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

In Re SRBA

Case No. 39576

Subcases No. 61-248 and 61-10419

**COUNTERCLAIMS TO VERIFIED
PETITION FOR DECLARATORY
JUDGMENT**

COMES NOW Weitz & Company, Inc. (“Weitz”) by and through its counsel of record, Schroeder Law Offices, P.C., and files these *Counterclaims to Verified Petition for Declaratory Judgment* (“Counterclaims”) in the above-captioned case pursuant to I.R.C.P. 13. These Counterclaims are filed conjunction with Weitz’s *Response to Verified Petition for Declaratory Judgment*.

I. STATEMENT OF FACTS

1. Weitz is the successor in interest to lands described for water use under Water Right No. 61-248, an irrigation water right decreed by the Elmore County District Court in 1914. Exhibit 1 to *Verified Petition for Declaratory Judgment* (“Petition”).

2. Water Right No. 61-248 provided the right to use 160 miner’s inches of the waters of Canyon Creek with a priority of April 8, 1885 for beneficial use on certain described lands now held by Weitz.



3. Mountain Home Irrigation District (“MHID”) and its predecessor delivered irrigation water to the lands described under Water Right No. 61-248 through MHID infrastructure and infrastructure belonging to Weitz and its predecessors.

4. Weitz and its predecessors have continued to beneficially use the water for irrigation as decreed by the Elmore County District Court in 1914.

5. In 1989, MHID filed in the Snake River Basin Adjudication (“SRBA”) Claim No. 61-10419 which stated it was a combination of six water rights, including “A61-00248.” Exhibit 6 to Petition.

6. As claimed by MHID and adjudicated by this Court, Water Right No. 61-10419 expanded the described Weitz lands under Water Right No. 61-248 to a place of use for irrigation of all lands within the boundaries of MHID.

7. Neither Weitz nor its predecessors authorized MHID to combine or take legal title to Water Right No. 61-248 by way of an SRBA claim.

II. COUNTERCLAIMS

Counterclaim 1 – Breach of Fiduciary Duties and Consequential Economic Loss

8. Weitz incorporates by reference and realleges the preceding paragraphs.

9. Neither before MHID filed Claim No. 61-10419 nor following the SRBA Court's October 26, 2000 issuance of a partial decree for 61-10419 (Exhibit 9 to Petition) did MHID notify Weitz or its predecessor of MHID's unauthorized action with regard to taking legal ownership or combining Water Right No. 61-248.

10. Weitz first became aware that there may be some issue with Water Right No. 61-248 by receipt of a copy of MHID's letter to the City of Mountain Home dated November 15, 2019 concerning the Weitz property. Exhibit 10 to Petition.

11. MHID had a duty to Weitz and/or its predecessors to seek its authorization before taking legal title and combining Water Right No. 61-248 into MHID Water Right No. 61-10419.

12. During 2019, at which time Weitz believed it still held legal title to Water Right



1 No. 61-248, Weitz pledged a portion of the beneficial use provided under Water Right No. 61-
2 248 to the City of Mountain Home that culminated in Weitz's execution of the "Railway
3 Industrial Park Annexation Agreement" on or before February 11, 2020 ("Industrial Park
4 Agreement"). See Exhibit 12, attached and incorporated herein.

5 13. As provided by Section 4.2 of the Industrial Park Agreement, any development
6 Weitz would make outside of the Property designated as Phase I will require Weitz "to pay the
7 water right fee in effect at the time of development" which at this time is \$2,000 per acre of land.

8 14. Subsequent phases of development will include up to 1,500 acres of Weitz
9 property. Weitz estimates that the loss of legal title and the incorporation of beneficial use under
10 Water Right No. 61-248 into Water Right No. 61-10419 to the extent Weitz cannot "transfer the
11 Bennett Ranch water storage right to the City" would require payment of up to \$3,000,000.

12 **Counterclaim 2 – Declaratory Judgment as to Beneficial Ownership**
13 **of Water Right No. 61-10419**

14 15. Weitz incorporates by reference and realleges the preceding paragraphs.

15 16. When MHID filed Claim No. 61-10419 incorporating Water Right No. 61-248,
16 MHID necessarily relied on the beneficial use of 160 miner's inches for irrigation by Weitz and
17 its predecessors that began on April 8, 1885.

18 17. MHID has never irrigated or otherwise beneficially used water on the lands
19 owned by Weitz or its predecessors.

20 18. Beneficial use is required to obtain and maintain water use under a water right.
21 Idaho Code 42-217, 42-219, 42-222(2).

