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Department of Water Resources

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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

Case No. 39576

Subcase Numbers 55-10288B, 55-10289B, 55-10290B, 55-10292B, 55-10293B, 55-10295, 55-10296, 55-10297B, 55-10298, 55-10299B, 55-10300, 55-10301B, 55-10303B, 55-13451, 55-13846 and 55-13844

LU RANCHING CO.,

Movant/Appellant,

v.

United States of America

Respondent.

**LU RANCHING CO.'S NOTICE OF
APPEAL FROM THE HONORABLE
JOHN M. MELANSON'S
MEMORANDUM DECISION AND
ORDER ON CHALLENGE, ORDERS ON
PARTIAL DECREES, AND ORDER ON
LU'S MOTION FOR
RECONSIDERATION**

**TO: THE ABOVE NAMED RESPONDENT, UNITED STATES OF AMERICA, AND
ITS ATTORNEY, LARRY A. BROWN, ESQ., FOR THE UNITED STATES AT THE
UNITED STATES DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL
RESOURCES DIVISION, 550 WEST FORT STREET, MSC 033, BOISE, IDAHO, 83724,
AND THE CLERK OF THE ABOVE-ENTITLED COURT.**

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, LU Ranching Co., appeals against the above-named Respondent to the Idaho Supreme Court from the Memorandum Decision and Order on Challenge

1 and Orders on Partial Decrees entered in the above-entitled action on January 4, 2005 and the Order
2 on LU Ranching's Motion for Reconsideration entered in the above-entitled action on May 2, 2005,
3 the Honorable John M. Melanson presiding.

4 2. LU Ranching Co. has a right to appeal to the Idaho Supreme Court, and the
5 judgments or orders described in paragraph 1, above, are appealable orders under and pursuant to
6 I.A.R. 11(a)(3) by virtue of the Certification entered on January 4, 2005, by the above entitled Court
7 with respect to the memorandum Decision and Order appealed from herein.

8 3. On appeal, appellant intends to assert the following issues, provided that this list of
9 issues on appeal shall not prevent LU Ranching from asserting other issues on appeal:

10 (a) whether qualified grazing preferences are evidence of historic use of water

11 sources pre-dating the enactment of the Taylor Grazing Act;

12 (b) whether LU Ranching Co. is entitled to a priority date that pre-dates the
13 enactment of the Taylor Grazing Act by virtue of the grazing preferences and grazing
14 permits issued to LU Ranching's predecessors in interest;

15 (c) whether the post-1934 priority dates priority dates are contrary to the unrebutted
16 evidence of historic use of the water sources at issue; and

17 (d) whether the evidentiary standard applied by the District Court on the issue of
18 priority date constitutes an unrealistic and insurmountable evidentiary hurdle.

19 4. An order has not been entered sealing all or any portion of the record.

20 5. Reporter's transcripts of the following proceedings are requested: Trial (commencing
21 February 21, 2001), Hearing on Motion to Alter or Amend (held July 31, 2003), Hearing on
22 Challenge and Cross-Challenge (held November 10, 2004), Hearing on Motion for Reconsideration
23 (held March 16, 2005).

24 6. LU Ranching requests the following documents to be included in the clerk's record
25 in addition to those automatically included under I.A.R. 28 and exhibits offered or admitted at trial
26 (I.A.R. 31):

27 (a) Motion of Claimant LU Ranching for Admission of Counsel Pro Hac Vice
28 and Affidavits submitted in support of same (January 13, 2000);

- 1 (b) Order Admitting Counsel Pro Hac Vice (January 14, 2000);
- 2 (c) LU's Memorandum in Opposition to United States' Motion to Alter or
- 3 Amend the Special Master's Report and Recommendation (May 13, 2003);
- 4 (d) Motion of LU Ranching for Admission of Counsel Pro Hac Vice and
- 5 Declaration of Local Counsel and Affidavit of Elizabeth P. Ewens filed in
- 6 support of same (May 14, 2003);
- 7 (e) Order Granting Motion of LU Ranching for Admission of Counsel Pro Hac
- 8 Vice (Ewens) (May 20, 2003);
- 9 (f) LU Ranching's Memorandum in Opposition to United States' Challenge of
- 10 the Special Master's Order on Motion to Alter or Amend (August 30, 2004);
- 11 (g) LU Ranching's Motion for Reconsideration and/or Motion to Amend
- 12 (January 18, 2005); and
- 13 (h) LU Ranching's Responsive Brief to United States' Memorandum in
- 14 Opposition to LU Ranching's Motion for Reconsideration (March 14, 2005).

15 7. I certify:

- 16 (a) That a copy of this Notice of Appeal has been served on the reporter.
- 17 (b) That the clerk of the district court has been paid the estimated fee for
- 18 preparation of the reporter's transcript.
- 19 (c) That the estimated fee for preparation of the clerk's or agency's record has
- 20 been paid.
- 21 (d) That the appellate filing fee has been paid.
- 22 (e) That service has been made upon all parties required to be served pursuant to
- 23 I.A.R. 20 and the Attorney General of Idaho pursuant to § 67-1401(1), Idaho
- 24 Code.
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Dated this 9~~th~~ day of June, 2005.

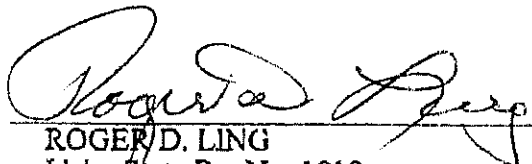
Respectfully submitted,

McQUAID BEDFORD & VAN ZANDT, LLP

By: 
MICHAEL J. VAN ZANDT
ELIZABETH EWENS

1 Dated this 9th day of June, 2005.

2
3 LING, ROBINSON & WALKER

4
5
6 By: 
7 ROGER D. LING
8 Idaho State Bar No. 1018
9 Attorneys for LU Ranching Co.

1 **CERTIFICATE OF SERVICE**

2 I certify that on June 9, 2005, I served a true and correct copy of foregoing **LU RANCHING**
3 **CO.'S NOTICE OF APPEAL FROM THE HONORABLE JOHN M. MELANSON'S**
4 **MEMORANDUM DECISION AND ORDER ON CHALLENGE, ORDERS ON PARTIAL**
5 **DECREES, AND ORDER ON LU'S MOTION FOR RECONSIDERATION** upon the
6 following individuals by placing the document in the United States Mail, postage paid, and
7 addressed as follows:

8
9 U.S. Department of Justice
10 General Litigation Section
11 Environment and Natural Resources Division
12 550 West Fort Street, MSC 033
13 Boise, ID 83724

14 Larry Brown
15 Attorney, U.S. Dept. of Justice
16 General Litigation Section
17 Environment and Natural Resources Division
18 550 West Fort Street, MSC 033
19 Boise, Idaho 83724

20 Chief, Natural Resources Division
21 Office of the Attorney General
22 State of Idaho
23 P.O. Box 44449
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25 IDWR Document Depository
26 P.O. Box 83720
27 Boise, ID 83720-0098

28 Ms. Maureen Newton, Court Reporter
Box 368
Rupert, ID 83350



Teresa Bechelli

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