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DEPARTMENT OF
WATER RESOURCES

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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 Number 55-10135, 55-11061, 55-
11385, and 55-12452

13 Case No. 39576

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

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

27 NOTICE IS HEREBY GIVEN THAT:

1 1. The above named Appellant, Joyce Livestock Co (“Joyce Livestock”), appeals
2 against the above-named Respondent, the United States of America, to the Idaho Supreme Court
3 from the Memorandum Decision and Order Re: Attorneys’ Fees entered in the above-entitled action
4 on February 3, 2006, the Honorable John M. Melanson presiding.

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

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

- 9 a. whether the Court’s decision to deny Joyce Livestock’s Motion for Attorneys
10 Fees was an abuse of discretion; and
11 b. whether the Court misinterpreted the Equal Access to Justice Act (“EAJA”)
12 and the standard for an award of attorneys fees thereunder

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

14 5. Reporter’s transcripts of the following proceedings are requested:

- 15 a. September 20, 2005 Hearing on Motion to Bifurcate; and
16 b. December 14, 2005 Oral Argument on Motion for Attorneys’ Fees.

17 6. Joyce Livestock requests the following documents to be included in the clerk’s
18 record in addition to those automatically included under I.A.R. 28 and 31:^{1/}

- 19 a. Motion for Attorneys Fees; Memorandum of Points and Authorities in
20 Support of Attorneys Fees under I.R.C.P. 54(e), I.C. 12-121, and the Equal
21 Access to Justice Act, 28 U.S.C. §2412 (August 17, 2005);
22

23 ^{1/} Joyce Livestock and the United States have each appealed the underlying
24 substantive order of the District Court, the Memorandum Decision and Order on Challenge
25 entered in the above-entitled action on August 3, 2005, the Honorable John M. Melanson
26 presiding. These appeals are pending before the Idaho Supreme Court, Supreme Court Nos.
27 32278 and 32279. The Clerk’s Record, trial and other exhibits, and transcripts designated
and prepared in conjunction with the pending appeals are relevant to the within appeal, and
to avoid duplication of effort and expense, Joyce Livestock requests that the record in Idaho
Supreme Court Case Nos. 32278 and 32279 also be designated as part of the record for this
appeal from the Memorandum Decision and Order Re: Attorneys’ Fees.

- b Declaration of Michael J Van Zandt in Support of Joyce Livestock's Motion for Attorneys Fees (August 17, 2005);
- c Declaration of Elizabeth P. Ewens in Support of Joyce Livestock's Motion for Attorneys Fees (August 17, 2005);
- d Declaration of W Alan Schroeder in Support of Joyce Livestock's Motion for Attorneys Fees (August 17, 2005);
- e Declaration of Paul Nettleton in Support of Joyce Livestock's Motion for Attorneys Fees (August 17, 2005);
- f Certificate of Service for Motion for Attorneys Fees and Memorandum of Points and Authorities in Support of Attorneys Fees;
- g All exhibits and supporting documents filed in support of Motion for Attorneys Fees (August 17, 2005);
- h Joyce Livestock's Response to United States' Motion to Bifurcate Proceedings, Disallow Costs and Enlarge Time to File a Memorandum in Support of Motion to Disallow Costs (September 19, 2005);
- i Reply Brief in Opposition to United States' Motion to Disallow Costs (November 18, 2005); and
- j Joyce Livestock's Notice of Lodging of State Authority in Support of Reply Brief in Opposition to United States' Motion to Disallow Costs and Accompanying State Authority (November 18, 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 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;

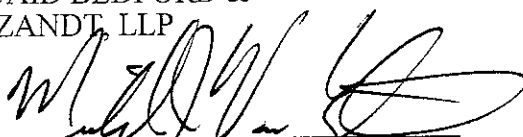
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e. That service has been made upon all parties required to be served pursuant to
I A.R. 20 and the Attorney General pursuant to §67-1401, Idaho Code.

Dated this 1st day of March, 2006.

McQUAID BEDFORD &
VAN ZANDT, LLP

By:

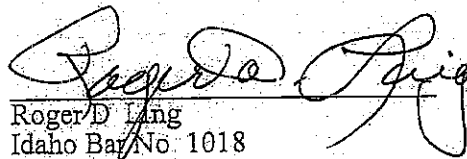

Michael J. Van Zandt
Elizabeth P. Ewens

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LING, ROBINSON & WALKER

Dated this 15 day of March, 2006

By:


Roger D. Ling
Idaho Bar No. 1018

ATTORNEYS FOR JOYCE LIVESTOCK

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CERTIFICATE OF SERVICE

I certify that on March 15, 2006, 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:

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Environment and Natural Resources Division
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Boise, ID 83724

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