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DEPARTMENT OF
WATER RESOURCES

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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

Subcase Nos. 61-248 and 61-10419

Case No. 39576

ANSWER TO COUNTERCLAIM

COMES NOW the Mountain Home Irrigation District (“MHID”) by and through its counsel of record, McHugh Bromley, PLLC, and files its Answer to Defendant Weitz and Company, Inc.’s Counterclaim.

- 1) MHID denies each and every allegation of the *Amended Complaint* not otherwise specifically admitted herein.
- 2) MHID admits the allegations contained in Paragraph 1 of the Counterclaim.
- 3) MHID admits the allegations contained in Paragraph 2 of the Counterclaim.
- 4) MHID admits the allegations contained in Paragraph 3 of the Counterclaim.
- 5) With respect to the allegations in Paragraph 4 of the Counterclaim, MHID admits it has delivered water to the Weitz headgate. With respect to the remaining allegations in paragraph 4 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.

- 6) Exhibit 6 to MHID's Petition, speaks for itself. With respect to the remaining allegations in paragraph 5 of the Counterclaim, MHID denies the same.
- 7) With respect to the allegations in paragraph 6 of the Counterclaim MHID, this statement calls for a legal conclusion and thus MHID denies the allegations.
- 8) With respect to the allegations in paragraph 7 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.
- 9) Paragraph 8 of the Counterclaim is an incorporation paragraph and therefore MHID incorporates the above responses in responding to Paragraph 8 of the Counterclaim.
- 10) With respect to the allegations contained in paragraph 9 of the Counterclaim, MHID denies that Weitz or its predecessors were without notice of MHID's claim or the fact that water right no. 61-248 was not claimed. With respect to the remaining allegations in paragraph 9 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.
- 11) With respect to the allegations contained in paragraph 10 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.
- 12) MHID denies the allegations contained in paragraph 11 of the Counterclaim.
- 13) With respect to the allegations in paragraph 12 of the Counterclaim, MHID states that the Industrial Park Agreement produced by Weitz speaks for itself. With respect to the remaining allegations in paragraph 12 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.
- 14) With respect to the allegations contained in paragraph 13 of the Counterclaim, MHID states that the Industrial Park Agreement produced by Weitz speaks for itself. With

respect to the remaining allegations in paragraph 13 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.

15) With respect to the allegations contained in paragraph 14 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.

16) Paragraph 15 of the Counterclaim is an incorporation paragraph and therefore MHID incorporates the above responses in responding to Paragraph 15 of the Counterclaim.

17) With respect to the allegations contained in paragraph 16 of the Counterclaim, MHID is without information sufficient to admit or deny those allegations and therefore denies the same.

18) MHID admits the contained allegations in Paragraph 17 of the Counterclaim.

19) MHID states the Idaho Code Sections referenced in Paragraph 18 of the Counterclaim speak for themselves. The remainder of Paragraph 18 of the Counterclaim is a legal conclusion to which no response is required.

20) MHID denies the allegations in Paragraph 19 of the Counterclaim and further denies Counterclaimant is entitled to any relief.

21) MHID denies each and every allegation in Counterclaimant's "Prayer for Relief" section and further denies that Counterclaimant is entitled to any relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Counterclaim fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Counterclaimant's claims for damages, if any, are barred and or/reduced by the doctrine of claim preclusion.

THIRD AFFIRMATIVE DEFENSE

Counterclaimant's claims are barred by application of the doctrine of estoppel and equitable quasi-estoppel.

FOURTH AFFIRMATIVE DEFENSE

Counterclaimant's claims and damages, if any, are barred or reduced by Counterclaimant's failure to exercise its duty under Idaho law to mitigate or reduce its damages. In asserting this defense, Counterdefendant does not admit any fault or responsibility, or that Counterclaimant has suffered any damages.

FIFTH AFFIRMATIVE DEFENSE

Counterclaimant's damages, if any, are barred and/or reduced in that the damages sought by Counterclaimant could have been avoided if Counterclaimant had acted reasonably prior to filing this action.

SIXTH AFFIRMATIVE DEFENSE

Counterclaimant's damages, if any, are barred and/or reduced because Counterdefendant acted pursuant to statutory authority when seeking a declaration of the rights of the parties under that Agreement, dated October 15, 1923, entered into between Flora A. Bennett and the Mountain Home Co-Operative Irrigation Company.

SEVENTH AFFIRMATIVE DEFENSE

Counterclaimant's damages, if any, are barred and/or reduced because Counterdefendant acted pursuant to the Final Unified Decree when seeking a declaration from this Court of the

rights of the parties as it related to water right no. 61-248, a water right that was not partially decreed, was therefore decreed disallowed by operation of the Final Unified Decree, and is no longer a valid water right.

EIGHTH AFFIRMATIVE DEFENSE

The negligence/fault of Counterclaimant exceeds the negligence or fault, if any, of counterdefendant.

NINTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the doctrine of Latches.

TENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by the doctrine of Waiver.

ELEVENTH AFFIRMATIVE DEFENSE

Counterclaimant's claims, if any, are barred or reduced by I.C. § 42-1204.

As discovery in this matter has not yet commenced, Counterdefendant specifically reserves the right to amend its Answer to the Counterclaim and to assert additional affirmative defenses as the same may become known.

WHEREFORE, Counterdefendant prays:

- 1) Counterclaimant takes nothing and the Counterclaim be dismissed.
- 2) Counterdefendant has been forced to retain the services of legal counsel in connection with defending this matter, has secured the representation of McHugh Bromley on a paid hourly basis at the rate of \$245 per hour. Counterdefendant is entitled to recover

their attorney's fees and cost of suit pursuant to Idaho Rule of Civil Procedure 54(d) and (e), I.C. §§ 10-1210, 12-121, and 12-120(3).

- 3) Counterdefendant also asks this Court award Counterdefendant any other and further relief as the Court deems just and equitable.

DATED this 12th day of January, 2021.

A handwritten signature in black ink, appearing to read "Chris M. Bromley", written over a horizontal line.

CHRIS M. BROMLEY

Attorneys for Mountain Home Irr. Dist.

VERIFICATION

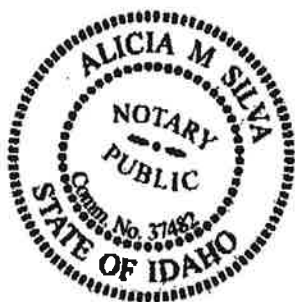
State of Idaho)
) s.s.
 County of Elmore)

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
 DAVID ASCUENA

SUBSCRIBED AND SWORN to Before me this 12 day of January, 2020



Alicia M Silva
 Notary Public for Mtn Home ID Farm Bureau
 Residing at Mtn Home ID
 My commission expires 3-11-2026

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:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707
Facsimile: 208-736-2121

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CHRIS M. BROMLEY