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8 Attorneys for Joyce Livestock

9  
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 Number 55-10135<sup>1/</sup>

13 Case No. 39576

**JOYCE LIVESTOCK'S NOTICE OF  
APPEAL FROM THE HONORABLE  
JOHN M. MELANSON'S  
MEMORANDUM DECISION AND  
ORDER ON CHALLENGE**

14  
15 \_\_\_\_\_ /  
16 JOYCE LIVESTOCK CO.,

17 Appellant,

18 v.

19 UNITED STATES OF AMERICA,

20 Respondent.  
21 \_\_\_\_\_ /

22 **TO: THE ABOVE NAMED RESPONDENT, UNITED STATES OF AMERICA, AND**  
23 **ITS ATTORNEY, LARRY A. BROWN, ESQ., FOR THE UNITED STATES AT THE**  
24 **UNITED STATES DEPARTMENT OF JUSTICE, ENVIRONMENT AND NATURAL**  
25 \_\_\_\_\_

26 <sup>1/</sup> Joyce Livestock Co. is appealing that portion of the Memorandum Decision  
and Order on Challenge pertaining to Joyce Livestock's claim, Subcase Number 55-10135.  
27 Joyce Livestock does not appeal that portion of the Memorandum Decision and Order on  
Challenge pertaining to the United States' claims, Subcase Numbers 55-11061, 55-11385,  
and 55-12452.

1 **RESOURCES DIVISION, 550 WEST FORT STREET, MSC 033, BOISE, IDAHO, 83724,**  
2 **AND THE CLERK OF THE ABOVE-ENTITLED COURT.**

3 NOTICE IS HEREBY GIVEN THAT:

4 1. The above named Appellant, Joyce Livestock Co. ("Joyce Livestock"), appeals  
5 against the above-named Respondent to the Idaho Supreme Court from the Memorandum Decision  
6 and Order on Challenge entered in the above-entitled action on August 3, 2005, the Honorable John  
7 M. Melanson presiding.

8 2. Joyce Livestock has a right to appeal to the Idaho Supreme Court, and the judgment  
9 described in paragraph 1, above, is an appealable order under and pursuant to I.A.R. 11(a)(3) by  
10 virtue of the I.R.C.P. 54(b) Certification entered August 3, 2005, by the above entitled Court with  
11 respect to the Memorandum Decision and Order on Challenge.

12 3. On appeal, Appellant intends to assert the following issues, provided that this list of  
13 issues on appeal shall not prevent Joyce Livestock from asserting other issues on appeal:

- 14 a. whether qualified grazing preferences are evidence of historic use of water  
15 sources pre-dating the enactment of the Taylor Grazing Act;  
16 b. whether Joyce Livestock is entitled to a priority date that pre-dates the  
17 enactment of the Taylor Grazing Act by virtue of the grazing preferences and  
18 grazing permits issued to Joyce Livestock and its predecessors in interest;  
19 c. whether the post-1934 priority dates are contrary to the unrebutted evidence  
20 of historic use of the water sources at issue; and  
21 d. whether the evidentiary standard applied by the District Court on the issue of  
22 priority date constitutes an unrealistic and insurmountable evidentiary hurdle.

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

24 5. Reporter's transcripts of the following proceedings are requested: Trial (commencing  
25 December 3, 2002); Hearing on Motion to Alter or Amend (held April 1, 2004); Hearing on  
26 Challenge (held June 15, 2005).

27 6. Joyce Livestock requests the following documents to be included in the clerk's

1 record in addition to those automatically included under I.A.R. 28 and exhibits offered or admitted  
2 at trial (I.A.R. 31):