22 19. Weitz holds the beneficial ownership of Water Right 61-10419 to the extent it
23 combined the water use beneficially used under Water Right 61-248, including the rate of 160
24 miner's inches, and the specific lands described therein,

25 **III. PRAYER FOR RELIEF**

26 WHEREFORE, on Counterclaim 1, Weitz requests entry of judgment as follows:



1. \$3,000,000 or the amount proven at trial;

2. Costs incurred herein pursuant to applicable law and procedural rules, including but not limited to Idaho Code 12-101 and I.R.C.P. 54(d);

3. Reasonable attorneys' fees incurred herein pursuant to applicable law and procedural rules, including but not limited to Idaho Code 12-120(1-2) and I.R.C.P. 54(e); and

4. Such further relief as this Court deems just and proper.

WHEREFORE, on Counterclaim 2, Weitz prays for entry of the following declarations and judgments:

1. Neither Weitz nor its predecessors authorized the incorporation of Water Right No. 61-248 into Water Right No. 61-10419;

2. MHID holds Water Right No. 61-10419 to the extent of 160 miner's inches with a priority of April 8, 1885 in trust for the beneficial use on Weitz lands as described by the Elmore County District Court in Water Right No. 61-248;

3. Costs incurred herein pursuant to applicable law and procedural rules, including but not limited to Idaho Code 10-1210 and I.R.C.P. 54(d);

4. Reasonable attorney's fees incurred herein pursuant to applicable law and procedural rules, including but not limited to Idaho Code 12-120(1-2) and I.R.C.P. 54(e); and.

5. Such further relief as this Court deems just and proper.

DATED this 15th day of December, 2020.

SCHROEDER LAW OFFICES, P.C.

Paul Schroeder

Laura A. Schroeder, ISB #3799
Attorney for Weitz & Company, Inc.



CERTIFICATE OF MAILING

I hereby certify that on December 15, 2020, I caused a true and correct copy of the foregoing ***COUNTERCLAIMS TO VERIFIED PETITION FOR DECLARATORY JUDGMENT*** to be mailed with sufficient first-class postage to the following:

Chris M. Bromley
Candice M. McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
Attorney for Mountain Home Irrigation District

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

United States Department of Justice
Environment & Natural Resources Division
550 W Fort St., MSC 033
Boise, ID 83724

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

Dated this 15th day of December, 2020.



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EXHIBIT 12

- 1.4 "Property" shall mean that certain real property legally described in Exhibit A.
- 1.5 "Mountain Home Zoning Ordinance" shall mean Title 9 of Mountain Home's City Code.
2. **LEGAL AUTHORITY.** This Agreement is made pursuant to and in accordance with the provisions of Idaho Code Section 67-6511A and Mountain Home City Code Title 9 and other applicable state statutes and city ordinances.
3. **USE PERMITTED BY THIS AGREEMENT.** The uses allowed pursuant to this Agreement are those uses allowed under the City's Zoning Ordinance and the Railway Industrial Park Overlay Zone in effect. Landowner agrees that this Agreement specifically allows only the uses described in the Zoning Ordinance and the Overlay Zone unless otherwise approved by the City through the application process.
4. **INFRASTRUCTURE IMPROVEMENTS.** Landowner shall donate an adequate easement to the City for the required right of ways within Phase 1 of the Property. Engineering and construction of the streets, roadways and walkways for the right of ways required for Phase I of the Property may be financed through a local improvement district. Landowner will donate the required easements for roads and utilities to the City for the remainder of the Property as such Property is developed. Landowner shall pay City fees incurred by the City for the annexation of the Property and the creation of a railroad industrial overlay zone, including legal fees.
- 4.1 Streets. All streets, roadways and walkways shall be designed and constructed in accordance with the applicable standards of City.
- 4.2 Water System. The Landowner has received a waiver of the water right fee for Phase I of the Property pursuant to a prior agreement with the City dated July 7, 2005. Any development of the Property that is outside of the boundaries of the Property designated as Phase 1 shall require the Landowner to transfer the Bennett Ranch water storage right to the City or in the alternative, to pay the water right fee in effect at the time of development. The Landowner may elect to transfer the Bennett Ranch water storage right prior to the development of property that is outside of Phase 1 and such transfer shall constitute compliance with this condition. At the time of development, the parcel owner of any portion of the Property, shall engineer, construct and extend, at owner's sole expense, the water system throughout the parcel being developed in accordance with the applicable standards of the City. All applicable water connection fees shall be paid by the parcel owner.
- 4.3 Sewer System. At the time of development, the parcel owner of any portion of the Property, shall engineer, construct and extend, at owner's sole expense, the sewer system throughout the parcel being developed in accordance with the applicable standards of the City. All applicable sewer connection fees shall be paid by the parcel owner.
- 4.4 Electric Power. Trunk lines for electronic power may be installed and financed through a local improvement district. Any additional electric powerlines that are