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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

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. 36-00039D, 36-00048A, 36-00049,
	)	36-02169 and 36-04260B
Case No. 39576	)	
	)	ORDER DENYING MOTION TO LIMIT
	)	DISCOVERY

On October 27, 1995, Cranney Bros. filed its *Consolidated Motion to Limit Discovery and Request for Expedited Hearing (Motion to Limit Discovery)*. At the same time, it lodged its *Memorandum in Support of Consolidated Motion to Limit Discovery and Request for Expedited Hearing*. Titles to both the *Motion to Limit Discovery* and the *Memorandum* listed Subcase No. 36-00048A twice, so presumably the matter concerns only the above five (5) subcases.

The *Motion* was heard by the Special Master on October 31, 1995. Jeffrey C. Fereday appeared in person on behalf of Cranney Bros. Patrick D. Brown appeared in person on behalf of claimants in the subcases¹ and argued in opposition. Deputy Attorney General Brent R. King appeared by telephone on behalf of IDWR, but took no position one way or the other. Just before the hearing, Deputy Attorney General Cheri C. Jacobus faxed to the Court the *State of Idaho's Notice to Not Participate in Hearing Scheduled on Cranney Bros. Consolidated Motion to Limit Discovery*. At the conclusion of argument, the Special Master took the matter under advisement.

¹ Fred and Susan Walmsley (36-00039D), Dan and Irma McFadden (36-00048A, 36-00049 and 36-02169) and Robert H. Brailsford (36-04260).

DISCUSSION

On August 18, 1995, Cranney Bros. filed its *Motion to File Late Responses*² in the subcases. On October 20, 1995, the claimants filed their *Notice of Taking Deposition Duces Tecum upon Oral Examination of Cranney Brothers* in each subcase. On October 27, 1995, Cranney Bros. filed its *Motion to Limit Discovery*. The *Motion to Limit Discovery* seeks to limit the scope of discovery by oral deposition *duces tecum* of Cranney Bros. noticed by the claimants for November 3, 1995, in Burley, Idaho. Cranney Bros. wants the deposition "limited to the issue of whether Cranney has good cause to file a late objection to Basin 36 claims." At present, Cranney Bros. is not a party to any of the subcases.

The genesis of the *Motion to Limit Discovery* lies in Judge Hurlbutt's *Order Granting in Part, and Denying in Part, Joint Motions for Amendment of Administrative Order 1*, dated July 28, 1995. In that *Order*, a procedure was established for parties seeking to file late objections or late responses in subcases because of removal of IDWR as a party and the change in the status of the Director's Report:

1. Parties shall have twenty-one (21) days from the date of this Order in which to file a *Motion to File Late Objection* or a *Motion to File a Late Response*. The moving party shall attach a completed *Objection* or *Response* which shall be signed by the party or counsel.
2. The court will review the *Motion to File a Late Objection* or *Motion to File a Late Response* under a criteria similar to that contained in I.R.C.P. 55(c). The proponent of such *Motions* must show both good cause for timeliness and the existence of a meritorious position. In addition, the court may grant such *Motions* with such limitations as are just under the circumstances.

One month after that *Order* was entered, Judge Hurlbutt signed an *Order Granting Motion for Protective Order* barring HWRO from deposing Cranney Bros. and Mike Cranney as then scheduled. The *Order* stated that discovery requests must be filed in subcases where HWRO or its individual members and Cranney Bros. are parties, rather than in the main SRBA case. The *Order* went on to give some guidance about the timing of discovery:

That is not necessarily to say that the Cranney motions to file late responses must first be granted by a special master before discovery will be allowed. This court can

² A hearing on Cranney Bros.' *Motion to File Late Responses* is scheduled for November 22, 1995.

conceive of situations where discovery upon a party filing a motion to file a late objection or response may be appropriate *prior* to a decision on the motion by the special master. In any event, decisions regarding the motions made under the *Order*, and any discovery requests are properly filed in the subcases to which they pertain, and will be left to the discretion of the special master hearing the subcase. The special master will also be responsible for fashioning discovery in their subcases as they deem appropriate under the Idaho Rules of Civil Procedure and SRBA Administrative Order 1.

During argument on the pending *Motion to Limit Discovery*, counsel for Cranney Bros. agreed to proceed with the deposition as set. Cranney Bros. only sought protection from “wide-ranging discovery.” There was no claim of annoyance, embarrassment or oppression. The only basis for protection under I.R.C.P. Rule 26(c) alleged by Cranney Bros. was undue burden (“burdensome”) because it “has not had an opportunity to pursue its own discovery.” However, I.R.C.P. Rule 26(d) states that a party’s sequence and timing of discovery “shall not operate to delay any other party’s discovery.” And Cranney Bros. is a party to the main SRBA case having filed its own water rights claims.

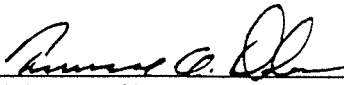
Essentially, Cranney Bros. was left with a single basis for their *Motion*. Since Cranney Bros. is not yet a party to the subcases, the deposition should be limited to the issue of whether it has good cause for filing late responses.

It is clear that the discovery sought by the claimants may proceed as scheduled. Under these circumstances, nothing in the Rules of Civil Procedure, *SRBA Administrative Order 1* or Judge Hurlbutt’s orders prohibits the oral deposition *duces tecum* of Cranney Bros. In accordance with I.R.C.P. Rule 26(b)(1), “parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” It is proper for the claimants to inquire of Cranney Bros. concerning the “existence of a meritorious position” as alleged in their pending *Motion to File Late Responses* filed in these subcases. The fact that Cranney Bros.’ *Motion to File Late Responses* has not been granted is no bar. Neither is the fact that Cranney Bros. has not conducted its own discovery.

Cranney Bros. correctly pointed out that at the hearing on its *Motion to File Late Responses*, it need not *prove* the “the existence of a meritorious position.” It must merely *allege* facts which, if proven, would constitute a meritorious position. And it is that position into which claimants Walmsley, McFaddan and Brailsford are now entitled to inquire by oral deposition *duces tecum*.

Therefore, IT IS ORDERED that Cranney Bros.' *Consolidated Motion to Limit Discovery* is denied.

DATED November 2, 1995.


TERRENCE A. DOLAN
Special Master, Reporting Area 3
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER SETTING HEARING ON CONSOLIDATED MOTION TO LIMIT DISCOVERY was served on November 2, 1995, as follows:

By Facsimile

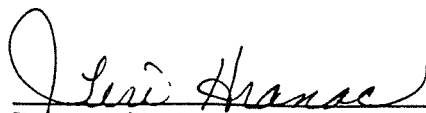
Jeffrey C. Fereday
Michael C. Creamer
Givens, Pursley & Huntley
P.O. Box 2720
Boise, ID 83701-2720
(208) 343-9492 (FAX)

By Facsimile

Patrick Brown
Hepworth, Lezamiz & Hohnhorst
P.O. Box 389
Twin Falls, ID 83303
(208) 734-4115

By Mail

Chief, Natural Resources Div.
Office of the Attorney General
State of Idaho
P.O. Box 44449
Boise, ID 83711-4449


Deputy Clerk