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6  
7 IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT  
8 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS  
9

10 In Re SRBA  
11 Case No. 39576

Subcases No. 61-248 and 61-10419

12 **MOTION TO DISMISS OR IN THE**  
13 **ALTERNATIVE MOTION TO CHANGE**  
14 **VENUE AND MEMORANDUM IN**  
15 **SUPPORT THEREOF**

16 COMES NOW Weitz & Company, Inc. (“Weitz”) by and through its counsel of record,  
17 Schroeder Law Offices, P.C., and moves this Court to dismiss Count 2 of the above-captioned  
18 matter pursuant to I.R.C.P. 12(b)(1) on the ground that this Court lacks subject matter  
19 jurisdiction over the contractual elements of the claim set forth by the Mountain Home Irrigation  
20 District (“MHID” or “District”) in its *Verified Petition for Declaratory Judgment* (“Petition”). In  
21 the alternative, Weitz moves this Court to change venue of Count 2 pursuant to I.R.C.P. 40.1 and  
22 reassign Count 2 to the Fourth Judicial District Court for Elmore County. Being that the Elmore  
23 County District Court had historically ruled on the contractual elements of MHID’s claim, and  
24 said elements are not directly related to the *Final Unified Decree* of the Snake River Basin  
25 Adjudication (“SRBA”), this Court is not the proper forum for Count 2 of the Petition to be  
26 heard.



1           **A. Contractual issues are beyond the scope of this Court’s SRBA jurisdiction.**

2           It is indisputable that this Court retains jurisdiction to resolve issues related to the SRBA  
3 that are not reviewable under the Administrative Procedures Act and/or rules of the Idaho  
4 Department of Water Resources (“IDWR”). *Final Unified Decree*, p. 13 ¶ 17. However, the base  
5 issue identified in Count 2 of the Petition is a *quid pro quo* arrangement that the SRBA does not  
6 materially alter. Therefore, this Court lacks subject matter jurisdiction over the allegations raised  
7 in Count 2 regarding the 1923 contract (“Agreement”) entered into by Flora Bennett and the  
8 Mountain Home Co-Operative Irrigation Company (“Co-Op”), the respective predecessors in  
9 interest of Weitz and MHID, so said count should be dismissed pursuant to I.R.C.P. 12(b)(1), or  
10 in the alternative reassigned to the Elmore County District Court pursuant to I.R.C.P. 40.1.

11           The central component of the Agreement and the 1935 Elmore County District Court  
12 ruling related thereto, *Mountain Home Irr. Dist. v. Bennett* (“Memorandum Decision”), is a  
13 water delivery easement created by the Agreement. “[A]s a consideration” for the Co-Op’s right  
14 to enlarge Bennett’s ditch and use it and the connected pipeline underpass of a railway line for  
15 delivery to other water users, Bennett was allowed to annually store up to 250 acre feet in Co-Op  
16 reservoirs. *Agreement*, ¶ 5. Notably, this grant came with a condition of subordination: The Co-  
17 Op’s use would “at all times” be secondary to Bennett’s right “to receive the water to which she  
18 may be entitled hereunder,” (*Id* at ¶ 4) suggesting that Bennett intended to preserve ultimate  
19 control over the ditch’s operation for her and her successors in interest.

20           While MHID acknowledges the significance of the Agreement and the Memorandum  
21 Decision, it emphasizes the wrong attribute of those legal developments. *See generally, Petition*.  
22 MHID asserts that both are predicated on the existence of a water right owned by Bennett and  
23 her successors in interest that was purportedly invalidated by the SRBA (*Id.* at ¶ 52), thereby  
24 relieving the District of any contractual obligations set forth in the Agreement.

25           Irrespective of the allegations raised in Count 1 of the Petition, to which Weitz responded  
26 in its *Response to Verified Petition for Declaratory Judgment* filed December 15, 2020, this is



1 not a question of water right ownership but rather a right of use pursuant to a contractual accord.  
2 Weitz holds the historic beneficial interest to water use that was decreed in 1914 by the Elmore  
3 County District Court in *Bennett v. Norse* (“Canyon Creek Decree”) and delineated by the  
4 Agreement, and the SRBA does not change that. A fundamental principle of Idaho irrigation law  
5 is that one who lawfully makes beneficial use upon land acquires a right to its use, *Sanderson v.*  
6 *Salmon River Canal Co.*, 34 Idaho 303, 307, 200 P. 341, 342 (1921), so even if legal title to the  
7 proprietary interests of the water right was conferred to MHID by the *Final Unified Decree*,  
8 MHID is not absolved of its contractual responsibility to deliver water to Weitz “regardless of  
9 the underlying circumstances.” *Memorandum Decision*, p. 5.

