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DEPARTMENT OF
WATER RESOURCES

Laura A. Schroeder, ISB #3799
James Browitt, ISB #9016
Schroeder Law Offices, P.C.
1915 N.E. Cesar E. Chavez Boulevard
Portland, Oregon 97212
PHONE – (503) 281-4100 FAX – (877) 600-4971
counsel@water-law.com

Attorneys for Weitz & Company, Inc.

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

In Re SRBA
Case No. 39576

Subcases No. 61-248 and 61-10419

**MEMORANDUM IN SUPPORT
OF WEITZ'S MOTION FOR
SUMMARY JUDGMENT**

Weitz & Company, Inc. ("Weitz"), by and through its attorneys Laura A. Schroeder and James Browitt of Schroeder Law Offices, P.C., hereby submits this memorandum in support of Weitz's Motion for Summary Judgment on Count 1 and Counterclaim 2 of the above-captioned matter filed concurrently herewith. Petitioner Mountain Home Irrigation District ("MHID" or "District") cannot show, as a matter of law, Weitz's beneficial interest in Water Right No. 61-248 was invalidated as the result of the Snake River Basin Adjudication ("SRBA"). Therefore, the portions of this matter relating to Weitz's perpetual right to beneficial use should be summarily resolved by this Court.

I. PROCEDURAL BACKGROUND

On October 1, 2020, MHID commenced this matter by filing a *Verified Petition for Declaratory Judgment* ("Petition"), asking this Court to declare Water Right No. 61-248 had



1 been disallowed by operation of the *Final Unified Decree* of the SRBA and therefore ceased to
2 exist. On December 15, 2020, Weitz filed *Counterclaims to Verified Petition for Declaratory*
3 *Judgment* ("Counterclaim"), asking this Court to declare that Weitz holds beneficial ownership
4 in Water Right No. 61-10419 to the extent it incorporates the right beneficially used under 61-
5 248. On January 22, 2020, this Court entered an order on Weitz's *Motion to Dismiss or in the*
6 *Alternative Motion to Change Venue*, whereas it retained jurisdiction over Count 1 and
7 Counterclaim 2 while determining to change venue of Count 2 and Counterclaim 1 pursuant to
8 Idaho Rule of Civil Procedure ("IRCP") 40.1. Those claims, which are contractually based, will
9 be subsequently assigned to the Fourth Judicial District Court in Elmore County.

10 II. STATEMENT OF FACTS

11 1. Weitz is an Idaho corporation in good standing with the Secretary of State, whose
12 registered agent's address is 1900 W Main Street, Boise, Idaho 83702.

13 2. Weitz is the successor in interest of Elmore County lands described for water use
14 under Water Right No. 61-248, an irrigation water right decreed on July 30, 1914, by the Elmore
15 County District Court in 1914 in *Bennett v. Nourse*. Exhibit 1 to *Petition*.

16 3. 2. Water Right No. 61-248 provided the right to use 160 miner's inches of
17 the waters of Canyon Creek with a priority of April 8, 1885 for beneficial use on certain
18 described lands now held by Weitz. *Id.*

19 4. MHID and its predecessor in interest, the Mountain Home Co-Operative
20 Irrigation Company ("Co-Op"), delivered irrigation water to the lands described under 61-248
21 through MHID infrastructure and infrastructure belonging to Weitz and its predecessors.

22 5. Weitz and its predecessors in interest have continued to beneficially use the water
23 for irrigation as decreed by the Elmore County District Court in 1914.

24 6. The "Co-Op" entered into a contract with Weitz's predecessor, Flora Bennett, on
25 October 15, 1923 ("Bennett Contract"). The Bennett Contract granted Flora Bennett a
26 contractual right to a certain volume of storage with a right of delivery from the Co-Op in



1 exchange for the Co-Op's use and enlargement of an existing canal located on Flora Bennett's
2 property. Exhibit 2 to *Petition*.

3 7. In 1976, the property now owned by Weitz was annexed into the Mountain Home
4 Irrigation District. The annexed lands are entitled to 70 shares of water diverted by MHID. As a
5 result, Weitz is a shareholder in MHID. Exhibit 5 to *Petition*.

6 8. In 1989, MHID filed in the SRBA, Claim No. 61-10419 which stated it was a
7 combination of six water rights, including "A61-00248." Water Right No. 61-10419 expanded
8 the described Weitz lands under Water Right 61-248 to a place of use for irrigation of all lands
9 within the boundaries of MHID. Exhibit 6 to *Petition*.

