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UNITED STATES OF AMERICA

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**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 55-10135, 55-11061,
	) 55-11385, and 55-12452
	)
	) UNITED STATES' MOTION TO
	) BIFURCATE PROCEEDINGS,
	) DISALLOW COSTS, AND ENLARGE
Case No. 39576	) TIME TO FILE A MEMORANDUM IN
	) SUPPORT OF MOTION TO
	) DISALLOW COSTS
	)
	) [TELEPHONIC ORAL ARGUMENT
	) REQUESTED]

MOTION

On August 17, 2005, Joyce Livestock Company ("Joyce") filed a Motion for Attorneys' Fees; Memorandum of Points and Authorities in Support for Attorneys' under I.R.C.P. 54(e), I.C. § 12-121 and the Equal Access to Justice Act [28 U.S.C. 2412(d)] (August 16, 2005). The United States, by and through the undersigned attorney, respectfully moves this Court for an order as follows:

1. For an order bifurcating the proceeding on Motion for Attorneys' Fees^{1/} into two proceedings; one proceeding to determine whether Joyce is entitled to costs,^{2/} and, in the event this Court determines that Joyce is entitled to costs, a separate proceeding to determine reasonable fees and hours.
2. Pursuant to IDAHO R. CIV. P. 54(d)(6), for an order disallowing costs because Joyce's Motion for Attorneys' Fees fails to state a claim upon which relief can be granted.
3. Pursuant to IDAHO R. CIV. P. 54(d)(6), for an order disallowing costs because this Court lacks jurisdiction over the subject matter of Joyce's Motion for Attorneys' Fees.

^{1/} Joyce's Motion for Attorneys' Fees is incorrectly captioned given the clear direction of the Idaho Rules of Civil Procedure to file a "memorandum of costs . . . supported by an affidavit of the attorney stating the basis and method of computation of the attorney fees claimed." IDAHO R. CIV. P. 54(e)(5).

^{2/} "Attorney fees, when allowable by statute or contract, shall be deemed as costs in an action and processed in the same manner as costs and included in the memorandum of costs; provided, however, the claim for attorney fees as costs shall be supported by an affidavit of the attorney stating the basis and method of computation of the attorney fees claimed." IDAHO R. CIV. P. 54(e)(5) (emphasis added). For the purposes of this Motion, the term "costs" includes attorney fees and Joyce's Motion for Attorneys' Fees shall be considered a memorandum of costs, as required by IDAHO R. CIV. P. 54(e)(5).

4. In the alternative, and pursuant to IDAHO R. CIV. P. 54(d)(6), for an order disallowing unreasonable fees and hours.

5. Pursuant to IDAHO R. CIV. P. 7(b)(3)(C), the United States desires to present oral argument on its Motion to Bifurcate Proceedings and Motion to Enlarge Time to File a Memorandum in Support of Motion to Disallow Costs. Pursuant to IDAHO R. CIV. P. 7(b)(4) and Administrative Order 1, 10.m., the undersigned counsel requests permission to participate in such hearing by telephone.

6. Pursuant to IDAHO R. CIV. P. 7(b)(3)(C), the United States desires to file a memorandum in support of its motion to disallow costs, and the United States' memorandum in support of its motion to disallow costs must be filed within 14 days.^{3/} The United States respectfully moves this Court for an order enlarging the time to file its memorandum in support of its motion to disallow costs to October 14, 2005.

7. For an order allowing such other relief as the Court deems just and reasonable.

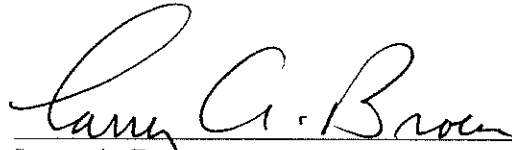
^{3/} "Any party may object to the claimed costs of another party . . . by filing and serving on adverse parties a motion to disallow part or all of such costs within fourteen (14) days of service of the memorandum of cost. Such motion shall not stay execution on the judgment, exclusive of costs, and shall be heard and determined by the court as other motions under these rules." IDAHO R. CIV. P. 54(d)(6). "Any objection to the allowance of attorney fees, or to the amount thereof, shall be made in the same manner as an objection to costs as provided by Rule 54(d)(6). . . ." IDAHO R. CIV. P. 54(e)(6).

By this motion, the United States makes a special appearance and specifically challenges the jurisdiction of this Court to award costs and attorneys' fees under the Equal Access to Justice Act, codified at 28 U.S.C. §§ 2412 et seq. See Joyce's Motion for Attorneys' Fees.

DATED this 30th day of August, 2005.

Respectfully submitted,

UNITED STATES OF AMERICA

A handwritten signature in cursive script, reading "Larry A. Brown", is written over a horizontal line.

Larry A. Brown
Of Attorneys for the United States

CERTIFICATE OF SERVICE

I certify that on August 30, 2005, that I served a true and correct copy of foregoing **UNITED STATES' MOTION TO BIFURCATE PROCEEDINGS, DISALLOW COSTS, AND ENLARGE TIME TO FILE A MEMORANDUM IN SUPPORT OF MOTION TO DISALLOW COSTS; SUBCASE NUMBERS 55-10135, 55-11061, 55-11384, and 55-12452** upon the following individuals by placing the document in the United States Mail in Washington D.C., postage paid, and addressed as follows:

Original to:

Clerk of the Court
Snake River Basin Adjudication
P.O. Box 2707
Twin Falls, ID 83303-2707

Copies to:

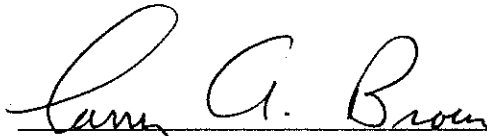
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