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Department of Water Resources
Adjudication Bureau

Party: San Felipe Ranches & Lola Coates

Attorney Name and Address: HEPWORTH, LEZAMIZ & HOHNHORST,
CHARTERED
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389
Telephone: (208)734-7510

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	)	Subcase Nos. See Exhibit A
	)	
	)	
Case No. 39576	)	BRIEF IN SUPPORT OF LEAVE TO
	)	FILE LATE OBJECTIONS
	)	
	)	

* * * * *

The issues before the Court are whether Lola Coates and San Felipe Ranches ("movants") may be allowed to file late objections to the BLM claims listed in Exhibit "A." To date, the Court has indicated it will decide the issues under I.R.C.P. 55(c) and 60(b), rules which apply to setting aside default or other judgments. Those rules apply where a judgment has been entered, which is not the situation presented here. No judgment has been entered on any of these claims.

1 What has happened here is that movants attempted to file objections in March
2 of 1993, but the Clerk of the Court would not accept the filings. Consequently, a decision
3 on the motion should be made not on the basis of I.R.C.P. 55 and 60, but under the only
4 rule on point; that rule is Administrative Order 1, Rule 6.f., which reads:

5 A party to the adjudication who does not file an objection or
6 response waives the right to be a party to the subcase and to
7 receive notice of further proceedings in the subcase. (Emph.
8 added.)

9 By this Court's own rule, we are presented with a question about waiver, not
10 setting aside a nonexistent judgment. The distinction is important because, while waiver
11 may lead to entry of a judgment, and a judgment certainly deserves a high degree of finality
12 in order to achieve repose, stability and judicial economy, the concept of waiver demands
13 far less:

14 "A waiver is the intentional relinquishment of a known right.
15 It is a voluntary act and implies election by a party to dispense
16 with something of value or to forego some right or advantage
17 which he might at his option have demanded and insisted
18 upon." *Crouch v. Bischoff*, 78 Idaho 364, 304 P.2d 646, 649.
19 The record discloses no voluntary surrender or election by
20 appellants to waive their rights as required for an "express
21 waiver."

22 In addition to express waiver, this court has recognized a
23 doctrine of implied waiver, under which are consistently
applied principles of estoppel. *City of Coeur d'Alene v.*
Spokane, etc., R. R. Co., 31 Idaho 160, 169 P. 930; *Hawkins*
v. Smith, 35 Idaho 349, 205 P. 188.

"The dividing line between waivers implied from conduct and
estoppels is often shadowy as the two terms have come to be
quite commonly used interchangeably; * * * when the term
waiver is so used the elements of estoppel almost invariably
appear, and it is employed to designate not a pure or express
waiver, but one which has come into the existence of

effectiveness through the application of the principles underlying estoppels." *Independent Gas & Oil Co. v. T. B. Smith Co.*, 51 Idaho 710, 10 P.2d 317, 320.

This doctrine has also been applied where the court has refused to find an implied waiver. *Neitzel v. Lawrence*, 40 Idaho 26, 231 P. 423; *Smith v. Faris-Kesl Const. Co., Ltd.*, 27 Idaho 407, 150 P. 25, 32, where this court said: "What constitutes a waiver is essentially a question of intention. * * * In order to establish a waiver the intention to waive must clearly appear, and a waiver * * * will not be presumed or implied, contrary to the intention of the party whose rights would be injuriously affected thereby unless, by his conduct, the opposite party was misled, to his prejudice, into the honest belief that such waiver was intended or consented to."

Grover v. Idaho Public Utilities Commission, 83 Idaho 351, 357-58, 364 P.2d 167 (1961).

In light of that comment and accepted concept of waiver, it is clear the Court contemplated the act of not filing an objection would constitute a voluntary election or surrender of the right to be a party to the subcase. The facts of this case, as established by the evidence, make it clear that we are not dealing with a knowing or voluntary act of not objecting. The Coates clearly intended to file objections, attempted to file objections, and mailed copies of the objections to IDWR and the United States, but were unsuccessful as the Court would not accept the documents for filing. There is no evidence before this Court upon which to base a finding that the Coates intended to waive anything. At most, the Court could find that they were frustrated, partially by their own inability to communicate that which they intended to do, and partially by the Court's unwillingness to file the documents.

Notwithstanding assertions by the United States, the Coates' intentions cannot be questioned. While the United States makes much to-do about the delay from March of

1 1993 when the efforts to file were rebuffed, until the motion for leave to amend was filed
2 in April of 1995, the affidavits irrefutably establish the Coates had done everything they
3 knew how to do in March of 1993 and took no further action until April of 1994 because
4 they could not afford to hire someone to help them. That one-year delay cannot be
5 considered conduct evidencing an intention to waive, but only an inability to further help
6 themselves. Also, one cannot draw the implication of waiver through the application of
7 principles underlying estoppels. The United States has in no way been misled to its
8 prejudice into an honest belief that a waiver was intended or consented to by the Coates.
9 In fact, the unrefuted evidence establishes the United States spent from March of 1993
10 through April of 1995 investigating and reevaluating unobjected to claims. Those actions
11 by the United States are confirmed by its filing of the motion to withdraw and defer, which
12 was the subject of the April 1994 hearing, and by its subsequent filing of an additional
13 motion to withdraw claims in April of 1995. Both Tom Coates and the Coates' counsel, and
14 thereafter the Coates' counsel, were in contact with the BLM and its attorneys about the
15 BLM's reevaluation of its unobjected to claims and were assured that the BLM would be
16 moving to withdraw many of those claims.

