

Party's Name: Cranney Bros.

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Department of Water Resources
Adjudication Bureau

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3-20

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. 36-04260B, 36-
00048A, 36-00049, 36-02169, 36-
00039D

**CRANNEY BROS.' RESPONSE
TO MOTION FOR
PROTECTIVE ORDER,
REQUEST FOR ORDER
COMPELLING DISCOVERY,
AND REQUEST FOR
EXPEDITED HEARING**

DESCRIPTIVE SUMMARY

This is Cranney Bros.' ("Cranney") Response to Motion for Protective Order, Request for Order Compelling Discovery, and Request for Expedited Hearing.

RESPONSE TO MOTION FOR PROTECTIVE ORDER

Cranney Bros., through its attorneys Givens Pursley & Huntley, hereby responds to the Motion for Protective Order filed by Dan H. and Irma R. McFaddan, Fred and Susan Walmsley, Robert Brailsford, Hagerman Water Users Association, Walten E. Mildren, Harry R. Gisler and Ya-Ta-Hay Investments, Inc. ("Claimants")

CRANNEY BROS.' RESPONSE TO MOTION FOR PROTECTIVE ORDER, REQUEST
FOR ORDER COMPELLING DISCOVERY, AND REQUEST FOR EXPEDITED HEARING - 1

in the above-captioned subcases, and asks the Court to compel the Claimants to timely respond to the Cranney's interrogatories and requests for production.

Cranney Bros. has been permitted by the Special Master to file late responses to objections in five subcases in Basin 36 which involve rights to spring water in the Hagerman Valley. These subcases are in many respects representative of over 160 other Hagerman claims, in that the basis for the Claimants' objections to the Director's Report, and the affirmative defenses they have asserted, essentially are identical. However, the factual basis for the Claimants' objections are in many respects unique to each of them. The Claimants have sought permissive review of the Special Master's determination to allow Cranney's and others' late responses in their subcases. See McFaddan et al.'s Reply to Special Master's Findings and Recommendation of Denial of Claimant's Consolidated Motion for Permissive Review of Master's Orders. The Claimants now seek to postpone ongoing discovery in these subcases pending the outcome of Claimants' request for permissive review.

The Special Master has scheduled a large number of subcases involving Hagerman Valley claims for trial beginning in June, 1996. These subcases are ones where only the Claimant is a party (the "Unresponded-to Claims"). At a February 29, 1996 status conference involving the parties, the Department and the Special Master, the Special Master indicated that he expected the cases in which Cranney has been admitted as a party to proceed on an equally expedited basis. Cranney also understood that the Special Master expected the parties to prepare for hearing on these subcases by cooperating to complete discovery as expeditiously as possible, and in working together to settle these subcases if possible. Cranney has taken the

Court's directive to heart, and is preparing for trial on these subcases at the Court's earliest convenience, while working simultaneously on the possibility for settlement.

Even prior to the February 29, 1996 status conference, Cranney had served Wesley Nash, the successor to Claimant Brailsford (36-04260B), with Cranney's First Set of Interrogatories and Request for Production of Documents. Subsequently, Cranney has served Claimants Walmsley and McFadden with similar discovery requests which seek the factual basis for the Claimants' objections to the Director's recommendations, and for their long list of uniform affirmative defenses.

Many of the interrogatories posed to Nash by Cranney simply are restatements of the questions which Nash was required to answer through Initial Disclosure Statements at the time of the mandatory settlement conferences. The balance of the questions posed by Cranney to Nash speak for themselves—they go directly to the issues raised by Nash's pleadings and issues that Cranney expects to be prominent at trial. Although Cranney provided its Initial Disclosure Statement to Nash at the January 10, 1996 settlement conference, Nash did not reciprocate, and still has not done so despite Cranney's subsequent requests. See attachments A and B hereto. As of March 14, 1996, Nash's responses to Cranney's Interrogatories were overdue. The other Claimants' responses to Cranney's discovery requests directed to Walmsley and McFadden will be due on March 26th and March 29th respectively.

The Claimants' Motion for Protective Order must be considered in its full context. These subcases originally were set for meaningful settlement conferences, and much of the information Cranney now seeks through formal discovery would have been obtained in that process. Cranney incurred substantial expense in

preparing for the two conferences that were scheduled, in preparing Confidential Settlement Statements and its Initial Disclosures, and in attending the one conference that was not vacated. Cranney was not provided with Brailsford's Initial Disclosure, nor subsequently, with any other Claimants' Initial Disclosures.

The mandatory settlement conferences were vacated expressly to allow the numerous Hagerman subcases to be logically grouped for more meaningful settlement discussions. Those groupings necessarily included subcases in which Cranney is involved in. Yet, after the necessary delays for approximately one month to allow the Department to establish these groupings for settlement discussions, the Claimants asserted that they were not interested in settlement. In other words, while Cranney, the Department and others were in good faith focusing their attention on dealing with issues they believed were on the table for settlement, the Claimants used that time to prepare motions aimed at foreclosing settlement and the ability of the respondents to move forward to trial in any reasonable time period.

The Claimants' motions to stay all proceedings on Hagerman subcases pending the outcomes of sundry matters in the SRBA have become the norm. Deferment, and now apparently, cancellation of settlement discussions in favor of trial, negates any benefits the Court might have intended for the parties from that process. And now, the Claimants seek to delay discovery, and most likely trial, in those cases where Cranney or other Respondents are involved, until long after the Unresponded-to Claims may have been heard by the Court.

