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UNITED STATES OF AMERICA

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Department of Water Resources

**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA	)	Sub-case Nos. See attached
	)	list
	)	
Case No. 39576	)	UNITED STATES' RESPONSE TO
	)	AMENDED MOTION OF LOLA
	)	COATES AND SAN FELIPE RANCHES
	)	FOR LEAVE TO FILE LATE
	)	OBJECTIONS
	)	

Descriptive Summary

This is the United States' opposition to the Amended Motion of Lola Coates and San Felipe Ranches to file 374 late objections to de minimis stockwatering claims in basin 34. The parties' late objections should be disallowed. As set forth below, the parties have not demonstrated good cause for filing their late objection, and their objections are without merit.

I. Background

This court has established specific procedures for the adjudication of claims to water in basin 34 and throughout the Snake River Basin. Among these procedures are rules governing when a party may file a claim and when a party may object. By opposing the Coates' and San Felipe Ranches' 374 late objections, the United States seeks to preserve the integrity of the court's rules and the efficient determination of water rights in the adjudication.

The United States, through the Bureau of Land Management, has filed a number of claims for de minimis amounts of stockwater on the public lands in Basin 34. The Director of the IDWR issued a supplemental Report recommending these claims on November 17, 1992. Parties then had until March 17, 1993, to file objections to these consumptive use claims in Basin 34.

The Coates and San Felipe Ranches, as with all parties in Basin 34, had four months after the issuance of the Director's Report to prepare and file their objections. In fact, these parties did file a number of objections in a timely manner. San Felipe Ranches had filed 6 objections (subcase numbers 34-00322-A, 34-10635, 34-13214-A, 34-13322-A, 34-13352, 34-13392) to the Director's recommendations for their own and other claimants' water rights before the objection deadline. Coates properly filed 6 individual objections (subcase numbers 34-07232, 34-11563, 34-13101-A, 34-13121-A, 34-13178-A, 34-13192-A) before the March 17 cut-off for objections.

In addition to these timely objections, the Coates identified 186 BLM stockwatering claims in basin 34 for objection prior to the March 17 deadline. Mr. Tom Coates then filed one Objection to these 186 water rights on March 16, 1993. See Affidavit of Tom Coates in Motion of Lola Coates and San Felipe Ranches For Leave To File Late Objection, April 18, 1995 (hereinafter "Coates Affidavit"). Because of improper filing of these 186 objections on a single Objections form, the Court initially rejected the objections but later allowed the Coates an additional two weeks beyond the objection deadline, until March 31, 1993, to submit the 186 individual objections. See Order Granting Extension of Time to File Objections, March 24, 1993.

On March 31, 1993, the Coates attempted to file 486 objections to BLM water rights in basin 34. Pursuant to the judge's order of March 24, 1993, the Court clerk rejected the 300 additional claims that were not included in the March 16, 1993, single Objection filed by the Coates.

Over two ~~years~~ later, the Coates and San Felipe Ranches filed their motion for leave to file late objections. See Motion of Lola Coates and San Felipe Ranches For Leave To File Late Objection, April 18, 1995. This motion referenced 342 BLM stockwatering claims. Once again, the Coates, by and through their attorney, failed to follow proper court procedures in the filing of objections and the Court issued an order requiring the parties to amend their motion. Approximately four months later on July 24, 1995, the parties filed an Amended Motion of Lola

Coates and San Felipe Ranches For Leave To File Late Objection accompanied by 374 individual objections.¹

II. Argument

A. Standard of Review

Although Administrative Order No. 1 does not explicitly set forth the test to be applied for admitting late objections, the Court has applied the test set forth in A.O. #1 for admitting late claims to requests for late objections. Motions for late objections are reviewed under the same criteria set forth in I.R.C.P. 55(c) and 60(b). These rules provide that a proponent of a Motion for Late Objection must show both good cause and a meritorious position. Schraufnagel v. Quinowski, 113 Idaho 753, 755, 747 P.2d 775 (Idaho Ct. App. 1987); Reeves v. Wisenor, 102 Idaho 271, 272, 629 P.2d 667, 668 (1981).