10 9. Neither Weitz nor its predecessor in interest authorized MHID to combine or take
11 legal title to Water Right No. 61-248 by way of an SRBA claim.

12 10. On October 26, 2000, this Court issued a partial decree for Water Right No. 61-
13 10419. Exhibit 9 to *Petition*.

14 11. On August 26, 2014, this Court entered its *Final Unified Decree* which
15 incorporated by reference all partial decrees previously issued in the SRBA.

16 12. The source, rate, annual volume, beneficial use, and place of use adjudicated in
17 the Canyon Creek Decree under 61-248 were recognized, incorporated into 61-10419, and
18 superseded by the SRBA *Final Unified Decree*.

19 III. STANDARD OF REVIEW

20 Summary judgment must be granted "if the movant shows that there is no genuine
21 dispute as to any material fact and the movant is entitled to judgment as a matter of law." IRCP
22 56(a). If reasonable persons could reach different conclusions or draw conflicting inferences
23 from the evidence, summary judgment must be denied. *Farm Credit Bank of Spokane v.*
24 *Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1467 (1994) (citing *Doe v. Durtschi*, 110 Idaho
25 466, 469, 716 P.2d 1238, 1241 (1986)). But if the evidence reveals no disputed issues of material
26 fact, summary judgment is proper. *Id.*



IV. ARGUMENT

MHID's stance in this matter rests on the proposition that Water Right No. 61-248, which has been used without interruption by Weitz and its predecessors in interest since it was established in 1885, was invalidated by operation of the SRBA's *Final Unified Decree. Petition*, ¶¶ 1, 35, 48. With respect to how water rights are catalogued in Idaho and the nomenclature used in the administration thereof, MHID is technically correct – 61-248 is no longer a right of use independently recognized by the State. But while the label may have been retired, the quantifiable elements established and exercised under 61-248 that were necessary for MHID to claim and obtain Water Right No. 61-10419 have endured, just under a different name. As decreed by the SRBA, 61-10419 incorporates, along with most of the descriptive elements of 61-248¹, the instant diversion rate that was perfected by Weitz's predecessors in interest, and that beneficial use has continued as authorized by the *Final Unified Decree*. Accordingly, MHID's assertion that 61-248 has been unequivocally voided as a consequence of the SRBA is fundamentally incorrect.

Further, pursuant to Idaho case law, Weitz remains the holder of that enduring beneficial interest. A fundamental principle of the state's irrigation law is that one who lawfully makes beneficial use upon the land acquires a right to its use, *Sanderson v. Salmon River Canal Co.*, 34 Idaho 303, 307, 200 P. 341 342 (1921), and that when said use is established, "such person ... shall not, thereafter, without his consent, be deprived of the annual use of the same." *United States v. Pioneer Irrigation Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 114, 157 P.3d 600, 608 (2007) (*citing Idaho Const. Art. XV, § 4*). By claiming 61-248 in the SRBA, and without Weitz's consent, MHID perhaps gained nominal legal title, *id.* at 112, 157 P.3 at 606, but

¹ The most notable discrepancy, other than ownership, is date of priority. MHID's Notice of Claim for what would become 61-10419 designated May 1, 1886 to correspond with the latest dates of priority among the six rights that were combined under the single claim. The original priority date for 61-248 was April 8, 1885, as recognized in the 1914 Elmore County District Court case *Bennett v. Nourse* ("Canyon Creek Decree").



1 equitable title – and the right to beneficial use – remained with Weitz and his predecessors in
2 interest.

3 **A. Rather than being invalidated, the quantifiable elements of 61-248 were**
4 **incorporated into 61-10419, as was the authorized place of use.**

5 Although MHID has steadfastly maintained that, by operation of the SRBA, Water Right
6 No. 61-248 has been invalidated, said right still very much exists. Indeed, the measurable
7 components of 61-248 – namely its 3.2 cfs diversion rate (converted from the historic calculation
8 of 160 miner’s inches), along with the 500 acre feet annual volume – have been continuously
9 exercised since the *Final Unified Decree* was entered in 2014, much as they had been for the
10 previous 100 years following the issuance of the Canyon Creek Decree. The only distinction
11 between pre- and post-SRBA use is that the water right of use now occurs as part of a more
12 substantial appropriation. Setting aside, for the moment, the issue of equitable ownership, which
13 will be addressed in Subsection B *infra*, MHID cannot completely disavow the existence of 61-
14 248, regardless how it is packaged.

