

Party: Cranney Bros.

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8-21

**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

Case No. 39576

) CRANNEY'S MOTION
) AND MEMORANDUM FOR
) PROTECTIVE ORDER AND
) REQUEST FOR EXPEDITED
) HEARING

95-08-0059

DESCRIPTIVE SUMMARY

This document contains the Motion for Protective Order filed by Cranney Bros. ("Cranney") to prevent, or postpone, the proposed August 24, 1995 deposition of Mike Cranney by the Hagerman Water Right Owners, Inc. ("HWRO") pursuant to HWRO's August 18, 1995 deposition notice.

MOTION FOR PROTECTIVE ORDER

Cranney, through its attorneys, Givens Pursley & Huntley, LLP, and pursuant to Rule 26(c) I.R.C.P., hereby moves the Court for an order protecting Cranney from the deposition that HWRO seeks to conduct on August 24, 1995, on the ground that such a deposition, at this time and carried out by this entity, would be untimely, oppressive, and unreasonable. A copy of HWRO's August 18, 1995 deposition notice served on Cranney (the "deposition notice") is attached hereto for the Court's reference.

Cranney requests that the Court order that: 1) the deposition request is

untimely and unreasonable as contemplated by I.R.C.P. 26(f); 2) such discovery may be had only after Cranney has been allowed to become a party to a subcase in which HWRO also is a party; 3) HWRO is not a proper entity to engage in such discovery; and 4) HWRO pay Cranney's reasonable attorney fees and expenses in seeking this order, pursuant to I.R.C.P. 37(a)(4).

Cranney requests an expedited hearing.

MEMORANDUM

Pursuant to the Court's July 28, 1995 Order, Cranney filed its August 17, 1995 motion, which seeks leave to file late responses to the objections to the Basin 36 director's report filed by Dan and Irma McFaddan (subcases 36-00048A, 36-00049, and 36-02169), Fred and Susan Walmsley (subcase 36-00039D), and Robert Brailsford (subcase 36-04260B). The motion and attached responses were served on counsel of record for these parties. On August 18, 1995—the day the motion and responses were received by counsel on the service list—HWRO served the deposition notice by fax on Cranney's counsel.

HWRO is not a party to any of these subcases and has not sought to file a late response or objection, or to intervene or participate in them. There has been no discovery or hearing schedule established for these subcases. HWRO has filed no pleading in these cases which would inform Cranney about the positions HWRO might be asserting or the information it might seek to elicit, and for what purpose. The court has not yet ruled on Cranney's August 17, 1995 motion to file late responses.

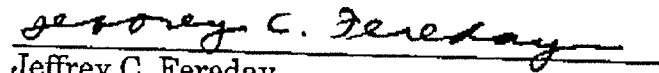
HWRO files this deposition notice in the main SRBA case, not in any subcase. However, HWRO is not, to Cranney's knowledge, a claimant in the SRBA.¹

¹HWRO also did not serve the deposition notice as required by this Court's Administrative Order 1.

HWRO's proposed deposition of Cranney in the main SRBA case follows HWRO's recent filing of interrogatories in the main SRBA case against Idaho Ground Water Appropriators, Inc., several Upper Valley Irrigation Companies, Fremont-Madison Irrigation District, A & B Irrigation District, Aberdeen-Springfield Canal Company, United Water Idaho, Busch Agricultural Resources, Inc., and several other entities. Motions for protective orders are pending with respect to these interrogatories on the grounds that such discovery is burdensome and vexatious. The current deposition request, filed by a non-claimant and lodged outside of any subcase, appears to be more of the same. The Court should allow protection from such discovery until HWRO is properly a part of a particular contested matter, such as a subcase, to which Cranney is a party, and until the special master presiding over the subcase has had an opportunity to establish an appropriate discovery schedule.

Cranney does not assert immunity from discovery. However, for the above reasons, his deposition should not be had at this time by this entity. Cranney respectfully requests that the court grant this motion for protective order.

Dated this 21st day of August, 1995.


Jeffrey C. Fereday
GIVENS PURSLEY & HUNTLEY, LLP
Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I certify that on this 21st day of August, 1995, I caused to be served a true and correct copy of the foregoing CRANNEY'S MOTION AND MEMORANDUM FOR PROTECTIVE ORDER AND REQUEST FOR EXPEDITED HEARING by fax to:

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Attached Court Certificate of Mailing for Expedited Hearings dated July 17, 1995

Jeffrey C. Tereday