

COPY

Party's Name: Cranney Bros.

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MAR 14 1996

Department of Water Resources
Adjudication Bureau

Attorneys' Names and Address

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WATER

ADJUDICATION

343

**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. A36-00039D

Case No. 39576

**CRANNEY BROTHERS' FIRST
SET OF INTERROGATORIES
AND REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO WALMSLEY**

TO: FRED J. AND SUSAN K. WALMSLEY AND THEIR COUNSEL OF RECORD:

YOU WILL PLEASE TAKE NOTICE that CRANNEY BROS., require you to answer, under oath, the following Interrogatories and Requests for Production of Documents on or before fifteen days from the service hereunder, and in conformance with all provisions of the Idaho Rules of Civil Procedure.

DEFINITIONS

Unless otherwise indicated, the following definitions are applicable to these interrogatories and requests for production of documents:

A. The term "identify" when referring to an individual, corporation, or any other entity means to set forth:

- (1) the name;
- (2) the present or last known residence and business address;
- (3) the telephone number; and
- (4) the individual's employer and job title, both presently and at all times referred to in the specific interrogatories.

B. The term "identify" when used with respect to a document or the description or identification of a document shall deem to include a request for the following:

- (1) the nature and substance of the document with sufficient particularity to enable it to be identified;
- (2) the date of the document, if any;
- (3) the person or persons executing the document and identify all persons participating in preparation of the document; and
- (4) the present location of the original or a legible copy of the document, and name, address and telephone number of the custodian of such document.

C. "Claim" refers to the Claim of Water Right filed by you on approximately June 16, 1988 with the Idaho Department of Water Resources, which claim is numbered A36-00039D.

D. "Subject Property" refers to all land or property on which you claim to beneficially use the water identified in the Claim.

E. "Objection" refers to the document dated April 30, 1993 which contains your objections to the Director's recommendations contained in the Director's Report, which was filed with the Idaho Department of Water Resources. The Objection was prepared and filed on your behalf by your attorney Patrick Brown.

F. "Director" means the Director of the Idaho Department of Water Resources.

G. "Department" means the Idaho Department of Water Resources.

H. "Describe" means to provide *all* pertinent information regarding the item or event referenced in a particular question.

I. "Or" means and includes and/or, whichever is broader in the context of the question.

J. "Document" as used in these interrogatories has the same meaning as is set forth in these requests for production on page 11.

K. "Notice of Error" refers to the Notice of Error Form filed by you with the Department dated September 23, 1992.

L. "You" refers to Fred J. Walmsley and Susan K. Walmsley, their attorneys, agents or anyone acting on their behalf and shall include their predecessor(s) in interest to the Subject Property.

INTERROGATORIES

Cranney Bros. make the following Interrogatories pursuant to Rule 33 of the Idaho Rules of Civil Procedure. In answering these Interrogatories, furnish all information available to you, including information in the possession of your attorneys (and investigators, experts, etc., retained by you and your attorneys), not

merely information known of your own personal knowledge.

If you cannot answer the following Interrogatories in full after exercising due diligence to secure the information to do so, state you are unable to answer completely, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information and knowledge you have concerning the unanswered portion.

These Interrogatories are deemed to be continuing Interrogatories, and your answers are to be supplemented as additional information and knowledge becomes available to you.

INTERROGATORY NO. 1. Please identify each person known to you or your attorneys who has or may have knowledge of any fact pertinent to any element of the water right claimed in your Claim, or pertinent to your Objection, and state the subject matter of that knowledge. In your answer to this Interrogatory No. 1, please include each person who has been retained, hired, or relied upon by you, your agents or representatives to review any issues presented in your Claim or Objection.

INTERROGATORY NO. 2. Please identify each person you intend to call as a witness at the trial of this matter, and for each such person, state:

- a. The substance of his or her expected testimony;
- b. Whether you, your agents, representatives and/or attorneys have obtained any oral or written statement from said witness.

INTERROGATORY NO. 3. Please identify each person whom you expect to call as an expert witness at the trial of this matter, and for each such person, state:

- a. The qualifications upon which you intend to rely to establish said person as an expert witness, or in the alternative you may

provide a copy of a current curriculum vitae for each such person;
and

- b. The substance of the facts and opinions to which he or she is expected to testify.

INTERROGATORY NO. 4. Please identify each documentary, written or tangible item of evidence you expect to introduce or use, or may use at the trial of this matter.

