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DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls-State of Idaho

DEC 20 2024

By _____


Deputy Clerk

Attorneys for Crooked River Ranches, LLC

**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 No. 00-92021-69

**MEMORANDUM IN SUPPORT OF
MOTION FOR INTERIM
ADMINISTRATION FROM
CROOKED RIVER IN BASIN 69**

COMES NOW Crooked River Ranches, LLC (“CRR”), by and through its attorneys of record, McHugh Bromley, PLLC, and pursuant to I.C. § 42-1417, hereby file this *Memorandum In Support of Motion for Interim Administration from Crooked River in Basin 69*. The *Motion for Interim Administration* is directed only at water rights from Crooked River in Basin 69.

**I. INTERIM ADMINISTRATION OF WATER RIGHTS FROM CROOKED RIVER
IN BASIN 69 IS REASONABLY NECESSARY TO PROTECT SENIOR WATER
RIGHTS**

CRR is the senior water right holder who diverts from Crooked River in Basin 69. *Declaration of Chris M. Bromley; Declaration of Katie A. Shrum*. Starting in 2022, CRR has been attempting to informally distribute water from Crooked River with Jack and Ava R. Rubelt (“Rubelt”) and Moonshine Ventures, LLC (“Moonshine Ventures”), with little to no success.

*Declaration of Katie A. Shrum; see also Declaration of Steven Visosky at 2-3.*¹ Rubelt and Moonshine Ventures divert water from Crooked River pursuant to water right nos. 69-4122 (5/6/1901) and 69-4013B (4/1/1955), respectively. In 2023, CRR again attempted to informally distribute water from Crooked River with Rubelt and Moonshine Ventures with little to no success. *Declaration of Katia A. Shrum.*

In 2024, CRR filed a *Motion to Enforce Settlement Agreement* with the Court, served on Rubelt and Moonshine Ventures, in SRBA subcase no. 69-4103a *et al.* During the spring, summer, and fall of 2024, CRR attempted to reach a settlement with Rubelt and Moonshine Ventures. *Declaration of Katie A. Shrum.* As documented in the minutes of the Court, the parties reported their progress, and lack thereof, to Special Master Booth throughout the 2024 irrigation season.

Administration of water rights is the distribution of water to water users in accordance with the prior appropriation doctrine as set forth in Idaho law. The primary mechanism for distribution of water in accordance with the prior appropriation doctrine in Idaho is through the creation of a water district and the office of watermaster within that district under the supervision of the Director (“Director”) of the Idaho Department of Water Resources (“IDWR”). I.C. § 42-602 *et seq.* The creation and establishment of a water district takes time, in some cases years. *See In re Water District No. 170*, 148 Idaho 200, 220 P.3d 318 (2009) (creation of Water District No. 170 took four years).

Pursuant to I.C. § 42-1417, this Court is authorized to order the distribution of water in accordance with the partial decrees for purposes of interim administration, but only upon a

¹ The *Declaration of Steven Visosky*, which was filed by CRR in SRBA subcase no. 69-4103A *et al.* is attached hereto for convenience.

determination that administration is reasonably necessary to protect senior water rights. I.C. § 42-1417(2)(c).

Interim administration from Crooked River in Basin 69 is reasonably necessary because an efficient means of administering water rights does not exist. As evidenced by the records of the Court and IDWR, there are six (6) water rights that divert from Crooked River in Basin 69, listed in order of priority:

Water Right No.	Priority Date	Div. Rate	Source	Water Use	Owner	Decree Date
69-4103A	4/1/1888	3.38 cfs	CROOKED RIVER	IRRIGATION, STOCKWATER	CROOKED RIVER RANCHES LLC	1/30/2008
69-10228	5/1/1895	0.02 cfs	CROOKED RIVER	STOCKWATER	UNITED STATES OF AMERICA	3/4/2003
69-10229	5/1/1895	0.02 cfs	CROOKED RIVER	STOCKWATER	UNITED STATES OF AMERICA	3/4/2003
69-10251	5/1/1895	0.02 cfs	CROOKED RIVER	STOCKWATER	UNITED STATES OF AMERICA	3/4/2003
69-4122	5/6/1901	2.81 cfs	CROOKED RIVER	IRRIGATION, STOCKWATER	RUBELT, AVA E; RUBELT, JACK	1/30/2008
69-4103B	4/1/1955	1.94 cfs	CROOKED RIVER	IRRIGATION	MOONSHINE VENTURES LLC	1/30/2008

Declaration of Chris M. Bromley at 2.

