

RECEIVED

AUG 21 1995

OFFICE OF THE
ATTORNEY GENERAL

RECEIVED

AUG 22 1995

Department of Water Resources
Adjudication Bureau

Party's Name: Cranney Bros.

Attorneys' Names and Address

Jeffrey C. Fereday
Michael C. Creamer
GIVENS PURSLEY & HUNTLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
(208) 342-6571
(208) 343-9492 (facsimile)

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

Subcase No. 36-00039D

RESPONSE TO WALMSLEY
OBJECTION

(Standard Form 2)

95-12-0055

I. GENERAL INFORMATION

1. Person responding to objection:

Name: Cranney Bros.

Address: c/o Mike Cranney
Route 1, Box 40D
Oakley, ID 83346

Briefly describe your interest in this water right:

Cranney Bros. ("Cranney") is a holder of ground water rights in the Snake Plain Aquifer which may be affected by the exercise of the rights claimed by Fred J. and Susan K. Walmsley ("claimant") in this matter, and by the outcome of this case as to the factual and legal issues claimant asserts in their objection.

2. Person who filed objection:

Name: Fred J. and Susan K. Walmsley

Address: P.O. Box 179
Hagerman, ID 83332

3. If this response is filed by an attorney:

Attorney Name(s): Jeffrey C. Fereday

Attorney Address: GIVENS PURSLEY & HUNTLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720

Attorney Phone No.: (208) 342-6571

II. STATEMENT OF THE RESPONSE

3. ☒ Quantity: I respond to the objection concerning:
- 3a. ☒ The total quantity of water used in cubic feet per second.
- 3c. ☒ The total quantity of water reserved for each and every purpose, including all present and future uses.
7. ☒ Purposes of Use: I respond to the objection concerning the purpose(s) of use.
8. ☒ Period of Year: I respond to the objection concerning the period of year when water is used or is necessary for the purpose stated.
10. ☒ Consumptive Use: I respond to the objection concerning the annual volume of consumptive use.
11. ☒ Remarks: I respond to the objection concerning the "remarks" listed with the water right.
14. ☒ Other: I respond to the objection concerning:

All matters raised in the claimant's answer, affirmative defenses, and prayer for relief.

REASONS SUPPORTING EACH BOX CHECKED

The following reasons are stated upon Cranney's information and belief:

In response to Statement of Objections 3 and 3.a., and all allegations of the objection regarding those items, Cranney responds as follows: (1) the Idaho Department of Water Resources ("IDWR") recommended the amount of water it determined was being beneficially used; and (2) the claimant is not entitled to any amount greater than that which is beneficially used.

In response to Statement of the Objection item 3c., and all allegations of the objection regarding that item, Cranney responds as follows: Since this water right is not a federal reserved water right, this objection item is inapplicable and the claimant's assertion of it is in error. Cranney further responds that under Idaho law water cannot be reserved for future use, but must be appropriated and put to beneficial use before the user can acquire a water right.

In response to the claimant's allegations contained in Objection item 7, Cranney responds that IDWR recommended the same purpose or purposes of use that were identified on the notice of claim. By identifying in the objection an additional use (for domestic purposes) that the claimant did not list on the notice of claim, the claimant improperly seeks to use the objection process to amend the claim. Cranney further responds that fish propagation or commercial uses, if approved under this right, would be illegal enlargements or expansions of use under the decreed right claimed.

In response to the claimant's allegations contained in Objection item 8, Cranney responds as follows: The decree asserted by the claimant does not specify a period of use for this water right. Idaho law requires IDWR to determine the period of use of each water right acquired under state law that is recommended in the director's report. The irrigation season of use cannot exceed the period in which water may be beneficially used. IDWR has developed irrigation season of use standards for various climatic areas throughout the state based on certain determinations, and has concluded that the period of the year during which this water right may be used is consistent with the standard irrigation season of use for the area in which the place of use of this water right is located. Cranney acknowledges that water may be used for irrigation outside the standard season of use, subject to beneficial use and the conditions set forth in general provision 12b of the director's report.

Cranney further responds that for each use recommended, IDWR has recommended a reasonable season of use. By now seeking to include a year-round season of use for irrigation, the claimant improperly seeks to use the objection process to amend the claim and asserts a period of use beyond which water can be beneficially used for irrigation.

