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DEPT. OF WATER RESOURCES

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**IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS**

In Re SRBA

Case No. 39576

Subcase Nos. 69-4103A, 69-4103B, 69-4104A, 69-4104B, and 69-4112

**MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

COMES NOW Crooked River Ranches, LLC (“CRR”) by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to AO1.6.f, as supported by the declarations of Katie A. Shrum, Dennis R. White, and Steven Visosky, filed contemporaneously herewith, hereby files this *Motion to Enforce Settlement Agreement*.

I. INTRODUCTION

As evidenced by the Court’s January 30, 2008 *Partial Decrees*, and as will be explained in more detail below, CRR, who is a successor-in-interest to Harold A. Powers and Enea H. Powers (“Powers”), is the senior user from Crooked River and Moonshine Creek relative to

Moonshine Ventures, LLC (“Moonshine Ventures”) and Jack Rubelt and Ava E. Rubelt (“Rubelts”). In return for issuance of the *Partial Decrees*, the original parties to the above-captioned subcases (Powers, Moonshine Ventures, and Rubelts) resolved their differences by entering into a *Settlement Agreement* that allowed this Court to provide relief: (1) if access through the granted easement was not provided by the parties to their respective headgates; and (2) if Moonshine Ventures and Rubelts did not voluntarily reduce their diversion rates to satisfy Powers’ senior rights. The rights in the *Settlement Agreement* were granted because the above-captioned water rights are not located in an organized water district and, as such, there is no IDWR-appointed watermaster to administer the rights.

CRR has been and was repeatedly denied access to its headgate in 2023 and the headgates of Moonshine Ventures and Rubelts through the granted easement, resulting in CRR being denied the water to which it is entitled as the senior user during last year’s irrigation season. Therefore, CRR is filing this motion and seeking judicial assistance ahead of the 2024 irrigation season. Without an organized water district and an Idaho Department of Water Resources-appointed watermaster, the Court is the only forum to address access to headgates and delivery of water, in-priority. CRR is also entitled to an award of its reasonable costs and attorneys fees in seeking court-ordered relief.

Attached hereto is a map labeled Exhibit 1 to assist the Court in reviewing the documents and arguments set forth below.

II. ARGUMENT

CRR is the successor-in-interest to Powers. *Declaration of Katie A. Shrum* at 1; *Declaration of Dennis R. White* at 1; *Declaration of Steven Viskosky* at 2. On January 30, 2008, the Court issued *Partial Decrees* for water right nos. 69-4103A and 69-4103B to Powers, water

right no. 69-4112 to Rubelts, and water right nos. 69-4104A and 69-4014B to Moonshine Ventures. *Declaration of Katie A. Shrum, Ex. A.* The above-captioned water rights are summarized as follows, conclusively demonstrating that CRR is senior to Rubelts and Moonshine Ventures:

Water Right No.	Owner	Priority	Source
69-4103A	Powers / CRR	4/1/1888	Crooked River
69-4104A	Powers / CRR	4/1/1888	Moonshine Creek
69-4122	Rubelts	5/6/1901	Crooked River
69-4103B	Moonshine Ventures	4/1/1955	Crooked River
69-4014B	Moonshine Ventures	4/1/1955	Moonshine Creek

Id.

On November 29, 2007, and as consideration for entry of the *Partial Decrees* that was preceded by the filing of *SF5s*, Powers, Moonshine Ventures, and Rubelts jointly filed with the Court a *Motion in Support of Settlement Agreement* in the above-captioned subcases.¹

Declaration of Katie A. Shrum, Ex. B. Included in the *Motion in Support of Settlement Agreement* was a *Settlement Agreement*, which was recorded in Adams County on October 30, 2007 as Instrument No. 115466, and executed by Powers, Rubelts, and Douglas M. Scism as sole member of Moonshine Ventures. *Id.* The *Settlement Agreement* was made binding on “all

¹ The *Motion in Support of Settlement Agreement* is included as Exhibit A to the *Declaration of Katie A. Shrum* and is also of record in IWTRS. Included with the *Motion in Support of Settlement Agreement* are three exhibits: (1) the *Settlement Agreement*; (2) the *SF5s* that were entered with the Court on November 6, 2007; and (3) a *[Proposed] Order Granting Motion in Support of Settlement Agreement*. The undersigned counsel cannot find a record in IWTRS showing that the Court issued an *Order Granting Motion in Support of Settlement Agreement*. Nonetheless, as will be explained, the *Settlement Agreement* was recorded in Adams County and is binding on the parties today.