Since the rights were decreed by the Court, a water district has not been created by IDWR in Basin 69, nor has a watermaster been appointed to distribute water in accordance with the partial decrees. *Declaration of Steven Visosky at 3, ¶ 9* (“the area for water right 69-4103A is not within the boundary of an IDWR-created water district. Without a water district . . . there was not an IDWR-appointed watermaster for that area.”). An IDWR-appointed watermaster is necessary for the proper administration and distribution of water from Crooked River.

Declaration of Katie A. Shrum.

In order to fully and adequately deliver water rights, the Court should order the Director to administer the above-captioned water rights on an interim basis, in accordance with the partial decrees, from Crooked River in Basin 69.

II. THE RECORDS OF THE COURT AND IDWR PROVIDE THE LIST OF WATER RIGHTS FOR PURPOSES OF INTERIM ADMINISTRATION

Chapter 6, Title 42, Idaho Code recognizes that distribution of water requires an accurate listing of water rights. The Supreme Court has recognized the importance of an accurate list containing the description of the water rights to be administered. In *Nettleton v. Higginson*, 98 Idaho 87, 558 P.2d 1048 (1977), the Court stated: “Only by having a specific list reciting the names of water users, with their priority dates, amounts, and points of diversion can a system be administered.” *Id.* at 91, 558 P.2d at 1052.

In order for the Court to issue an order for interim administration, it must find that there is a listing of the owners and elements of the water rights. Idaho Code § 42-1417 states that the partial decrees constitute an adequate listing, because all of the elements have been investigated, reported by IDWR to the Court, and decreed, having withstood the scrutiny of the Court’s review. Idaho Code § 42-1417 assures procedural due process by requiring notice to the water right holders who will be affected by interim administration. Upon entry of an order for interim administration, the creation of a water district and the distribution of water thereunder may occur in accordance with the normal administrative mechanism provided by Chapter 6, Title 42, Idaho Code. As explained in the above table, there are six (6) water rights that divert from Crooked River in Basin 69. *Declaration of Chris M. Bromley.*

III. NOTICE IS BEING PROVIDED TO EACH WATER RIGHT HOLDER WHO WILL BE SUBJECT TO INTERIM ADMINISTRATION

Idaho Code § 42-1417 requires that notice be given to each holder of a water right who could reasonably be determined to be adversely affected by entry of an order of interim administration. As explained in the *Declaration of Chris M. Bromley*, filed contemporaneously herewith, service of the *Joint Motion* has been made on the above-listed water right holders, as well as the Director, as required by I.C. § 42-1417(b), with service on the State of Idaho, United States, and IDWR, with publication of these documents on the Court's docket sheet, pursuant to A.O.1. Therefore, the notice provisions of I.C. § 42-1417 and A.O.1 are satisfied.

IV. CONCLUSION

Based on the foregoing, interim administration is reasonably necessary to properly distribute and protect senior water rights in the absence of a water district. Therefore, CRR respectfully requests that the Court enter an order directing the administration of water rights pursuant to Chapter 6, Title 42, Idaho Code, from Crooked River in Basin 69, consistent with the partial decrees.

DATED this 19th day of December, 2024.

/s/ Chris M. Bromley
CHRIS M. BROMLEY
McHugh Bromley, PLLC
Attorneys for Crooked River Ranches, LLC

CERTIFICATE OF SERVICE

I certify that on this 19th day of December, 2024, I caused to be served a true and correct copy of the foregoing upon the following persons by U.S. Mail:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

Julie Klein Fischer
Morrow & Fischer PLLC
4 Ogden Ave.
Nampa, ID 83651

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

Michael P. Lawrence
Givens Pursley LLP
PO Box 2720
Boise, ID 83701

Chief Natural Resources Div.
Office of the Attorney General
State of Idaho
PO Box 83720
Boise, ID 83720-0010

United States Dept. of Justice
Environment & Natural Resource
550 West Fort Street, MSC 033
Boise, ID 83724-0101

/s/ Chris M. Bromley
CHRIS M. BROMLEY

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Attorneys for Crooked River Ranches, LLC

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

MAR 27 2024

By _____ Clerk
Deputy Clerk

**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

**DECLARATION OF
STEVEN VISOSKY**

I, Steven Visosky, being first duly sworn upon oath, depose and state as follows:

1. I am over the age of eighteen and am competent to testify to the matters contained herein. I make this declaration pursuant to Idaho Code § 9-1406 and based on my own personal knowledge.

