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DEPARTMENT OF
WATER RESOURCES

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

In Re SRBA

Case No. 39576

Subcase Nos. 61-248 and 61-10419

**REPLY TO RESPONSE TO
VERIFIED PETITION FOR
DECLARATORY JUDGMENT**

COMES NOW the Mountain Home Irrigation District (“MHID”) by and through its counsel of record, McHugh Bromley, PLLC, pursuant to Administrative Order 1 paragraph 6.f.(4)(c), and replies to Weitz & Company, Inc’s (“Weitz”) *Response to Verified Petition for Declaratory Judgment* (“Response”).

ARGUMENT

The *Verified Petition for Declaratory Ruling* asks this Court for two forms of relief:

1. To declare, by operation of the *Final Unified Decree*, that water right no. 61-248 (“61-248”) was decreed disallowed and is no longer a valid water right; and
2. Any water represented by 61-248 was subsumed by this Court’s partial decree for water right no. 61-10419 (“WR 61-10419”), without challenge, thereby making the 1923 contract entered into between the predecessors-in-interest to MHID and

Weitz fully satisfied and/or no longer enforceable by Weitz or any successor-in-interest thereto.

A. 61-248 Ceased to Exist And is Disallowed

As to the first issue, Weitz admits he is the successor-in-interest to Richard Bennett, who was decreed 61-248 by the Elmore County district court in 1914 in the case of *Bennett v. Nourse* (“Canyon Creek Decree”). *Response* at ¶ 3. Weitz admits 61-248 was not partially decreed by this Court in the Snake River Basin Adjudication (“SRBA”). *Id.* at ¶ 6. Weitz admits the elements of 61-248 was “superseded” by the SRBA *Final Unified Decree*. *Id.* ¶¶ 9, 10. Despite these admissions, Weitz confusingly denies MHID is entitled to a declaratory ruling that 61-248 no longer exists. *Id.* at ¶ 44-49.

The language of the *Final Unified Decree* could not be any clearer as to the outcome that 61-248 is no longer a valid water right:

First, the “Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987” *Final Unified Decree* at 9, ¶ 1. All water rights decreed in the 1914 Canyon Creek Decree bore priority dates senior to November 19, 1987, *see Exhibit 1 to Verified Petition for Declaratory Judgment*, and were required to be partially decreed in the SRBA in order to remain valid.

Second, and because of the requirement to see water rights with priority dates senior to November 19, 1987 partially decreed in the SRBA, “All prior water right decrees . . . are superseded by this Final Unified Decree” *Id.* at 12, ¶ 11. Thus, by operation of the *Final Unified Decree*, the Canyon Creek Decree was rendered null and void.

Third, “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. A review of Attachment 2 shows no partial decree was issued for 61-248. *See Attachment 2 to the Final Unified Decree.*

Based on the plain language of the *Final Unified Decree*, and because a partial decree was not issued for 61-248, the right to water that was represented by 61-248 ceased to exist and is no longer a valid water right.

B. The Contract, which was Predicated on Existence of 61-248 and was Not Carried Forward into the SRBA, is Fully Satisfied

Weitz admits the existence of the October 15, 1923 contract (“Contract”) between the predecessors-in-interest to MHID and Weitz, *Response* at ¶¶ 11, 12, yet denies that the Contract was predicated on the existence of 61-248, *Id.* at ¶ 14, and denies that this Court has jurisdiction to review the contract, which was previously interpreted by the Elmore County district court in 1935 (“Memorandum Decision”), *Id.* at ¶ 7.

First, the Court may review the Contract. The Court is a district court, sanctioned with the inherent authority to review contracts. Idaho Const. Art. X § 20; I.C. § 1-705; I.C. § 5-409; and I.C. § 6-401. The *Final Unified Decree* gives this Court further authority to “resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or the rules of the Idaho Department of Water Resources” *Final Unified Decree* at 13, ¶ 17. With this matter involving the existence and delivery of 61-248, the Court may review the Contract.

Second, the Contract could not be clearer that 61-248 was the predicate for the agreement entered into between the predecessors to MHID and Weitz: “The party of the first part [Flora Bennett] 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”

Paragraph 5 to Exhibit 2 to Verified Petition for Declaratory Judgment (emphasis added).

Third, like the Contract itself, the Memorandum Decision could not be clearer that 61-248, Flora Bennett’s prior right, was the predicate for the agreement: “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 run-off, or whether defendant [Flora Bennett] is entitled to only such water as should accumulate in storage from her prior right.” *Memorandum Decision* at 3 to *Exhibit 3 to Verified Petition for Declaratory Judgment* (emphasis added).

Because the Contract and Memorandum Decision were predicated on existence of Flora Bennett’s “prior right” 61-248, because the Contract and Memorandum Decision explained delivery of “her said appropriation” 61-248, because neither the Contract nor the Memorandum Decision were carried forward into the SRBA, and because 61-248 was not partially decreed in the SRBA, the Contract is no longer enforceable.

CONCLUSION

In conclusion, MHID is entitled to a judgment from this Court, consistent with its *Verified Petition for Declaratory Judgment*, that: (1) By operation of the *Final Unified Decree*, 61-248 was decreed disallowed; and (2) Any water represented by 61-248 was subsumed by WR 61-10419, without challenge, making the Contract fully satisfied and/or no longer enforceable.

DATED this 31st day of December, 2020.


CHRIS M. BROMLEY
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CERTIFICATE OF SERVICE

I certify that on this 31st day of December, 2020, I caused to be served a true and correct copy of the foregoing upon the following persons by the foregoing methods of service:

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