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OCT 05 2020  
DEPARTMENT OF  
WATER RESOURCES

*Attorneys for Mountain Home Irr. Dist.*

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. 61-248 and 61-10419

VERIFIED PETITION FOR  
DECLARATORY JUDGMENT

COMES NOW the Mountain Home Irrigation District (“MHID”) by and through its counsel of record, McHugh Bromley, PLLC, and files this *Petition for Declaratory Judgment* (“Petition”), pursuant to this Court’s *Final Unified Decree, Idaho Rule of Civil Procedure 57*, and Idaho Code § 10-1201 *et seq.*

I. INTRODUCTION

1. A controversy exists between MHID and Weitz & Company, Inc. (“Weitz”), regarding delivery of what was formerly known as water right no. 61-248 (“61-248”), an irrigation water right that was originally decreed by the Elmore County district court in 1914, then was not partially decreed by this Court in the Snake River Basin Adjudication (“SRBA”), rendering 61-248 decreed disallowed by operation of the *Final Unified Decree*. MHID brings

this Petition to obtain a judgment from this Court that because 61-248 was not partially decreed, the right is invalid, and as such MHID has no obligation to deliver 61-248 through its system.

## **II. PARTIES**

2. MHID is an irrigation district organized under Title 43, Idaho Code, located in Elmore County, Idaho. MHID was partially decreed water rights by this Court in Basin 61 and Basin 63.

3. Weitz is an Idaho corporation in good standing with the Secretary of State, whose registered agent's address is 1900 W. Main St., Boise, Idaho 83702. Weitz owns property in Elmore County, is a shareholder in MHID, and owns lands that were irrigated by 61-248.

## **III. JURISDICTION AND VENUE**

4. MHID brings this action seeking declaratory relief pursuant to this Court's *Final Unified Decree*, I.C. § 10-1201 *et seq.*, and I.R.C.P. 57.

5. This Court has jurisdiction of the subject matter of this action pursuant to the *Final Unified Decree*, with venue properly in the SRBA: "This Court retains jurisdiction of this proceeding to: a) resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or rules of the Idaho Department of Water Resources . . . ." *Final Unified Decree* at 13, ¶ 17. *See also* I.C. § 5-409, I.C. § 6-401, and I.C. § 42-1413.

6. This matter involves a controversy over the validity of 61-248, a water right that was not partially decreed by this Court.

7. This Court has jurisdiction to review contracts pursuant to Idaho Const. Art. X § 20 and I.C. § 1-705.

#### IV. STATEMENT OF FACTS

8. MHID provides irrigation water to its shareholders with water rights that were partially decreed by this Court in the SRBA. MHID's rights range in priority from 1876 through 1913, diverting from sources in both Basin 61 and Basin 63, ultimately delivering natural flow and storage water for irrigation within MHID's boundaries in Elmore County, summarized as follows:

| Basin | Sequence | Priority Date | Div. Rate (cfs) | Vol. (af) | Source         | Water Use                                               |
|-------|----------|---------------|-----------------|-----------|----------------|---------------------------------------------------------|
| 61    | 10417    | 6/1/1876      | 4.4             | 2138.2    | CANYON CREEK   | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 61    | 263      | 4/1/1877      | 6               | 2880      | CANYON CREEK   | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 61    | 266      | 5/1/1882      | 2.4             | 1152      | CANYON CREEK   | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 61    | 10419    | 5/1/1886      | 18.1            | 8688      | CANYON CREEK   | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 61    | 264      | 5/1/1887      | 3.2             | 1536      | CANYON CREEK   | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 61    | 363      | 5/1/1902      |                 | 4340      | LONG TOM CREEK | IRRIGATION FROM STORAGE, IRRIGATION STORAGE             |

| Basin | Sequence | Priority Date | Div. Rate (cfs) | Vol. (af) | Source                          | Water Use                                               |
|-------|----------|---------------|-----------------|-----------|---------------------------------|---------------------------------------------------------|
| 61    | 10421    | 5/1/1902      | 400             | 7695.49   | CANYON CREEK, RATTLESNAKE CREEK | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 63    | 19893    | 6/1/1894      | 19              | 9120      | LITTLE CAMAS CREEK              | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 63    | 2188     | 12/28/1911    | 2.84            | 1380.1    | CAT CREEK                       | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |
| 63    | 20139    | 5/20/1912     |                 | 22910     | LITTLE CAMAS CREEK              | IRRIGATION FROM STORAGE, IRRIGATION STORAGE             |
| 63    | 2214     | 2/1/1913      | 1.8             | 874.7     | CAT CREEK                       | IRRIGATION, IRRIGATION FROM STORAGE, IRRIGATION STORAGE |

#### **The 1914 Canyon Creek Decree**

9. 61-248 was originally decreed by the Elmore County district court on July 30, 1914 in *Bennett v. Nourse*, which decreed rights from Canyon Creek (“Canyon Creek Decree”). The Canyon Creek Decree is attached hereto as **Exhibit 1**. As will be explained below, the Canyon Creek Decree was superseded by the Snake River Basin Adjudication’s (“SRBA”) *Final Unified Decree*.

10. 61-248 was decreed in the name of Richard Bennet, with a diversion rate of 3.2 cfs (160 inches), for the irrigation of some number of acres, with an unknown point of diversion, and a priority date of April 8, 1885. As will be explained below, any rights from the Canyon Creek Decree that were not decreed in the SRBA ceased to exist.

### **The 1923 Contract**

11. On October 15, 1923, a contract (“Contract”) was entered between the Mountain Home Co-Operative Irrigation Company (“Co-Op”) and Flora Bennett, widow of Richard Bennett (“Flora”). The Contract is attached hereto as **Exhibit 2**.

12. As will be explained below, MHID is a successor-in-interest to the Co-Op.

13. According to the Contract, “it is difficult to accurately determine what water flowing in said Canyon Creek at the point of diversion the party of the first part [Flora] as fixed in said decree is natural flow of said Creek and what part of such water is water released from the reservoirs of the party of the second part [Co-Op] . . . .” “[T]he party of the second part [Co-Op] desires to acquire the right of enlarging and using the ditch of the party of the first part [Flora] diverting and carrying from said Canyon Creek to the premises . . . so as to carry water to lands entitled to water from the irrigation system of said second part . . . .” *Contract* at 2.

14. Due to the complex nature of natural flow water being diverted through a storage system, the Contract explained, among things, how delivery of 61-248 would occur, and importantly was conditioned upon Flora having her own appropriation.

15. The Contract stated, “The party of the first part [Flora] at her own expense may carry through said ditch and divert from said Canyon Creek under her said appropriation any of the waters of said Creek to which she may be entitled.” *Id.* at ¶ 5 (emphasis added).

16. The Contract also explained 61-248 could be diverted until approximately the middle of June, with the ability for Flora to store a certain amount of water in the reservoirs for later use. *Id.* at ¶ 1.

17. 61-248, which the Canyon Creek Decree defined as a natural flow right, was then redefined as a combined natural flow and storage right: “500 acre feet of water, or its equivalent, in such quantities as she may require, but not exceeding 160 miners’ inches at any one time.” *Id.* at ¶ 2 (emphasis added).

18. In consideration for the ability to store and deliver water through the system, Flora granted the Co-Op the right to enlarge an existing easement: “The party of the second part [Co-Op] shall have the right to enlarge the ditch of first party [Flora] carrying water to said premises and to use the said ditch and the pipe line under the railroad tracks of the Oregon Short Line Railroad for carrying water to water users entitled to water from the irrigation system of second party . . . .” *Id.* at ¶ 4.

#### **The 1935 Memorandum Decision**

19. On February 6, 1935, the Elmore County district court in *Mountain Home Irr. Dist. v. Bennett* was petitioned to construe the Contract as it pertained to losses and drought of stored water: “The real point in issue is whether or not plaintiff district under the contract in question is bound to deliver 500 acre feet of water each season irrespective of the run-off, or whether defendant [Flora] is entitled to only such water as should accumulate in storage from her prior right.” *Memorandum Decision* at 3 (emphasis added). The Memorandum Decision is attached hereto as **Exhibit 3**.

20. According to the district court, in the event of a short water supply, and contingent upon Bennett having her own appropriation, MHID was to deliver Bennett the full amount: “It will be noted that in the contract in question there is no savings clause to protect plaintiff district in years of drouth. . . . Plaintiff purchased the irrigation system from the Mountain Home Co-operative Irrigation Company, and took its title burdened with this contract.

Under the terms of the contract and the evidence, the contract was entered into as a compromise to settle recurring disputes as to defendant's water. The agreement is clear and unambiguous, and the quantity of water is definite and certain; and by the terms of such contract defendant is entitled to 500 acre feet of water to be delivered every season for the lands described therein.” *Id.* at 3, 4-5 (internal citation omitted) (emphasis added).

### **The 1976 Annexation**

21. On January 20, 1976, Mayme E. Bennett, as trustee under the will of Flora petitioned for annexation of lands into MHID (“Annexation Petition”): “The above-described real property is adjacent to the boundaries of the Mountain Home Irrigation District. The above-described lands are agricultural or farming lands and your petitioners desire that said lands be annexed to and included within the boundaries of the Mountain Home Irrigation District and be made liable for payment of assessments of said district and the operation and maintenance for the year 1976 and all subsequent years and for the delivery of irrigation water, the same as for other lands within the district.” *Annexation Petition* at 1. The Annexation Petition is attached hereto as **Exhibit 4**.

22. On April 6, 1976, MHID resolved to grant the Petition for Annexation by resolution (“Resolution”), entitling the lands to delivery of MHID water rights: “such lands are hereby, annexed to and included within the Mountain Home Irrigation District.” *Resolution* at 1. The Resolution is attached hereto as **Exhibit 5**.

23. The lands that were annexed are entitled to receive seventy (70) shares of water diverted by MHID under water rights that were partially decreed to MHID by this Court. The maximum amount of water that one share is entitled to is 3 are-feet; in the event of drought, the amount of water each share is entitled to receive is proportionally reduced.

24. Pursuant to the Petition for Annexation and Resolution, Weitz is a shareholder of MHID. Shareholders who are in good standing are entitled to delivery of water that is diverted by MHID under the rights that were partially decreed to MHID in the SRBA.

**The Snake River Basin Adjudication**

25. In 1989, MHID filed a number of claims in the SRBA, including one that was numbered 61-10419 (“Claim”). The Claim was based on beneficial use, for diversion of 18.10 cfs from Canyon Creek, for irrigation and irrigation storage (8,688 acre-feet), within MHID’s place of use, with a priority date of May 1, 1886. The Claim states it was a combination of water rights “A61-00249, A61-00248, A61-00267, A61-00268, A61-00259 and A61-00265.” *Claim* at 7. The Claim is attached hereto as **Exhibit 6**.

26. On February 12, 1999, the Idaho Department of Water Resources (“IDWR”) issued a recommendation for the Claim to this Court (“Recommendation”). The Recommendation is attached hereto as **Exhibit 7**.

27. No claim was filed in the SRBA for 61-248 by Richard Bennett, Flora Bennett, or their successors in interest, including but not limited to Weitz. *Affidavit of Craig L. Saxton (IDWR)*. The Affidavit of Craig L. Saxton is attached hereto as **Exhibit 8**. Moreover, as will be explained below, no partial decree was issued for 61-248 either.

28. On October 26, 2000, this Court issued a partial decree for water right no. 61-10419 (“WR 61-10419”). WR 61-10419 is attached hereto as **Exhibit 9**.

