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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

**RESPONSE TO MOTION TO
DISMISS OR IN THE
ALTERNATIVE MOTION TO
CHANGE VENUE**

Mountain Home Irrigation District (“MHID”) by and through its counsel of record, Chris M. Bromley and Candice M. McHugh of McHugh Bromley, PLLC, file this *Response to Motion to Dismiss or in the Alternative Motion to Change Venue* pursuant to the *Stipulation* filed on January 12, 2021.

Weitz & Company, Inc. (“Weitz”) filed its *Motion to Dismiss or in the Alternative to Change Venue* (“Motion”) asking this Court to dismiss Count 2 of the above-captioned matter arguing that this Court lacks subject matter jurisdiction over the contractual elements of the claim or asks this Court to change venue of Count 2 pursuant to I.R.C.P. 40. The issues involved in Count 2 in MHID’s Petition are properly before this Court for the following reasons.

As Weitz concedes, all district courts in Idaho have original jurisdiction in all cases, including ones involving contract disputes. Idaho Const. Art. V Sec. 20 and Idaho Code 1-705, (Br. at 4.) Furthermore, this Court has already determined that it has the power to hear such matters:

Neither the statute creating the SRBA nor the Supreme Court's order of assignment has in any way divested this court of its status as a full district court in the Fifth Judicial District. The Constitution of the State of Idaho and statutes defining the judicial branch would not allow such a limit to be placed on a sitting district judge.

In Re SRBA 39576, BWI 92-00012, *Order And Memorandum Decision Denying Motion To Dismiss Petition For Declaratory Relief And Denying Motion For Disqualification Of Judge Without Cause* at 3-4 (March 1, 1995).

The Supreme Court also addressed the question about whether or not this Court has jurisdiction to hear contract disputes regarding the “right of use pursuant to a contractual understanding” that arise between parties. *See*, Br. at 3-5 (Weitz defines the issue here in part as Weitz “holds the historic beneficial interest to water use” and as Weitz being the “historic beneficial use(er)” and that the issue is one of a “right of use”.) In *Bray v. Pioneer Irrigation Dist.*, 144, Idaho 116, 157 P.3d 610 (2007), Bray argued that “jurisdiction of the SRBA court does not extend to addressing contractual disputes between users” *Id.* at 118, 157 P.3d at 612. Weitz also argues that the question in this case is a “right to use pursuant to a contractual accord.” (Br. at 3) As the Supreme Court stated in *Bray*, “the SRBA court and this Court have determined that the right to use of the water is specifically derived from law and is not based exclusively on the contracts between the Bureau of Reclamation and the irrigation organizations.” *Id.* Finally, Weitz states that the primary purpose of the contract is a “water delivery easement created by the Agreement.” Br.at 2.

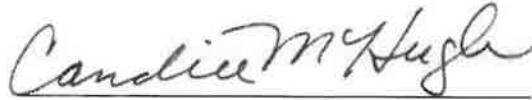
In this case, the question in Count 2 puts directly at issue whether or not there is a continuing obligation under the Contract to deliver water to Weitz. To answer that question, this Court must first determine if the water right that is the subject of the Contract, 61-248, even still exists, and if it does, then, it seems that the obligations under the Contract are likely still valid. If, however, the Court determines that 61-248 does not exist, then the question for this Court becomes whether or not the Contract applies to a water “use” by the Weitz necessitating the owner of the water right(s) (i.e. MHID) to deliver the water under a “use” right arising out of a contract or some other duty. These questions are best answered by this Court who has retained jurisdiction of all of the water rights involved – the water rights owned and held by MHID and the alleged water right or use owned by Weitz. There is no question that this Court, and only this Court, has jurisdiction to determine what right, if any, Weitz may still have in any water right.

Because the SRBA Court has full original jurisdiction in all cases and has the power to hear all matters as any full district court, the question here is not about “subject matter” jurisdiction, but rather a question of venue.

The issues in Count 2 directly question the obligations of the MHID, if any, to deliver any of its water rights to Weitz. This Court’s consideration of the contract issue is necessary in the event that a revision or interpretation of the water right(s) of the parties is required; no other Court has that authority. Thus, the convenience of the parties and the promotion of justice is best served by this Court exercising its general jurisdiction over the issues in Count 2 so that the risk of the parties litigating in a different forum does not result in another Court passing on the question of what the parties’ water rights or entitlements thereunder actually mean given the fact that this Court is the only court that can resolve those issues. Additionally, hearing this matter before a single court eliminates the risk of two courts issuing inconsistent judgments.

For the reasons stated above, MHID asks that Weitz's Motion be denied and that this Court retain jurisdiction and venue over all Counts contained in MHID's Petition.

DATED this 12th day of January, 2021.

A handwritten signature in cursive script, reading "Candice M. McHugh". The signature is written in dark ink and is positioned above a horizontal line.

Candice M. McHugh

Attorneys for Mountain Home Irr. Dist.

CERTIFICATE OF SERVICE

I certify that on this 12th day of January, 2021, I caused to be served a true and correct copy of the foregoing upon the Court by facsimile, and upon the other persons by U.S. Mail:

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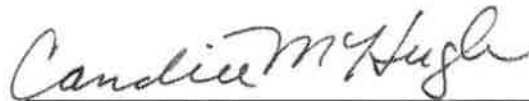
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