B. Coates and San Felipe Ranches Have Failed to Show Good Cause For Not Filing Timely Objections

1. Coates' Neglect to Timely File 300 Objections in March of 1993 Was Not Inadvertent or Excusable.

This Court, in its Extension Order dated March 24, 1993, allowed the Coates to file objections after the close of the objection period with specific restrictions. The Coates were permitted to correct the inadequate filing and service of their Objection to 186 BLM stockwatering claims by submission of 186 individual objections, as required in the instructions on page 1

¹ Lola Coates and San Felipe Ranch have each filed 187 late objections to identical water right claims by the BLM for stockwatering purposes. Of these 187 claims, 179 have no objections pending.

of the Objection form. The judge's Order in this matter specifically referenced the Objection that was "intended to cover 186 separate water rights." See Order Granting Extension of Time at 1. Rather than submit the 186 individual objections as allowed by the judge's Order, on March 31, 1995, the Coates attempted to file 486 objections. The additional 300 objections were rejected. The 300 objections were clearly outside the judge's Order and amounted to an attempt to circumvent the adjudication procedures regarding the filing of objections.

Mr. Tom Coates admits that identification of these additional 300 claims was not even begun until after the close of the March 17, 1993 objection period. See Coates Affidavit at 5 ("Between March 24 and 31, 1993, I continued to identify additional claims made by the BLM within Basin 34"). He improperly availed himself of the opportunity given by the Court to correct a procedural flaw in his filing of 186 objections to continue efforts to prepare and file 300 additional objections.

The movants now wish to file 374 late objections for reasons stated in the Coates Affidavit regarding events of March, 1993. Clearly, the events of two years ago did not give good cause for filing late objections even then. It is not excusable neglect when a party fails to meet a court imposed deadline due to their lack of diligence. Mr. Coates' identification, preparation, and filing of 300 additional objections after the close of the objection period was not inadvertent. It was a deliberate attempt to circumvent the process.

2. Coates Has Not Shown Good Cause For The Filing Of 187 Objections More Than Two Years After The End Of The Objection Period.

Even should this Court find that Coates showed good cause in failing to file 300 claims in a timely manner in 1993, neither movant has offered a reasonable explanation for delaying for over two years the filing of their present motion for 374 late objections.²

Following the rejection of their attempted filing of 300 objections on March 31, 1993, Coates did not motion this Court for leave to file late objections. In fact, the Motion of Lola Coates and San Felipe Ranches For Leave To File Late Objection, was not filed until April 18, 1995. Even accounting for the approximately eight month interval that the adjudication was stayed in 1994, Coates unreasonably waited sixteen months before attempting a second time to file their late objections.³

² In addition, movants have offered no proof that the 374 late objections that they wish to lodge now were included in the 300 late objections that Mr. Coates attempted to file in 1993. Mr. Coates merely includes the self-serving statement that the present 374 late objections are "objections pertaining to the 300 additional BLM claims which we unsuccessfully attempted to file on March 31, 1993." Affidavit at 8.

³ The Coates' position is particularly spurious because they no longer reside in or maintain cattle in the Sage Creek area. It is not clear how or even if the Coates are injured by the BLM claims to de minimis amounts of water for stockwatering purposes in the area of Sage Creek. A party must allege particularized injury in order to show standing to bring their claim. Miles v. Idaho Power Co., 116 Idaho 635, 641, 778 P.2d 757, 763 (Idaho 1989) ("litigants generally must allege or demonstrate an injury in fact and a substantial likelihood that the judicial relief requested will prevent or redress the claimed injury.")

In their April motion, the parties once again failed to follow court procedures requiring the filing of individual objections. Finally, on July 24, 1995, the movants filed an amended motion for late objection, accompanying their request with the 374 objection forms. The total amount of time elapsed since the March 17, 1993 deadline for filing objections, exclusive of the stay of the adjudication, was twenty months.

A party alleging excusable neglect must not have shown indifference or unreasonable delay in the prosecution of its claims. Olson v. Kirkham, 111 Idaho 34, 38, 720 P.2d 217, 221 (Idaho Ct. App. 1986). A twenty-month delay to file an objection is certainly unreasonable. A twenty month delay in filing 374 objections is inexcusable. Such delay is particularly inexcusable in light of the fact that Coates admits that he had identified all of these objections in the last two weeks of March, 1993. Coates Affidavit at 5.