29. In 2011, the Court began the process of closing the SRBA. On September 23, 2011, the Court issued an *Order Establishing Deadlines for Late Claim Filings in Basins 23, 24,*

25, 43, 51, 57, 61, 81, 82, 83, 84, 85, & 86, Basin-Wide Issue 16, Subcase No. 00-92099 (In Re: Form and Content of Final Unified Decree) (“Deadline Order”).<sup>1</sup>

30. The Deadline Order stated: “The preparation of this list is undertaken as a courtesy to the water users not as an additional due process requirement. . . . The burden of determining whether to file a motion for late claim for any of the listed water right numbers rests solely with the water right holder.” *Deadline Order* at 3 (emphasis added). Except for *de minimis* domestic and stock water rights and late claims required to resolve pending litigation, the last date to file a motion for late claim in Basin 61 “shall be November 30, 2011.” *Id.* at 4.

31. On December 1, 2011, the Court issued its *Order Closing Claims Taking in Basins 23, 24, 25, 43, 51, 57, 61, 81, 82, 83, 84, 85, & 86*, Basin-Wide Issue 16, Subcase No. 00-92099 (In Re: Form and Content of Final Unified Decree) (“Closure Order”). “Claimants in each of these basins previously received extensive first-round and second-round *Notice of Filing Requirements* in the SRBA. *See* Idaho Code § 42-1408. These notice procedures meet constitutional due process requirements. *LU Ranching Co. v. U.S.*, 138 Idaho 606 (2003).” *Closure Order* at 3. According to the Closure Order: “claims taking in Basin[] . . . 61 . . . is closed.” *Id.* at 4. A list of “unclaimed water rights represented by the water right numbers on Exhibit 1 . . . are hereby decreed as disallowed.” *Id.*

32. Neither the Deadline Order nor the Closure Order listed 61-248.

33. On August 26, 2014, the Court entered its *Final Unified Decree*. “This Final Unified Decree is binding against all persons . . .” *Final Unified Decree* at 11, ¶ 8.

34. “This Final Unified Decree is conclusive as to the nature and extent of all water rights with the Snake River Basin within the State of Idaho with a priority date prior to

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<sup>1</sup> All orders cited herein are records of the Court and available in IWTRS under the designated subcase number.

November 19, 1987 . . . .” *Id.* at 9, ¶ 1. Deferrable *de minimis* domestic and stockwater rights were not required to be claimed in the SRBA. *Id.*

35. “All other water rights with a priority before November 19, 1987, not expressly set forth in this Final Unified Decree are hereby decreed as disallowed.” *Id.* (footnote omitted referencing subcases that were pending resolution, none of which included 61-248).

36. “All partial decrees issued by this Court are set forth in Attachments 2 and 4 to this Final Unified Decree and are incorporated herein by reference.” *Id.* at 10, ¶ 2.

37. “All water rights based on beneficial use, licenses, permits, posted notices, and statutory claims required to be claimed in this proceeding are superseded by this Final Unified Decree.” *Id.* at 11-12, ¶ 10.

38. “All prior water right decrees . . . are superseded by this Final Unified Decree . . . .” *Id.* at 12, ¶ 11.

39. “No person shall use the public waters of the state of Idaho except in according with the laws of the state of Idaho. No person shall divert any water from a natural watercourse or apply water to land without first having obtained a valid water right to do so . . . .” I.C. § 42-201(2).

### **The Present Controversy**

40. In 2019, and through public notice, MHID became aware that property owned by Weitz was potentially subject to annexation by the City of Mountain Home (“City”). As such, MHID sent a letter (“MHID Letter”) to the City providing its comments on the possible annexation, explaining the property owned by Weitz “is located within the boundaries of MHID. Due to this, the property is entitled to delivery of irrigation water, owned by MHID, consistent with the requirements of Title 43, Idaho Code. Water provided by MHID is the only source of

surface water for the property. Prior to the Snake River Basin Adjudication (“SRBA”), there was a surface water right from Canyon Creek that went with the subject property, numbered 61-248. Water right no. 61-248 was not decreed by the SRBA district court.” The MHID Letter is attached hereto as **Exhibit 10**.

41. On January 6, 2019, an attorney representing Weitz sent a letter (“Weitz Letter”) to MHID regarding the matter. The Weitz Letter is attached hereto as **Exhibit 11**. “The Idaho Department of Water Resources (IDWR) has previously identified the Bennett Ranch to have a water right identified as Certificate No. 61-0248, and that right showed Richard Bennett as the Decreed owner, with what appears to be the decree date that came through prior litigation apparently dated back to around July 30, 1914. The date of the right has been identified to date back to April 8, 1885. . . . MHID had the obligation to deliver the water to the Bennett Ranch, their Certificate No. 61-10419 . . . addressed it in the ‘comments’ to the effect that the District has the contractual obligation to supply water to the Bennett Ranch . . . that includes water allocated within the MHID water rights and to be delivered to the property before described as the ‘Bennett Ranch’ and currently owned by Weitz & Co., Inc.” *Letter* at 1. The Letter concluded with a demand for delivery of 61-248: “Weitz & Co., Inc. intends to take this water resource delivered under the Bennett Ranch Agreement on a year-round basis, as it is described in the Agreement.” *Id.* at 5.

42. Weitz has continued to take delivery of water from MHID’s canals through the 2020 irrigation season.

43. MHID requests a speedy hearing pursuant to I.R.C.P. 57(a) so this matter may be resolved prior to the 2021 irrigation season.

## V. CLAIMS FOR RELIEF

### **COUNT 1 – Declaratory Ruling That Water Right 61-248 Ceased To Exist And Is Disallowed With Prejudice**

44. MHID incorporates by reference and realleges the preceding paragraphs.

45. The *Final Unified Decree* is “binding against all persons,” *Final Unified Decree* at 11, ¶ 8, and is “conclusive as to the nature and extent of all water rights with the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987 . . . .” *Id.* at 9, ¶ 1.

46. Therefore, the *Final Unified Decree* is binding against Weitz and conclusive to any rights possessed by Weitz with a priority date senior to November 19, 1987.

47. The *Final Unified Decree* “superseded” the Canyon Creek Decree. *Id.* at 12, ¶ 11. Therefore, any water rights established in the Canyon Creek Decree were required to be claimed, recommended, and partially decreed in the SRBA to remain valid.

48. If a water right with a priority date senior to November 19, 1987 was not “expressly set forth in this Final Unified Decree [it is] hereby decreed as disallowed.” 61-248 was not expressly set forth in the Deadline Order, the Closure Order, or any other order of the Court, therefore 61-248 was decreed disallowed by operation of the *Final Unified Decree*.

49. By not claiming 61-248 in the SRBA and failing to challenge WR 61-10419, any request by Weitz for diversion, storage, and/or delivery of 61-248, and performance under the Contract for 61-248 constitutes a collateral attack on the orders of this Court.

### **COUNT 2 – Declaratory Ruling That The Contract Is Fully Satisfied**

50. MHID incorporates by reference and realleges the preceding paragraphs.

51. Without “a valid water right” no person can divert the public waters of the State of Idaho. I.C. § 42-201(2). Because 61-248 is not a valid water right, it cannot be diverted, stored, and/or delivered through MHID’s irrigation system.

52. The Contract and Memorandum Decision were predicated on existence of 61-248 for diversion, storage, and delivery through MHID’s system. Because 61-248 is not a valid water right, the right cannot be diverted and MHID cannot store or deliver 61-248 through its system.

53. In the SRBA, MHID was partially decreed WR 61-10419. Any water that was represented by 61-248 was subsumed by the Claim, Recommendation, and Partial Decree for WR 61-10419, without challenge, making MHID the party of the first part and the party of the second part to the Contract. Therefore, the Contract has been fully satisfied and is no longer in any force or effect by a third party.

54. The Contract is a commercial transaction. I.C. § 12-120(3).

55. As such, the prevailing party is entitled to reasonable attorneys’ fees. *Id.*

## **VI. PRAYER FOR RELIEF**

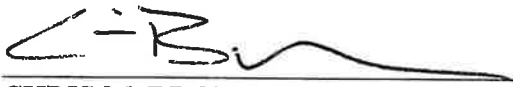
WHEREFORE, MHID prays for entry of Judgment as follows:

1. By operation of the *Final Unified Decree*, 61-248 was decreed disallowed and is no longer a valid water right.

2. Any water represented by 61-248 was subsumed by the claim and partial decree for WR 61-10419, without challenge, making MHID the party of the first part and the party of the second part to the Contract, thereby making the Contract fully satisfied and/or no longer enforceable by any third party, including but not limited to Weitz or any successor in interest thereto.

3. An award of its costs of suit against Weitz pursuant to I.C. § 10-1210 and I.R.C.P. 54(d).
4. An award of reasonable attorneys' fees against Weitz pursuant to Idaho Code § 12-120(3), and I.R.C.P. 54(e).
5. Such further relief as this Court deems just and proper.

DATED this 1<sup>st</sup> day of October, 2020.

  
CHRIS M. BROMLEY  
*Attorneys for Mountain Home Irr. Dist.*

## VERIFICATION

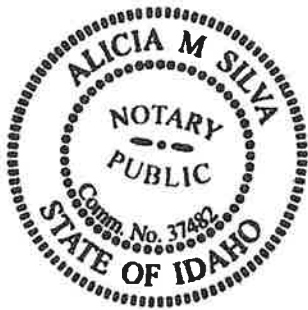
State of Idaho            )  
                                  ) s.s.  
County of Elmore        )

DAVID ASCUENA, being first duly sworn upon oath, deposes and states to the best of his knowledge:

That he is the Chairman/President of the Mountain Home Irrigation District and makes this Verification for and on behalf of himself; that he has read the foregoing, knows the contents thereof, and the facts therein stated are true and correct to the best of his knowledge and belief.

  
DAVID ASCUENA

SUBSCRIBED AND SWORN to Before me this 2<sup>nd</sup> day of October, 2020



  
Notary Public for Farm Bureau  
Residing at Mtn Home Id.  
My commission expires 3-11-2026

## CERTIFICATE OF SERVICE

I certify that on this 2<sup>nd</sup> day of October, 2020, I caused to be served a true and correct copy of the foregoing upon the following persons by U.S. Mail:

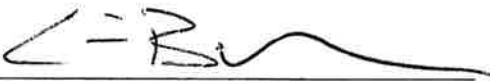
Clerk of the District Court  
Snake River Basin Adjudication  
253 Third Avenue North  
PO Box 2707  
Twin Falls, ID 83303-2707

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

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  
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Boise, ID 83724-0101

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Law Office of Vernon K. Smith, PC  
1900 W. Main St.  
Boise, ID 83702

  
CHRIS M. BROMLEY

## **EXHIBIT 1**

①

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE.

RICHARD BENNETT, ET AL

PLAINTIFF

VS

F. A. NOURSE, ET AL

DEFENDANTS

Trans Noted

And now this cause coming on to be heard upon the findings of fact and conclusions of law made and entered herein pursuant to the order of the Supreme Court herein, it is by the Court ordered, adjudged and decreed that the parties to this action be and they are hereby awarded the use of the waters of Canyon Creek in Elmore County, Idaho, in the following amounts and from the following dates:-

I.

61 0248 To plaintiff Richard Bennett for use on the North-west quarter of Section 26, Township 3 South of Range 6 East, 160 inches dated from April 8, 1885.

II.

61 0249 To plaintiff B. L. Williams as administrator of the estate of John Dienst for use upon the east half of the northeast quarter of section thirty-five and the east half of the southeast quarter of section twenty six, township 4 North of Range 6 East, 160 inches dated from March 31, 1885.

III.

