

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)

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Adjudication Bureau

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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 Nos. A36-04260B, A36-
00048A, A36-00049, A36-02169,
A36-00039D

CRANNEY BROS.' RESPONSE
TO HAGERMAN VALLEY
WATER RIGHT OWNERS'
MOTION TO STAY SUBCASES

Respondent Cranney Bros., ("Cranney") hereby responds to the Motion to Stay Subcases ("Motion") filed by Hagerman Water Right Owners, Inc. ("HWRO") in the above-captioned subcases, and objects to delaying proceedings in them.

HWRO's Motion seeks a stay of these subcases on the grounds that it has filed a Motion to Designate Basin Wide Issues Nos. 10 and 11. At least two of these subcases are scheduled for settlement conferences in January, 1996. Cranney is prepared to attend these conferences, and to attempt to settle as many issues as possible.

Cranney also is prepared to proceed with discovery, pretrial motions, and ultimately, as necessary, trial, on a reasonable schedule to be established by the Special Master. However, an important part of Cranney's trial preparation will be the opportunity to conduct discovery in the subcases, which necessarily must include discovery regarding the Claimants' actual beneficial use of water in the past and during the 1996 irrigation season. Staying all activity in the subcases pending the resolution of basinwide issues at some indeterminate point (which undoubtedly would be in late 1996 at the earliest if appeal is made to the Supreme Court) would postpone the date at which a trial could reasonably be held for at least two additional irrigation seasons.

Moreover, HWRO's proposed Basinwide Issues 10 and 11 are meritless. In proposed Basinwide Issue 10, HWRO seeks an answer to the question of whether there is such a thing as "partial forfeiture" of a water right, which is another way of asking whether water rights can be limited by their actual beneficial use. We do not need a Basinwide Issue to explain to HWRO or any other claimant that the answer to this question is "yes". HWRO, and its member/claimants appear to be the only parties who believe that a reasonable dispute could exist as to this issue. To stay the subcases, even until a decision is reached on HWRO's Motion to Designate Basinwide Issue Nos. 10 and 11, would result in unreasonable delay.

Furthermore, the appropriate place to resolve the issues proposed by HWRO in its Motion to Designate Basinwide Issue Nos. 10 and 11 is at the subcase level, on summary judgment, and where specific, real facts can and will be developed to which the law can be applied.

For the foregoing reasons, Cranney respectfully requests that HWRO's Motion to Stay Subcases be denied.

Respectfully submitted this 29th day of December, 1995.

GIVENS PURSLEY & HUNTLEY LLP



Jeffrey C. Fereday

Michael C. Creamer

Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of December, 1995, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

Patrick D. Brown
Hepworth, Lezamiz & Hohnhorst
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express

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

☐ U.S. Mail ☒ Fax ☐ Hand Delivery ☐ Federal Express



FAX COVER SHEET

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Cranney Bros.' Response to Hagerman Valley Water Right Owners' Motion to Stay Subcases

SEND TO FAX PHONE: (208)736-2121

TO: Ms. Diana Delaney
Snake River Basin Adjudication
253 3rd Avenue N.
P.O. Box 2707
Twin Falls, ID 83303-2707

MESSAGE:

Diana—

Attached for filing please find Cranney Bros.' Response to Hagerman Valley Water Right Owners' Motion to Stay Subcases.

If you have any questions regarding the attached, do not hesitate to call me.

Thank you.

—Mike Creamer

cc: Patrick D. Brown, (208) 734-4115 (w/encl., via fax)
Office of the Attorney General, 334-2690 (w/encl., via fax)
Dept. of Justice, Environment & Natural Resources Div., 387-0842 (w/encl., via fax)

If transmission is incomplete, call Julie Best-Gilster at (208) 388-1234.

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From:

JEFFREY C. FEREDAY
GIVENS PURSLEY & HUNTLEY LLP
Suite 200, Park Place
277 North Sixth Street
Post Office Box 2720
Boise, Idaho 83701-2720
Telephone: (208) 342-6571
Fax: (208) 343-9492