Cranney hopes that the Court will appreciate Cranney's efforts to get to the issues in these cases directly and quickly, the importance of these particular subcases

moving forward, and the value of a full trial, on the merits, among parties on the extremely important factual and legal issues that are uniformly raised by the Hagerman claims. Delaying these subcases, and thereby potentially placing them at the very end of the line in terms of the Court's consideration of the important common legal and factual issues, would be prejudicial to Cranney, to the Court and to all other parties in the SRBA.

The Claimants' Motion for Protective Order was filed *after* discovery responses were due. They have not asserted, and cannot assert that the Interrogatories and Production Requests are objectionable under the I.R.C.P.. The Interrogatories and Requests for production are aimed directly at facts and issues raised by the pleadings. The Interrogatories seek facts which are elemental to an evaluation of the Claimant's diversion requirements. The Claimant's basis for its protective order simply is that they now are seeking review of the Special Master's largely discretionary decisions to allow Cranney and other respondents to participate as parties in these subcases. Cranney submits that the likelihood that the Claimants would ultimately prevail in overturning the Special Masters decision to allow late responses must be weighed against the prejudice to Cranney if discovery, and ultimately a timely trial, is delayed.

The Claimants' Motion for Protective Order should be denied. Granting the Motion would only delay progress in these subcases, and prejudice Cranney. The Court should order the Claimants to immediately provide the overdue and pending discovery responses, and order that the Claimants comply with the I.R.C.P. in responding to any future discovery requests, including, but not limited to any request

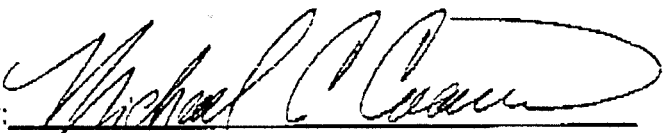
to permit entry upon the Claimants' lands for the purpose of inspection, or notices of deposition, etc..

If the Court determines to stay discovery pending its resolution of the Claimant's Reply to the Special Master's Findings, Cranney respectfully requests that the Court conclude its review and decision in that matter quickly.

Cranney Bros. requests an expedited hearing on this matter at the Court's March 27, 1996 status conference.

DATED this 20th day of March, 1996.

GIVENS PURSLEY & HUNTLEY, LLP

By: 

MICHAEL C. CREAMER
Attorneys for Cranney Bros.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of March, 1996, I caused a true and correct copy of the foregoing to be served upon:

Court Certificate of Mailing for Expedited Hearings (12/18/95)

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

by the method noted above.



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January 15, 1996

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Via Facsimile

Patrick D. Brown, Esq.
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P.O. Box 389
Twin Falls, ID 83303-0389

Matter: In Re SRBA; Case No. 39576
Subject: Initial Disclosure Form
Our file: 4431-1

Dear Pat:

As you know, at the Settlement Conference last week I did not receive a copy of your client's Initial Disclosures. I have not yet received them and would appreciate it if you would fax a copy to me immediately.

Sincerely,


Michael C. Creamer

MCC:mc
cc: Brigitte Bilyeu

LAW OFFICES
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 & Hohnhorst*
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JAN 24 1996

Givens, Pursley & Huntley

January 23, 1996

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Re: SRBA, Subcase No. 36-04260B (Brailsford/Nash)
 Initial Disclosure
 Our File No. 92-1-530.1

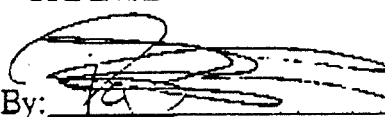
Dear Michael:

Your January 15, 1996 fax requested Initial Disclosures concerning the settlement conference between Wes Nash and Cranney Brothers. Enclosed is the document "Crop Water Requirements in the Hagerman Valley," prepared by County Agents. From our conversation, I understand that you were unsure whether you had that document or not.

As far as other disclosures, at this point in time we simply do not know what the issues are given your clients reliance upon IDWR, and what I understand to be IDWR's change in position based on its reassessment of methodology or inputs. After I receive some documentation of IDWR's position, perhaps I would be in a better position to understand what it is that your client may dispute. Please let me know when your client has decided what elements of the right he intends to dispute and why, and perhaps then, I can make further disclosures that are responsive to an actual controversy.

Very truly yours,

HEPWORTH, LEZAMIZ & HOHNHORST,
 CHARTERED

By: 

Patrick D. Brown

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PDB:llm
 cc: Brigitte Bilyeu (w/o encl.)
 Enclosure
 /0123MC:llm

ATTACHMENT B

FAX COVER SHEET

DATE: March 20, 1996

TIME: 3:53 pm (Mountain Time)

PAGES (INCLUDING COVER): 11ORIGINAL TO FOLLOW: () Yes ☒ No

OUR FILE NUMBER: 4431-1

MATTER: In Re SRBA; Case No. 39576

SEND TO: See attached list

From:

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MESSAGE:

Attached please find Re: Subcase Nos. 36-04260B, 36-00048A, 36-00049, 36-02169, 36-00039D; Cranney Bros.' Response to Motion for Protective Order, Request for Order Compelling Discovery, and Request for Expedited Hearing. This document was filed with the SRBA Court today via fax. If you have any questions regarding the attached, do not hesitate to call. Thank you.

—Mike Creamer

If transmission is incomplete, call Molly Creswell at (208) 388-1248.

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[4431\1\LONGFAX.F01]

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