61 0250 To the defendant John W. Hice for the south-east quarter of

south half of the northeast quarter and the northwest quarter of the southeast quarter of Section one (I) township (2) south of Range Six (6) East, 75 inches dating from October 1, 1878.

V.

61 0252 To T. G. Boardman for use upon the south-east quarter of the southwest quarter and the southwest quarter of the southeast quarter of section twenty-three, township two south of range six east, 80 inches dating from July 27, 1887.

VI.

61 0253 To Frank P. Ake for use upon the southwest quarter of the northeast quarter and the west half of the south east quarter, and the southeast quarter of the southwest quarter of section two, township three south of range six east, 50 inches dating from April 1, 1884;  
61 0254 50 inches dating from March 31, 1885.

VII.

61 0255 To Laura Ake for use upon the northwest quarter of section eleven, township three south of range six east, 80 inches dating from March 15, 1885.

VIII.

61 0256 To Susan A. Lockman for use upon the east half of the southeast quarter, section thirty-five, township two south of range six east and lots 1 and 2 of section 2, township 3 south of range 6 east, 120 inches dating from March 1, 1876.

IX.

61 0257 To Frank P. Ake and A. W. Lockman for use upon southwest quarter and the south half of the northwest quarter of Section thirty-six, township two south of range six east, 100 inches dating from

XI.

61 0259 To the Great Western Beet Sugar Company for storage in its reservoir, known as the Long Tom Reservoir, and for delivering water to its patrons, 160 inches dating from May 1, 1886, and 50,000 inches dating from May 1, 1902.

XII.

61 0260 To Charles A. Walker for use upon Lots one, two, three and four of section thirty-one, township one south of range <sup>Seven</sup> ~~six~~ east, 50 inches (out of Syrup Creek, tributary of Canyon Creek) dating from October 1, 1890, 75 inches (out of Long Tom Creek a tributary of Canyon Creek) dating from October 1, 1890.

XIII.

61 0262 To Elmore County Irrigated Farms Association for storage in its reservoir, known as Mountain Home Reservoir, and for the purpose of delivering water to its patrons 20,000 inches dating from April 1, 1891.

XIV.

To Elmore County Irrigated Farms Association as successor in interest to the persons named in this paragraph, there is awarded water from the following dated, to-wit:

61 0263 Commodore Jackson diverted and appropriated water for the irrigation of the west half of the southeast quarter and the southwest quarter of section twenty-five; the east half of the southeast quarter of section twenty township three south of range six east, from April 1st, 1877, 300 inches;

61 0264 Albert G. Smith diverted and appropriated water for the west half of the northwest quarter and the west half of the southeast quarter of section twenty-six township three south of range six east

- 61 0266 James Justice diverted and appropriated water for the northeast one fourth of section thirty-five, township three south of range six east from May 1st, 1882, 120 inches.
- 61 0267 John Mitchell diverted and appropriated water for the northeast quarter of the southeast quarter of section thirty-five (35) township three south and range six east; from May 1st, 1885, 35 inches.
- 61 0268 Constantine T. Rhorer diverted and appropriated water for Lots four, five, six and seven in section 6, and Lots one, two, three and four and the northeast quarter of the northwest quarter of section seven, township four south of range seven east, from May 1st, 1885, 230 inches.

That the rights of the Elmore County Irrigated Farms Association as herein found are also subject to the rights of the plaintiffs Bennett and Dienst to the extent that said Elmore County Irrigated Farms Association must and it is hereby decreed to let sufficient water pass down the said Canyon Creek to give each of the said Bennett and Dienst at the head of his ditch the amount of water herein awarded him and found to be his or it may deliver said water herein awarded to the plaintiff herein as provided in paragraphs one and two hereof.

XV.

That the several parties to this action whose rights to the use of the waters of Canyon Creek are of even date shall whenever the amount of water flowing in said streams is insufficient in quantity to supply the amount of water herein awarded, share in the use of said water in proportion that the several quantities awarded, as of the same date, bears to the quantity of water flowing in said streams at such time of scarcity not however interfering with any apportionment

a headgate or headgates, and box or boxes suitably constructed for measuring water in inches, under a four inch pressure or its equivalent in second feet.

XVII.

That each party hereto to whom water is awarded shall whenever the beneficial use thereof ceases turn the water of said stream so used into the channel thereof.

XVIII.

That each and every party hereto, their agents, attorneys, employees and privies, and their successors in interest shall be enjoined and restrained from interfering in any manner with the water of said stream, except as provided in the decree herein.

Edward A. Walters,

District Judge.

July 30th, 1914.

O. K. W. C. Howie

O. K. E. M. Wolfe

Filed this 1st day of Aug. 1914.

F. H. Smith,

Clerk of District Court

By B. H. Smith, Deputy

JUN 1 9 1914

APPROVED  
Dec. 14, 1925  
W. C. Snelson  
Commissioner of Reclamation

AGREEMENT

THIS AGREEMENT, made and entered into this 15th day of October, 1923, by and between FLORA A. BENNETT, widow of Richard Bennett, deceased, of Mountain Home, Idaho, the party of the first part, and MOUNTAIN HOME CO-OPERATIVE IRRIGATION COMPANY, a corporation organized under the laws of the State of Idaho with its principal place of business at Mountain Home, Idaho, the party of the second part,

WITNESSETH: That whereas, the party of the first part is the owner of the Northwest Quarter of Section 26, Township 3 South, Range 5 East, B.E., Elmore County, Idaho, together with the right to use for the irrigation thereof 160 inches of the waters of Canyon Creek with a priority as of April 8, 1885 as determined and adjudicated in a certain suit in the District Court of the Fourth Judicial District of the State of Idaho, in and for Elmore County, wherein Richard Bennett, et al, were plaintiffs, and F. A. Nourse, et al, were defendants, and in which suit a final decree was entered on or about the 1st day of August, 1914, and

WHEREAS, The party of the second part is the owner of an irrigation system consisting of reservoirs and canals, which reservoirs store waters of said Canyon Creek and other waters, and which ditches divert water from said Canyon Creek, and

WHEREAS, it is difficult to accurately determine what water flowing in said Canyon Creek at the point of diversion of the party of the first part as fixed in said decree is natural flow of said Creek and what part of such water is water released from the reservoirs of the party of the second part, and

## **EXHIBIT 2**

WHEREAS, the party of the second part desires to acquire the right of enlarging and using the ditch of the party of the first part diverting and carrying from said Canyon Creek to the premises hereinbefore described so as to carry water to lands entitled to water from the irrigation system of said second party,

NOW, THEREFORE, In consideration of the premises and the mutual covenants hereinafter contained, the parties hereto have agreed and hereby do agree as follows:

1. For the purpose of this agreement, the right of the first party to divert water from said Canyon Creek under said decree, recorded in Book 4 of Judgments, page 316 in the office of the Clerk of the District Court of Elmore County, Idaho, shall be considered as terminating at the end of the 17th day of June of each year, and that from the 1st day of April to the 17th day of June, both days inclusive, first party shall be entitled to take under its said decree 500 acre feet of water, or its equivalent, in such quantities as she may require, but not exceeding 160 miners' inches at any one time.

2. That if the party of the first part for any reason does not desire to use the said 500 acre feet of water before midnight on the 30th day of June of any year, she shall have the right to store so much thereof, not exceeding 250 acre feet, as she does not require for immediate use in the reservoir or reservoirs of the party of the second part, now or hereafter constructed, and the party of the second part hereby grants to the party of the first part the right to store in its reservoirs between the 1st day of April and the 17th day of June of each year up to but not exceeding 250 acre feet of water; the remaining 250 acre feet to which first party is entitled under her said appropriation, first party shall use on or before the 30th day of June, or waive all right thereto during such irrigation season, unless she has through no fault or neglect of

1st measured at said point and that at least 250 acre feet thereof shall be taken and used on or before the 20th day of June of each year and the remainder, not exceeding 250 acre feet, less a ten per cent, deduction as aforesaid, shall be delivered to the party of the first part as demanded from time to time during the irrigation season out of the reservoir or reservoirs of the party of the second part, provided that second party shall not be required to deliver any water to first party after the 15th day of September of any year.

5. The party of the first part at her own expense may carry through said ditch and divert from said Canyon Creek under her said appropriation any of the waters of said Creek to which she may be entitled, prior to April 1st of each year, and after the irrigation season, for use upon the premises above described and for stock purposes, but the amount so used shall not be deducted from the 500 <sup>acres</sup>/feet to which she is entitled after April 1st of each year and to be delivered to her as herein provided, but first party shall be to no expense for maintenance of said ditch or for delivery of water through the same between the 1st day of April of any year, and the 15th day of September, and the said party of the second part shall have the right, at any time it may elect, after September 15th of each year, to enlarge, repair and clean out said ditch of said party of the first part, and it shall be allowed a reasonable time in which to make said enlargement, repairs and clean outs.

Nothing herein contained shall be construed as a waiver of the right of first party to her right to water under the appropriations made by her predecessors in interest and confirmed by the said decree hereinbefore referred to, but this agreement is intended to provide for storage of water under said right for use later in the irrigation season and as a consideration therefor the party of the second part shall have the right to use the ditch and pipe line of second party upon the conditions herein stated.

her own been prevented from securing said amount.

3. The party of the first part shall from time to time as she desires to store water, notify in writing the water master, superintendent, or office manager in charge of the Mountain Home office of second party at least twenty-four hours in advance of her intention to store water under this agreement in the reservoirs of second party and an accurate account shall be kept of all water of first party stored hereunder, and the amount thereof, less ten per cent. for storage losses, shall be delivered by the party of the second part to the premises of first party at the measuring weir installed as hereinafter provided within one-fourth mile from said premises, without charge to first party, other than the said ten per cent. deduction of the water stored hereunder.

4. The party of the second part shall have the right to enlarge the ditch of first party carrying water to said premises and to use the said ditch and the pipe line under the railroad tracks of the Oregon Short Line Railroad for carrying water to water users entitled to water from the irrigation system of second party, but all such use by second party shall be subject and subordinate to the right of first party to at all times receive the water to which she may be entitled hereunder, not exceeding, however, 160 inches at any one time, and second party will at its own cost and expense from this date maintain and keep in repair the said ditch and pipe line and distribute the water therefrom to the persons entitled thereto and install a suitable weir or measuring device for the use of first party within one-fourth mile of the premises above described and all water which first party is entitled to receive through said irrigation system shall be measured at said weir or measuring device, and it is expressly agreed and understood that her appropriation entitles her to receive 500 acre feet after April

This agreement is binding upon the parties hereto; their heirs, executors, successors and assigns, but shall not become effective until approved by the Commissioner of Reclamation of the State of Idaho.

IN WITNESS WHEREOF, the party of the first part has hereunto set her hand and seal and the party of the second part has by authority of its Board of Directors caused its name to be hereunto subscribed by its President and its corporate seal affixed, attested by its Secretary, in duplicate, the day and year first above written.

Flora A. Bennett (Seal)

(SEAL)

MOUNTAIN HOME CO-OPERATIVE IRRIGATION  
COMPANY,

ATTEST:

F. E. Brady  
Secretary

By J. Robb Brady  
President.

STATE OF CALIF. }  
COUNTY OF ORANGE } ss.

On this 19 day of October, 1923, before me, F. H. Ivan, a Notary Public in and for said County, personally appeared Flora A. Bennett, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

F. H. Ivan  
Notary Public

STATE OF IDAHO }  
COUNTY OF ADA } ss.