2. I am a Principal Water Resource Agent at the Idaho Department of Water Resources ("Department"). I have been in this position since August 21, 2022. I am based out of the Department's State Office, 322 E. Front Street, Suite 648, Boise, Idaho 83702.

3. On January 30, 2008, the above-captioned water rights were partially decreed by the Snake River Basin Adjudication district court as follows:

Water Right No.	Date Decreed	Owner	Priority
69-4103A	01/30/2008	Evea H. & Harold A. Powers	4/1/1888
69-4104A	01/30/2008	Evea H. & Harold A. Powers	4/1/1888
69-4122	01/30/2008	Ava E. & Jack Rubelts	5/6/1901
69-4103B	01/30/2008, amended 06/29/2009	Moonshine Ventures LLC	4/1/1955
69-4104B	01/30/2008	Moonshine Ventures LLC	4/1/1955

4. Department records show that on September 3, 2009, the ownership of water right nos. 69-4103A and 69-4104A was changed from Evea H. and Harold A. Powers to Harold A. Powers and Evea H. Powers Trust.

5. Department records show that on October 1, 2018, the ownership of water right nos. 69-4103A and 69-4104A was changed from Harold A. Powers and Evea H. Powers Trust to Katie White.

6. Department records show that on December 1, 2022, the ownership of water right nos. 69-4103A and 69-4104A was changed from Katie White to Crooked River Ranches, LLC ("CRR"). Ownership of these water rights is currently in the name of CRR.

7. Department records do not show changes of ownership filed with the Department for water right nos. 69-4122, 69-4103B, or 69-4104B.


8. On Friday, September 9, 2022, I corresponded via email with Dennis White regarding a headgate for water right no. 69-4103A. A true and correct copy of this email is attached to this Declaration as Exhibit A.

9. I informed Dennis White that the area for water right 69-4103A is not within the boundary of an IDWR-created water district. Without a water district, I informed him that there was not an IDWR-appointed watermaster for that area.

10. On August 30, 2023, I was contacted by Dennis White regarding delivery of water right nos. 69-4103A and 69-4104A. Dennis White alleged that CRR was being denied its prior water rights. I responded on September 1, 2023. A true and correct copy of this email is attached to this Declaration as Exhibit B.

11. I certify under penalty of perjury pursuant to the law of the State of Idaho that the foregoing is true and correct.

DATED this 22nd day of March, 2024.


Steven Visosky
Water Resource Agent, Principal
Idaho Department of Water Resources

From: [Visosky, Steven](#)
To: "D W"
Subject: RE: Settlement Agreement
Date: Friday, September 9, 2022 11:13:00 AM

Dennis,

Please let me know if a watermaster from another IDWR water district made an adjustment to your diversion. The closest IDWR watermaster to that area is Brandi Horton-Warner, watermaster of Water District 67, Weiser River and tributaries. Brandi's assistant is Tim Bumgarner. The Water District 67 boundary is a ridge to the east of your property that separates the two basins.

Steve V.

From: D W <dwidaho5@yahoo.com>
Sent: Friday, September 9, 2022 10:58 AM
To: Visosky, Steven <Steven.Visosky@idwr.idaho.gov>
Subject: Re: Settlement Agreement

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

They introduced him as a watermaster, so maybe he is from a different district.

He didn't give us his name. I should have asked.

They said they were going to take pictures and measurements so I assumed he was acting on behalf of IDWR.

They were still there when we left. I'm going back up today to check if they made any adjustments to the water.

If an IDWR watermaster from another district made adjustments to my water, who would I talk to?

Thank You

Dennis

On Friday, September 9, 2022 at 10:05:58 AM MDT, Visosky, Steven <steven.visosky@idwr.idaho.gov> wrote:

Dennis,

I assume you are speaking about a headgate for water right 69-4103A on the Crooked River in Adams County? Assuming this is correct, the area you are referencing is not within the boundary of an IDWR-created water district. An IDWR-appointed watermaster is elected annually by the water users at the annual water district meeting. As the area is not with an IDWR water district, there is no IDWR-appointed watermaster for that area.