Parties hereto and their respective heirs, real property successors-in-interest, permitted assigns, employees, agents and contractors.” *Settlement Agreement* at 10.

According to the *Settlement Agreement*, the parties agreed to resolve their differences by entering into *SF5s* that would in turn become the *Partial Decrees*: “This Agreement will foster cooperation among the Parties so as to optimize the beneficial uses the Parties may make of the water consistent with their water right decrees and terms herein.” *Settlement Agreement* at 2.

Pertinent to the dispute at hand are two provisions, related to “Access” and “Flow Management”:

h. Access

Each Party shall have reasonable access to each other Party’s flow measuring and control devices solely for purposes of inspection and verification of compliance with this Agreement and the partial decrees entered in the above-captioned subcases. This access is not intended to limit any rights available to the Parties under the Idaho Code. This access is not intended to limit any Party’s ability to seek enforcement of the Idaho Criminal Code, Title 18, Chapter 43 (Irrigation Works).

If a Party’s point of diversion and water conduit is surrounded by the property of another Party, the Party that owns the surrounding property shall provide a right-of-way for all purposes consistent with Idaho Code § 42-1102 (2006).

Settlement Agreement at 6.

i. Flow Management Agreement

To alleviate the adverse impacts on any and all of the Parties when the flow of the Crooked River is insufficient to satisfy all of the above-referenced water rights during the decreed period of use, the Parties shall coordinate and confer concerning voluntary adjustments to or reallocation of water flows irrespective of the Parties’ partial decrees. The Parties shall discuss practices for equitably distributing water between the Parties, including shared reductions in the quantities of water diverted or any other reasonable alternative proposed by a Party other than rotating periods of water use which the Parties have concluded is unworkable. Each Party shall designate one representative to participate in the coordination and conferences. Any decision to adjust or reallocate water flows shall be made only by agreement of all the Parties and shall be in effect only during the single year period of use during which the agreement is reached. If the Parties’ representatives cannot reach agreement, the water shall be allocated according to the partial decrees entered in the above-captioned subcases.

Id.

On December 13, 2022, CRR notified Moonshine Ventures and Rubelts that it was the successor-in-interest to Powers, thereby updating the contact information that was in the *Settlement Agreement*, and notifying Moonshine Ventures and Rubelts of its intention to “divert all of the water that is available to it under its water rights this coming irrigation season.”

Declaration of Katie A. Shrum, Ex. C.

1. Moonshine Ventures and Rubelts Denied CRR Access to the Parties’ Headgates in Violation of the Settlement Agreement and the Easement that was Granted Therein Consistent with Idaho Code § 42-1102

Due to the presence of irrigation works, and though not required by Idaho Code, the *Settlement Agreement* nonetheless granted an express easement to each of the Parties, including CRR as the successor-in-interest to Powers: “If a Party’s point of diversion and water conduit is surrounded by the property of another Party, the Party that owns the surrounding property shall provide a right-of-way for all purposes consistent with Idaho Code § 42-1102.” *Settlement Agreement* at 6 (emphasis added). “In our decisions addressing section 42-1102, we have consistently used the term ‘easement’ to generally describe the right-of-way conferred by the statute and have applied longstanding principles of easement law to that statutory right-of-way.” *Hood v. Poorman*, 171 Idaho 176, 187, 519 P.3d 769, 780 (2022).

