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8 Attorneys for LU Ranching
9

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

12 In Re SRBA

13 Case No. 39576
14

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

15 LU RANCHING CO.,

16 Movant/Appellant,

17 v.

18 United States of America

19 Respondent.
20 _____/

**LU RANCHING CO.'S NOTICE OF
APPEAL FROM THE HONORABLE
JOHN M. MELANSON'S
MEMORANDUM DECISION AND
ORDER RE: ATTORNEYS' FEES**

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

26 NOTICE IS HEREBY GIVEN THAT:

27 1. The above named Appellant, LU Ranching Co. ("LU Ranching"), appeals against the

1 above-named Respondent to the Idaho Supreme Court from the Memorandum Decision and Order
2 Re: Attorneys Fees entered in the above-entitled action on August 2, 2005, the Honorable John M.
3 Melanson presiding.

4 2. LU Ranching Co. has a right to appeal to the Idaho Supreme Court, and the
5 order described in paragraph 1, above, is an appealable order under and pursuant to I.A.R. 11(a)(1).

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

8 (a) whether the Court's decision to deny LU Ranching's Motion for Attorneys Fees
9 was an abuse of discretion; and

10 (b) whether the Court misinterpreted the Equal Access to Justice Act ("EAJA") and
11 the standard for an award of attorneys fees thereunder.

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

13 5. Reporter's transcripts of the following proceedings are requested: Hearing on Motion
14 for Attorneys Fees (June 15, 2005).

15 6. LU Ranching requests the following documents to be included in the clerk's record
16 in addition to those automatically included under I.A.R. 28 and 31:^{1/}

17 (a) Motion for Attorneys' Fees; Memorandum of Points and Authorities in
18 Support for Attorney's Fees under IRCP 54(E)(1), I.C. 12-121 and the Equal
19 Access to Justice Act [28 U.S.C. 2412(D)] (January 18, 2005);

20 (b) Declaration of Elizabeth P. Ewens in Support of LU Ranching's Motion for
21 Attorney Fees (January 18, 2005);

22 (c) Exhibits A, B & C filed by LU Ranching in Support of Motion for Attorney's
23

24 ^{1/} By way of a Motion to Consolidate Appeals, LU Ranching will seek leave of
25 the Idaho Supreme Court to consolidate the within appeal of the Order Re: Attorneys Fees
26 with the pending Appeal from the Honorable John M. Melanson's Memorandum Decision
27 and Order on Challenge, Orders on Partial Decrees, and Order on LU's Motion for
Reconsideration, Idaho Supreme Court No. 31994. The Clerk's Record, exhibits and
transcripts designated and prepared in conjunction with the pending appeal (Idaho Supreme
Court No. 31994) are relevant to the within appeal, and to avoid duplication of effort and
cost, LU Ranching requests that the record in Idaho Supreme Court No. 31994 also be
designated as part of the record for this Appeal from the Order Re: Attorneys Fees.

1 Fees (January 18, 2005);

2 (d) Declaration of Roger Ling in Support of LU Ranching's Motion for
3 Attorney's Fees (January 18, 2005);

4 (e) Declaration of Timothy Lowry in Support of LU Ranching Co.'s Motion for
5 Attorney Fees and Expenses Under I.R.C.P. 54 and the Equal Access to
6 Justice Act (January 18, 2005);

7 (f) Declaration of W. Alan Schroeder in Support of LU Ranching Co.'s
8 Application for Attorneys Fees under I.R.C.P. 54 and the Equal Access to
9 Justice Act [28 U.S.C. 2412(d)] (January 18, 2005);

10 (g) Supplemental Declaration of Timothy Lowry in Support of LU Ranching
11 Co.'s Application for Attorneys Fees and Expenses under I.R.C.P. 54 and the
12 Equal Access to Justice Act (February 1, 2005); and

13 (h) LU Ranching Co.'s Reply to United States' Memorandum in Support of
14 United States' Motion to Disallow Costs (June 8, 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 6th day of September, 2005.

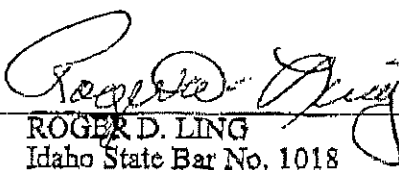
Respectfully submitted,

McQUAID BEDFORD & VAN ZANDT, LLP

By: 
MICHAEL J. VAN ZANDT
ELIZABETH EWENS

1 Dated this 7th day of September, 2005.

2
3 LING, ROBINSON & WALKER

4
5 By: 

6 ROGER D. LING

Idaho State Bar No. 1018

7 Attorneys for LU Ranching Co.
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1 **CERTIFICATE OF SERVICE**

2 I certify that on September ___, 2005, I served a true and correct copy of foregoing LU
3 **RANCHING CO.S' NOTICE OF APPEAL FROM THE HONORABLE JOHN M.**
4 **MELANSON'S MEMORANDUM DECISION AND ORDER RE: ATTORNEYS' FEES** upon
5 the following individuals by placing the document in the United States Mail, postage paid, and
6 addressed as follows:

7
8 U.S. Department of Justice
9 General Litigation Section
10 Environment and Natural Resources Division
11 550 West Fort Street, MSC 033
12 Boise, ID 83724

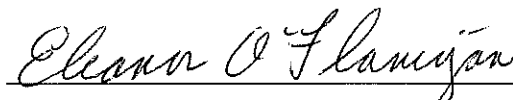
13 Larry Brown
14 Attorney, U.S. Dept. of Justice
15 General Litigation Section
16 Environment and Natural Resources Division
17 550 West Fort Street, MSC 033
18 Boise, Idaho 83724

19 Chief, Natural Resources Division
20 Office of the Attorney General
21 State of Idaho
22 P.O. Box 44449
23 Boise, ID 83720-0098

24 IDWR Document Depository
25 P.O. Box 83720
26 Boise, ID 83720-0098

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

Mr. Tim Lowry
LU Ranching Co.
Box 415
Jordan Valley, OR 97910



Eleanor O'Flanigan