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Attorneys for LU Ranching

**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 Numbers 55-10288B, 55-10289B,
	)	55-10290B, 55-10292B, 55-10293B,
	)	55-10295, 55-10296, 55-10297B,
	)	55-10298, 55-10299B, 55-10300,
Case No. 39576	)	55-10301B, 55-10303B, 55-13451, 55-
	)	13846 and 55-13844
	)	
	)	DECLARATION OF ELIZABETH P.
	)	EWENS IN SUPPORT OF LU
	)	RANCHING'S MOTION FOR
	)	ATTORNEY FEES
	)	

I, Elizabeth P. Ewens declare as follows:

1. I am a partner with the firm McQuaid, Bedford & Van Zandt, LLP, attorneys of record herein. I have personal knowledge of the matters stated herein and if called as a witness could testify competently thereto.

2. This is an action for review and approval by this Court of an adjudication of instream stockwater rights belonging to LU Ranching within a preferential grazing allotment located in the state of Idaho.

3. This case requires distinctive knowledge and specialized skill in the area of natural resources law, and specifically the enforcement, prosecution and defense of water rights.

4. LU Ranching incurred fees and expenses in this lengthy litigation, a detailed record is attached hereto as Exhibits A and B. Such fees and expenses were necessary and appropriate and the services for which they have been charged were actually and necessarily performed.

5. This award of attorney's fees is appropriate in that during the lengthy litigation spanning approximately six years, the United States' position was not substantially justified and concluded in the Applicant's successful defense of its water rights which were improperly objected to by the United States. Counsel is requesting only those attorney fees from the judicial phase of this litigation. It would be inequitable for LU Ranching to bear the cost of litigating this matter where the position of the United States throughout all phases of the litigation was without substantial justification.

6. The amount of attorney's fees requested is supported by the fact that this action involved not only trial but also the filing of numerous motions and briefs both before trial and after trial including the preparation of the following: summary judgment briefing, Trial brief, Post-Trial Brief, Memorandum in Support of LU Ranching's Motion to Alter or Amend, Memorandum in Opposition to United States' Motion to Alter or Amend, Reply Memorandum

in Support of LU Ranching's Motion to Alter or Amend, LU Ranching's Response to IDWR's Supplemental Report, Opening Brief on Challenge, Memorandum in Opposition to United States' Challenge and Reply to United States' Memorandum in Opposition to LU Ranching's Challenge. This action required multiple court appearances by attorneys for Applicants, both by phone and in person. The record involved in this action was voluminous, requiring attorneys for Applicants to expend time in gathering evidence and coordinating exhibits as well as extensive review of voluminous documents. Also, the level of particularized skill of attorneys for Applicants in the field of water rights adjudications and natural resources law is of significance in measuring their fees. This case involved important issues involving the interplay between federal and state law in the area of water rights. There was a substantial amount at stake in this litigation and the effort required to defend Applicant's rights was considerable. Nearly all issues were resolved in favor of Applicant after a great expenditure of resources by Applicant.

7. I have expertise in the area of water rights including but not limited to the representation of clients in the Snake River Basin Adjudication ("SRBA"). I have attended numerous conferences on water law and related areas, am a contributing author to the publication *California Water Law and Policy*, and am an active member of the Water Resources Committee of the ABA Section of Environment, Energy and Resources including serving on the planning committee for the annual ABA Water Law Conference and assisting the editor of the ABA Water Resources Newsletter. I, along with the attorneys in my firm specializing in natural resources and water law, have familiarity with and represent irrigation districts, water districts, and individual water users in conjunction with water rights actions in various different states in the

western United States. I have over ten years of experience as a litigator, almost half of which have focused almost exclusively on the area of water rights in the western United States including Idaho.

8. My partner, Michael Van Zandt has over 23 years of experience in the field of environmental law and significant experience in the area of water rights adjudications both in Idaho and in other western states. In addition, he had over 13 years of governmental experience, resulting in extensive knowledge of the limits of government authority and powers. He has served as lead counsel in representing irrigation districts, water districts and individual water users in conjunction with water right actions throughout the western United States, before both State and Federal courts. He has particular expertise in land use and water rights actions before the United States Court of Federal Claims involving highly specialized issues of federal law relating to water right holders and rights deriving from the Mining Act of 1866.

9. Craig Pridgen also has significant experience in the field of environmental and water law. He has practiced law for over 32 years, at least 11 of which have focused on environmental and water law matters. Mr. Pridgen has significant experience in the area of water rights adjudications both in Idaho and in other western states. Other attorneys who have contributed to the Applicant's case include Anthony (Tony) Francois. My former associate, Tony Francois has dedicated his practice to environmental and land use issues with a particular focus on water law. Mr. Francois has experience in complex water law and land use law litigation before a wide array of federal and state courts and administrative tribunals. My associate, Justin Lucke, also has contributed to this litigation. Mr. Lucke has focused on

water law since he entered the practice of law in 1999. My associate, Chris Whitman also contributed legal services to this litigation and provided litigation support during the latter phases of the case. My paralegals, Laurie Paffhausen and MargaretAnn Franz, also provided valuable support during the latter phases of the litigation.

10. The record of fees and expenses set forth in Exhibit A is an accurate and correct summary of what was billed to LU Ranching. My current billing rate of \$275.00 per hour and that of my colleagues from \$210.00 to \$340.00 per hour is in accordance with local market standards in the San Francisco Bay Area.

11. As reflected on the actual bills sent to the client, attached hereto, my firm's billing rates varied during the length of this litigation, beginning in 1999 to the present. Each timekeeper's rate is listed on the last page of each bill, on Exhibit B. As reflected on Exhibit B, portions of the bills have been redacted so any irrelevant, unrelated work or attorney work product is not exhibited.

12. Additional attorneys serving as counsel for the Applicant, LU Ranching, are local counsel, Richard Harris and Roger Ling. A summary description of the attorneys fees and expenses associated with the representation by Mr. Harris is attached hereto as Exhibit C. A summary description of the attorneys fees and expenses associated with the representation by Mr. Ling is submitted with the Declaration of Roger Ling, filed herewith.

13. The attorneys and paralegals' fees for the preparation and argument of this motion for attorneys' and the reply and oral argument are estimated to be 25 hours at \$275.00 per hour for myself, 8 hours at \$315.00 per hour for Craig Pridgen, 5 hours at \$340.00 per

hour for Michael Van Zandt, 10 hours at \$210.00 per hour for Justin Lucke, and 17 paralegal hours at \$160.00 per hour for an estimated total of \$15,915.00. Should this estimate change, we will so advise the Court.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge and belief.

Executed this 16th day of January 2005 at Davis, California.


Elizabeth P. Ewens

EXHIBITS CAN BE VIEWED IN THE
REPOSITORY OR LEGAL FILES