The litigation of subcases in basin 34 has been well underway since the lifting of the stay in November of 1994. Permitting these movants to file 374 objections this late in the adjudication of subcases will unreasonably prejudice the claimant and significantly delay the efficient determination of water rights in basin 34. Because they have failed to demonstrate good cause for their belated filing, their late objections must be denied.

3. San Felipe Ranches Has Alleged No Good Cause For Its Late Filing Of 187 Objections.

Movant San Felipe Ranches has offered no explanation why it delayed twenty months in the filing of its late objections. The joint motion relies entirely upon the affidavit of Mr. Tom Coates. The Coates statement provides no facts supporting good cause shown why San Felipe Ranches did not file its objections in a timely manner in March 1993. Therefore, San Felipe Ranches' request for late objection should be summarily denied. Thomas v. Stevens, 78 Idaho 266, 271, 300 P.2d 811, 813-14 (1956) ("Mere mistake, inadvertence, surprise or excusable neglect without disclosure of meritorious defense or meritorious defense without disclosure of mistake, inadvertence, surprise or excusable neglect will not suffice.... The facts constituting the defense, whether disclosed by answer, affidavit or both, must also be detailed and must be sufficient, when established, to constitute a defense to the action on its merits").

C. Coates And San Felipe Ranches Fail To Allege A Meritorious Position.

In addition to a showing of good cause, a movant must also demonstrate that they have a meritorious position. Reeves v. Wilsenor, 102 Idaho 271, 272, 629 P.2d 667, 668 (1981). Movants have failed to show that their late objections have merit for legal or factual reasons.

1. Coates May Litigate The Legal Issues She Has Raised In The Context Of The 186 Objections She Has Currently Pending Against BLM Stockwatering Claims.

There is no merit to the filing of these late objections because the issues raised are issues currently being litigated in the context of the 186 objections by Lola Coates currently before the Court. A review of the 374 objections filed by the movants show that the issues of legal significance contest the United States' ability to own a water right. Movants have alleged that the United States has not beneficially used the water and, for the claims based upon the theory of a federal reservation, that no federal law or action created a reservation to the water right. While these are issues of dubious merit on their face, they already have been raised in the context of the 186 active subcases. The Court need not congest the docket or waste its resources on issues that are already before the Court and the parties.

In addition, the parties to the current subcases, accompanied by Mr. Dave Nelson, an employee of San Felipe Ranches, are currently engaged in settlement negotiations to resolve the 186 subcases. Successful resolution of the 186 subcases in which the parties have raised identical issues of law may moot the need for these late objections.

2. The Factual Issue Raised By The Late Objections Is Without Merit.

The only factual objection alleged in the 374 Late Objections that are particular to the individual BLM stockwater claims is the presence of water at the claimed sites. The Coates Affidavit, in particular, singles out a sole concern "that there was not, and never had been any live water which could conceivably be appropriated at the described location of the claim." Id. at ¶ 6.

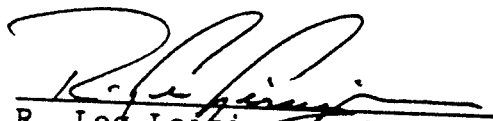
This objection is unfounded. BLM hydrologist, Mr. David Blackstun, has previously stated that a field investigation process to ensure that "all claims" were field verified was conducted in basin 34. See, Declaration of David E. Blackstun, in [U.S.] Response to Brief By Lola Coates To United States' Motion to Withdraw and Defer Claims, March 29, 1994, ¶¶ 9, 10. Each site included in the Coates/San Felipe Ranches Motion for Late Objection was visited by BLM personnel and the presence of surface water noted and recorded. Other sites that did not at the time of the field visit show the presence of water were subsequently withdrawn, even though the sites may have contained water during non-drought years. Therefore, there exists no merit to allegations that water is not present at the 187 sites that are the subject of the 374 late objections that the movants now wish to file.⁴

⁴ Four of the late objections are to BLM stockwatering claims that have been objected to by other parties, 34-12565, 34-
(continued...)

