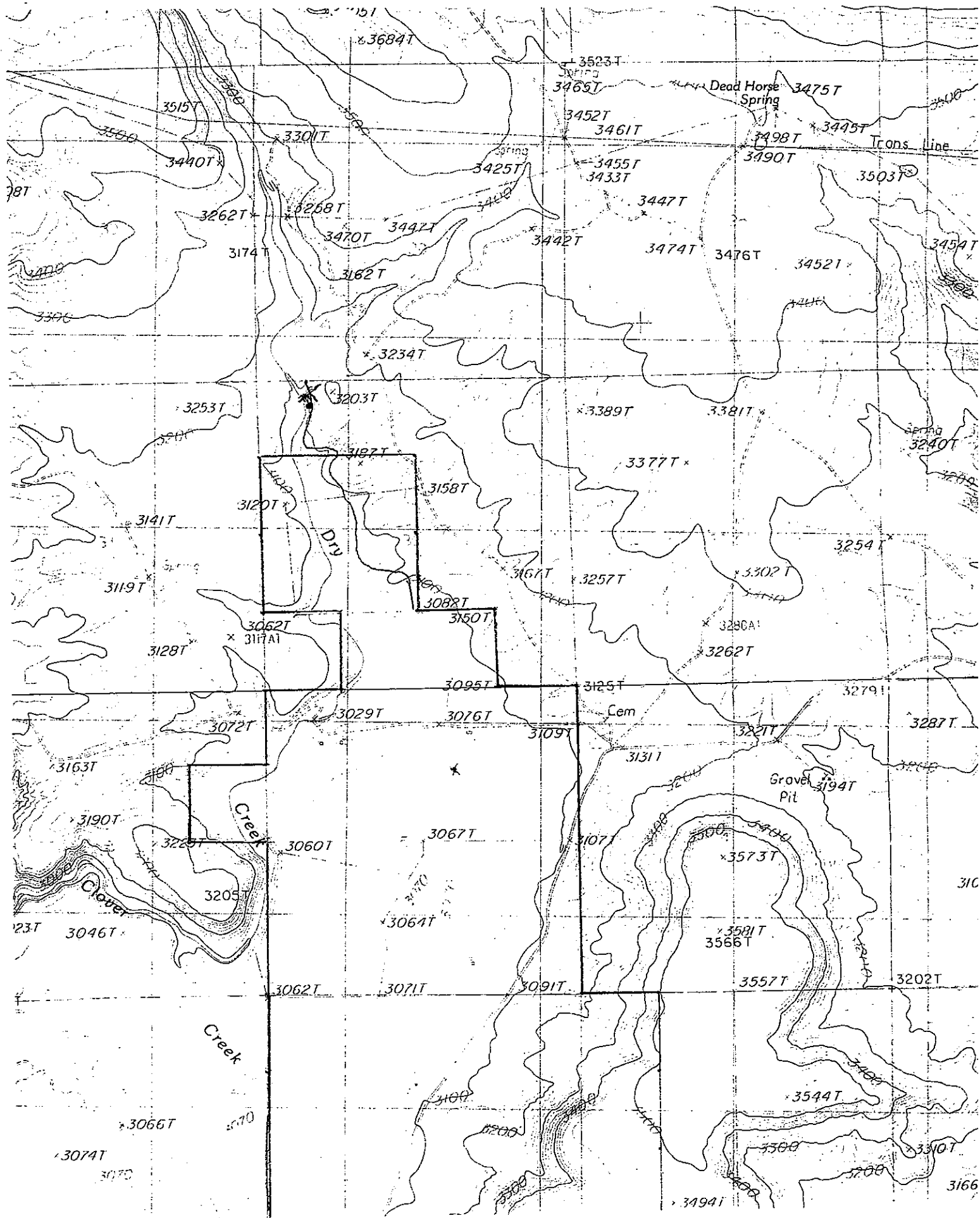
  
\_\_\_\_\_  
BRUCE M. SMITH

1-10-08

In regard to the irrigation ditch to My Grandfathers (Charlie Hobday) ranch. We moved to Dry Creek in 1943 Where My Parents Earl & Alice purchased the place South of Granpa's. We farmed these places until My Dad bought Granpa's place then He had them both until they were purchased by Mike Kast

