

Party's Name: Cranney Bros.

Attorneys' Names and Address

Jeffrey C. Fereday
Michael C. Creamer
Judson B. Montgomery
GIVENS PURSLEY & HUNTLEY LLP
277 North 6th Street, Suite 200
P.O. Box 2720
Boise, Idaho 83701-2720
(208) 388-1200
(208) 388-1201 (facsimile)
4431\1\PLEADING\REVIEW.MEM

RECEIVED

JUN 14 1996

Department of Water Resources
Adjudication Bureau

6-12

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

**MEMORANDUM OF POINTS
AND AUTHORITIES
REGARDING THE
APPROPRIATE STANDARD
FOR DEMONSTRATING A
MERITORIOUS POSITION**

DESCRIPTIVE SUMMARY

This is Cranney Bros.' Memorandum of Points and Authorities Regarding the Appropriate Standard for Demonstrating a Meritorious Position.

MEMORANDUM

At the June 5, 1996 hearing on the Claimant's Motion for Permissive Review (restyled by the Court as a motion for reconsideration, and by the Special Master as a rehearing), the Special Master provided the opportunity for the parties to brief the issue of whether a party seeking to proceed in court under I.R.C.P. Rule 55(c) must

allege facts, which if proven, would constitute a meritorious defense, or whether the party must actually *establish* facts constituting a meritorious defense.

As a starting point, a party seeking relief under I.R.C.P. 55(c) must establish "good cause" for relief from a default and the existence of a meritorious defense to the default. *McFarland v. Curtis*, 123 Idaho 931, 934, 854 P.2d 274 (Ct. App. 1993). This memorandum addresses only the requirements for establishing the existence of a meritorious defense according to the Special Master's request for additional points and authorities.

Idaho courts have consistently required that a party seeking relief under Rule 55(c) *allege* facts, which if true, would amount to a meritorious defense. *McFarland v. Curtis*, 123 Idaho at 934; *cf. Hearst Corp v. Keller*, 100 Idaho 10, 12, 592 P.2d 66 (Idaho 1979) ("moving party must plead facts which, *if established*, would constitute a defense to the action." (emphasis added)). The court conducts such an analysis, because "it would be an idle exercise for the court to set aside a default [judgment] if there is in fact no real justiciable controversy." *McFarland*, 123 Idaho at 934. A court needs to be assured that there is some possibility that the outcome of the suit after full trial will change the result achieved by default. This standard is to be liberally applied, since "procedural rules, other than those which are jurisdictional, should be applied to promote the disposition of causes upon their merits." *Johnson v. Pioneer Title Co. of Ada County*, 104 Idaho 727, 732, 662 P.2d 1171 (Ct. App. 1983).

In contrast, the Special Master questioned at the June 5, 1996 hearing whether *Reeves v. Wisenor* 102 Idaho 271, 629 P.2d 667 (1981) presents a different standard by requiring a party moving pursuant to Rule 55(c) to *establish* facts constituting a

meritorious defense. Although imprecisely written, the *Reeves* case is consistent with the *McFarland* line of cases referenced herein which require only the allegation or pleading of facts. The *Reeves* court found that:

[A] party seeking to set aside a default judgment must show a meritorious defense going *beyond the mere notice requirements* which would be sufficient if plead before default. *Hearst Corp. v. Keller, supra; Thomas v. Stevens*, 78 Idaho 266, 300 P.2d 811 (1956). That policy is founded on the doctrine that it would be an idle exercise for a court to set aside a default if, in fact, there is no real justiciable controversy. *Hearst Corp. v. Keller, supra.* (emphasis added).

Reeves, 102 Idaho at 272. The *Reeves* court correctly stated the standard *under Rule 60(b)*, examined whether the movant alleged facts which if true would constitute a meritorious defense, but went on to find that movant had not met this burden. *Reeves* 102 Idaho at 272. The confusion surrounding *Reeves* arises due to the Court's statement that a movant must show "a meritorious defense going beyond the mere notice requirements." *Reeves* 102 Idaho at 272.

As the Special Master knows, Idaho allows notice pleading in responsive pleadings, including answers to a complaint or claim. The responsive pleadings must merely set forth averments in a simple, concise, and direct manner. See F.R.C.P. 8(e)(1) and I.R.C.P. 8(e)(1). The respondent sets forth the averments in the pleadings in general terms, serving the function of apprising the opposing parties of the nature of the litigation and claims or defenses that are being raised by the suit. For example, for purposes of notice pleading in answers or responses, general admissions,

denials and allegations of affirmative defenses are sufficient.¹ "*The evidentiary material supporting these general statements should not be set out in the pleadings but rather should be left to be brought to light during the discovery process.*" 5 Wright and Miller, Federal Practice and Procedure: Civil 2d § 1281 (1990). *Reeves* clarified that general averments from which a court could not discern whether a meritorious defense existed (ie. too vague) would not satisfy the "requirements" for showing a meritorious position under Rule 60(b). *Reeves* did not require that the facts alleged by the pleadings be "established" or "proven" to be true.

This aspect of the *Reeves* holding was clarified in *State v. One 1990 GEO Metro*, 126 Idaho 675, 889 P.2d 109 (Ct. App. 1995). In *Geo Metro*, the State argued that Mitchell, the party seeking relief, had to plead facts constituting a meritorious defense **and supply the documents to prove the alleged facts.** *Geo Metro*, 126 Idaho at 682. The Court rejected that suggestion noting that:

Such proof is not required at this stage of the proceedings. It is sufficient if the movant *pleads* with particularity facts which, *if proven*, would constitute a meritorious defense. (*citations omitted*). The facts constituting the defense may be asserted by affidavit or by a proposed answer or both. *Thomas v. Stevens*, 78 Idaho 266, 271, 300 P.2d 811, 814 (1956).

Geo Metro 126 Idaho at 682; *cf. Johnson* 104 Idaho at 733 (the correct question is whether movant "pled facts which, *if established*, would constitute a defense to this

¹ These and all other pleadings are always to be construed so as to do substantial justice. See I.R.C.P. 8(f).

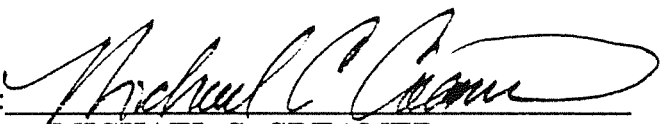
action." (emphasis added)).² This flexibility is consistent with the overall goal of these rules, and allows each cause of action (whenever possible) to be decided on its merits.

Cranney Bros.' responses and pleadings allege with particularity as to each relevant element of the claimed right that actual beneficial use is substantially different and/or less than claimed or previously decreed. Further, Cranney Bros.' reliance on, and adoption of the Director's Reports and Responses (which themselves have the weight of prima facie evidence) to claimant's objections clearly satisfy the "allegation of facts" standard recognized in Idaho.

Accordingly, the proof supporting the Cranney Bros.' meritorious defense will be provided at the hearing of this case, and should not be prematurely ruled upon. It is enough at this stage that Cranney Bros. has alleged facts, which if proven, or established, would constitute a meritorious defense.

RESPECTFULLY SUBMITTED This 12th day of June, 1996.

GIVENS PURSLEY & HUNTLEY, LLP

By: 
MICHAEL C. CREAMER
Attorneys for Cranney Bros.

² The Special Master should also recognize that *Reeves* and *Geo Metro* were cases dealing with the requirements of a meritorious defense in the stricter context of Rule 60(b) rather than Rule 55(c). *McFarland* 123 Idaho at 934.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of June, 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

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

by the method noted above.

