

1 Michael J. Van Zandt (Cal. SBN 096777)
Elizabeth P. Ewens (Cal. SBN 213046)
2 **McQUAID BEDFORD & VAN ZANDT LLP**
221 Main Street, 16th Floor
3 San Francisco, CA 94105
Telephone: 415/905-0200
4 Facsimile: 415/905-0202

5 ROGER D. LING (Idaho SBN 1018)
LING, ROBINSON & WALKER
6 P.O. Box 396
Rupert, Idaho 83350
7 Telephone: (208) 436-4717
Facsimile: (208) 436-6804
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9 Attorneys for Joyce Livestock

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

11
12 In Re SRBA

Subcase Numbers 55-10135, 55-11061,
55-11385 and 55-12452

13
14 Case No. 39576

DECLARATION OF ELIZABETH P.
EWENS IN SUPPORT OF JOYCE
LIVESTOCK'S MOTION FOR
ATTORNEYS' FEES

1 I, Elizabeth P. Ewens declares as follows:

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

5 2. This is an action for the adjudication of instream stockwater rights belonging to
6 Joyce Livestock located within a preferential grazing allotment in the state of Idaho, and an
7 adjudication of instream stockwater rights claimed by the United States within the same grazing
8 allotment. Joyce Livestock's claim was granted with an April 26, 1935 priority. The United States'
9 claims were denied in their entirety.

10 3. I have substantial expertise in the area of water rights, have attended numbers
11 conferences on water law and related areas. My firm has particular expertise in the areas of natural
12 resources and water law, and represents individuals, private companies, irrigation districts, and
13 water districts in conjunction with water rights disputes.

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

16 5. Joyce Livestock incurred fees and expenses in this lengthy litigation, a detailed
17 record is attached hereto as Exhibit A. Such fees and expenses were necessary and appropriate and
18 the services for which they have been charged were actually and necessarily performed.

19 6. This award of attorneys' fees is appropriate in that the United States' position was not
20 substantially justified and led to lengthy litigation of some seven and one half (7 ½) years. Counsel
21 is requesting only those attorney fees from the judicial phase of this litigation. It would be
22 inequitable for Joyce Livestock to bear the cost of litigating this matter where the position of the
23 United States throughout all phases of the litigation was without merit.

24 7. The amount of attorneys' fees requested is support by the fact that this action
25 involved the filing of numerous motions and briefs, including but not limited to summary judgment
26 briefing, pre-trial memorandum, post-trial memorandum, briefs filed in support of Motion to Alter
27 or Amend Special Master's Report and Recommendation, and briefs filed in support of Challenge.

1 This action required court appearances by attorneys for Joyce Livestock including appearances at
2 numerous conferences prior to trial, trial, oral argument on Joyce Livestock's Motion to Alter or
3 Amend, and oral argument on Joyce Livestock's Challenge. The record involved in this action was
4 voluminous, requiring attorneys for Joyce Livestock to expend time in gathering evidence and
5 coordinating exhibits as well as extensive review of voluminous documents. The record of fees and
6 expenses set forth in Exhibit A is an accurate and correct summary of what was billed to Joyce
7 Livestock. My current billing rate of \$300.00 per hour and that of my colleagues from \$295.00 to
8 \$360.00 is in accordance with local market standards in the San Francisco Bay Area.

9 8. As reflected on the actual bills sent to the client, the firm's billing rates varied during
10 the length of this litigation, beginning in 2000 to the present. Each timekeeper's rate is listed on the
11 last page of each bill, on Exhibit A. As reflected on Exhibit A, the bills have been redacted so any
12 irrelevant, unrelated work or attorney work product is not exhibited.

13 9. My partner Micahel Van Zandt has extensive experience in the areas of water rights
14 adjudication and natural resources law. Mr. Van Zandt has practiced for over 25 years and has
15 significant experience in the area of water rights adjudications and environmental disputed before
16 both state and federal courts. Mr. Van Vandt is counsel on a major land use and water rights action
17 before the United States Court of Federal Claims which case involves highly specialized issues of
18 federal law relating to water rights holders.

19 10. My colleague Mr. Craig Pridgen has dedicated his practice to environmental, land
20 use and real property issues with a particular focus on water law. Mr. Pridgen has experience in
21 complex water law and land use law litigation before a wide array of federal and state courts and
22 administrative tribunals

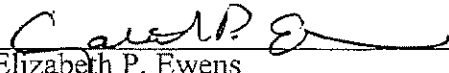
23 11. My former colleague Mr. Anthony Francois practices in the areas of environmental
24 land use law and water law and has experience in complex water law and land use law litigation
25 before federal and state courts and administrative tribunals. My paralegals, Samantha _____ -
26 Hubley and Laurie Paffhausen, also provided valuable support during the litigation.

27 12. The attorneys and paralegals' fees for the preparation and argument of this motion for

1 attorneys' fees and the reply are estimated to be 40 hours for myself at \$300.00 per hour, 10 hours
2 for Mr. Michael Van Zandt at \$360.00 per hour, and 20 paralegal hours at \$160.00 per hour for Ms.
3 Laurie Paffhausen for a total of \$ 18,800.00.

4 I declare under penalty of perjury under the laws of the State of California that the foregoing
5 is true and correct.

6 Executed this 16 day of August, 2005 at Davis, California.

7
8 
Elizabeth P. Ewens