On this 20th day of October, 1923, before me, W. E. Sullivan, a Notary Public in and for said County, personally appeared J. Robb Brady, known to me to be the President of the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(Seal)

W. E. Sullivan  
Notary Public for Idaho  
Residence

## **EXHIBIT 3**

C O P Y

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ELMORE

\_\_\_\_\_ : \_\_\_\_\_  
MOUNTAIN HOME IRRIGATION DIS-  
TRICT, a quasi municipal  
corporation,

Plaintiff,

-vs-

FLORA A. BENNETT,

Defendant.

Case No. 220

MEMORANDUM DECISION.

\_\_\_\_\_ : \_\_\_\_\_  
Plaintiff brings this action for a declaratory judgment of this court interpreting the provisions of a certain water contract made and entered into under date of October 15, 1923, between the defendant and the Mountain Home Co-operative Irrigation Company, plaintiff's predecessor in interest, and declaring the rights and duties of the parties with respect to said contract. To the complaint defendant has filed an answer and amended cross-complaint. The case was submitted on the complaint and answer, the matter of the cross-complaint being reserved for hearing after disposition of the complaint.

As stated by the Supreme Court in Bratton vs. Morris, (Idaho) 37 Pac. 2d 1097,

"The determination of the second question, involving the intention of the parties as expressed in their contract of dissolution, depends upon the construction of the contract. The primary object of construction in contract law is to discover the intention of the parties, as it existed at the time the contract was made, Page on Contracts (2d Ed.) # 2021; and, in effectuating that primary object, a contract must be construed as a whole

and in the light of the purposes for which it was intended, Southern R. Co. vs. Stearns Bros. (Circuit Court of Appeals, Fourth Circuit) 28 F. (2d) 560; Clarke vs. Blackfoot Water Works, 39 Idaho 304, 228 P. 326, and to accomplish those purposes."

The purpose of the contract is recited in the preamble, as follows:

"Whereas, it is difficult to accurately determine what <sup>flowing</sup> water/ in said Canyon Creek at the point of diversion of the party of the first part as fixed in said decree is natural flow of said creek and what part of such water is released from the reservoirs of the party of the second part \* \* " and paragraph 1 of the agreement provides:

"For the purpose of this agreement, the right of the first party to divert water from said Canyon Creek under said decree \* \* \* shall be considered as terminating at the end of the 17th day of June of each year, and that from the first day of April to the 17th day of June, both days inclusive, first party shall be entitled to take under its said decree 500 acre feet of water or its equivalent;"

while paragraph 4 of the agreement provides, in part:

"It is expressly agreed and understood that her appropriation (defendant's) entitled her to receive 500 acre feet after April 1st, measured at said point, and that at least 250 acre feet thereof shall be taken and used on or before the 20th day of June of each year, and the remainder, not exceeding 250 acre feet, less a 10% deduction, as aforesaid, shall be delivered to the party of the first part as demanded from time to time during the irrigation season out of the reservoir or reservoirs of the party of the second part \* \* \*."

The other provisions of the contract are not in dispute.

It appears from the evidence that 1934 was a short-water year. During the period beginning in April and extending through June 3d of that year, defendant was furnished with 271.82 acre feet of water, and then the water was cut off by the plaintiff district; that on or about March 31, 1934, defendant gave notice in writing to the plaintiff district that she desired to store water as provided by this contract. (Paragraph V of the complaint).

The real point in issue is whether or not plaintiff district under the contract in question is bound to deliver 500 acre feet of water each season irrespective of the run-off, or whether defendant is entitled only to such water as should accumulate in storage from ~~her~~ prior right.

From the portions of the contract above set forth it seems to me that the contract is clear and unambiguous. There is no allegation in the complaint of mistake, and therefore this contract seems to come within the rule announced in Tapper, et al. vs. Idaho Irr. Dist., 36 Ida. 78:

"The intention of the parties is to be deduced from the language employed by them, and the terms of the contract, where unambiguous, are conclusive, in the absence of averment and proof of mistake, the question being, not what intention existed in the minds of the parties, but what intention is expressed by the language used. When a written contract is clear and unequivocal, its meaning must be determined by its contents alone; and a meaning cannot be given it other than that expressed. Hence words cannot be read into a contract which import an intent wholly unexpressed when the contract was executed. Where the contract evidences care in its preparation, it will be presumed that its words were employed deliberately and with intention."

It will be noted that in the contract in question there is no saving clause to protect the plaintiff district in years of drouth.

In this connection the original opinion in the Tapper case, supra, is in point, where the Court (Dunn, J.) says, at page 84:

"It is <sup>an</sup> unqualified undertaking to furnish the definite amount of water mentioned, and the right of the purchaser to receive it is conditioned only upon his complying with his contract. Such contracts sometimes contain such an exemption, as in the case of Groefsema v. Mountain Home Co-operative Irr. Co., 33 Ida. 90, 180 Pac. 356. In that contract the irrigation company had this saving provision:

"In case of shortage of water in the Company's reservoir or canal system through an accident, drought, or scarcity in any natural stream supplying said canal, or by reason of improper diversion of water by any person, or from any cause beyond its control, the company shall not be liable for such shortage, nor for any damage caused thereby, nor shall there be, by reason thereof, any deduction from any sum agreed to be paid to the company by the purchaser."

"The fact that no such exemption from liability was placed in the contract by respondent when it might easily have done so would lead fairly to the conclusion that respondent, with the water supply that it claimed, was willing to take the chances involved in making an unqualified contract to deliver the specified amount of water mentioned each year."

Plaintiff purchased the irrigation system from the Mountain Home Co-operative Irrigation Company, and took its title burdened with this contract. Nampa & Meridian Irr. Dist. vs. Briggs, 27 Idaho 84.

Under the terms of the contract and the evidence, the contract was entered into as a compromise to settle recurring disputes as to defendant's water. The agreement is clear and unambiguous, and the quantity of water is definite and certain; and by the terms of such

contract defendant is entitled to 500 acre feet of water to be delivered each and every season for the lands described therein.

The question of water shortage or exceptional drouth is only to be considered as a matter of defense to an action for damages brought for non-delivery.

Having reserved the question of damages raised by the cross-complaint, evidence will be taken upon the cross-complaint and plaintiff's answer thereto at the convenience of counsel, and pursuant to the rule laid down in the Tapper case, supra, in the opinion of Rice, C.J., on rehearing.

Findings and judgment will await disposition of the cross-complaint.

DATED this 6th day of February, 1935.

---

CHARLES E. WINSTEAD  
District Judge.

## **EXHIBIT 4**

PETITION FOR ANNEXATION OF ADJACENT LAND

TO THE BOARD OF DIRECTORS OF THE MOUNTAIN HOME IRRIGATION DISTRICT:

The petition of MAYME E. BENNETT, individually and as trustee under the will of F. W. Bennett, deceased; ROBERTA J. BENNETT, individually and as personal representative of the estate of Walter D. Bennett, deceased; and MURIEL VAN BERKEM and FRANCES BENNETT KIRKWOOD, dealing in and with their sole and separate property and estate, respectfully represents:

1. Your petitioners are the owners of the following described real property located in the County of Elmore, State of Idaho, to-wit:

The Northwest Quarter of the Southwest Quarter of the Northwest Quarter of Section Twenty-six, Township Three South, Range Six East, Boise Meridian, containing ten acres.

2. The above-described real property is adjacent to the boundaries of the Mountain Home Irrigation District.

3. The above-described lands are agricultural or farming lands and your petitioners desire that said lands be annexed to and be included within the boundaries of the Mountain Home Irrigation District and be made liable for payment of assessments of said district and the operation and maintenance expenses for the year 1976 and all subsequent years and for the delivery of irrigation water, the same as for other lands within said district.

WHEREFORE, your petitioners pray that said described land be annexed to and be included within the boundaries of the Mountain Home Irrigation District.

DATED this 20th day of January, 1976.

Mayme E. Bennett  
Mayme E. Bennett, individually and as trustee under the will of F. W. Bennett, deceased,

Roberta J. Bennett  
Roberta J. Bennett, individually and as personal representative of the estate of Walter D. Bennett, deceased,

Muriel Van Berkem  
Muriel Van Berkem

Frances Bennett Kirkwood  
Frances Bennett Kirkwood

STATE OF IDAHO, )  
COUNTY OF ELMORE, ) ss.

On this 11th day of February, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared MAYME E. BENNETT, individually and as trustee under the will of F. W. Bennett, deceased, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Signature]  
Notary Public for Idaho,  
Residing at Mountain Home, Idaho.

STATE OF IDAHO, )  
COUNTY OF ELMORE, ) ss.

On this 11th day of February, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared ROBERTA J. BENNETT, individually and as personal representative of the estate of Walter D. Bennett, deceased, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

[Signature]  
Notary Public for Idaho,  
Residing at Mountain Home, Idaho.

STATE OF WASHINGTON, )  
 ) ss.  
COUNTY OF KING, )

On this 2nd day of February, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared MURIEL VAN BERKEM, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

*Michael B. Smith*  
Notary Public for Washington,  
Residing at ~~Bothell~~, Washington.  
*Edmonds*

STATE OF CALIFORNIA, )  
 ) ss.  
COUNTY OF SONOMA, )

On this 4<sup>th</sup> day of February, 1976, before me, the undersigned, a Notary Public in and for said State, personally appeared FRANCES BENNETT KIRKWOOD, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

*Anna A. Monymaker*  
Notary Public for California,  
Residing at Santa Rosa, California.

## **EXHIBIT 5**

*Bennett* 526 130 K 68

CERTIFIED COPY OF RESOLUTION AND ORDER OF THE BOARD OF DIRECTORS  
OF THE MOUNTAIN HOME IRRIGATION DISTRICT.

At a regular meeting of the Directors of the Mountain Home Irrigation District held on April 6th, 1976, and convened at Two O'clock P.M., on that day the following resolution was adopted.

WHEREAS, Mayme E. Bennett, individually and as a trustee under the will of F.W. Bennett, deceased; Roberta J. Bennett, individually and as a personal representative of the estate of Walter D. Bennett, deceased; and Muriel Van Berkem and Frances Bennett Kirkwood, dealing in and with their sole and separate property and estate, the owners of land hereinafter described, has filed, verified petition with the Board of Directors of the Mountain Home Irrigation District for the annexation of such lands to such District, and,

WHEREAS, notice of the hearing of such petition was given and published as required by law, and,

WHEREAS, such petition came on regularly for hearing before the Board at the monthly meeting thereof on the 6th day of April, 1976, at the hour of Two O'clock P.M., and no objection what ever having been made to the granting of such petition; and,

WHEREAS, it appears to the Board of Directors of such District to annex to and include into the District such lands;

NOW, THEREFORE BE IT RESOLVED, AND IT IS HEREBY ORDERED, that such petition be, and the same is hereby granted; and the lands owned by such petitioner in the manner set forth hereinabove, situate in Elmore County, Idaho, and more particularly described as follows, to-wit;

The Northwest Quarter of the Southwest Quarter of the Northwest Quarter of Section Twenty-Six, Township Three South, Range Six East, Boise Meridian, Containing ten acres, more or less.

be and such lands are hereby, annexed to and included within the Mountain Home Irrigation District.

I, Harold F. Kniefel, the duly appointed, qualified, and acting Secretary of the Mountain Home Irrigation District, do hereby certify that the within and foregoing is a true and correct copy of a resolution passed by the Board of Directors of the Mountain Home Irrigation District at a meeting held on the 6th day of April, at 2:00 P.M., and that such resolution is of record in the minute book of the Mountain Home Irrigation District, in the minutes of such meeting and that such minute book is a part of the official records of the Mountain Home Irrigation District.

I have hereunto set my hand this 6th day of April, 1976.