INTERROGATORY NO. 5. Please identify each purchaser, or purchaser's field representative(s) of your crops, or representatives of chemical or fertilizer companies, with which you have worked or who would have knowledge of the Subject Property, or crops grown thereon since 1982.

INTERROGATORY NO. 6. Please state whether the Subject Property is located within the boundaries of, or served by, any irrigation district, water district, canal company, or other water company or organization of any kind, including any lateral or property organization. If so, please identify:

- a. Each such entity;
- b. The ditch rider, water master or other person responsible for regulating or supervising the delivery of water to the Subject Property.

INTERROGATORY NO. 7. Please fully describe how the irrigated acres identified in your Claim have been irrigated since 1982. In answering this Interrogatory, please identify each individual field, and for each identified field, please include to the extent such matters are applicable to your irrigation system a description of the acres included within any individual fields, the method of irrigation (i.e., furrows, corrugation, sprinkler lines, drip, etc.), the field length and furrow

length and width, the furrow inflow rate in gallons per minute, cfs or miners inches, the period of application for each set, the number of sets per field, the frequency of irrigation, the method used for scheduling irrigation (i.e., soil color, soil moisture measurements, contracted consultants, etc.), and any special irrigation methods that are used (i.e., surge irrigation, alternate furrows).

INTERROGATORY NO. 8. For each field identified by you in your answer to Interrogatory No. 7 above, please fully describe the crop(s) that were grown thereon for each year since 1982, and for each such crop please include the number of acres of the particular crop grown, the yield per acre, to whom the crop was sold, and whether the crop was sold pursuant to a contract with a particular purchaser, and the dates each crop was planted and harvested, including the dates of any replanting required.

INTERROGATORY NO. 9. For each field identified by you in your answer to Interrogatory No. 7 above, please state whether you have filed crop reports, or participated in any crop, soil or water programs (including crop disaster programs, water or soil conservation programs, etc.) with any state, federal or county agency since 1982. If so, please identify:

- a. The agency with which each such report was filed, or agency that managed or assisted with the program in which you participated or made application to participate;
- b. The date each report or application was filed; and
- c. Identify the documents, reports, summaries or other papers that were filed with each agency.

INTERROGATORY NO. 10. For each field identified by you in your answer

to Interrogatory No. 7 above, please identify every soil type that you claim to be present.

INTERROGATORY NO. 11. In your Objection, you object to the Director's recommended purpose of use for water. Please state each theory, claim, fact or defense on which you rely to support this objection.

INTERROGATORY NO. 12. In your Objection, you objected to the Director's recommended period of year when the water is used or is necessary for the purpose stated. Please state each theory, claim, fact, or defense on which you rely to support this objection.

INTERROGATORY NO. 13. In your Objection, you objected to the Director's recommended consumptive use determination. Please state each theory, claim, fact, or defense on which you rely to support this objection.

INTERROGATORY NO. 14. In your Objection, you objected to the Director's remarks listed with the water right. Please state your objection in detail by explaining each remark which you object to, and state each theory, claim or defense on which you rely to support this objection.

INTERROGATORY NO. 15. In your Objection, you objected to the Director's recommended quantity or cfs of water used, and the total quantity of water reserved. For each objection state each theory, claim, fact or defense on which you rely to support these objections.

INTERROGATORY NO. 16. Please identify, each document or item of tangible evidence which supports or pertains to any of the objections filed by you in your Objection and referenced in Interrogatories 11 through 15, and for each such

document or item of tangible evidence identified, please state which objection it supports or pertains to.

INTERROGATORY NO. 17. Please state whether any measurements, studies or estimates of transmission losses or diversion or irrigation efficiencies have been made for your diversion or irrigation facilities, and the results thereof. If such transmission losses are incorporated into your claim for 0.260 cfs of water as identified in your Claim, please describe the amounts and reasons for all such losses including the extent of the loss and how such loss occurred. Please identify each document which records, documents, supports or pertains to your position that transmission losses should be or are included in your Claim.

INTERROGATORY NO. 18. With respect to the water identified in your Claim for irrigation, please describe all irrigation systems located on the Subject Property. By this interrogatory, we seek the following information:

- a. The method by which the water is delivered to each field, *i.e.* open ditch, pipe, concrete ditch, etc. Please include the size of the delivery mechanism;
- b. Whether the lands irrigated, irrigation system or irrigation methods have changed in any way on the Subject Property since the entry of the decree in the case of *New International Mortgage Bank v. Idaho Power Co.*, dated approximately 1933, and if so, describe the change and date the change occurred.

INTERROGATORY NO. 19. Please identify every source of water used for each use identified in your Claim.