10 Beyond that, Idaho law recognizes that Weitz, as the custodian of an historic beneficial  
11 use, has an interest that is stronger than a mere contractual expectancy. *United States v. Pioneer*  
12 *Irrigation Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 114, 157 P.3d 600, 608 (2007).  
13 Unlikely though it may be that the drafters of said legislation, including Article XV Sec. 4 of the  
14 Idaho Constitution<sup>1</sup>, contemplated circumstances analogous to those that define the Weitz-MHID  
15 association, the underlying concept – that beneficial use is a continuing right – is applicable  
16 nonetheless. If MHID did indeed, by operation of the *Final Unified Decree*, acquire legal  
17 ownership of quantitative rudiments contained in the original water right – the 500 acre feet  
18 annual volume in particular – it would compound the District’s contractual obligations pursuant  
19 to the Agreement with a fiduciary duty to Weitz, the beneficial user, for whom MHID holds  
20 water rights in trust. Idaho Code 43-316. *See also Pacific States Sav. & Loan Co. v. Commercial*

21  
22  
23 <sup>1</sup> Idaho Const. Art. X § 4: CONTINUING RIGHTS TO WATER GUARANTEED. Whenever any waters have  
24 been, or shall be, appropriated or used for agricultural purposes, under a sale, rental, or distribution thereof, such  
25 sale, rental, or distribution shall be deemed an exclusive dedication to such use; and whenever such waters so  
26 dedicated shall have once been sold, rented or distributed to any person who has settled upon or improved land for  
agricultural purposes with the view of receiving the benefit of such water under such dedication, such person, his  
heirs, executors, administrators, successors, or assigns, shall not thereafter, without his consent, be deprived of the  
annual use of the same, when needed for domestic purposes, or to irrigate the land so settled upon or improved, upon  
payment therefor, and compliance with such equitable terms and conditions as to the quantity used and times of use,  
as may be prescribed by law.



1 *State Bank*, 46 Idaho 481, 486, 269 P. 86, 87 (1928). (The essential characteristics of a trust are  
2 the separation of the legal from the beneficial interest and the existence of a fiduciary  
3 relationship.)

4 Although the separation of legal and beneficial interests of the water right at issue  
5 subverts MHID's allegation that it now represents both parties in the Agreement, thereby  
6 rendering it fully satisfied (*see Petition*, ¶ 53), this bifurcation is irrelevant insofar as the proper  
7 analysis. Again, this is not a question of water right ownership but rather a right of use pursuant  
8 to a contractual understanding. As established above, the ditch easement is the crucial  
9 component of the Agreement, and Weitz continues to honor a 97-year-old obligation from which  
10 MHID has historically benefited but suddenly feels no duty to reciprocate. This contractual  
11 dispute is beyond the scope of this Court's SRBA jurisdiction, and therefore Count 2 should be  
12 dismissed or, in the alternative, assigned to the Elmore County District Court.

13 **B. Elmore County District Court is the proper forum for Count 2, having**  
14 **previously interpreted the contractual contours of the Agreement, and this**  
**Court should exercise its discretion to change venue.**

15 As demonstrated in Section A *supra*, the contractual elements of Count 2 of the Petition  
16 fall outside the subject matter jurisdiction of this Court because they do not implicate the SRBA.  
17 Even if this Court disagrees, it should take into account the Elmore County District Court's  
18 historical connection with this portion of the matter, which is a contract dispute involving water  
19 rather than a water rights issue. Accordingly, this Court should exercise its discretion pursuant to  
20 I.R.C.P. 40.1(a)(1)(B) and reassign Count 2 to Elmore County.