According to the Idaho Supreme Court, “section 42-1102 entitles ditch owners ‘to a right-of-way through the lands of others, for a ditch, canal, or conduit to convey water to the place of use for the purposes of irrigation.’ I.C. § 42-1102(1). Further, section 42-1102(2) provides a nonexhaustive list of rights within the statutory right-of-way [including the right of access].” *Chester v. Wild Idaho Adventures RV Park, LLC*, 171 Idaho 212, 222, 519 P.3d 1152, 1162 (2022).

“The plain language of section 42-1102 addresses both a ditch user’s primary and secondary easements. Subsection (1) describes the right to use the land of another for a specified purpose—to convey water to its place of irrigation using a ditch, canal, or conduit. I.C. § 42-1102(1). Subsection (2), in turn, describes the secondary easement rights a ditch user has to maintain the right-of-way. I.C. § 42-1102(2). This distinction is more than a semantic one, as the character of an easement as primary or secondary informs how courts define the scope of the easement.” *Hood* at 188, 519 P.3d at 781. “Idaho Code section 42-1102 provides that the right-of-way for a ditch includes the ‘reasonable exercise of ... [t]he right to enter the land across which the right-of-way extends for the purposes of accessing, inspecting, operating, cleaning, maintaining, and repairing the ditch[.]’ I.C. § 42-1102(2)(a).3. We have construed the phrase ‘reasonable exercise’ in section 42-1102 to mean that a ditch user’s secondary easement rights are limited by the ‘rule of reasonableness.’” *Id.* at 189, 519 P.3d at 782.

In applying the *Settlement Agreement* and its express incorporation of Idaho Code § 42-1102 to the facts at hand, Moonshine Ventures and Rubelts wrongfully denied CRR access to the headgates during the 2023 irrigation season. On August 1, 2023, CRR attempted to access the headgates, yet discovered that the traditional access road was blocked due to a locked gate. *Declaration of Katie A Schrum* at 3; *Declaration of Dennis R. White* at 2. When CRR asked for the gate to be unlocked or to be given a key, neither Moonshine Ventures nor Rubelts complied, telling CRR that the gate was locked to prevent trespassers from accessing the property and wrongfully denying CRR access. *Declaration of Katie A. Schrum* at 4. When CRR asked the Adams County sheriff’s office for assistance in keeping the peace when it came to addressing the locked gate, CRR was told that without an order from the Court, the sheriff would not assist.

Declaration of Dennis R. White at 3. Denying access through the easement violates the *Settlement Agreement* and Idaho Code § 42-1102.

2. Moonshine Ventures and Rubelts Denied CRR the Water to which CRR is Entitled to as the Senior User

During the 2022 irrigation season, CRR discovered that the headgates for Moonshine Ventures and Rubelts were padlocked open, making them unadjustable and thereby depriving CRR of its water under its senior water rights. *Declaration of Katie A Shrum* at 2. Due to the inability to receive all of the water to which it is entitled, CRR's pastures dried up, forcing CRR to sell calves in August 2022, which is one month earlier than it typically does. *Id.* In early September, 2022, CRR communicated by email with IDWR regarding its need for water and to inquire about whether IDWR had sent a "watermaster" to adjust the headgates of the parties. *Declaration of Steven Visosky, Ex. A.* In correspondence back to CRR, IDWR assured CRR that because the above-captioned water rights are not in an organized water district, no watermaster existed for IDWR to send. *Id.*

On July 22, 2023, when flows were becoming low, CRR discovered that its headgate had been manipulated in such a way as to reduce the amount of water flowing to its irrigated pastures. *Id.* at 3. Despite repeated requests during the 2023 irrigation season to Moonshine Ventures and Rubelts to voluntarily adjust their headgates, including an August 2, 2023 letter from CRR's attorney to the attorneys for Moonshine Ventures and Rubelts, CRR's request was ignored, with Moonshine Ventures and Rubelts refusing to remove the padlocks that were keeping their headgates open since 2022. *Id.* at 3-4. By not unlocking the gate on the access road, CRR was unable to ensure that the headgates were correctly set and that CRR's senior water rights were satisfied ahead of Moonshine Ventures and Rubelts. Moreover, because the padlocks were not removed from Moonshine Ventures' and Rubelts' headgates during low flow

in 2023, CRR was unquestionably denied the water to which it was entitled as the senior user. When CRR asked the Adams County sheriff's office for assistance in keeping the peace when it came to the padlocks on the headgates, CRR was told that without an order from the Court, the sheriff would not assist. *Declaration of Dennis R. White* at 3.