INTERROGATORY NO. 20. Please state each theory, claim, fact or defense on which you rely or intend to rely to support Affirmative Defenses 1 through 27 in your Objection. For each such claim, theory, fact or defense identified, please state

to which affirmative defense it applies.

INTERROGATORY NO. 21. Please describe how the water identified in your Claim has been used for stock purposes. In answering this Interrogatory, please include the date on which the water was first used for stock purposes, the dates and amounts of water diverted for stock, the numbers and kinds of livestock for which the stock water is used, and the dates such stock are kept on the Subject Property, and identify all documents or records which pertain to, establish or support the use of the water for stock purposes.

INTERROGATORY NO. 22. Please describe all restrictions, covenants or conditions (regardless of whether such restrictions, covenants or conditions are enforced) to which the Subject Property may be or is subjected to as a result of being located in Willowbrook Subdivision.

INTERROGATORY NO. 23. Please identify any homeowners or similar association or organization which exists or has existed since 1982 and of which you are a member or shareholder as a result of owning the Subject Property.

INTERROGATORY NO. 24. In your Notice of Error, in response to the question "Describe the portion of proposed recommendation with which you disagree" you state, "I disagree with the recommendation of reducing my decreed water right from 13 inches (.26 cfs) to 3 inches (.06 cfs). I also disagree with the limitation of use from 12 months to 7 months (4-01 - 10-31)." Please state each theory, claim, fact or defense which supports your statement.

INTERROGATORY NO. 25. In your Notice of Error, in response to the question, "Describe the changes you wish to have made in the proposed

recommendation" you state, "Your recommendation should be changed to reflect my legally decreed water right with change in the period of use to reflect the growing season in the Hagerman area." Please state each theory, claim, fact or defense which supports your statement.

INTERROGATORY NO. 26. In your Notice of Error, you state you disagree with the Director's proposed recommendations, and explain why in paragraphs (a),(b) and (c) (b and c are contained in an attachment to the Notice of Error). Please state each theory, claim, fact or defense which supports each of the statements contained in paragraphs (a), (b) and (c) of your Notice of Error.

INTERROGATORY NO. 27. Please identify any persons or entities that have rented or leased any portion of the Subject Property from you since it was acquired by you.

REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to Rule 34 of the Idaho Rules of Civil Procedure, Cranney Bros. request that you produce and permit their attorneys to inspect and copy the following designated documents at 10:00 o'clock a.m. on March 29, 1996, at the offices of Givens Pursley & Huntley LLP, 277 N. 6th Street, Boise, Idaho 83702.

Unless you furnish copies of all the following documents by delivering or mailing to Cranney Bros. counsel true and accurate copies of the same before 5:00 p.m., March 28, 1996, production will be had by you producing the documents at the time and place referred to above and keeping said documents available to Cranney

Bros. for a reasonable time thereafter to enable them and their counsel to inspect and to photocopy said documents.

DEFINITIONS AND PRELIMINARY STATEMENT

1. "Document" means and includes any and all tangible things and papers, whether written, recorded, graphic, typewritten, printed, photographed or otherwise produced or reproduced, and whether produced manually or by mechanical, electrical, electronic, other artificial process or a combination of these methods, including but not limited to papers, computer records and/or files, agreements, contracts, letters, cables, wires, notes, memoranda, correspondence, telegrams, patents, books, reports, studies, minutes, records, accounting books, maps, plans, blueprints, sketches, charts, drawings, diagrams, photographs, movies, films, computer printouts, tape recordings, information stored on computers, assignments, notebooks, ledgers, bills, statements, invoices, checks, receipts, analyses, surveys, transcriptions, and recordings, of which you have any knowledge or information, referring, relating or pertaining in any way to the subject matters in connection with which the word is used. The term "Document" includes, without limitation, originals, all file copies, and all of the copies no matter how or by whom prepared and all drafts prepared in connection with such writings, whether used or not.

2. This Request includes all Documents in your possession or under your control, including Documents in the possession of your attorneys, accountants, expert witnesses or other agents or persons from whom you have a legal right to obtain such Document.

3. All of the Requests herein are deemed continuing. If, after responding

to this request you acquire any Documents requested herein, or any information related to any Document herein, which is not reflected by any Documents produced or any response to these requests, you must file a supplemental response or indicate to counsel for the party propounding this Request of the existence of such Documents. Such supplementation is required by the Idaho Rules of Civil Procedure.