15 MHID was clear in its intention to integrate 61-248 into its SRBA claim that ultimately
16 was decreed as 61-10419 – it specifically acknowledged such in the Notice of Claim. Exhibit 6
17 to *Petition*, ¶ 14. The combination of six rights provided 18.1 cfs and 8,688 acre feet of annual
18 volume, *id.*, ¶ 6, while the MHID’s place of use, which is served by all of the district’s water
19 rights pursuant to Idaho Code 42-219(5), was expanded to include 125 acres exclusively
20 cultivated by Weitz or its successors in interest.² The Idaho Department of Water Resources
21 (“IDWR”) includes the following notation in the Conditions of Approval for 61-10419: “This
22 right is a combination of old right nos. 61-00248, 61-00249, 61-00259, 61-00265, 61-00267 &
23 61-00268.” (emphasis added). This suggests that IDWR believes such is “necessary for
24
25

26 ² Based on Weitz’s belief, and in the absence of information requested from MHID that might prove otherwise,
Weitz is the only irrigator within the Northwest quarter of Section 26, T03S R06E receiving water from MHID.



1 definition of the right, for clarification of any element of a right, or for administration of the
2 right. Idaho Code 42-1411(2)(j).

3 In effect, it is more accurate to say that 61-248 was retired rather than invalidated or
4 disallowed, which is consistent with the manner that IDWR generally handles a water right that
5 is split as part of a change of ownership or combined with others to form a larger right. Whether
6 rights are split or combined, new numbers are issued in place of the old ones, which are archived
7 as parent rights in the data entry pedigree. *See Adjudication Memorandum #26*, attached hereto
8 as Exhibit 1. Also, while not definitive evidence in light of language this Court included in the
9 *Final Unified Decree*³, it is nonetheless telling that 61-248 is found neither in the list of
10 Disallowed Water Rights Claims nor the list of Unclaimed Water Rights Decreed Disallowed
11 attached to the *Final Unified Decree*.

12 Therefore, MHID cannot earnestly assert that 61-248 no longer exists when most of its
13 elements, including those of quantifiable significance, have been combined into 61-10419 – **at**
14 **the District's request**. Being that it is indisputable that 61-248 was substantively claimed in the
15 SRBA, and without Weitz's consent, the more imperative question is who is entitled to the
16 beneficial interest that was preserved within 61-10419.

17 **B. Weitz's proprietary interest in beneficial use established under 61-248**
18 **significantly outweighs MHID's "nominal legal title."**

19 The United States Supreme Court appreciates that states which adhere to the doctrine of
20 prior appropriation place paramount emphasis on the requirement of beneficial use. "[I]t long has
21 been established law that the right to the use of water can be acquired only by prior appropriation
22 for a beneficial use; and that such right when thus obtained is a property right, which, when
23 acquired for irrigation, becomes, by state law ... part and parcel of the land upon which it is
24 applied." *Ickes v. Fox*, 300 U.S. 82, 95-96, 57 S. Ct. 412, 417 (1937). This clearly holds true in

25
26 ³ "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*, p. 10.

{POS24MK7, 1637 01 LMM}



1 Idaho, where “[b]eneficial use is enmeshed in the nature of a water right,” *Pioneer Irrigation*
2 *Dist.*, 144 Idaho at 113, 157 P.3d at 607, and state law “signif[ies] that the beneficial users have
3 an interest that is stronger than mere contractual expectancy.” *Id.* at 114, 157 P.3d at 608.

4 So it is incredible that MHID, an entity which appropriates water for the benefit of its
5 shareholders but does not itself implement beneficial use, would seek to deprive Weitz of a
6 proprietary interest that has been exercised by Weitz and its predecessors for 136 years. MHID
7 insists, however indirectly, that by virtue of the *Final Unified Decree* it now holds full ownership
8 of the right of use established under 61-248, and is thereby released from any obligation to
9 deliver water to Weitz through its system. *Petition*, ¶ 1. But in so concluding, MHID relies on
10 assumptions that do not correspond with Idaho case law.