In summary, providing access through an easement is what Moonshine Ventures and Rubelts bargained for when they resolved their differences with Powers in the SRBA, as evidenced through the *Settlement Agreement* and its express incorporation of Idaho Code § 42-1102. Moreover, nothing in the *Settlement Agreement* and SRBA partial decrees allows Moonshine Ventures and Rubelts to lock their headgates open to the detriment of CRR, who is the senior user. As the successor-in-interest to Powers, the Court should order that CRR is entitled to access its headgates and the headgates of Moonshine Ventures and Rubelts through the granted easement, and that Moonshine Ventures and Rubelts, as junior users, cannot lock their headgates open to the detriment of CRR.

3. Without an Organized Water District and Watermaster, this Court is the Only Forum for Relief

Crooked River and Moonshine Creek are not in an organized water district and, as such, there is no IDWR-appointed watermaster. *Declaration of Steven Visosky* at 3. Without a water district or watermaster, IDWR cannot and will not administer the above-captioned water rights. *Id.*; Idaho Code § 42-602 (“The provisions of chapter 6, title 42, Idaho Code, shall apply only to distribution of water within a water district.”). The *Settlement Agreement* anticipated the possibility that a water district would not be created, which is why the parties agreed that the forum in which to address the parties’ rights and responsibilities is this Court. Therefore, CRR prays that the Court will issue an order enforcing the *Settlement Agreement*, which will, in turn,

require Moonshine Ventures and Rubelts to provide water to CRR when there is insufficient water to fill CRR's senior-priority water rights.

4. CRR is Entitled to its Reasonable Costs and Attorneys' Fees

According to the *Settlement Agreement*: "If a Party shall commence any action or proceeding in a court of law against another Party in order to enforce the provisions of this Agreement or the partial decrees or to recover damages as a result of the alleged breach of any of the provisions of this Agreement, the prevailing Party shall be entitled to recover from the other Party all reasonable costs in connection therewith, including reasonable attorneys' fees."

Settlement Agreement at 9; see also *Settlement Agreement* at 7 ("Any party who believes the terms of this Agreement or the partial decrees are being violated may, in addition to administrative enforcement, seek an order from the SRBA District Court compelling compliance and awarding damages, costs, and attorneys' fees."). "Where a valid contract between the parties contains a provision for an award of attorney fees, the terms of the contract establish a right to attorney fees." *Gangi v. Debolt*, 168 Idaho 815, 819, 488 P.3d 483, 487 (2021).

The terms of the *Settlement Agreement* are plain and unambiguous, establishing a right to attorneys' fees if a party brings an enforcement action and prevails. Here, CRR has taken all reasonable steps to seek voluntary compliance with the *Settlement Agreement*, yet has been frustrated in all of its attempts. Due to the recalcitrance of Moonshine Ventures and Rubelts, CRR has been forced to file this action as a last resort and should be entitled to an award of reasonable costs and attorneys' fees.

III. CONCLUSION

Based on the foregoing, and because the Court is the forum for relief, CRR respectfully moves the Court for an order enforcing the *Settlement Agreement* by requiring Moonshine

Ventures and Rublets to: (1) provide CRR access to the headgates through the confirmed easement, consistent with Idaho Code § 42-1102; (2) provide CRR with water by unlocking their headgates when CRR's water right nos. 69-4103A and 69-4103B are not satisfied; and (3) an award of CRR's reasonable costs and attorneys' fees.

DATED this 25th day of March, 2024.

A handwritten signature in cursive script, reading "Candice M. Hughes".