I have indicated on map as to Where I remember the ditch running

Michael Hobday

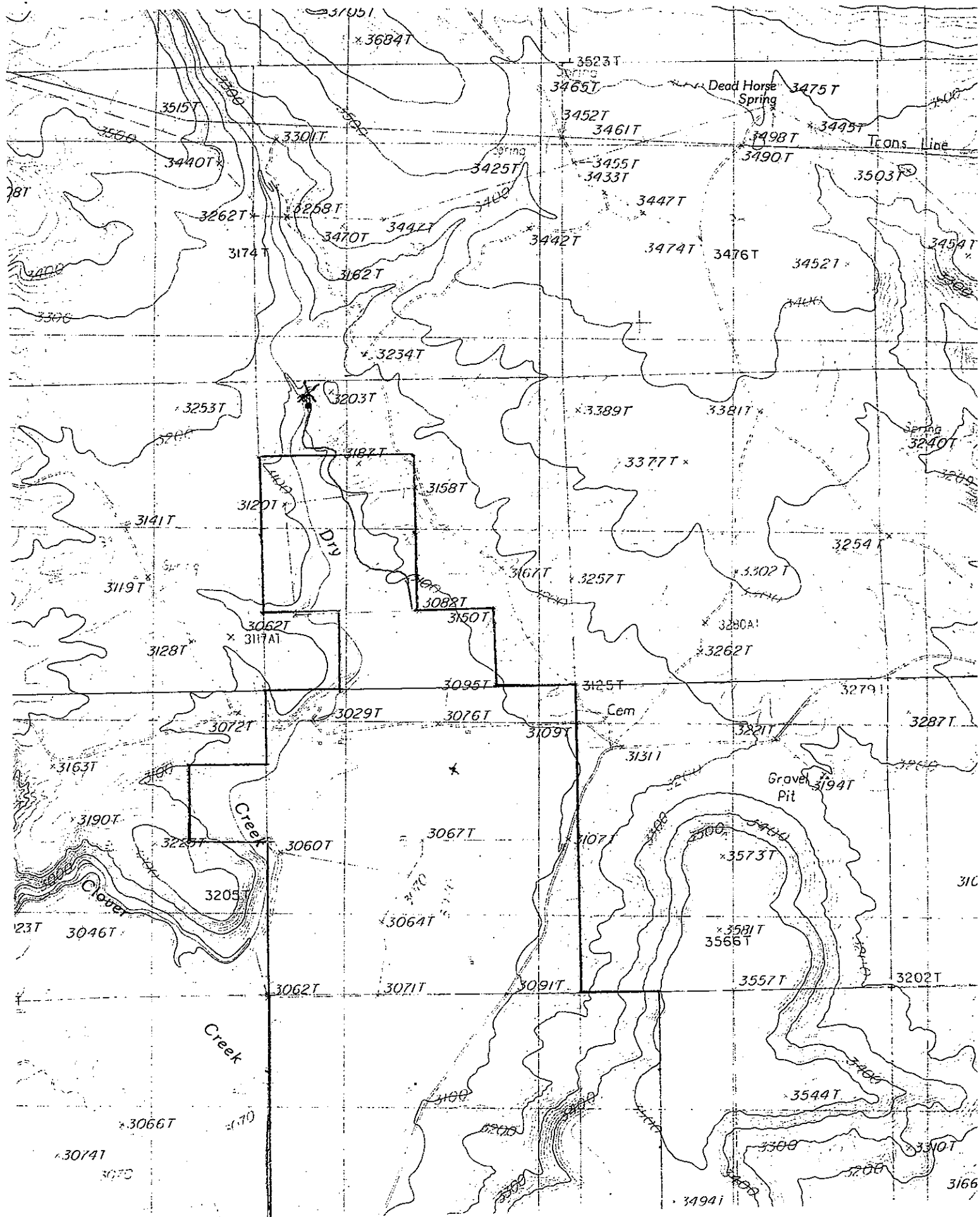


To whom it may concern: *LOWER IRRIGATION DITCH*

We used the irrigation ditch located in Township 4 South, Range 12 East section 32. This ditch extended above the north property line approximately 1300' to a diversion point. This diversion was used from 1968 to 1993. I believe this ditch to be the first ditch on dry creek for the original homestead, and had a water right from the early 1900's.