11 First, MHID chooses to ignore the limitations of its ownership interest. As first described
12 in *Nevada v. United States*, 463 U.S. 110, 126, 103 S. Ct. 2906, 2916 (1983) and subsequently
13 recognized by the Idaho Supreme Court in *Pioneer Irrigation Dist.*, 144 Idaho at 112, 157 P.3d
14 at 608, public appropriators have at most “nominal legal title” in water rights while beneficial or
15 equitable title rested with owners of the land. (Although the aforementioned cases involved the
16 U.S. Bureau of Reclamation, the circumstances are analogous and likewise applicable to a quasi-
17 governmental entity formed under Idaho law, such as MHID.) While the Idaho Supreme Court
18 defines certain water users as customers of the original appropriator of the water right and limits
19 their interest accordingly⁴, the instant circumstances stand in direct contrast; Weitz’s
20 predecessors perfected use more than a century before MHID purportedly acquired any
21 ownership of 61-248 through operation MHID’s filing in the SRBA.

22
23
24 ⁴ “One who acquires from an appropriator, whose right was initiated by appropriation under sec. 1, art. 15 [of the
25 Idaho Constitution] for ‘sale, rental or distribution,’ is not the owner of the appropriation and does not acquire the
26 rights of an appropriator but he simply acquires the rights of a user and consumer, as distributee of the water under
secs. 4 and 5, art. 15, of the Constitution.” *Nampa & Meridian Irrigation Dist. v. Barclay*, 56 Idaho 13, 19, 47 P.2d
916, 921 (1935).



1 Second, this separation of legal and beneficial ownership interests signals a trust
2 relationship between MHID and Weitz that transcends the association typically recognized
3 between an irrigation district and its shareholders. Pursuant to Idaho Code 43-316 and as
4 underscored by the state Supreme Court, all property acquired by an irrigation district, including
5 water rights, is held in trust for the benefit of landowners within its boundaries. *See, e.g., Jensen*
6 *v. Boise-Kuna Irrigation Dist.*, 75 Idaho 133, 141, 269 P.2d 755, 760 (1954), and *Yaden v. Gem*
7 *Irr. Dist.*, 37 Idaho 300, 308-309, 216 P. 250, 253 (1923). Yet in this instance, MHID seeks to
8 exclude Weitz, one of its shareholders, from the benefit of a proprietary interest that Weitz used
9 to exclusively own. For a fiduciary charged with the duty of managing a water right for its
10 beneficiaries' use and enjoyment, *Fort Vannoy Irrigation Dist. v. Water Res. Comm'n*, 345 Ore.
11 56, 86, 188 P.3d 277, 295 (2008), that seems statutorily violative, not to mention unduly harsh.

12 And third, MHID's contention that Weitz's efforts in this matter amount to a collateral
13 attack on the SRBA, *Petition*, ¶ 49, is simply erroneous. Weitz is not challenging the conclusions
14 of this Court, but rather MHID's attempts to interpret the *Final Unified Decree* in a manner that
15 divests Weitz of an historic and valuable proprietary interest. *Counterclaim*, ¶¶ 13, 14. To be
16 precise, Weitz seeks to secure beneficial title to the portion of 61-10419 that represents the use
17 that can be attributed to 61-248, particularly the 3.2 cfs diversion rate.

18 In the event this may still be construed as a collateral attack, Weitz once more refers to
19 *Nevada v. United States*, and the U.S. Supreme Court's treatment therein of comparable
20 circumstances. Nearly 30 years after a final decree was entered in the adjudication of the Truckee
21 River, the Bureau of Reclamation sued on behalf of the Pyramid Lake Indian Reservation in an
22 effort to acquire additional water rights. 463 U.S. at 113, 103 S. Ct. at 2910. Although the
23 Supreme Court ultimately rejected the attempt to undo the decree, ruling that water rights were
24 not "like so many bushels of wheat, to be bartered, sold or shifted about as the Government
25 might see fit," *id.* at 126, 103 S. Ct. at 2916, the interests of the parties needed to be ascertained.
26 Or, as the Idaho Supreme Court understood the process:



1 The defendants argued that the [prior] litigation was *res judicata* against the
2 government and the tribe. The government responded that the court below simply
3 approved a reallocation of the water decreed in the [prior] litigation to a single party
4 (the United States) from reclamation use to reservation use. The Court did not
5 accept this theory. Before holding that *res judicata* precluded the government from
6 attempting to reallocate the water, the Court had to identify whose water the
7 reclamation water was. It was not the government's.