21 Generally speaking, all district courts in Idaho have original jurisdiction in all cases,  
22 including ones involving contract disputes. Idaho Const. Art. V Sec. 20 and Idaho Code 1-705.  
23 Yet the establishment of this Court in connection with the SRBA, its ongoing role in  
24 adjudications throughout the state, and its mandate to "hear all petitions for judicial review of  
25 any decision regarding the administration of water rights" (*see Idaho Supreme Court*  
26



1 Administrative Order dated December 9, 2009) implies a more particular function. Indeed, the  
2 state Supreme Court has demonstrated a desire to tailor this Court's focus to a water-specific  
3 docket<sup>2</sup>, and assigning Count 2 of this matter to Elmore County would correspond with that  
4 objective.

5 As MHID points out, the Elmore County District Court was asked in 1935 to determine  
6 the contours of the Agreement in times of water shortage. *See Petition*, ¶¶ 19-20. Finding the  
7 Agreement to be "clear and unambiguous" and the amount of water "definite and certain," the  
8 Court declared that Bennett was "entitled to 500 acre feet of water to be delivered each and every  
9 season" regardless of underlying circumstances. *Memorandum Decision*, pp. 4-5.

10 The claims asserted by MHID in Count 2 amount to a similar challenge. Much as the Co-  
11 Op did in bringing the aforementioned action 85 years ago, MHID is asking for an interpretation  
12 of the Agreement and the conclusion that an extrinsic development – on this occasion a  
13 purported change in legal ownership of a water right as opposed to drought in 1935 – alters its  
14 contractual intent. The Elmore County District Court is perfectly equipped to again address this  
15 matter, and if this Court is not compelled to order change of venue pursuant to I.R.C.P.  
16 40.1(a)(2), it should consider the "convenience" and perhaps "ends of justice" that a  
17 discretionary exercise of reassignment would promote. I.R.C.P. 40.1(a)(1)(B).

18 **C. Weitz requests leave to amend Counterclaims if motion made herein is not**  
19 **granted.**

20 Should this Court deny the motion made herein to Dismiss Count 2 of the Petition or, in  
21 the alternative, order change of venue and reassign Count 2 to the Elmore County District Court,

22  
23 <sup>2</sup> In *D.L. Evans Bank v. Ballentine Ditch Co. et al.* Case No. CV-OC-2013-17406, the Ada County District Court,  
24 acting on a motion by IDWR that neither fellow defendants nor the plaintiff opposed, ordered a change of venue and  
25 reassignment to this Court. Approximately one month later, in an order dated October 20, 2014, the Idaho Supreme  
26 Court denied the change of venue, stating only that the Ada County court had "no jurisdiction to change venue in  
this proceeding." In the absence of further explanation, counsel for Ballentine Ditch Co. offered, "[o]ne can only  
infer that lack of jurisdiction was because the Supreme Court did not view this as a water rights case but rather as a  
stock ownership case." *Defendants' Ballentine Ditch Co., et al Memorandum in Support of Summary Judgment*,  
dated January 22, 2015, pp. 2-3, fn. 1.



1 Weitz hereby requests leave to amend the *Counterclaims to Verified Petition for Declaratory*  
2 *Judgment* ("Counterclaim") filed December 15, 2020 to include counterclaims related to the  
3 contractual elements of this matter.

4 THEREFORE, for reasons stated herein, this Court should dismiss Count 2 of MHID's  
5 Petition because it lacks subject matter jurisdiction over the contractual elements set forth  
6 therein. In the alternative, this Court should order a change of venue and reassign Count 2 to the  
7 Fourth Judicial District Court for Elmore County, being that the contractual elements contained  
8 therein are not directly related to the *Final Unified Decree* of the SRBA. Should this Court deny  
9 this motion, Weitz hereby requests leave to amend its Counterclaim accordingly. Weitz hereby  
10 requests oral argument on this motion.

11  
12 DATED this 15<sup>th</sup> day of December, 2020.

13 SCHROEDER LAW OFFICES, P.C.

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19 Laura A. Schroeder, ISB #3799  
20 James Browitt, ISB #9016  
21 Attorneys for Weitz & Company, Inc.  
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## CERTIFICATE OF MAILING

I hereby certify that on December 15, 2020, I caused a true and correct copy of the foregoing ***MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO CHANGE VENUE*** to be mailed with sufficient first-class postage to the following:

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Dated this 15<sup>th</sup> day of December, 2020.



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