Harold F. Kniefel  
Secretary of the Mountain Home Irrigation District.

167656

**FILMED**

ELMORE COUNTY, IDAHO, ss  
Request of Mountain Home Irrigation  
Time 2:05 P.M.  
Date April 7, 1976  
Book 45 of Miscellaneous  
Page 58  
By Dean Sangrey  
Recorder  
By Judy Heath  
Deputy  
Fee 2.00

Direct ✓  
Reverse ✓  
Reception ✓

140 S 3 E  
Mountain Home, ID.

83647

## **EXHIBIT 6**

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

IN RE THE GENERAL ADJUDICATION  
OF RIGHTS TO THE USE OF WATER FROM  
THE SNAKE RIVER BASIN WATER SYSTEM.

CIVIL CASE NUMBER: 39576

Ident. Number: A61-10419  
Date Received: 12/07/1989  
Receipt No: W006884  
Received By: LW

AMENDED

NOTICE OF CLAIM TO A WATER RIGHT  
ACQUIRED UNDER STATE LAW

AMENDED

1. Name: MOUNTAIN HOME IRRIGATION DISTRICT 208-587-4867  
Address: C/O CLAYTON COLTHORPE  
140 S. 3RD EAST  
MOUNTAIN HOME, ID 83647

2. Date of Priority: MAY 01, 1886

3. Source: CANYON CREEK Trib. to: SNAKE RIVER

4. Point of Diversion:

| Township | Range | Section | 1/4 of | 1/4 of | 1/4 of | Lot | County |
|----------|-------|---------|--------|--------|--------|-----|--------|
| 02S      | 06E   | 36      | NE     | NW     |        |     | ELMORE |
|          |       |         | NE     | SW     |        |     | ELMORE |

5. Description of diverting works:  
DAMS, AQUADUCT, CANALS

6. Water is used for the following purposes:

| Purpose                 | From  | To    | C.F.S  | (or) | A.F.A.  |
|-------------------------|-------|-------|--------|------|---------|
| IRRIGATION              | 03/15 | 11/15 | 18.100 |      |         |
| IRRIGATION STORAGE      | 01/01 | 12/31 |        |      | 8688.00 |
| IRRIGATION FROM STORAGE | 03/15 | 11/15 |        |      | 8688.00 |

7. Total Quantity Appropriated is:  
18.100 C.F.S. (and/or) 8688.00 A.F.A.

8. Total consumptive use is 13346.7 Acre Feet Per Annum.

9. Non-irrigation uses:

A61-10419

Page 1

Date: 01/22/90

SCANNED

JUL 08 2003

MICROFILMED

AUG 12 1992

10. Place of Use:

| Township | Range | Section | 1/4 | of | 1/4 | Lot  | Use           | Acres         |               |      |
|----------|-------|---------|-----|----|-----|------|---------------|---------------|---------------|------|
| 02S      | 06E   | 35      | NE  |    | SE  |      | IRR           | 10.0          |               |      |
|          |       |         | SW  |    | SE  |      | IRR           | 2.0           |               |      |
|          |       |         | SE  |    | SE  |      | IRR           | 26.0          |               |      |
|          |       |         |     |    |     |      | Section Acres | 38.0          |               |      |
| 03S      | 06E   | 2       | NE  |    | NE  |      | IRR           | 17.0          |               |      |
|          |       |         | NW  |    | NE  |      | IRR           | 12.0          |               |      |
|          |       |         | SW  |    | SE  |      | IRR           | 28.0          |               |      |
|          |       |         |     |    |     |      |               |               | Section Acres | 57.0 |
|          |       | 9       | NW  |    | NE  |      | IRR           | 7.0           |               |      |
|          |       |         | SW  |    | NE  |      | IRR           | 40.0          |               |      |
|          |       |         | SW  |    | NW  |      | IRR           | 3.0           |               |      |
|          |       |         | SE  |    | NW  |      | IRR           | 30.0          |               |      |
|          |       |         |     |    |     |      |               |               | Section Acres | 80.0 |
|          |       | 10      | NE  |    | SW  |      | IRR           | 32.0          |               |      |
|          |       |         | SW  |    | SW  |      | IRR           | 16.0          |               |      |
|          |       |         | SE  |    | SW  |      | IRR           | 29.0          |               |      |
|          |       |         | NW  |    | SE  |      | IRR           | 40.0          |               |      |
|          |       |         | SW  |    | SE  |      | IRR           | 40.0          |               |      |
|          |       |         | SE  |    | SE  |      | IRR           | 25.0          |               |      |
|          |       |         |     |    |     |      | Section Acres | 182.0         |               |      |
| 11       | NE    |         | SW  |    | IRR | 10.0 |               |               |               |      |
|          | NW    |         | SW  |    | IRR | 10.0 |               |               |               |      |
|          | SW    |         | SW  |    | IRR | 5.0  |               |               |               |      |
|          | SE    |         | SW  |    | IRR | 6.5  |               |               |               |      |
|          | NW    |         | SE  |    | IRR | 20.0 |               |               |               |      |
|          | SW    |         | SE  |    | IRR | 16.5 |               |               |               |      |
|          | SE    |         | SE  |    | IRR | 15.0 |               |               |               |      |
|          |       |         |     |    |     |      | Section Acres | 83.0          |               |      |
| 12       | SE    |         | SW  |    | IRR | 40.0 |               |               |               |      |
|          |       |         |     |    |     |      |               | Section Acres | 40.0          |      |
| 13       | NE    |         | NW  |    | IRR | 40.0 |               |               |               |      |
|          |       |         |     |    |     |      |               | Section Acres | 40.0          |      |
| 14       | NW    |         | NW  |    | IRR | 23.3 |               |               |               |      |

10. Place of Use: Continued

| Township | Range | Section | 1/4 of        | 1/4 | Lot | Use | Acres |
|----------|-------|---------|---------------|-----|-----|-----|-------|
| 03S      | 06E   | 14      | NW            | SW  |     | IRR | 40.0  |
|          |       |         | SW            | SW  |     | IRR | 40.0  |
|          |       |         | SE            | SW  |     | IRR | 7.5   |
|          |       |         | Section Acres |     |     |     | 110.8 |
|          |       | 15      | NE            | NW  |     | IRR | 38.0  |
|          |       |         | SE            | NW  |     | IRR | 40.0  |
|          |       |         | NE            | SE  |     | IRR | 40.0  |
|          |       |         | NW            | SE  |     | IRR | 4.0   |
|          |       |         | SW            | SE  |     | IRR | 5.0   |
|          |       |         | SE            | SE  |     | IRR | 10.0  |
|          |       |         | Section Acres |     |     |     | 137.0 |
|          |       | 23      | SW            | NE  |     | IRR | 5.0   |
|          |       |         | SE            | NE  |     | IRR | 8.7   |
|          |       |         | NE            | NW  |     | IRR | 20.0  |
|          |       |         | NW            | NW  |     | IRR | 40.0  |
|          |       |         | SE            | NW  |     | IRR | 13.0  |
|          |       |         | NE            | SW  |     | IRR | 7.0   |
|          |       |         | SE            | SE  |     | IRR | 5.0   |
|          |       |         | Section Acres |     |     |     | 98.7  |
|          |       | 25      | SE            | NE  |     | IRR | 1.3   |
|          |       |         | NE            | SE  |     | IRR | 3.0   |
|          |       |         | Section Acres |     |     |     | 4.3   |
|          |       | 26      | NW            | NE  |     | IRR | 17.0  |
|          |       |         | SW            | NE  |     | IRR | 29.0  |
|          |       |         | NE            | NW  |     | IRR | 20.0  |
|          |       |         | NW            | NW  |     | IRR | 30.0  |
|          |       |         | SW            | NW  |     | IRR | 40.0  |
|          |       |         | SE            | NW  |     | IRR | 35.0  |
|          |       |         | NE            | SW  |     | IRR | 20.0  |
|          |       |         | SW            | SW  |     | IRR | 39.0  |
|          |       |         | SE            | SW  |     | IRR | 10.0  |
|          |       |         | NW            | SE  |     | IRR | 37.5  |
|          |       |         | SW            | SE  |     | IRR | 5.0   |
|          |       |         | Section Acres |     |     |     | 282.5 |
|          |       | 27      | NE            | NE  |     | IRR | 5.0   |

10. Place of Use: Continued

| Township | Range | Section | 1/4 of        | 1/4 | Lot | Use | Acres |
|----------|-------|---------|---------------|-----|-----|-----|-------|
| 03S      | 06E   | 27      | SE            | NE  |     | IRR | 10.0  |
|          |       |         | Section Acres |     |     |     | 15.0  |
|          |       | 36      | NE            | NE  |     | IRR | 40.0  |
|          |       |         | SW            | NE  |     | IRR | 13.0  |
|          |       |         | SE            | NE  |     | IRR | 40.0  |
|          |       |         | NW            | NW  |     | IRR | 9.0   |
|          |       |         | SW            | NW  |     | IRR | 21.6  |
|          |       |         | NE            | SW  |     | IRR | 40.0  |
|          |       |         | NW            | SW  |     | IRR | 15.0  |
|          |       |         | SW            | SW  |     | IRR | 19.0  |
|          |       |         | SE            | SW  |     | IRR | 35.0  |
|          |       |         | NE            | SE  |     | IRR | 40.0  |
|          |       |         | NW            | SE  |     | IRR | 17.0  |
|          |       |         | SE            | SE  |     | IRR | 24.5  |
|          |       |         | Section Acres |     |     |     | 314.1 |
|          | 07E   | 19      | SW            | SW  |     | IRR | 5.1   |
|          |       |         | Section Acres |     |     |     | 5.1   |
|          |       | 30      | NW            | NW  |     | IRR | 40.0  |
|          |       |         | SW            | NW  |     | IRR | 22.0  |
|          |       |         | SE            | NW  |     | IRR | 9.5   |
|          |       |         | NE            | SW  |     | IRR | 30.3  |
|          |       |         | NW            | SW  |     | IRR | 24.0  |
|          |       |         | SW            | SW  |     | IRR | 35.0  |
|          |       |         | SE            | SW  |     | IRR | 36.0  |
|          |       |         | Section Acres |     |     |     | 196.8 |
|          |       | 31      | SW            | NE  |     | IRR | 10.0  |
|          |       |         | NE            | NW  |     | IRR | 33.0  |
|          |       |         | NW            | NW  |     | IRR | 35.0  |
|          |       |         | SW            | NW  |     | IRR | 38.4  |
|          |       |         | SE            | NW  |     | IRR | 40.0  |
|          |       |         | NE            | SW  |     | IRR | 40.0  |
|          |       |         | NW            | SW  |     | IRR | 37.7  |
|          |       |         | SW            | SW  |     | IRR | 40.0  |
|          |       |         | SE            | SW  |     | IRR | 40.0  |
|          |       |         | NW            | SE  |     | IRR | 31.0  |
|          |       |         | SW            | SE  |     | IRR | 40.0  |
|          |       |         | Section Acres |     |     |     | 385.1 |