In response to Statement of Objection 10 and all allegations of the objection regarding that item, Cranney responds as follows: (1) The decree asserted by the claimant did not set an annual volume of consumptive use for this water right. (2) Idaho law requires the director to determine the annual volume of consumptive use for each water right acquired under state law and recommended in the director's report. (3) The annual volume of consumptive use recommended for this right is 3 acre feet per acre, which is the maximum volume of water consumed by the most water consumptive crop (pasture) that can be grown in the area during the period of year when water is used for irrigation, as provided for by Idaho Code Sec. 42-1401A(2).

In response to Statement of Objection 11, and all allegations of the objection regarding that item, Cranney responds that the Department of Water Resources has authority pursuant to Idaho Code § 42-1411 to include in its recommendations

of water rights, and recommended in the director's report, remarks and other matters that are necessary to define, clarify, or administer the right, or other matters as are necessary to define the right.

In response to Statement of Objection 14, and all allegations of the objection regarding that item, see "Response to Claimant's Affirmative Defenses," below.

In response to the sentence listed in Changes to the Director's Report, whereby the claimant attempts to "reserve the right to claim all purposes of use and quantities of use as shown by the evidence at trial," Cranney responds that, insofar as this purported reservation of rights may constitute an attempt to reserve the right to amend at trial the claimant's notice of claim, the claimant improperly seeks to use the objection process to amend the claim.

RESPONSE TO CLAIMANT'S AFFIRMATIVE DEFENSES

Responding to the 27 affirmative defenses asserted in the attachment to claimant's objection, Cranney notes that these are assertive against IDWR. To the extent these are still being pressed by the claimant, Cranney generally denies each affirmative defense asserted. Cranney further responds that those affirmative defenses asserting various violations of civil or constitutional rights, fail to comply with the requirements I.R.C.P. 9(b) providing that in all averments of violation of civil or constitutional rights the factual circumstances constituting such violation must be stated with particularity. Accordingly, Cranney asserts that those affirmative defenses should be stricken.

CHANGES TO THE DIRECTOR'S REPORT

Cranney proposes no changes to the description of this claim in the Director's Report.

- ☐ Check here if you are submitting documents. Please list each document by the title and number of pages. You may use additional pages if necessary.

VERIFICATION

STATE OF IDAHO)
 : SS
COUNTY OF ADA)

Mike Cranney, being first duly sworn, upon oath, deposes and says:

I am a principal in Cranney Bros., a party to this proceeding, as defined by I.C. 42-1401A(1) and (7); that Jeffrey C. Fereday is my attorney in fact for these matters and is authorized to verify this response; and I have read the foregoing response, know its contents and that the statements contained therein are true to the best of my knowledge and belief.

CRANNEY BROS.

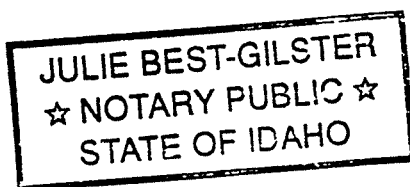
By: _____

GIVENS PURSLEY & HUNTLEY LLP

By: Jeffrey C. Fereday
Jeffrey C. Fereday, Attorney signing
in representative capacity

Subscribed and sworn to before me this 17 day of August, 1995.

Julie Best Gilster
Notary Public for Idaho
Residing at: Nampa, Idaho
My commission expires: 4-21-2001



CERTIFICATE OF SERVICE

I certify that on August 17, 1995, I caused to be served a true and correct copy of the foregoing *RESPONSE TO WALMSLEY OBJECTION (No. 36-00039D)* to each of the persons named below by the method indicated below each of their names.

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

☒ U.S. Mail ☐ Fax ☐ By Hand ☐ Overnight

Environment & Natural Resources Div.
United States Department of Justice
550 West Fort Street, Box 033
Boise, ID 83724

☒ U.S. Mail ☐ Fax ☐ By Hand ☐ Overnight

Patrick D. Brown, Esq.
Hepworth, Lezamiz & Hornhorst, Chtd
133 Shoshone Street North
P. O. Box 389
Twin Falls, ID 83303-0389

☒ U.S. Mail ☐ Fax ☐ By Hand ☐ Overnight

Jeffrey C. Freckley