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DEPARTMENT OF
WATER RESOURCES

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IN THE SUPREME COURT OF THE STATE OF IDAHO

IN RE: SNAKE RIVER BASIN	)	APPELLANTS' RESPONSE IN
ADJUDICATION CASE NO. 39576	)	OPPOSITION TO UNITED STATES'
	)	MOTION FOR PARTIAL STAY
	)	
	)	SUPREME COURT CASE NO. 31994
LU RANCHING CO.,	)	
	)	
Movant-Appellant,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	
	)	
	)	
	)	
	)	
	)	
	)	

APPELLANTS' RESPONSE IN OPPOSITION TO UNITED STATES' MOTION FOR PARTIAL STAY

JOYCE LIVESTOCK CO.,	)	
	)	
Movant-Appellant,	)	SUPREME COURT CASE NO. 32278
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Respondent.	)	
	)	
_____	)	
JOYCE LIVESTOCK CO.,	)	
	)	SUPREME COURT CASE NO. 32279
Respondent,	)	
	)	
v.	)	
	)	
UNITED STATES OF AMERICA,	)	
	)	
Appellant.	)	
_____	)	
	)	
	)	

I. INTRODUCTION

Appellants, LU Ranching Co. and Joyce Livestock Co. filed a Motion to Consolidate Appeals. In response, on November 30, 2005, the United States filed a Response in Opposition to Motion to Consolidate Appeals and Motion for Partial Stay. While Appellants stand on their position and arguments in favor of consolidation of these appeals, as set forth in the Appellants' Motion to Consolidate Appeals and Memorandum of Points and Authorities in Support of Motion to Consolidate Appeals, it is necessary to respond to the United States' Motion for

Partial Stay. Because the requested stay will only serve to further bifurcate and unnecessarily delay these proceedings, Appellant LU Ranching opposes the United States' Motion for Partial Stay.

II. ARGUMENT

In its Motion, the United States moved for a partial stay of the portion of LU Ranching's appeal relating to attorneys fees until after resolution of the appeal on the merits of the case. *See* United States of America's Response in Opposition to Motion to Consolidate Appeals and Motion for Partial Stay, p. 7. However, a stay is unnecessary and will only serve to delay resolution of this case and needlessly increase the cost of this litigation.

This Court has in the past been presented with appeals of attorney's fees decisions and has ruled on those appeals in conjunction with a ruling on an appeal of the lower court's substantive decision in the case. *See e.g. Mayo v. Safeway Stores, Inc.* 93 Idaho 161 (1969) (ruling on a substantive appeal of lower court's decision with respect to death benefits and in the same opinion ruling on an appeal of the lower court's ruling on a petition for attorneys fees). This Court also frequently rules on motions for attorneys fees on appeal based on I.A.R. 41, and has considered on appeal whether attorneys fees are warranted based on a party's arguments and positions taken at the District Court level, and has issued these rulings with respect to attorneys fees in the same decisions in which the Court rules on the underlying substantive appeals. *See North Snake Ground Water Dist. v. Gisler*, 136 Idaho 747 (2002) (awarding attorneys fees on appeal following a motion for the same pursuant to I.C. §12-121, I.R.C.P. 54(3) and I.A.R. 41); *see also Clear Springs Foods, Inc. v. Clear Lakes Trout Co.*, 136 Idaho 761 (2002). This

Court has both the proven authority and ability to rule both on the merits of a substantive appeal and on the issue of attorneys fees at the same time and in the same decision.

Briefing of both the substantive appeal regarding the water rights together with the attorneys fees issue also will serve the interests of judicial economy. In ruling on the appeal of the District Court's Memorandum Decision and Order Re: Attorneys Fees, this Court will need to consider the merits of the United States' position in the underlying case involving the water rights. *See* I.R.C.P. 54 (court must consider whether the case was brought, pursued or defended unreasonably or without foundation); *see also* 28 U.S.C. § 2412(d) (consideration of whether the United States' position in the underlying litigation was substantially justified). These inquiries require the Court to delve into the substantive merits of the underlying case. If, as the United States' requests, the appeal relating to attorneys fees is stayed, then the very real potential exists that the parties will need to brief issues relating to the substantive merits of the case twice: first in briefing of the substantive appeal and, a second time, in conjunction with briefing the appeal of the attorney's fees ruling. This duplication of effort will only serve to increase the cost of this litigation, which will disproportionately and adversely affect the private party litigants, in this case LU Ranching.

III. CONCLUSION

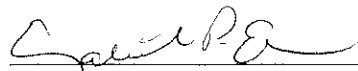
It is the expressed policy of this Court that litigation be pursued by the parties in a manner that will not cause unnecessary delay or a needless increase in the cost of litigation. *See e.g.* I.A.R. 11.1. In this case, as detailed above, staying the appeal of the attorney's fees decision will likely lead to a duplication of effort if the parties are required to brief substantive issues not once, but twice. It will also delay final resolution of litigation that began over eight years ago. Accordingly,

in the interest of economy, Appellants request that the Court deny the United States' Motion for Partial Stay.

Dated this 13 day of December, 2005.

Respectfully submitted,

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Dated this ____ day of December, 2005.

Respectfully submitted,

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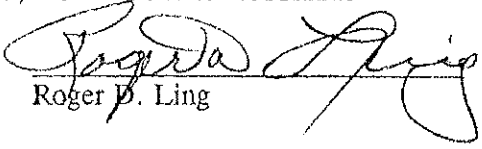
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CERTIFICATE OF SERVICE

I certify that on December 13, 2005, I served a true and correct copy of foregoing **APPELLANTS' RESPONSE IN OPPOSITION TO UNITED STATES' MOTION FOR PARTIAL STAY** upon the following individuals by placing the document in the United States Mail, postage paid, and addressed as follows:

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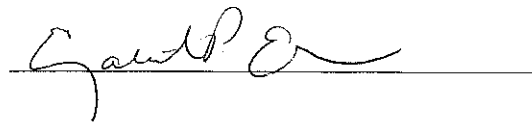
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