10. Place of Use: Continued

| Township | Range | Section | 1/4           | of | 1/4 | Lot | Use | Acres |
|----------|-------|---------|---------------|----|-----|-----|-----|-------|
| 04S      | 06E   | 1       | NE            |    | NE  |     | IRR | 23.7  |
|          |       |         | NW            |    | NE  |     | IRR | 35.0  |
|          |       |         | SW            |    | NE  |     | IRR | 40.0  |
|          |       |         | SE            |    | NE  |     | IRR | 38.0  |
|          |       |         | NE            |    | SW  |     | IRR | 40.0  |
|          |       |         | NW            |    | SW  |     | IRR | 10.8  |
|          |       |         | Section Acres |    |     |     |     | 187.5 |
|          |       | 12      | NE            |    | NE  |     | IRR | 40.0  |
|          |       |         | NW            |    | NE  |     | IRR | 40.0  |
|          |       |         | SW            |    | NE  |     | IRR | 40.0  |
|          |       |         | SE            |    | NE  |     | IRR | 35.4  |
|          |       |         | SW            |    | SE  |     | IRR | 12.0  |
|          |       |         | SE            |    | SE  |     | IRR | 40.0  |
|          |       |         | Section Acres |    |     |     |     | 207.4 |
|          | 07E   | 6       | NE            |    | NE  |     | IRR | 12.5  |
|          |       |         | NW            |    | NE  |     | IRR | 40.0  |
|          |       |         | SW            |    | NE  |     | IRR | 40.0  |
|          |       |         | SE            |    | NE  |     | IRR | 12.5  |
|          |       |         | NE            |    | NW  |     | IRR | 39.0  |
|          |       |         | NW            |    | NW  |     | IRR | 39.5  |
|          |       |         | SW            |    | NW  |     | IRR | 21.0  |
|          |       |         | SE            |    | NW  |     | IRR | 40.0  |
|          |       |         | NE            |    | SW  |     | IRR | 37.0  |
|          |       |         | SE            |    | SW  |     | IRR | 24.4  |
|          |       |         | NE            |    | SE  |     | IRR | 29.0  |
|          |       |         | NW            |    | SE  |     | IRR | 40.0  |
|          |       |         | SW            |    | SE  |     | IRR | 40.0  |
|          |       |         | SE            |    | SE  |     | IRR | 40.0  |
|          |       |         | Section Acres |    |     |     |     | 454.9 |
|          |       | 7       | NE            |    | NE  |     | IRR | 40.0  |
|          |       |         | NW            |    | NE  |     | IRR | 25.0  |
|          |       |         | SW            |    | NE  |     | IRR | 3.0   |
|          |       |         | SE            |    | NE  |     | IRR | 37.0  |
|          |       |         | NW            |    | NW  |     | IRR | 40.0  |
|          |       |         | SW            |    | NW  |     | IRR | 40.0  |
|          |       |         | NE            |    | SW  |     | IRR | 40.0  |
|          |       |         | NW            |    | SW  |     | IRR | 37.5  |
|          |       |         | SW            |    | SW  |     | IRR | 10.5  |

10. Place of Use: Continued

| Township      | Range | Section | 1/4 of        | 1/4 | Lot | Use | Acres |
|---------------|-------|---------|---------------|-----|-----|-----|-------|
| 04S           | 07E   | 7       | SE            | SW  |     | IRR | 15.5  |
|               |       |         | NE            | SE  |     | IRR | 18.0  |
| Section Acres |       |         |               |     |     |     | 306.5 |
|               |       | 8       | SW            | NW  |     | IRR | 40.0  |
|               |       |         | SE            | NW  |     | IRR | 20.0  |
|               |       |         | NE            | SW  |     | IRR | 35.9  |
|               |       |         | NW            | SW  |     | IRR | 40.0  |
|               |       |         | SW            | SW  |     | IRR | 37.0  |
|               |       |         | SE            | SW  |     | IRR | 40.0  |
| Section Acres |       |         |               |     |     |     | 212.9 |
|               |       | 16      | NE            | SW  |     | IRR | 10.0  |
|               |       |         | NW            | SW  |     | IRR | 20.0  |
| Section Acres |       |         |               |     |     |     | 30.0  |
|               |       | 17      | NE            | NE  |     | IRR | 22.0  |
|               |       |         | NW            | NE  |     | IRR | 40.0  |
|               |       |         | SW            | NE  |     | IRR | 40.0  |
|               |       |         | SE            | NE  |     | IRR | 40.0  |
|               |       |         | NE            | NW  |     | IRR | 30.0  |
|               |       |         | NW            | NW  |     | IRR | 13.0  |
|               |       |         | SE            | NW  |     | IRR | 30.0  |
|               |       |         | NE            | SE  |     | IRR | 40.0  |
|               |       |         | NW            | SE  |     | IRR | 18.0  |
|               |       |         | SW            | SE  |     | IRR | 9.4   |
|               |       |         | SE            | SE  |     | IRR | 40.0  |
|               |       |         | Section Acres |     |     |     |       |
|               |       | 19      | NE            | SE  |     | IRR | 19.0  |
|               |       |         | NW            | SE  |     | IRR | 1.0   |
|               |       |         | SW            | SE  |     | IRR | 40.0  |
|               |       |         | SE            | SE  |     | IRR | 40.0  |
| Section Acres |       |         |               |     |     |     | 100.0 |
|               |       | 20      | NW            | SW  |     | IRR | 29.0  |
|               |       |         | SW            | SW  |     | IRR | 20.0  |
| Section Acres |       |         |               |     |     |     | 49.0  |
|               |       | 29      | NW            | NE  |     | IRR | 10.0  |

A61-10419

Page

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Date: 01/22/90

SCANNED

JUL 08 2003

MICROFILMED

AUG 12 1992

10. Place of Use: Continued

| Township      | Range | Section | 1/4 of | 1/4 | Lot | Use | Acres  |
|---------------|-------|---------|--------|-----|-----|-----|--------|
| 04S           | 07E   | 29      | NE     | NW  |     | IRR | 40.0   |
|               |       |         | NW     | NW  |     | IRR | 40.0   |
|               |       |         | SW     | NW  |     | IRR | 40.0   |
|               |       |         | SE     | NW  |     | IRR | 40.0   |
| Section Acres |       |         |        |     |     |     | 170.0  |
|               |       | 30      | NE     | NE  |     | IRR | 40.0   |
|               |       |         | NW     | NE  |     | IRR | 40.0   |
|               |       |         | SW     | NE  |     | IRR | 40.0   |
|               |       |         | SE     | NE  |     | IRR | 40.0   |
|               |       |         | NE     | NW  |     | IRR | 40.0   |
|               |       |         | NW     | NW  |     | IRR | 20.0   |
|               |       |         | SW     | NW  |     | IRR | 20.0   |
|               |       |         | SE     | NW  |     | IRR | 40.0   |
|               |       |         | NE     | SW  |     | IRR | 38.9   |
|               |       |         | NW     | SW  |     | IRR | 10.0   |
|               |       |         | SE     | SW  |     | IRR | 10.0   |
| Section Acres |       |         |        |     |     |     | 338.9  |
| Total Acres   |       |         |        |     |     |     | 4448.9 |

11. Place of use in counties: ELMORE

12. Do you own the property listed above as place of use? NO

13. Other Water Rights Used:  
SEE REMARKS

14. Remarks:  
THIS IS A COMBINATION OF WATER RIGHT NUMBERS A61-00249, A61-00248  
A61-00267, A61-00268, A61-00259 AND A61-00265.  
MOUNTAIN HOME IRRIGATION DISTRICT SUPPLIES WATER FOR THE OWNERS  
OF THE PLACES OF USE.  
SEE ATTACHED SYSTEM DESCRIPTION. SEE DECREE 61-A-1.  
AMENDED CLAIM TO INDICATE STORAGE AND APPROPRIATE ACRE-FOOT  
AMOUNT.

15. Basis of Claim: DECREED  
Case Number:  
Court :  
Decree date:

|                  |        |                  |
|------------------|--------|------------------|
| Decree Plaintiff | vs     | Decree Defendant |
| A61-10419        | Page 7 | Date: 01/22/90   |

SCANNED  
JUL 08 2003

MICROFILMED  
AUG 12 1992

## **EXHIBIT 7**

AJ5856NP

IDAHO DEPARTMENT OF WATER RESOURCES  
RECOMMENDED WATER RIGHTS ACQUIRED UNDER STATE LAWDATE: FEB-12-1999  
PAGE: A-82-----  
RIGHTS FROM: SOURCE: CANYON CREEK TRIBUTARY: SNAKE RIVER  
-----

RIGHT NUMBER: 61-10419

NAME & ADDRESS: MOUNTAIN HOME IRRIGATION DISTRICT  
C/O CLAYTON COLTHORPE  
140 S 3RD EAST  
MOUNTAIN HOME ID 83647

SOURCE: CANYON CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 18.1 CFS  
8688.0 AFY

PRIORITY DATE: 05/01/1886

POINT OF DIVERSION: T02S R06E S36 NENW Within ELMORE County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE          | PERIOD OF USE | QUANTITY   |
|----------------------------|-------------------------|---------------|------------|
|                            | IRRIGATION              | 03-15 11-15   | 18.1 CFS   |
|                            | IRRIGATION STORAGE      | 01-01 12-31   | 8688.0 AFY |
|                            | IRRIGATION FROM STORAGE | 03-15 11-15   | 8688.0 AFY |

PLACE OF USE:

USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO THE IRRIGATION OF A COMBINED TOTAL OF 7556.0 ACRES IN A SINGLE IRRIGATION SEASON WITHIN THE BOUNDARIES OF THE MOUNTAIN HOME IRRIGATION DISTRICT. COMBINED RIGHT NOS.: 61-00363, 61-10417, 61-10421, 61-00263, 61-00264, 61-00266.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN BASIN 61:

| WATER RIGHT NO. | SOURCE |
|-----------------|--------|
| NONE            | NONE   |

THE FOLLOWING WATER RIGHTS FROM THE FOLLOWING SOURCES OF WATER IN BASIN 61 SHALL BE ADMINISTERED SEPARATELY FROM ALL OTHER WATER RIGHTS IN THE SNAKE RIVER BASIN:

| WATER RIGHT NO. | SOURCE |
|-----------------|--------|
| NONE            | NONE   |

ALL WATER RIGHTS WITHIN BASIN 61 ARE FROM CONNECTED SOURCES OF WATER IN THE SNAKE RIVER BASIN AND SHALL BE ADMINISTERED CONJUNCTIVELY.

## **EXHIBIT 8**

Chris M. Bromley, ISB # 6530  
Candice M. McHugh, ISB # 5908  
MCHUGH BROMLEY, PLLC  
380 S. 4<sup>th</sup> St., Ste. 103  
Boise, ID 83702  
(208) 287-0991  
(208) 287-0864 (facsimile)  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)  
[cmchugh@mchughbromley.com](mailto:cmchugh@mchughbromley.com)

*Attorneys for Mountain Home Irr. Dist.*

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

In Re SRBA

SRBA Subcase Nos. 61-248 and 61-10419

Case No. 39576

**AFFIDAVIT OF CRAIG L. SAXTON**

STATE OF IDAHO     )  
                                  ) ss.  
County of Ada         )

CRAIG L. SAXTON, being first duly sworn upon oath, deposes and says:

1. I am over the age of 18 and state the following based upon my own personal knowledge.
2. I have been employed by the Idaho Department of Water Resources ("IDWR") since January 10, 2000. My present position is Manager, Adjudication Section of IDWR. I have been in this position since January 6, 2020. My principal duties include supervising a staff of technical water right professionals and records support personnel. During my tenure with IDWR, have been involved with the Snake River Basin Adjudication ("SRBA") since January 10, 2000.

