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DEPARTMENT OF
WATER RESOURCES

DISTRICT COURT - SRBA
Fifth Judicial District
County of Twin Falls - State of Idaho

JAN 22 2021

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

Clerk

Deputy Clerk

In Re SRBA

Case No. 39576

) Subcase No. 61-248 and 61-10419
)
) **ORDER ON MOTION TO**
) **DISMISS OR IN THE**
) **ALTERNATIVE MOTION TO**
) **CHANGE VENUE**
)

The Mountain Home Irrigation District ("Petitioner") filed a *Verified Petition for Declaratory Judgment* on October 5, 2020. Count I seeks a declaratory ruling that water right 61-248 was disallowed in the Snake River Basin Adjudication and ceases to exist. Count II seeks a declaratory ruling that a 1923 contract is fully satisfied. Weitz and Company, Inc. ("Respondent") filed counterclaims on December 15, 2020. Counterclaim I seeks damages against the Petitioner for breach of fiduciary duty. Counterclaim II seeks a declaratory ruling as to beneficial ownership of water right 61-248.

On December 15, 2020, the Respondent filed a *Motion* to dismiss Count II of the *Petition*, or in the alternative, to change venue of Count II to Elmore County. The Respondent also filed a *Motion* to bifurcate under Idaho Rule of Civil Procedure 42(b). A hearing on the *Motions* was held before the Court on January 21, 2021. For the reasons stated on the record, the Court in an exercise of its discretion determined to change venue of Count II and Counterclaim I to Elmore County under Idaho Rule of Civil Procedure 40.1.

THEREFORE, BASED ON THE FOREGOING, THE FOLLOWING ARE HEREBY ORDERED:

1. The Court hereby bifurcates this matter as set forth herein.
2. Count I of the *Petition* and Counterclaim II will be retained, addressed, and determined by this Court.
3. After this Court determines Count I of the *Petition* and Counterclaim II, the Court will transfer Count II of the *Petition* and Counterclaim I to the proper venue of Elmore County for further proceedings.

4. The Respondent's *Motion to Dismiss or in the Alternative Motion to Change Venue* is therefore granted to the extent it seeks to change venue of Count II of the *Petition* to Elmore County. To the extent it seeks dismissal of Count II of the *Petition* due to lack of subject matter jurisdiction, the *Motion* is denied.

5. The parties shall submit a proposed briefing schedule on Count I of the *Petition* and Counterclaim II on or before February 1, 2021.

IT IS SO ORDERED.

Dated January 21, 2021.

A handwritten signature in black ink, appearing to read 'EW', is written over a horizontal line.

ERIC WILDMAN
Presiding Judge
Snake River Basin Adjudication

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO CHANGE VENUE was mailed on January 22, 2021, with sufficient first-class postage to the following:

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MOUNTAIN HOME IRRIGATION DIST
VERIFIED PETITION FOR
DECLARATORY JUDGMENT