

JAN 25 2021

DEPARTMENT OF
WATER RESOURCES

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

10 In Re SRBA
11 Case No. 39576

Subcases No. 61-248 and 61-10419

12 **REPLY TO RESPONSE TO MOTION TO**
13 **DISMISS OR IN THE ALTERNATIVE**
14 **MOTION TO CHANGE VENUE**

15 Weitz & Company, Inc. (“Weitz”) by and through its counsel of record, Schroeder Law
16 Offices, P.C., hereby submits this reply to the *Response to Motion to Dismiss or in the*
17 *Alternative Motion to Change Venue* (“Response”) filed by the Mountain Home Irrigation
18 District (“MHID” or “District”). Weitz reiterates that this Court is not the proper forum in which
19 to hear Count 2 of MHID’s *Verified Petition for Declaratory Judgment* (“Petition”) being that
20 the contractual elements at issue are obliquely related to the Snake River Basin Adjudication
21 (“SRBA”), if they are related at all. Therefore, Weitz requests that Count 2 be dismissed outright
22 or, in the alternative, reassigned to the Fourth Judicial District Court for Elmore County pursuant
23 to Idaho Rules of Civil Procedure (“I.R.C.P.”) 40.1.

24 While it would be absurd to argue that the fundamental aspect of this matter is something
25 other than water, the contractual components at the center of the dispute reveal it to be more than
26 a water rights case. The Parties’ predecessors in interest entered into an agreement which, after

[P0522392; 1637.01 LMM]



1 nearly one hundred (100) years, MHID seeks to void without surrendering its benefit of the
2 bargain. No matter how this Court rules on the existence of Water Right No. 61-248, MHID
3 cannot be absolved of the obligation incurred “in consideration” of a water delivery easement
4 granted in 1923. Plainly, this is a contractual issue that falls beyond the scope of the SRBA, and
5 as such should not be entertained by this Court.

6 MHID has steadfastly insisted that the contract entered into on October 19, 1923 by Flora
7 Bennett and the Mountain Home Co-Operative Irrigation Company (“Agreement”) was
8 predicated on Bennett’s decreed water right, No. 61-248. *See, generally, Petition; Response*, p. 3;
9 *Reply to Response to Verified Petition for Declaratory Judgment*, Sec. B. However, the
10 Agreement does not bear that out. Rather, the document’s language focused on the Mountain
11 Home Co-Operative Irrigation Company’s (“Co-Op”) intention to gain access to Bennett’s
12 existing irrigation infrastructure, and what Bennett was given in return:

13 WHEREAS, [Co-Op] desires to acquire the right of enlarging and using the
14 ditch of [Bennett] diverting and carrying from said Canyon Creek to the premises
15 hereinbefore described so as to carry water to lands entitled to water from the
irrigation system of said second party;

16 *Agreement*, p. 2 (first emphasis in original, second emphasis added).

17 [Co-Op] hereby grants to [Bennett] the right to store in its reservoirs between the
18 1st day of April and the 17th day of June of each year up to but not exceeding 250
19 acre feet of water.”

20 *Id.*, p. 2, ¶ 2.

21 [Water stored for Bennett] shall be delivered by [Co-Op] to the premises of
22 [Bennett] ... without charge.

23 *Id.*, p. 3, ¶ 3 (emphasis added).

24 [Co-Op] shall have the right to enlarge the ditch of [Bennett] carrying water to said
25 premises and to use the said ditch and the pipe line under the railroad tracks of the
26 Oregon Short Line Railroad for carrying water to water users entitled to water from
the irrigation system of [Co-Op], but all such use by [Co-Op] shall be subject



1 and subordinate to the right of [Bennett] to at all times receive water to which
2 she may be entitled hereunder.

3 *Id.*, p. 3, ¶ 4 (emphasis added).

4 [T]his agreement is intended to provide for storage of water under said right for use
5 later in the irrigation season and as a consideration therefor [Co-Op] shall have
6 the right to use to ditch and pipe line of [Bennett] upon the conditions herein stated.

7 *Id.*, p. 4, ¶ 5 (emphasis added).

8 Although it is indisputable that the right to use water by Bennett and her successors in
9 interest, including Weitz, factors into the Agreement, the existence of 61-248 is an ancillary
10 piece of the underlying *quid pro quo* arrangement, in which the Co-Op and subsequently MHID
11 have provided irrigation storage and delivery in exchange for system access for ninety-seven
12 (97) years. Weitz does not deny that any determination this Court makes regarding 61-248's
13 existence is likely to affect the Agreement, but the extent of the impact would be derived from
14 contractual interpretation, not from law governing the right to use water. *Cf.*, *Response*, p. 2.

15 As Weitz has previously noted, the Idaho Supreme Court has shown an inclination to
16 taper the focus of this Court to water-specific matters. *See Motion to Dismiss*, p. 5. So, although
17 this Court, like all district courts within the state, has original jurisdiction in all cases, including
18 contract disputes, Idaho Const. Art. X Sec. 20, Idaho Code. 1-705, assigning Count 2 to the
19 Elmore County District Court would be an appropriate use of discretion pursuant to I.R.C.P.
20 40.1(a)(1)(B).

21 Again, the Elmore County District Court has already served in this particular capacity,
22 having been asked in 1935 to interpret the Agreement in *Mountain Home Irr. Dist. v. Bennett*
23 ("Memorandum Decision"). Notably, that ruling hinged on the "clear and unambiguous"
24 language of the Agreement, *Memorandum Decision*, pp. 3-4, along with what the document did
25 not include – namely a savings clause that relieved MHID of liability in times of drought. *Id.*, p.
26



1 3. The court determined the absence thereof indicated that Bennett was due the prescribed
2 amount of water “each and every season” regardless of the circumstances. *Id.*, p. 5.

3 Intentionally or not, the Agreement also does not contain a severability clause, which
4 raises the possibility that a court may have to determine if the entire Agreement is no longer
5 enforceable – the water delivery easement included. If this matter were to come to that, having it
6 heard and settled in Elmore County would be most convenient for those involved. I.R.C.P.
7 40.1(a)(1)(B).

8 THEREFORE, for reasons stated herein, and in the *Motion to Dismiss*, Weitz asks this
9 Court to grant said motion, dismissing Count 2 of MHID’s *Petition* or, in the alternative, order a
10 change of venue and reassign Count 2 to the Fourth Judicial District Court for Elmore County.

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12 DATED this 20th day of January, 2021.

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14 SCHROEDER LAW OFFICES, P.C.

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18 _____
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CERTIFICATE OF MAILING

I hereby certify that on January 20, 2021 I caused a true and correct copy of the foregoing
***REPLY TO RESPONSE TO MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION
TO CHANGE VENUE*** to be mailed with sufficient first-class postage to the following:

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Dated this 20th day of January, 2021.



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