3. A record of a digital claim exists in IDWR's database for water right no. 61-248.
4. According to IDWR's digital record, water right no. 61-248 was decreed in the name of Richard Bennett with a priority date of 4/8/1885 for the diversion of 3.2 cfs from Canyon Creek for irrigation in Elmore County. No point of diversion is listed. Four quarter-quarters are listed as the place of use: T03S, R06E, S26, NENW, NWNW, SWNW, SENW. The digital record shows the right was previously decreed on 7/30/1914.
5. The information in the record of digital claim for water right no. 61-248 matches the elements that were data entered into the record of digital water right no. 61-248. The same elements that are missing in the digital record for water right no. 61-248 are also missing in the record for the digital claim except for the point of diversion. There is a point of diversion location is listed on the claim that is not on the water right record. The point of diversion on the claim is described as T65N, R46E, S36. This is not a valid township and range description in the state of Idaho. It appears to have been entered as a place holder to satisfy the required field restrictions in the claim application at the time.
6. While the record of digital claim shows a receipt associated with it, the receipt number, X999999, is simply a number that was entered into a required field so it could be created. IDWR does not have evidence that fees were paid.
7. While there is a record of a digital claim in IDWR's database, my review of IDWR's file inventory system shows no physical SRBA claim folder was created. No SRBA claim was filed for water right 61-248 and no recommendation was made by IDWR to the SRBA for water right no. 61-248. There is no evidence of a claim in IDWR's scanned documents.
8. When the Mountain Home Irrigation District filed a claim in the SRBA for water right no. 61-10419, the following remark was included: "This is a combination of water right

numbers A61-00249, A61-00248, A61-00267, A61-00268, A61-00259, and A61-00265.

Mountain Home Irrigation District supplies water for the owners of the places of use. See Attached System Description. See Decree 61-A-1. This claim represents additional places of use from approximately 1892 with gradual expansions thereafter.” Water right no. 61-10419 claimed a priority date of 5/1/1886, a diversion rate of 18.1 cfs (8688 acre-feet) from Canyon Creek, for irrigation and irrigation storage.

9. Like 61-248, IDWR does not have records of claims or fees associated with 61-249, 61-259, 61-265, 61-267, or 61-268.

10. IDWR recommended water right no. 61-10419 to the SRBA with the same priority date, diversion rate, volume, and purposes of use as were claimed. The following language was included in Explanatory Material: “Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code. The following rights are also diverted through point of diversion described above: 61-00258, 61-10421, 61-00263, 61-00264 & 61-00363. The Mountain Home Irrigation District has 4403.56 shares that receive water delivered through its system. This right is a combination of old right nos. 61-00248, 61-00249, 61-00259, 61-00265, 61-00267 & 61-00268.” Language from Explanatory Material does not typically carry forward to the face of an SRBA partial decree.

11. A partial decree was issued by the SRBA for water right no. 61-10419 on October 26, 2000. No reference to water right no. 61-248 is made in the partial decree.

12. No partial decree was issued by the SRBA for water right no. 61-248.

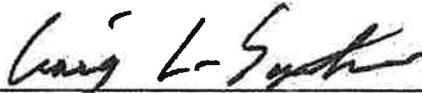
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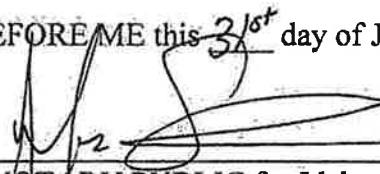
Further your Affiant sayeth naught.

DATED this 31<sup>st</sup> day of July, 2020.

  
CRAIG L. SAXTON

SUBSCRIBED AND SWORN TO BEFORE ME this 31<sup>st</sup> day of July, 2020.



  
NOTARY PUBLIC for Idaho  
Residing at: Ada County  
My Commission Expires: 2/17/2022

## EXHIBIT 9

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 )  
                  ) PARTIAL DECREE PURSUANT TO  
                  ) I.R.C.P. 54(b) FOR  
Case No. 39576 )  
                  ) Water Right 61-10419

NAME AND ADDRESS: MOUNTAIN HOME IRRIGATION DISTR  
C/O CLAYTON COLTHORPE  
140 S 3RD EAST  
MOUNTAIN HOME, ID 83647

SOURCE: CANYON CREEK                      TRIBUTARY: SNAKE RIVER  
QUANTITY: 18.10 CFS  
8688.00 AFY  
PRIORITY DATE: 05/01/1886  
POINT OF DIVERSION: T02S R06E S36              NENW              Within Elmore County

| PURPOSE AND PERIOD OF USE: | PURPOSE OF USE          | PERIOD OF USE  | QUANTITY    |
|----------------------------|-------------------------|----------------|-------------|
|                            | Irrigation              | 03-15 TO 11-15 | 18.10 CFS   |
|                            | Irrigation Storage      | 01-01 TO 12-31 | 8688.00 AFY |
|                            | Irrigation from Storage | 03-15 TO 11-15 | 8688.00 AFY |

PLACE OF USE:  
USE OF THIS RIGHT WITH THE RIGHTS LISTED BELOW IS LIMITED TO  
THE IRRIGATION OF A COMBINED TOTAL OF 7556.0 ACRES IN A SINGLE  
IRRIGATION SEASON WITHIN THE BOUNDARIES OF THE MOUNTAIN HOME  
IRRIGATION DISTRICT. COMBINED RIGHT NOS.: 61-00363, 61-10417,  
61-10421, 61-00263, 61-00264, 61-00266.

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE PLACE OF USE FOR THE MOUNTAIN HOME IRRIGATION DISTRICT  
INCLUDES 40 ACRES IN BASIN 63 DESCRIBED AS T01S, R09E S04, SESE  
THAT IS WITHIN THE BOUNDARIES OF MOUNTAIN HOME IRRIGATION DIST.

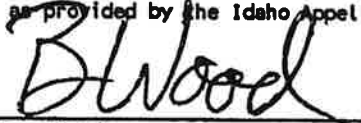
THE STORAGE FACILITIES FOR THE MOUNTAIN HOME IRRIGATION  
DISTRICT HAVE A TOTAL CAPACITY OF 31,494 ACRE FEET. THEY INCLUDE  
LITTLE CAMAS RESERVOIR IN BASIN 63 WITH A CAPACITY OF 22,910 ACRE  
FEET, LONG TOM RESERVOIR WITH A CAPACITY OF 4340 ACRE FEET AND  
MOUNTAIN HOME RESERVOIR WITH A CAPACITY OF 4244 ACRE FEET.

RIGHTS HAVE ALSO BEEN CLAIMED FROM SOURCES IN BASIN 63 FOR THE  
SAME PURPOSE OF USE AND PLACE OF USE AS THIS RIGHT. THESE BASIN  
63 CLAIMS WILL BE RECOMMENDED AT A LATER DATE IN THE BASIN 63  
DIRECTORS REPORT AND WILL CONTAIN COMBINED LIMITATIONS THAT  
INCLUDE THIS RIGHT.

THIS PARTIAL DECREE IS SUBJECT TO SUCH GENERAL PROVISIONS  
NECESSARY FOR THE DEFINITION OF THE RIGHTS OR FOR THE EFFICIENT  
ADMINISTRATION OF THE WATER RIGHTS AS MAY BE ULTIMATELY  
DETERMINED BY THE COURT AT A POINT IN TIME NO LATER THAN THE  
ENTRY OF A FINAL UNIFIED DECREE. I.C. SECTION 42-1412(6).

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above judgment or order, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the court has determined that there is no just reason for delay of the entry of a final judgment and that the court has and does hereby direct that the above judgment or order shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

A handwritten signature in cursive script, appearing to read "B. Wood", is written over a horizontal line.

Barry Wood  
Administrative District Judge  
Presiding Judge of the  
Snake River Basin Adjudication

## **EXHIBIT 10**

Mountain Home Irrigation District  
140 S. 3<sup>rd</sup> W.

Mountain Home, ID 83647

Chairman David Ascuena, At Large District - Eric Orr, Westside District - Mike Landers, Eastside District

November 15, 2019

City of Mountain Home  
Planning & Zoning Commission  
160 S. 3<sup>rd</sup> E. St.  
Mountain Home, ID 83647

Re: Notice of Public Hearing, Annex & Zone I-1

Dear Planning and Zoning Commission:

Through public notice, it has come to the attention of Mountain Home Irrigation District ("MHID") that property owned by Weitz and Company, Inc. is being looked at for possible annexation. In going through our records, the property is located within the boundaries of MHID. Due to this, the property is entitled to delivery of irrigation water, owned by MHID, consistent with the requirements of Title 43, Idaho Code. Water provided by MHID is the only source of surface water for the property. Prior to the Snake River Basin Adjudication ("SRBA"), there was a surface water right from Canyon Creek that went with the subject property, numbered 61-248. Water right no. 61-248 was not decreed by the SRBA district court.

Sincerely,



David Ascuena, Chairman  
Mountain Home Irrigation District

Work #: 208-587-4867  
Fax #: 208-587-8168  
Email: [headgate2000@yahoo.com](mailto:headgate2000@yahoo.com)  
Terry Seegrist, District Manager  
Stefanie Kazyaka, Secretary

COPY

# EXHIBIT 11

LAW OFFICES OF VERNON K SMITH, PC  
1900 W. MAIN STREET  
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The Mountain Home Irrigation District  
140 S. 3<sup>rd</sup> E. St  
Mountain Home, Idaho 83647

January 6, 2019

RE: Bennett Ranch/ VanBerkum /Weitz & Co, Inc water delivery rights

Attention: Mountain Home Irrigation District personnel,

Gentlemen:

It has come to my attention through notification from Mr. Weitz that the Mountain Home Irrigation District (MHID) has been expressing either the objective to undermine or attempt to eliminate the Bennett Ranch Agreement obligation to deliver water under that Agreement that has been in existence since 1923, as was entered into by the Bennett Ranch owner (Flora, the widow of her deceased husband, Richard Bennett) and the MHID. That delivery right is now owned by the successor to those water delivery rights, Weitz & Co., Inc.. This binding Agreement came into existence after the effects of prior litigation that addressed an obligation of delivery that had been interrupted by the effects of the drought of 1919, and the District was held to pay the damages for their failure to keep their delivery commitments. This delivery obligation will be fully and unconditionally enforced, and the performance under this Agreement has been continuously adhered to, as required, for just short of a century, dating back to 1923.

The Idaho Department of Resources (IDWR) has previously identified the Bennett Ranch to have a water right identified as Certificate No. 61-0248, and that right showed Richard Bennett as the Decreed owner, with what appears to be the decree date that came through prior litigation apparently dated back to around July 30, 1914. The date of the right has been identified to date back to April 8, 1885. In the comments from IDWR, that decreed right was superseded by the Snake River Basin Adjudication project (SBRA), but in the SBRA decree pertaining to the MHID water rights, because the MHID had the obligation to deliver the water to the Bennett Ranch, their Certificate No. 61-10419 did not require the specific reference to the existence of Certificate No. 61-048 within that decree issued to MHID, but instead addressed it in the "comments" to the effect that the District has the contractual obligation to supply water under contract to the Bennett Ranch, which is precisely what it is, a *contractual obligation* for the delivery of the water that includes water allocated within the MHID water rights and to be delivered to the property before described as the "Bennett Ranch" and currently owned by Weitz & Co., Inc..

It appears that the Bennett Ranch (Flora Bennett) Agreement, calls for Canyon Creek water flow (for irrigation) from Apr. 1 to June 17, and thereafter continuing water delivery from storage water committed to be delivered thereafter by MHID after June 17, and those delivery obligations

are bundled into the MHID adjudicated water right by the reference to that comment, such that MHID shall "administer" the water under their own adjudicated water rights (as it concerns the delivery of some of that water to the Bennett Ranch Agreement) such that MHID shall supply the water during the irrigation season (Apr. 1 to June 17), from creek flow, and then shall continue to provide a supplementation of water from their storage rights, which MHID has year around storage rights (Jan. 1 to Dec. 31).

