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BEFORE THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

HEARINGS CLERK  
EPA--REGION 10

In the matter of: )  
)  
)  
Bruneau Cattle Co., ) DOCKET NO. CWA-10-2007-0016  
)  
Owyhee County, Idaho, ) MOTION IN LIMINE  
) TO EXCLUDE EVIDENCE  
) OF INABILITY TO PAY  
Respondent. )  
\_\_\_\_\_ )

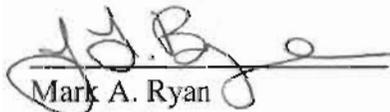
Pursuant to 40 C.F.R. § 22.16, Complainant Environmental Protection Agency ("EPA") submits this Motion In Limine to exclude all testimony and documents from evidence relating to Respondent's alleged inability to pay the penalty proposed in the Prehearing Exchange.

In its Complaint in this matter, Complainant proposed that Respondent be assessed a administrative penalty in an amount "not to exceed the statutory maximum penalty allowed under 33 U.S.C. §1319(g)(2)(B) ..." Complaint at 4. In Respondent's Pre-hearing Information Exchange, Respondent contended that a significant penalty would exceed its ability to pay, but that it could not clearly discern the amount Complainant was seeking. Assuming that the maximum could be assessed, Respondent provided three years of state and federal income tax returns as evidence of its inability to pay the statutory maximum penalty. Resp. Pre-Hearing Information Exchange at 6 and Exhibits N through P. Subsequently, in its Pre-Hearing Information Exchange, Complainant proposed an administrative penalty of \$75,000, an amount

significantly less than the statutory maximum Penalty. Compl. Pre-hearing Information Exchange at 8.

Complainant's counsel and Respondent's counsel have subsequently exchanged emails on the subject of Respondent's ability to pay. In an email dated August 2, 2007, Respondent's counsel represented that, given that Complainant was now seeking a penalty of \$75,000, Respondent would not claim an inability to pay. Because of settlement confidentiality concerns, Complainant is not attaching the August 2 email. Nevertheless, Complainant believes that Respondent will not dispute its representation that it will not claim an inability to pay. Therefore, Complainant hereby respectfully requests that the Presiding Officer preclude Respondents from offering any evidence at hearing of inability to pay.

RESPECTFULLY SUBMITTED this 3rd day of October, 2007.



Mark A. Ryan  
Jennifer Byrne  
Assistant Regional Counsels  
Region 10

## CERTIFICATE OF SERVICE

I certify that the foregoing "Motion in Limine to Exclude Evidence of Inability to Pay" was sent to the following persons, in the manner specified, on the date below:

A true and correct copy hand delivered to:

Carol Kennedy (original plus one copy)  
Regional Hearings Clerk  
EPA Region 10  
1200 Sixth Avenue  
Seattle, Washington 98101

A true and correct copy by U.S. Mail to:

Honorable Spencer T. Nissen  
Administrative Law Judge  
U.S. EPA Office of Administrative Law Judges  
1200 Pennsylvania Ave. NW  
Mail Code 1900L  
Washington, D.C. 20460

A true and correct copy by U.S. mail and by email to:

Kevin Beaton  
Stoel Rives LLP  
101 S. Capitol Blvd  
Boise, Idaho 83702

Dated: 10/3/2007

Sharon Eng

U.S. EPA Region 10