*1-1-08*

*C Michael Krost*



September 25, 2007

John McCallum  
11204 North Bar 21 Drive  
Glenns Ferry, Idaho 83623

John,

This is in response to your request for some history regarding maintenance of both the upper and lower Dry Creek ditches which convey water from Dry Creek to irrigate land at the North end of the Pioneer Ranch. The history of this area is available in a small publication of the history of Bliss, Idaho. If I recall correctly the first settlers in Gooding County settled at the Cove around the turn of the century and constructed the Dry Creek ditches to provide water for their homesteads.

I became a partner in, and manager of the Pioneer Ranch from 1992 until it was sold in 2002. When I came to the ranch both the upper and lower Dry Creek ditches were in use and I believe had been used continuously since they were constructed. I continued to use the ditches and maintained them each year with a Dozer or a backhoe as required to keep them functional.

  
K Lynn Bennett

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 37-22261  
Date Received:  
Receipt No:  
Received By:

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

1. Name of Claimant(s)

CASA DEL NORTE LP Phone: (208)366-7931  
11204 N BAR 21 DR  
GLENN'S FERRY ID 83623

2. Date of Priority: 04/08/1920

3. Source: DRY CREEK Trib. to: CLOVER CREEK

4. Point of Diversion:

| Township | Range | Section | 1/4 of 1/4 of 1/4 Lot | County  | Type |
|----------|-------|---------|-----------------------|---------|------|
| 04S      | 12E   | 29      | SW NW                 | GOODING |      |
| 04S      | 12E   | 32      | SW NW                 | GOODING |      |

If available, GPS coordinates: N43 02.929  
W115 03.978  
N43 02.308  
W115 03.853

5. Description of diverting works:  
Headgate with constructed ditch and pipeline.

6. Water is used for the following purposes:

| Purpose    | From To     | C.F.S. | (or) A.F.A |
|------------|-------------|--------|------------|
| IRRIGATION | 03/15 11/15 | 2.57   |            |

7. Total Quantity Appropriated is:  
2.57 C.F.S.

8. Total consumptive use:

9. Non-irrigation uses:

10. Place of use:

| Township      | Range Section |    | 1/4 of 1/4    |    | Lot | Use        | Acres |
|---------------|---------------|----|---------------|----|-----|------------|-------|
| 04S           | 12E           | 32 | SW            | NW |     | IRRIGATION | 1.2   |
|               |               |    | SE            | NW |     | IRRIGATION | 2.1   |
|               |               |    | NW            | SW |     | IRRIGATION | 0.8   |
|               |               |    | NE            | SW |     | IRRIGATION | 13    |
|               |               |    | SW            | SE |     | IRRIGATION | 29    |
|               |               |    | SE            | SW |     | IRRIGATION | 16    |
|               |               |    | Section Acres |    |     |            |       |
| 05S           | 12E           | 5  | NE            | NE | 1   | IRRIGATION | 26    |
|               |               |    | NW            | NW | 4   | IRRIGATION | 7.3   |
|               |               |    | NE            | NW | 3   | IRRIGATION | 8.8   |
|               |               |    | NW            | NE | 2   | IRRIGATION | 30    |
|               |               |    | SE            | NW |     | IRRIGATION | 22    |
|               |               |    | SW            | NE |     | IRRIGATION | 38    |
|               |               |    | NW            | SW |     | IRRIGATION | 2.5   |
|               |               |    | SE            | NE |     | IRRIGATION | 37    |
|               |               |    | SW            | NW |     | IRRIGATION | 9.6   |
|               |               |    | NE            | SW |     | IRRIGATION | 10    |
| Section Acres |               |    |               |    |     | 191.2      |       |
| Total Acres   |               |    |               |    |     | 253.3      |       |