When three or more water users share an irrigation ditch or lateral, the parties constitute a Lateral Water Users Association. I'm not sure if this applies to your situation; however, could there be a local lateral water users association that has elected a lateral manager? It's common for people to reference a lateral manager or ditch rider as the "watermaster." Additionally, irrigation districts will use the term watermaster, but I'm unaware of an irrigation district in that area.

Steve Visosky

Idaho Department of Water Resources

208-287-4933 | email: steven.visosky@idwr.idaho.gov

From: D W <dwidaho5@yahoo.com>
Sent: Friday, September 9, 2022 9:03 AM

Exhibit A

To: Visosky, Steven <Steven.Visosky@idwr.idaho.gov>
Subject: Re: Settlement Agreement

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Thank You.

Can you tell me who is in charge of your Water Masters.

There was a Water Master checking my head gate yesterday with the other two water users. I would like to know who sent him and why.

Dennis

On Thursday, September 8, 2022 at 10:37:07 AM MDT, Visosky, Steven <steven.visosky@idwr.idaho.gov> wrote:

Dennis,

Please allow me a few days to review the settlement agreement and speak with Nick Miller, IDWR Western Regional Manager, about your situation. I will call you after I can speak with Nick.

Steve Visosky

Idaho Department of Water Resources

208-287-4933 | email: steven.visosky@idwr.idaho.gov

From: D W <dwidaho5@yahoo.com>
Sent: Wednesday, September 7, 2022 1:39 PM
To: Visosky, Steven <Steven.Visosky@idwr.idaho.gov>
Subject: Re: Settlement Agreement

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Steve

This is Dennis White we talked in April about our water rite issues.

We are having trouble getting our water our neighbor keeps taking our water.

Would like to discuss the possibility of having a Water District formed.

Thank You

Dennis White

208-741-2072

On Monday, April 18, 2022 at 03:54:19 PM MDT, Visosky, Steven <steven.visosky@idwr.idaho.gov> wrote:

Dear Dennis,

Please see attached. I am making the assumption this is the settlement agreement on record.

Steve Visosky

Idaho Department of Water Resources

208-287-4933 | email: steven.visosky@idwr.idaho.gov

From: [Visosky, Steven](#)
To: [D W](#)
Cc: cbromley@mchughbromley.com; [Whitney, Rob](#)
Subject: RE: Water Right 69-4103A
Date: Friday, September 1, 2023 1:42:00 PM

Dennis,

I apologize for the delayed reply.

I shared your email and discussed your situation with my manager Rob Whitney. Today, Rob and I reached out to Chris Bromley to discuss the situation. Chris mentioned that he thought your daughter Katie was heading up to the Crooked River today and that he would likely know more about the status of the diversion/situation soon. We agreed to continue our discussion once Chris had a status update from Katie. I'm not sure of the timing of things with the holiday weekend, but I will keep you posted once I have more information from Chris or Rob.

Steve Visosky

Water Resource Agent, Principal | Compliance Bureau
steven.visosky@idwr.idaho.gov | 208-287-4933



From: D W <dwidaho5@yahoo.com>
Sent: Wednesday, August 30, 2023 2:40 PM
To: Visosky, Steven <Steven.Visosky@idwr.idaho.gov>
Subject: Water Right 69-4103A

CAUTION: This email originated outside the State of Idaho network. Verify links and attachments BEFORE you click or open, even if you recognize and/or trust the sender. Contact your agency service desk with any concerns.

Steve

We spoke last year about our problems getting our water.
We are located 19 miles North of Council on the Cuprum road.
Our Water comes from Crooked River.
The other users won't let our water go by. We have the superior rights.
We hired Chris Bromley in this matter. He is waiting for direction from the IDWR.
Something about the IDWR in our Water agreement he thinks gives the IDWR some jurisdiction. We intend to take this matter to Adams County Court if we can. Chris reached out to the IDWR approx 3 weeks ago. Can you help with this.

Thank You
Dennis White
208-741-2072

The water rights are now under the name of
Crooked River Ranches LLC

Exhibit B