- 3 a. Motion of Claimant Joyce Livestock Company for Admission of Counsel Pro  
4 Hac Vice and Declaration of Local Counsel, including supporting Affidavits  
5 of Michael J. Van Zandt, Craig A. Pridgen and Anthony Francois (April 30,  
6 2000);
- 7 b. Order Admitting Counsel Pro Hac Vice (April 13, 2000);
- 8 c. Motions for Summary Judgment by Joyce Livestock Co. including  
9 Attachments "A" and "B" to Motions for Summary Judgment (March 8,  
10 2002);
- 11 d. Joyce Livestock's Reply Brief to Memorandum in Opposition to Joyce  
12 Livestock Co.'s Motion for Summary Judgment (March 29, 2002);
- 13 e. Joyce Livestock's Pre-Trial Brief (November 27, 2002);
- 14 f. Closing Argument by Joyce Livestock Co. including Appendix 1 to Closing  
15 Argument by Joyce Livestock (March 19, 2003);
- 16 g. Motion to Alter or Amend Special Master's Report and Recommendation  
17 (November 24, 2003);
- 18 h. Motion of Joyce Livestock for Admission of Counsel Pro Hac Vice, including  
19 Declaration of Local Counsel in Support of Joyce Livestock Company's  
20 Motion for Admission of Counsel Pro Hac Vice and Affidavit of Elizabeth P.  
21 Ewens (December 24, 2003);
- 22 i. Order Admitting Counsel Pro Hac Vice (January 8, 2004);
- 23 j. Joyce Livestock's Opening Brief in Support of Motion to Alter or Amend  
24 Special Master's Report and Recommendation (January 9, 2004);
- 25 k. Joyce Livestock's Reply to United States' Memorandum in Opposition to  
26 Joyce Livestock Company's Motion to Alter or Amend (March 9, 2004);
- 27 l. Joyce Livestock's Opening Brief in Support of Challenge (December 10,

2004);

m. Joyce Livestock's Supplemental Opening Brief in Support of Challenge  
(March 4, 2005); and

n. Joyce Livestock's Reply to United States' Responsive Brief in Opposition to  
Joyce Livestock's Challenge (May 6, 2005).

7. I certify:

a. That a copy of this Notice of Appeal has been served on the court reporter.

b. That the clerk of the district court has been paid the estimated fee for the  
preparation of the reporter's transcript.

c. That the estimated fee for preparation of the clerk's or agency's record has  
been paid.

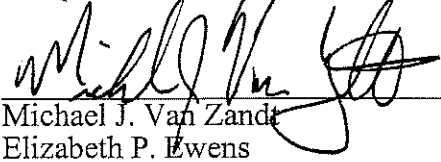
d. That the appellate filing fee has been paid.

e. That service has been made upon all parties required to be served pursuant to  
I.A.R. 20 and the Attorney General of Idaho pursuant to § 67-1401(1), Idaho  
Code.

Dated this 6th day of September, 2005.

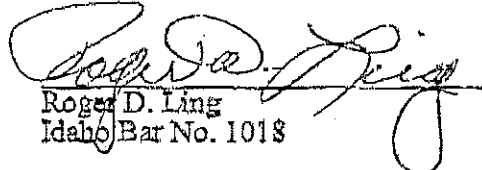
Respectfully submitted,

McQUAID BEDFORD & VAN ZANDT, LLP

  
\_\_\_\_\_  
Michael J. Van Zandt  
Elizabeth P. Ewens

1 Dated this 7<sup>th</sup> day of September, 2005.

2 LING, ROBINSON & WALKER

3  
4 By: 

5 Roger D. Ling  
6 Idaho Bar No. 1018

7 ATTORNEYS FOR JOYCE LIVESTOCK  
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CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_, 2005, I served a true and correct copy of the foregoing  
**JOYCE LIVESTOCK NOTICE OF APPEAL** upon the following individuals by placing the  
document in the United States Mail, postage paid, and addressed as follows:

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

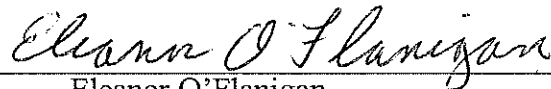
Larry Brown  
Attorney, U.S. Dept. of Justice  
General Litigation Section  
Environment and Natural Resources Division  
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Boise, Idaho 83724

Chief, Natural Resources Division  
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Ms. Maureen Newton, Court Reporter  
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Eleanor O'Flanigan