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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
BIFURCATE**

COMES NOW 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 the *Motion to Bifurcate* ("Motion to Bifurcate") filed by counsel for Weitz & Company, Inc. ("Weitz") on January 12, 2021. Because of the prehearing conference that is scheduled for January 14, 2021, MHID is filing this response ahead of any deadlines established by Administrative Order 1 and the Idaho Rules of Civil Procedure.

In the Motion to Bifurcate, Weitz asks the Court to limit the scope of the January 21, 2021 hearing as follows:

Weitz proposes limiting the scope of the first phase of this proceeding to Petitioner's Count I-Declaratory Ruling That Water Right 61-248 Ceased to Exist And Is Disallowed With Prejudice, Respondent's Counterclaim 1-Breach of Fiduciary Duties and Consequential Economic Loss (Liability Only), and Respondent's Counterclaim 2-Declaratory Judgment as to Beneficial Ownership of

Water Right No, 61-10419. Weitz proposes that the remaining issues shall be addressed after such time as this Court considers the Motion to Dismiss or in the Alternative Motion to Change Venue and Memorandum in Support Thereof.

Motion to Bifurcate at 2.

Weitz's requests above confuses the relief sought in the *Motion to Dismiss or in the Alternative Motion to Change Venue and Memorandum in Support Thereof* ("Motion to Dismiss"). In the Motion to Dismiss, Weitz argues this Court lacks jurisdiction to hear the issues relating to storage and delivery of water right no. 61-248 under the 1925 contract entered into between the predecessors in interest to Weitz and MHID. Yet Weitz then argues in the Motion to Bifurcate that the Court can hear questions related to liability and damages. Weitz can only have it one way – either the Court can hear the claims related to the 1925 contract, liability, and damages, or the Court can hear none of those issues. The jurisdictional questions regarding the contract, liability, and damages are legal questions that can be answered by the Court based on the motions presented.

Setting aside the jurisdictional issues, there should be no question that the Court, pursuant to its retained jurisdiction under the *Final Unified Decree*,¹ can declare whether water right no. 61-248, which was not partially decreed in the SRBA but was not expressly decreed disallowed, was disallowed by operation of the *Final Unified Decree*: "All other water rights with a priority before November 19, 1987, not expressly set forth in this Final Unified Decree are hereby decreed as disallowed." *Final Unified Decree* at 10, ¶ 1 (emphasis added). Whether a water right that once existed, yet does not appear in any of the Court's records as partially decreed, is a

¹ "This Court retains jurisdiction of this proceeding to: a) resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or rules of the Idaho Department of Water Resources" *Final Unified Decree* at 13, ¶ 17.

question of law that can and should be declared based on the previously filed briefing and argument on January 21, 2021.

For the reasons stated above, MHID opposes Weitz's Motion to Bifurcate. As pled, the Court can hear argument based on the briefing on January 21, 2021 to: (1) declare whether water right no. 61-248 exists; and (2) whether the Court has jurisdiction to hear the other issues.

DATED this 13th day of January, 2021.

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

Chris M. Bromley
Attorneys for Mountain Home Irr. Dist.

CERTIFICATE OF SERVICE

I certify that on this 13th 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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