8 *Pioneer Irrigation Dist.*, 144 Idaho at 112, 157 P.3d at 606 (emphasis added). In other words, the
9 ruling favored the party that had more than a “nominal” interest in the water. *Id.* And in that
10 sense, Weitz has a vastly superior claim to MHID, just as it did prior to the SRBA.

11 V. CONCLUSION

12 As demonstrated above, MHID cannot show, as a matter of law, that Weitz's beneficial
13 interest in Water Right No. 61-248 was invalidated as the result of the SRBA's *Final Unified*
14 *Decree*. Therefore, Weitz respectfully requests that this Court grant its motion for summary
15 judgment on the portions of this matter relating to Weitz's right to beneficial use.

16 DATED this 12th day of February, 2021.

17 SCHROEDER LAW OFFICES, P.C.

18 

19
20 Laura A. Schroeder, ISB #3799
21 James Browitt, ISB #9016
22 Attorneys for Weitz & Company, Inc.



EXHIBIT 1

EXHIBIT 1

ADJUDICATION MEMORANDUM # 26

TO: Adjudication Bureau Staff

FROM: Don Shaff, Adjudication Bureau Chief 

SUBJECT: Data entry trail for splitting or combining existing water rights

REVISED: April 13, 2009

The process of splitting or combining existing water rights in adjudication claims taking requires a clearly stated policy with which all staff are familiar. The following procedure must be followed whenever a claim splits or combines existing water right(s).

The claim should reference the number of the parent, or base, right(s). When a claim is for a portion of a pre-existing right, it might not be possible to identify the specific portion of a decreed or licensed right being claimed, but every effort should be made to maintain data integrity.

Splitting an existing water right (multiple claimants each claiming a previously recorded water right or a portion thereof):

1. Determine the parent (base) water right number from the claim or water right database.
2. If not already completed, create an adjudication claim record for the parent (base) water right number.
3. Follow the instructions in Workflow to split the parent (base) water right. Workflow will automatically update the pedigree in this process and add the appropriate conditions listing parent and new water right numbers.

Combining two or more water rights (same priority date and delivery through the same diversion system are required; or if priority dates are different, the claimant is willing to take the most junior of all priorities by combining rights with different priorities):

1. Determine the parent water right numbers from the claim or water right database.
2. If not already completed, create adjudication claim records for the parent water right numbers.
3. Renumber one of the parent water rights to create the new claim number representing the combination of the parent water rights. DO NOT use one of the original numbers for the combined right. Note: This is different from the Water Allocations process.
4. Set the status of the subsequent parent claims to "Parent." The status of the first claim will automatically set to "Parent."

5. Update the pedigree to reflect the combination. This can be counterintuitive to those more familiar with splitting rights than combining them and those attempting it for the first time should see their supervisor.
6. Update the conditions in each parent right to reflect they have been combined into a new water right number. The condition should list the old and new water right numbers. (The reference to the original right can aid in claim analysis during review and recommendation, for example, in determining if the right was overclaimed or underclaimed. After partial decree, this information is beneficial in determining which rights were not claimed but should have been, and which rights have been superseded by partial decrees.)
7. Update the conditions in the child right to reflect its combination of parent rights. The condition should list the old and new water right numbers.

CERTIFICATE OF MAILING

I hereby certify that on February 12, 2021 I caused a true and correct copy of the foregoing ***MEMORANDUM IN SUPPORT OF WEITZ'S MOTION FOR SUMMARY JUDGMENT*** to be mailed with sufficient first-class postage to the following:

Chris M. Bromley
Candice M. McHugh
McHugh Bromley, PLLC
380 S. 4th Street, Suite 103
Boise, ID 83702
Attorney for Mountain Home Irrigation District

United States Department of Justice
Environment & Natural Resources Division
550 W Fort St., MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P.O. Box 83720
Boise, ID 83720-0010

IDWR Document Repository
P.O. Box 83720
Boise, ID 83720-0098

Dated this 12th day of February, 2021.



Laura A. Schroeder, ISB # 3799
James Browitt, ISB #9016
Schroeder Law Offices, P.C.
1915 N.E. Cesar Chavez Blvd.
Portland, Oregon 97212
PHONE – (503) 281-4100
FAX – (877) 600-4971
counsel@water-law.com
Attorneys for Weitz & Company, Inc.