For CHRIS M. BROMLEY
*Attorneys for Crooked
River Ranches, LLC*

CERTIFICATE OF SERVICE

I certify that on this 26th day of March, 2024, I caused to be served a true and correct copy of the foregoing Motion to Enforce, and Declarations of Shrum, White, and Visosky on the following persons by U.S. Mail:

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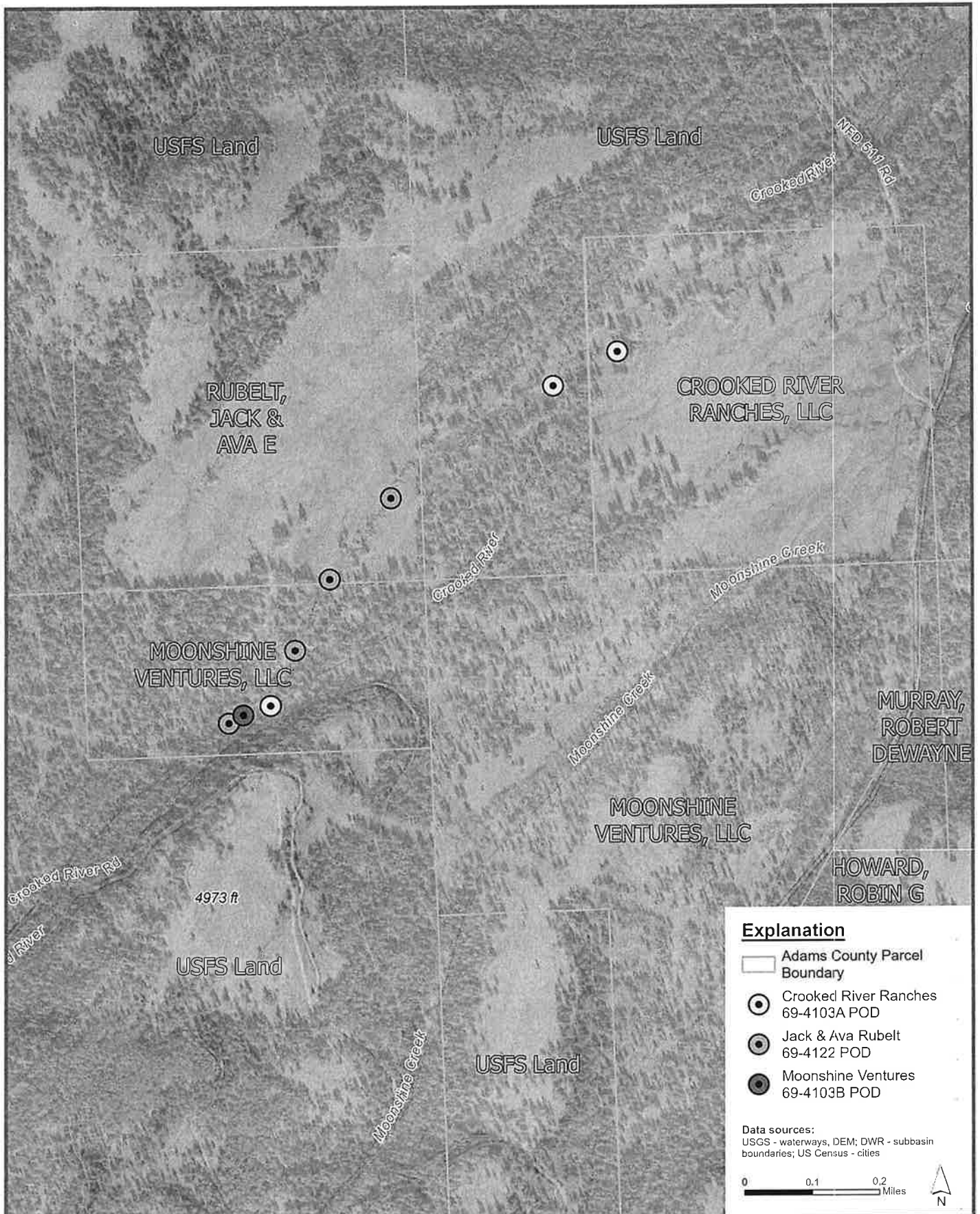
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**Luhdorff &
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Water Rights Map

69-4103A
Crooked River Ranches, LLC