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Department of Water Resources
Eastern Region

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between **CV Cattle Co.**, an Idaho corporation ("CV"), and **Portneuf-Marsh Valley Canal Company**, an Idaho corporation ("PMVCC") effective May 22, 2017 ("Effective Date").

CV has filed Application for Transfer of Water Right no. 79403 (the "Application") with the Idaho Department of Water Resources ("IDWR") to change the point of diversion of water right nos. 29-12B and 29-94C (the "Water Rights"). The Water Rights have historically been delivered through Chesterfield Reservoir, which is owned by PMVCC, through a pipe commonly referred to as the "Siphon" located at the east end of the dam. The Application proposes to move the point of diversion of the Water Rights to the Portneuf River at a point downstream from the dam. PMVCC filed a protest with IDWR dated July 16, 2014, opposing the Application. CV and PMVCC desire to resolve PMVCC's protest pursuant to the terms of this Agreement.

Therefore, in consideration of the promises, performances, and conditions set forth below, the parties agree as follows:

1. **Settlement of Protest.** Within five (5) days after the Effective Date, PMVCC will submit to IDWR a copy of this Agreement as a complete settlement of PMVCC's protest against the Application. The resolution of PMVCC's protest is subject to the terms and conditions of this Agreement.
2. **Amendment of Application.** CV will amend the Application to remove from water right no. 29-94C any point of diversion from the Siphon or the Portneuf River, leaving only the existing point of diversion from Toponce Creek.
3. **Measurement of Water Right No. 29-94C.** Water diverted under water right no. 29-94C will be measured at the point of diversion from Toponce Creek. CV will bear all loss of water from the point of diversion on Toponce Creek to CV's point of delivery on the Feeder Canal.
4. **Measurement of Water Right No. 29-12B.** Water diverted under water right no. 29-12B will be measured at the outlet of Chesterfield Reservoir. CV Ranches will bear all loss of water from the outlet of Chesterfield Reservoir to any downstream point of diversion from the Portneuf River.
5. **Measurement of Water Right Nos. 29-10313, 29-10314 & 29-13532.** CV's water right nos. 29-10313, 29-10314 & 29-13532 are presently measured at a Parshall Flume adjacent to Kelly-Toponce Road roughly one quarter mile downstream from the point of diversion of such water rights. CV will, within one (1) year after the Effective Date, at no expense to PMVCC, either: (a) dig a channel or install a pipe to minimize the loss of water between the point of diversion and the Parshall Flume at Kelly-Toponce Road, (b) relocate the point of measurement upstream to the point of

diversion, or (c) relocate the point of diversion and the point of measurement to where the "Drainage Channel" intersects Kelly-Toponce Road near the center of Section 30, Township 6 South, Range 39 East, Boise Meridian.

6. **Siphon Measuring Device.** Water measurement and flow regulation devices approved by IDWR shall be installed at the Siphon and maintained in good working order, at no expense to PMVCC, within one (1) year after the Effective Date. Water rights delivered through the Siphon will be administered in priority except during times when the elevation of Chesterfield Reservoir drops below the elevation of the Siphon in which case no water will be delivered.
7. **Water Right Conditions.** The following or a substantially similar condition shall be added to the Water Rights by IDWR:

The diversion and use of water described in this right may be subject to additional limitations set forth in an agreement between the right holder and Portneuf-Marsh Valley Canal Company to which the Department is not a party but which may be enforceable by a court of law.

8. **Reimbursement of Attorney Fees.** CV will reimburse all attorney fees incurred by PMVCC in connection with its protest of the Application and resolution thereof by this Agreement.
9. **Dispute Resolution.** Any substantial dispute between the parties related to this Agreement will be resolved in accordance with the following provisions:
 - 9.1 **Good Faith Negotiation.** Upon written notice from one party to the other, authorized representatives of the parties will attempt in good faith to resolve the dispute by negotiation.
 - 9.2 **Mediation.** If the dispute cannot be resolved by good faith negotiation, either party may demand that the dispute be subjected to mediation by a mediator designated by mutual agreement of the parties. The mediation will be held in Cassia County, Idaho, unless the parties mutually agree to a different location. Mediator costs will be split equally between the parties.
 - 9.3 **Litigation.** Litigation is allowed between the parties only: (i) if the dispute is not resolved by mediation, (ii) for the purpose of enforcing a settlement agreement entered into between the parties, or (iii) to seek temporary injunctive relief if a party deems such action necessary to avoid irreparable damage. The pursuit or granting of temporary injunctive relief does not excuse the parties from participating in good faith negotiation and mediation as set forth above. The prevailing party in any litigation is entitled to recover reasonable attorney fees and costs.

- 9.4 **Governing Law, Jurisdiction, and Venue.** This Agreement will be construed and interpreted in accordance with the laws of the State of Idaho. The parties agree that the courts of Idaho shall have exclusive jurisdiction, and agree that Cassia County is the proper venue.
- 9.5 **Exclusive Procedures.** The procedures specified in this section 9 are the exclusive procedures for the resolution of disputes between the parties. All applicable statutes of limitation shall be tolled while the negotiation and mediation procedures specified in section 9.1 and 9.2 are pending.
10. **Representations.** CV and PMVCC each represent, warrant, and covenant to the other that it has the authority to enter into this Agreement and perform the obligations herein. PMVCC further represents that this Agreement resolves all protests PMVCC has filed or could file against the Application.
11. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.
12. **Binding.** This Agreement is binding upon the successors and assigns of the parties.
13. **Amendment.** This Agreement may not be amended except by a written agreement signed by both parties.
14. **Non-Waiver.** Non-performance of any provision of this Agreement shall not be deemed a waiver of the right of any party to demand enforcement of such provision.
15. **No Third Party Beneficiaries.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any person or entity other than the parties any rights, remedies, or other benefits.
16. **Recording.** This Agreement may be recorded in the public real property records of Caribou County, Idaho, against the lands to which the water rights are appurtenant.
17. **Counterparts.** This Agreement may be executed by the parties in separate counterparts, which shall together constitute one and the same instrument. A faxed or scanned copy of a party's signature shall have the same effect as an original.

[End of Agreement; Signatures on following page]

CV CATTLE CO.

By: Rondo Perkins By Grant Simons
Rondo W. Perkins, President

By: Grant Simons
Grant Simons, Vice President

PORTNEUF-MARSH VALLEY CANAL COMPANY

By: Tom Barnes
Tom Barnes, President

Attest: Mark Bennett
Mark Bennett, Secretary