III. Conclusion

The filing of these 374 objections more than two years after the close of the objection period is without good cause and the issues raised are without merit. Moreover, the objections are unnecessary since the legal issues raised will be addressed in existing subcases. Just as importantly, however, the late filing of these objections is unfair to all participants of the adjudication process in basin 34. It is unfair to other parties in basin 34 who reasonably met the deadline for filing of objections in the SRBA. It is unfair to the claimants who are severely prejudiced by the almost doubling of objections to its rights in basin 34 after months and years of extensive effort to resolve timely-filed objections to its claims. And it is unfair to the Court as its effort to bring to partial decree all water rights in basin 34 may be severely impacted by the filing of hundreds of late objections. For these reasons, the motion to file late objections should be denied.

Respectfully submitted this 12th day of October, 1995.


R. Lee Leininger, Attorney, ENRD

⁴(...continued)
12567, and 34-12568. The BLM intends to withdraw these claims and the current objectors have agreed to the withdrawal with prejudice. A Standard Form No. 5 is expected to be filed in the near future. In addition, claim numbers 34-13264A and 34-13299A were inadvertently omitted from the list of withdrawn claims on the United States Motion to Withdraw Notice of Claims and Recommendations of Director's Report, April 5, 1995, for 702 unobjected to claims. The United States will motion for dismissal of these claims with prejudice as soon as possible.

CERTIFICATE OF SERVICE

I certify that on the 13th day of October, 1995, I served a true and correct copy of the United States' Response to Amended Motion of Lola Coates and San Felipe Ranches to File Late Objections upon the following individuals:

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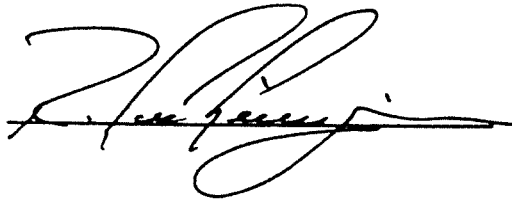
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Subcase Numbers

Exhibit A

34-02528	34-13120A	34-13183A	34-13271A
34-07444	34-13122	34-13184A	34-13272A
34-07445	34-13122A	34-13186A	34-13273A
34-07447	34-13123A	34-13187A	34-13274A
34-07449	34-13123	34-13188A	34-13275A
34-12536A	34-13127	34-13189A	34-13280A
34-12536	34-13127A	34-13190A	34-13281A
34-12537A	34-13128A	34-13191A	34-13282A
34-12537	34-13128	34-13194A	34-13283A
34-12538A	34-13129	34-13195A	34-13285A
34-12538	34-13129A	34-13196A	34-13286A
34-12539A	34-13133	34-13197A	34-13287A
34-12539	34-13133A	34-13200A	34-13288A
34-12540A	34-13134A	34-13201A	34-13289A
34-12540	34-13134	34-13202A	34-13290A
34-12541A	34-13135A	34-13203A	34-13291A
34-12541	34-13135	34-13204A	34-13296A
34-12542A	34-13136	34-13205A	34-13298A
34-12542	34-13136A	34-13206A	34-13299A
34-12552	34-13137	34-13207A	34-13303
34-12553	34-13137A	34-13208A	34-13303A
34-12554A	34-13140	34-13209A	34-13305
34-12565	34-13140A	34-13210A	34-13305A
34-12567	34-13141	34-13211A	34-13321
34-12568	34-13141A	34-13215A	34-13321A
34-12369A	34-13144A	34-13220A	34-13322
34-12569	34-13144	34-13223A	34-13324A
34-12570A	34-13145A	34-13228A	34-13324
34-12570	34-13146A	34-13229A	34-13328A
34-12573A	34-13147A	34-13230A	34-13328
34-12573	34-13148A	34-13231A	34-13340
34-12574	34-13154A	34-13235A	34-13341
34-12574A	34-13155A	34-13237A	34-13342
34-12575	34-13157A	34-13241A	34-13343
34-12575A	34-13161A	34-13243A	34-13344
34-12903A	34-13162A	34-13244A	34-13347
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34-13100A	34-13176A	34-13264A	
34-13114A	34-13179A	34-13266A	
34-13119	34-13180A	34-13267A	
34-13119A	34-13181A	34-13268A	
34-13120	34-13182A	34-13269A	