It has been indicated that the purpose for declaring it in that manner (in a comment rather than a separate adjudication) was an attempt to avoid duplicity of the same reference to the same seasonal irrigation water coming from Canyon Creek that would require enforcement of both the Bennett Ranch water right and the MHID right that delivers water to the same place for the same period for the same purpose, which could be construed to double up on the right to the same water that is to be diverted to the same beneficial use, and saying it the way it has now been said was to eliminate the potential of creating a "double delivery" of the water from Canyon Creek, and prevent any conflict between the Bennett Ranch and the District use of the same water under conflicting water rights, so Bennett Ranch does not receive double allocations of the same intended water delivery from Canyon Creek.

Under the Bennett Ranch Agreement, following the Canyon Creek seasonal delivery (Apr. 1 to June 17), after June 17, the Bennett Ranch is then entitled to receive a substantial allocation delivered to it from MHID's storage water source under their adjudicate storage rights, to be delivered by MHID pursuant to the storage component of their Agreement, at that rate and for those periods required therein.

As the Agreement provides, the District appears to have an 8 month (Mar. 15 to Nov. 15) right to Canyon creek flowing water, as defined in the adjudication (3/15 to 11/15) and then MHID has their year round storage rights as adjudicated (1/1 to 12/31) for storage rights, and it is from both sources that the Bennett Ranch receives creek flow water (Apr. 1 to June 17) and then continuing water delivery from the MHID storage source, that can be used to finish out the year to the Bennett Ranch under their contractual commitments, or delivered to ponds on the property, as the water is obligated to be delivered, and to come from that MHID storage source. The Agreement refers to rights to 3.2 CFS of MHID storage water, as well as natural flow.

I have been provided many documents that directly relate to the subject and existence of this historic Agreement, along with reference to prior litigation, and what has been the enforcement of these contractual rights emanating from that litigation. The contractual rights remain intact, and beyond any attempt that has apparently been suggested in a MHID letter to the County that the rights are not to be enforced or have been diminished or undercut in any adjudication process, so as to impair the validity or enforceability of that delivery obligation under the Bennett Ranch Agreement.

I have spoken with various sources that are either with or have been in contact with the Idaho Department of Water Resources (IDWR) personnel, to make certain they are fully aware of this history, and they are indeed, supplying many of the documents I have enclosed for your review. There are more documents yet, but these instruments confirm the authenticity and preservation of these established water rights contracted for with the MHID and the litigation that before judicially determined the obligation under these delivery agreements to be valid and have priority to that of the shareholders within the District.

These rights for the delivery of water from MHID to the Bennett Ranch constitute a contractual agreement for the delivery of water under the flow rights and storage rights of MHID, as established with MHID in 1923, as it relates to the acquisition of the transmission structures that had been previously created by the Bennett Ranch owners, Flora and Richard Bennett, and without that agreement, the MHID would have otherwise had to establish their own delivery system, at a huge expense then, and in present day terms, a most likely inability to even be able to secure the necessary easements and right of way acquisitions to conduct such a delivery system from their storage facility to their members to receive the water allocation under the water rights adjudicated to the MHID.

Why any members of the MHID would choose to express a position to the Elmore County Commissioners that would serve to undermine the delivery commitment contained within this Agreement, an agreement that has been in existence for almost a century, is, at the least, an alarming position to take, as the obligation is a contractual arrangement that was entered into to deliver water from within the water rights maintained by the MHID. Needless to say, prior litigation on any failure to deliver the water ended in damages being assessed for non-delivery, and the court not only re-enforced those agreement, but awarded damages for the crop loss due to the failure of the District to perform the delivery they had contracted to do and committed to perform as their consideration for securing the transmission facilities. Any misguided attempt by members of the MHID to disrupt, undermine, or compromise the validity and the enforceability of this Agreement (to deliver) and the right to receive the underlying water through that commitment of delivery, vested from within MHID's flow rights and storage rights, will not be tolerated, and any misrepresentation that has been undertaken to intentionally diminish the existence of these rights of water delivery under this Agreement, expressed to any agency, Department or Board, must be immediately corrected, and it would be appropriate for the authorized member(s) of the MHID to explained to your members any misunderstanding that has been allowed to permeate within the membership, as this delivery Agreement will be enforced without exception, and if there is found to be any continuation in what has appeared to be an attempt to smear or undermine the enforcement of this binding delivery commitment and the water rights that are embraced within its terms and the unconditional obligation of delivery of this water that has been contracted to be delivered, then such behavior will justify need for litigation to secure a declaratory judgment on the matter, to prevent any repeat as to what took place back in 1922, which will be, in today's terms of litigation, and accrual of costs that are substantial and could lead to imposition of punitive damages.

Upon reviewing these many historic and very pertinent documents regarding this matter, it becomes apparent that any failure of performance in the delivery of water under these contractual commitments will expose the District to damages, in a manner quite similar to that proceeding that came into being as a result of the drought of 1919, and for your convenience and awareness (unlikely any of the members of the MHID have a personal memory of what took place a century ago) these relevant documents and instruments are being provided for your District files and recognition of your commitment to perform this water delivery obligation.

Your irrigation district board meeting is currently set for January 7, 2020, and I have provided a copy of this letter to Mr. Weitz to present to you at the board meeting, along with the various enclosed documents. I understand that Mr. Weitz has arranged to be listed as among the board agenda that will allow him to address this issue, and in that process, he will deliver this communication for inclusion in your files.

It has been my understanding that Elmore County and Mountain Home City have been working directly with IDWR in regard to a project referred to as the "Boise Project", that is a significant project that involves an expansive water delivery system from the Anderson Ranch Dam to furnish more water to MHID, to be used for aquifer recharge and to be applied for irrigation delivery expansion. It may have been in this context that conversations may have taken place with members of the MHID and the Idaho Department of Water Resources regarding water rights, users, expansion of area of development and the recharge objectives within the basin.

I can only assume these delivery rights obligated to be performed under this Agreement may have become a subject of discussion, or the subject of a misunderstanding in any communications MHID may have had with the Department, the Commissioners or other agency participants.

For reasons yet unclear, MHID has apparently been promoting a flawed position that the Bennett Ranch Creek Rights, among the water to be delivered to the property belonging to Weitz & Co., Inc. under the Bennett Ranch Agreement, have somehow been eliminated or terminated by the effects within the consequence of the adjudication of water rights under the Snake River Basin Water System [referred to as the Snake River Basin Adjudication (SRBA)] and the adjudication to the MHID.

It appears there has been some indication that the Board of the MHID has come to believe they are not required to discharge their contractual obligation under the Agreement to deliver this water to Weitz & Co., Inc. property any longer, or possibly not to the degree it has been delivered in the past years.

The Bennett Ranch Agreement speaks specifically about what has been declared to be contractual obligations, and they are expressed in two different aspects, creek flow and storage reserve, referring to the traditional flow of water from Canyon Creek Apr.1 to June 17), and the supplemental delivery of storage water from the conclusion of the traditional irrigation season and natural flow of Canyon Creek, with additional water from the storage facility that MHID has year round storage rights. This supplemental delivery from storage water shall continue as needed in the following months, such that the MHID has a responsibility to deliver water under the terms of the Agreement each year, or suffer the consequence of damage resulting from any failure to perform that annual commitment and unconditional delivery. The storage water for continued irrigation comes from the 500-acre feet (minus 10% to compensate for water loss), to be delivered after the typical creek flow ends by June 17. The property is allowed their creek right during the typical irrigation season and the District will continue the delivery from storage water as required thereafter.

I have been made aware of the proposals from MHID that the Board of the MHID has requested Weitz & Co., Inc. to consider exchanging the Bennett Ranch Agreement (which is a water storage/delivery agreement as well as a creek right), for the replacement with a standard water right through the issuance of water shares, for which there would be an associated obligation to pay an annual assessment. Weitz & Co., Inc. has expressly declined such a proposal on each occasion it has been extended, and there is no beneficial reason to exchange a right that is contractual right, the validity and enforceability of which has been tested through litigation in the past, and no replacement arrangement would provide a right that that will equal or exceed the contractual benefits expressed in the Agreement and the needs of this property, which needs have

been served under contract since 1923, and it will continue as an obligation for which the MHID must perform without interruption.

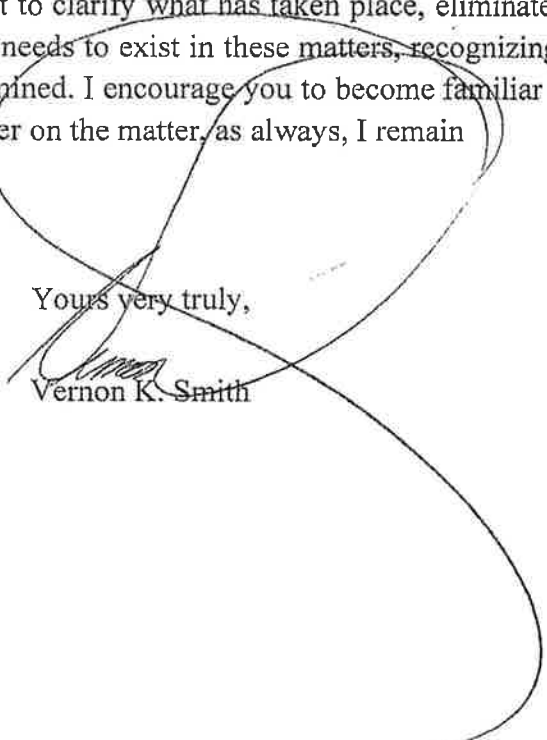
It may now be an expressed position by the MHID, under some misguided position, to attempt to hide the Bennett Ranch Agreement from the Elmore County Commissioners and the City of Mountain Home even possibly to deceive or misrepresent the history of this arrangement from IDWR. Because of this uncertain posture taken by the MHID, Mr. Weitz saw need to deliver a copy of the within included documents to IDWR, and to the County, in a sincere and genuine effort to eliminate what may be seen as a misrepresentation of fact by members of the MHID, and to avoid any embarrassment, or need for any declaratory action, to address this matter and avert any attempt that may be seen to be an effort to subvert the Bennett Ranch Agreement.

The intent of this letter is to make clear and to inform the members of the MHID who are in attendance at the annual meeting on January 7, 2020, that the obligation of the MHID to deliver water under this Agreement will be enforced, and at this meeting all members of the MHID will be placed on notice that the Bennett Ranch Agreement has a history of 97 years of continuous performance, before, during and beyond the SRBA, and has been confirmed to be a valid water right and storage right that embraces both the summer irrigation season and the off season late summer-early fall delivery of the storage water as addressed in the Agreement, and that Weitz & Co., Inc. owns the contractual rights under that Agreement, and in furtherance of the rights expressed within that Agreement, Weitz & Co., Inc. will soon be constructing storage containment ponds on the property to more effectively utilize the water provided through this water delivery, as authorized under the Agreement, so as to better utilize the water and to store water outside the irrigation season, after the completion of crops, to be stored in those pond(s) for those same purposes.

Weitz & Co., Inc. intends to take this water resource delivered under the Bennett Ranch Agreement on a year-round basis, as it is described in the Agreement.

If there is further need to discuss the merits of this matter, the MHID personnel may do so with Mr. Weitz at the annual meeting, in an effort to clarify what has taken place, eliminate any more misunderstanding, and restore the trust that needs to exist in these matters, recognizing the enforcement of this Agreement will not be undermined. I encourage you to become familiar with the enclosed documentation, and until I hear further on the matter, as always, I remain

Yours very truly,

  
Vernon K. Smith