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IN THE SUPREME COURT OF THE STATE OF IDAHO

AMERICAN FALLS RESEVOIR
DISTRICT #2

Petitioner,

v.

UNITED STATES OF AMERICA,
BUREAU OF RECLAMATION

Respondents.

Supreme Court Docket No. 38606-2011

Twin Falls County Docket Nos. 01-217, 01-
218, 01-2068, 01-4024, 01-4025, 01-4054

MOTION FOR PRO HAC VICE
ADMISSION AND FOR
WAIVER OF FEE

COMES NOW the United States of America, by and through David L. Negri, and hereby moves the Court, pursuant to Rule 9, Idaho Appellate Rules, and Rule 227, Idaho Bar Commission Rules, to permit John L. Smeltzer to appear and argue the above-entitled matter *pro hac vice*, in association with movant, for the United States. The United States also moves the Court for waiver of the \$200 fee imposed by Rule 227, Idaho Bar Commission Rules.

1. Mr. Smeltzer has been an active member in good standing of the bar of the State of Pennsylvania since 1990 and of the District of Columbia since 1992, maintains the regular practice of law at the above-noted address, and is not a resident of or licensed to practice law in the State of Idaho. Mr. Smeltzer certifies that he has not previously appeared *pro hac vice* in the

courts of Idaho. He has appeared *pro hac vice* in the courts of Arizona, California, Connecticut, Colorado, and Wyoming.

Mr. Smeltzer may be reached at:

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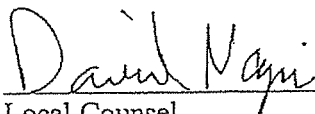
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2. The United States requests waiver of the \$200 fee imposed by Rule 227, Idaho Bar Commission Rules, for *pro hac vice* appearance before the Court. Federal law charges attorneys in the Department of Justice with the duty to conduct litigation on behalf of the United States in every forum in which the interests of the United States are at stake. Congress has specifically authorized the Attorney General to send “any officer of the Department of Justice ... to any State or district in the United States to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State” 28 U.S.C. § 517 (originally enacted as Act of June 22, 1870, ch. 150, § 5, 16 Stat. 162). Congress has also provided that “the conduct of litigation in which the United States, an agency, or officer thereof is a party, or is interested, ... is reserved to officers of the Department of Justice, under direction of the Attorney General.” 28 U.S.C. § 516; *see also* 28 U.S.C. § 515 (authorizing DOJ attorneys to “conduct any kind of legal proceeding ... whether or not he is a resident of the district in which the proceeding is brought”).

Under the Supremacy Clause of the Constitution, U.S. Const. Art. VI, cl. 2, these operations of the federal government are exempt from regulation by any state. *See Hancock v. Train*, 426 U.S. 167, 178-79 (1976). In this regard, the Supreme Court of the United States has held that the United States is exempt from state-imposed administrative fees when the United States is performing a governmental function. *Mayo v. United States*, 319 U.S. 441, 447 (1943); *see also Sperry v. Florida*, 373 U.S. 379, 403 (1963).

Under this analysis, the fee requirement of Rule 227, when imposed upon an attorney representing the United States, effectively constitutes "a money exaction[] the payment of which would be required before executing a function of government" and hence "is prohibited by the Supremacy Clause." *See Mayo*, 319 U.S. at 447. For these reasons, we respectfully request that the Court waive the fee requirement of Rule 227 in this case.

Respectfully submitted,



Local Counsel

DAVID L. NEGRI

United States Department of Justice

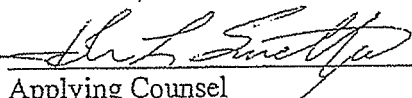
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July 8, 2011

Date



Applying Counsel

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July 1, 2011

Date

CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2011, a copy of the foregoing was served by

first class mail upon the following:

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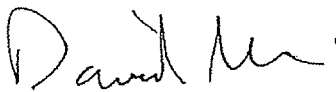
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