

Party's Name: Cranney Bros.

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Department of Water Resources

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4431\1\PLEADING\RESPONSE.MPR

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.' CONSOLI-
DATED RESPONSE TO MOTION
FOR PERMISSIVE REVIEW

DESCRIPTIVE SUMMARY

This is Cranney Bros.' Response to the Motion for Permissive Review of Master's Orders filed by numerous claimants seeking review of the Special Master's Order permitting Cranney Bros. and others to file late responses to the Claimants' claims in the SRBA.

RESPONSE

The Claimants seek permissive review of the Special Master's orders denying their Motion to Strike the Affidavit of Michael C. Creamer, and its accompanying excerpts from the Deposition of Michael Cranney ("Affidavit"). In their Motion for Permissive Review, the Claimants assert that a controlling question of law exists regarding "whether masters must follow the Idaho Rules of Procedure and Idaho

Rules of Evidence." Cranney Bros. ("Cranney"), opposes the Claimants' Motion for Permissive Review.

The Special Master need not grant permissive review of its Order admitting Cranney as a party to the above-referenced subcases, and denying the Motion to Strike. If, as the Claimants assert, the issue of law to be decided is whether the Special Master must follow the I.R.C.P. and I.R.E., Cranney submits that it does not dispute that Special Masters in the SRBA are to follow the I.R.C.P. and the I.R.E., consistent with the Court's Administrative Order 1, and the statutory provisions in Idaho Code, Title 42, Chapter 14. Cranney Bros. is unaware of any indication in the Special Master's Order, or other orders in the SRBA, suggesting that the Court itself takes a different view. As such, the Claimants' Motion for Permissive Review appears to more in the form of a rhetorical question, for which no answer or Permissive Review is needed.

However, Cranney also notes that inasmuch as the I.R.C.P. and I.R.E. do apply to proceedings before the Special Master, it is clear that the Special Master has discretion in applying them to promote economy and justice. Rule 1(a) of the I.R.C.P. (and its counterpart in the Federal Rules) states that "these rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding." Wright and Miller provide a good summary of the case law in this respect:

[t]here probably is no provision in the [federal] rules that is more important than this mandate. . . The [federal] rules are designed to discourage battles over mere form and to sweep away needless procedural controversies that delay a trial on the merits, or deny a party his day in court because of technical deficiencies.

Wright & Miller, Federal Practice and Procedure: Civil 2d § 1029. *See also Bunn v. Bunn*, 99 Idaho 710, 587 P.2d 1245 (1978) (liberal construction, while it cannot alter compliance which is mandatory or jurisdictional, will ordinarily preclude dismissal for mere technical noncompliance, especially where no prejudice is shown). Rule 102 I.R.E. provides that the rules of evidence

shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence, and the end that the truth may be ascertained and proceedings justly determined.

Cranney does not believe that any rule in the I.R.C.P. would bar the Affidavit, but in any event, Cranney presumes that the Special Master's determination not to strike the Affidavit, was an appropriate exercise of the Court's discretion in this respect.

Moreover, Cranney has maintained from the outset, based on a consistent line of Idaho cases, that good cause for its Late Response has been demonstrated sufficiently by the allegations of facts in its Motion to File Late Response, and in the proposed Response itself. Cranney Bros. did not need to *prove* the facts alleged to show "good cause", through affidavit, testimony or otherwise; nor did the Special Master need to rely on the deposition transcript excerpts in reaching its decision to accept the late responses. It was the Claimants who proposed to depose Cranney, who stated that Cranney's allegations were insufficient, and that actual proof was necessary. The Claimants put that matter at issue *after* Cranney filed its Motion and Proposed Response. As such, if anything, the Affidavit and attached deposition excerpts were not filed "in support of" Cranney's Motion to File Late Objections, but

rather were "in response to" the Claimants' attempt to show that the allegations in Cranney's Motion could not be substantiated.¹

Cranney submits that the Special Master correctly determined the issue of Cranney's Motion to File Late Responses, and correctly applied the Idaho Rules in the process. Granting permissive review on the terms proposed by the Claimants would not expedite these subcases. For these reasons, and for the additional reasons stated in the Consolidated Response Memorandum in Opposition to Motion for Permissive Review of Master's Orders filed by May Farms, Ltd, Sand Springs Ranch Partnership, and Faulkner Land & Livestock Company, the Claimant's Motion for Permissive Review should be denied.

DATED this 25th day of January, 1996.

GIVENS PURSLEY & HUNTLEY LLP

A handwritten signature in black ink, appearing to read "Michael C. Creamer", written over a horizontal line.

Michael C. Creamer
Attorneys for Cranney Bros.

¹If one were to style the deposition excerpts attached to the Affidavit at all, they might best be characterized as an anticipatory response to the use of excerpts from the Cranney deposition by the Claimants, which in fact were filed with, and also accepted by, the Special Master.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of January, 1996, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

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Office of the Attorney General
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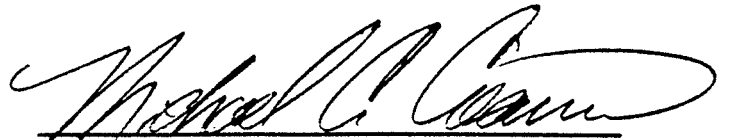
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Michael A. Crum