17 One cannot count the time in which the SRBA was stayed from April of 1994
18 through December of 1994, and waiting from December of 1994 until April of 1995 to file
19 a motion is entirely justifiable in light of the circumstances of the case. The United States
20 represented to the Coates' counsel that it was reevaluating and would be moving to
21 withdraw additional claims, including ones which are at issue here. In fact, in April of 1995
22 the motion for leave to file late objections crossed in the mail with the United States'
23

1 motion to withdraw claims. The United States' motion contains many claims which were
2 also addressed in the motion for leave to file late objections. Additionally, the 1994
3 legislation that led to the stay included provisions revoking the designation of the Director's
4 Report as a pleading and requiring the United States to file its claims directly with the Court.
5 IDWR was engaged in filing motions to transfer the federal claims from IDWR to the Court
6 and it was anyone's guess as to what documents would need to be objected to after the stay
7 was lifted and the dust had settled. Moreover, principles of equity and I.R.C.P. 1 prefer
8 decisions on the merits and abhor judgments by default. Justice requires that objections be
9 allowed. Just as Judge Hurlbutt has held that parties may substitute in for IDWR where they
10 relied upon IDWR's investigations only to find that IDWR is no longer a party, so too should
11 this Court consider that IDWR did nothing more than a cursory investigation of aerial photos
12 of the BLM stockwater claims. It would be truly anomalous if the Court were to decide that
13 although the Coates attempted to object as early as March of 1993, they will not now be
14 allowed to come in on BLM claims, while anyone filing motions to intervene in other SRBA
15 subcases as late as September of 1995 are justified in so doing.

16 In conclusion, the Coates have always acted in good faith in attempting to file
17 objections, and the United States has known of those intentions since March of 1993. Any
18 neglect on the part of the Coates, their counsel, or the Court is excusable, and although
19 mistakes may have been made, it is clear that the Coates have presented the Court with
20 substantial reasons for allowing late objections. In fact, justice requires late objections.
21 Moreover, the record clearly establishes the United States is neither prejudiced nor surprised
22 by the motions, but that by its own conduct it has always known the substance of the
23

1 objections. To say that it had an honest belief that the Court intended to abandon their
2 opposition to the claims would be simply ingenuous. Therefore, the Coates and San Felipe
3 Ranches respectfully request that they be granted leave by the Court to file the objections
4 which the United States has known were looming on the horizon for more than three years.
5 The Court should not allow technical pleading in this case to quash the ongoing substantive
6 disputes.

7 Dated this 3rd day of November, 1995.

8 Respectfully submitted,

9 HEPWORTH, LEZAMIZ & HOHNHORST,
10 CHARTERED

11 By: Patrick D. Brown
12 Patrick D. Brown
13 Attorneys for San Felipe Ranches and
14 Lola Coates
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CERTIFICATE OF SERVICE

The undersigned, a resident attorney of the State of Idaho, with offices at 133 Shoshone St. North, P.O. Box 389, Twin Falls, Idaho 83303, and one of the attorneys for the objector in this matter, certifies that on the 3rd day of November, 1995, he served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Attorney General's Office
IDWR
P. O. Box 44449
Boise, ID 83711-4449

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

U.S. Department of Justice
Environment & Natural Resources
Division
550 West Fort St.
MSC 033
Boise, ID 83724

☒ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy (Fax)

Patrick D. Brown for
Patrick D. Brown

(WATER\SANFLIP\BRF.N02)

EXHIBIT "A"

34-02528	34-13122A	34-13188A	34-13281A
34-07444	34-13123A	34-13189A	34-13282A
34-07445	34-13123	34-13190A	34-13283A
34-07447	34-13127	34-13191A	34-13285A
34-07449	34-13127A	34-13194A	34-13286A
34-12536A	34-13128A	34-13195A	34-13287A
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34-12537A	34-13129	34-13197A	34-13289A
34-12537	34-13129A	34-13200A	34-13290A
34-12538A	34-13133	34-13201A	34-13291A
34-12538	34-13133A	34-13202A	34-13296A
34-12539A	34-13134A	34-13203A	34-13298A
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34-12540A	34-13135A	34-13205A	34-13303
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34-12541A	34-13136	34-13207A	34-13305
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34-12569	34-13146A	34-13231A	34-13342
34-12570A	34-13147A	34-13235A	34-13343
34-12570	34-13148A	34-13237A	34-13344
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34-13122	34-13187A	34-13280A	