4. If, after exercising diligence, you cannot produce all of the documents requested in a request, state you are unable to completely do so and why, **and produce the documents to the extent possible.**

5. **If any Document or any portion of any Document requested herein is or will be withheld from production, inspection or copying (whether because it is claimed to be work product, communication from attorney to client, or is entitled to be withheld for any other reason), please fully identify each such Document or portion thereof in your response and fully state in your response the reason it is or will be withheld. In addition, if any Document is practically impossible of production, inspection or copying, please fully identify such Document and the reason for the practical impossibility.**

REQUEST FOR PRODUCTION NO. 1. Each document which you expect to introduce or use, or may use at the trial of the this matter.

REQUEST FOR PRODUCTION NO. 2. Each document described, identified, itemized or relied upon by you in your response to any Interrogatories served upon you by Cranney Bros. in this case.

REQUEST FOR PRODUCTION NO. 3. Each document pertaining to your

Claim or your Objection which has been obtained by you, your attorneys or representatives, including anyone acting on your or their behalf, from any person believed by you or by your attorney to have knowledge of any facts pertinent to your Claim. You may exclude from your production those documents that have been produced to your counsel as part of Cranney Bros.' Initial Disclosures in this subcase.

REQUEST FOR PRODUCTION NO. 4. Each document containing or describing test results, reports or data containing any information regarding the soil, soil types, soil samples, etc., taken from or evaluating the Subject Property since 1982.

REQUEST FOR PRODUCTION NO. 5. Each document which records, documents or pertains to the consumptive use of crops grown on the Subject Property.

REQUEST FOR PRODUCTION NO. 6. Each document pertaining to the sale of any crop grown on the Subject Property since 1982.

REQUEST FOR PRODUCTION NO. 7. Each document pertaining to ditch, seepage or transmission losses, or diversion or irrigation efficiencies, associated with the use of the water identified in your Claim.

REQUEST FOR PRODUCTION NO. 8. Each court order, decree, stipulation or agreement of any kind pertaining to all or a portion of the water identified in your Claim.

REQUEST FOR PRODUCTION NO. 9. Each document relating to power purchased or used in connection with any pump or irrigation system for diversion, delivery, transmission or application of any water identified in your Claim, since 1982.

REQUEST FOR PRODUCTION NO. 10 Each tax assessment, or estimate of taxes to be assessed, for the Subject Property since 1982.

REQUEST FOR PRODUCTION NO. 11. Each map, aerial photograph or field surveys, including but not limited to ASCS maps or surveys, of the Subject Property.

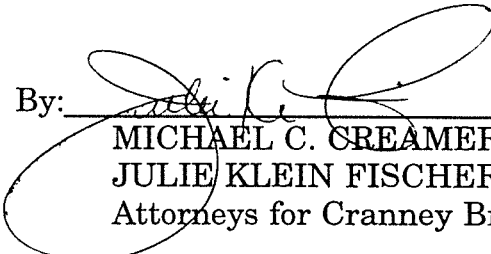
REQUEST FOR PRODUCTION NO. 12. Each lease or rental agreement of any kind for the Subject Property since 1982.

REQUEST FOR PRODUCTION NO. 13. Each document or declaration containing covenants, conditions or restrictions for the Subject Property or Willowbrook subdivision.

REQUEST FOR PRODUCTION NO. 14. Each document pertaining to the establishment of an homeowner's association or organization for Willowbrook Subdivision including, but not limited to, Articles of Incorporation and Bylaws.

DATED this 11th day of March, 1996.

GIVENS PURSLEY & HUNTLEY, LLP

By: 

MICHAEL C. CREAMER
JULIE KLEIN FISCHER
Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of March, 1996, I caused a true and correct copy of the foregoing to be served upon:

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

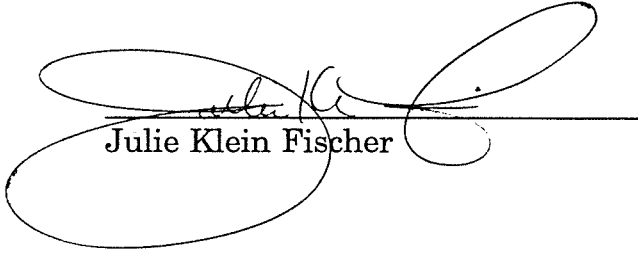
Patrick D. Brown
Hepworth, Lezamiz & Hohnhorst
133 Shoshone St. North
P.O. Box 389
Twin Falls, ID 83303-0389

☒ 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

by the method noted above.


Julie Klein Fischer