11. Place of use in counties: GOODING

12. Do you own the property listed above as place of use? Yes

13. Other Water Rights Used:

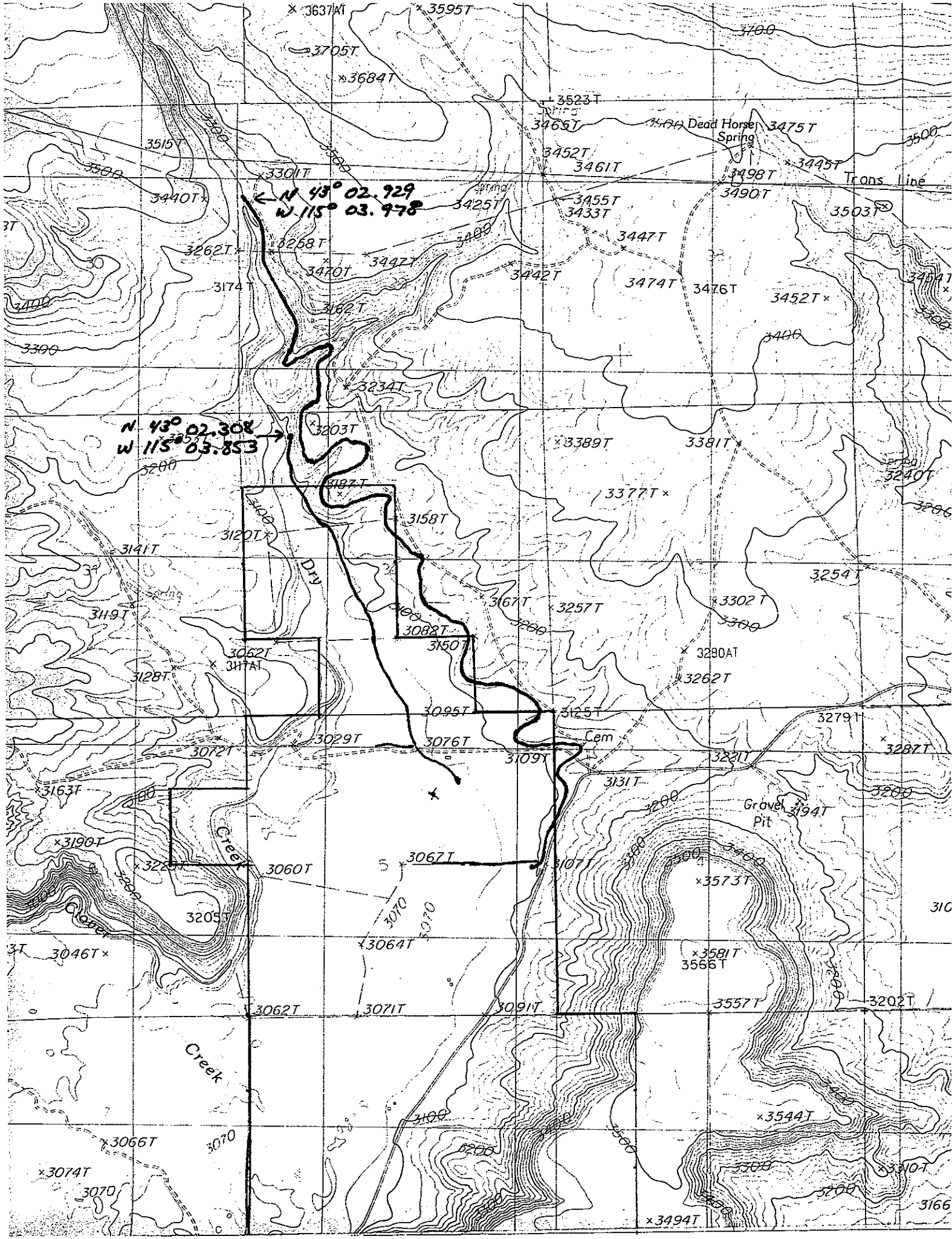
37-821B

14. Remarks:

15. Basis of Claim: Beneficial Use

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 \_\_\_\_\_ do not ☒ wish to receive and pay a small annual fee for monthly copies of the docket sheet.



Number of attachments: \_\_\_\_\_

For Organizations:

I do solemnly swear or affirm under penalty of perjury that I am

Managing Partner of  
Title

CASA Del Norte LP, that I have signed the foregoing  
Organization

document in the space below as MANAGING Partner of  
Title

CASA Del Norte LP and that the statements contained in the  
Organization

foregoing document are true and correct.

John B. McCallum  
Signature of Authorized Agent

MANAGING Partner, CASA Del Norte LP  
Title and Organization

3/19/08  
Date

17. Notice of Appearance:

Notice is hereby given that I, Bruce 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]

Address 950 WEST BANNOCK ST. Ste 520

Boise ID 83702

Date 3/24/08