

COPY
Party's Name: Cranney Bros.

Attorneys' Names and Address

Jeffrey C. Fereday
Michael C. Creamer
Julie Klein Fischer
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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Department of Water Resources
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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. A36-00048A, A36-00049

**CRANNEY BROS.
MEMORANDUM IN SUPPORT
OF MOTION TO
CONSOLIDATE SUBCASES**

I. INTRODUCTION

Respondent Cranney Bros., ("Cranney") hereby submits its Memorandum in Support of its Motion to Consolidate Subcases filed herewith. Cranney is a party to the SRBA, and subject to this Court's jurisdiction.

II. FACTUAL BACKGROUND

The above-referenced subcases involve two water right claims, both of which were filed and claimed by Dan H. and Irma R. McFadden, husband and wife ("McFaddens"). The McFaddens are represented by attorney Pat Brown in connection with the objections they have filed with the Idaho Department of Water Resources objecting to the Director's recommendations regarding each claim referenced herein

(collectively "Objections"). Cranney has responded to the McFadden's Objections regarding each claim and is a party to the SRBA.

III. POINTS AND AUTHORITIES

Idaho Rule of Civil Procedure 42(a), and SRBA Administrative Order No. 1, ¶ 9, allow the Court to order a joint hearing or consolidate separate cases when the cases involve "a common question of law or fact." Rule 42(a) also states it is appropriate to allow consolidation of cases when doing so would "avoid unnecessary costs or delay." These subcases involve both common questions of law and common questions of fact.

The parties involved in the two subcases at issue are the same. The McFadden's filed claims for both water rights A36-00048A and A36-00049 in 1988. Additionally, claims A36-00049 and A36-00048A represent decreed rights from *New International Mortgage Bank v. Idaho Power, Co.*. Both decrees combine to cover all the uses claimed by the McFaddens in both claims, and the rights claimed in these subcases encompass the same claimed place of use. Because the above-referenced subcases involve the same party, claimed place of use and decree, the facts which will be presented at the trial of these subcases will be very similar, if not identical. Many of the same witnesses, expert witnesses, documents and reports will be used at each trial.

Additionally, the legal arguments that have been raised by the McFaddens in support of their Objections are identical. Each of the objections filed by the McFaddens in both subcases raise the same twenty-seven affirmative defenses. Consequently, resolution of these subcases will require resolution of the exact same

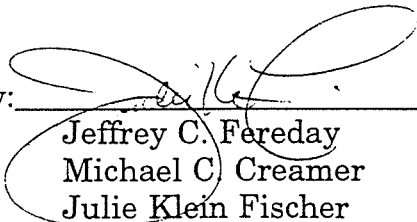
legal issues.

IV. CONCLUSION

Consolidation of the above-referenced subcases will avoid duplicate trials of the same legal and factual issues. Consolidation also will expedite resolution of these claims and prove more efficient and cost effective for all parties and witnesses involved. Therefore, Cranney respectfully requests its Motion to Consolidate Subcases be granted.

Dated this 14 day of March, 1996.

GIVENS PURSLEY & HUNTLEY, LLP

By: 

Jeffrey C. Fereday
Michael C. Creamer
Julie Klein Fischer
Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14 day of March, 1996, 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

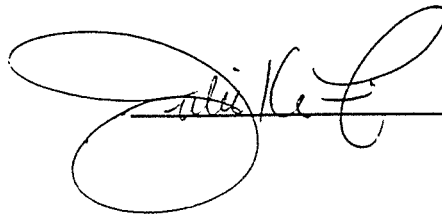
☒ U.S. Mail ☐ Fax ☐ Hand Delivery ☐ Federal Express

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

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

Josephine P. Beeman, Esq.
Dillion, Bosch, Daw & Bock, Chartered
Fidelity Building
243 N. 8th Street, Suite 200
Boise, Idaho 83702

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



A handwritten signature in dark ink, appearing to read "Patrick D. Brown", is written over a horizontal line.