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MAR 23 2021

DEPARTMENT OF
WATER RESOURCES

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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

**WEITZ'S RESPONSE TO MHID'S
MOTION TO STRIKE EXHIBIT 1,
EXHIBIT 2, AND FOOTNOTE 2 TO
WEITZ'S RESPONSE TO MHID'S
MOTION FOR SUMMARY JUDGMENT**

Weitz & Company, Inc., by and through its counsel of record, Schroeder Law Offices, P.C., hereby files this Response in opposition to the Mountain Home Irrigation District's ("MHID" or "District") March 4, 2021 *Motion to Strike Exhibit 1, Exhibit 2, and Footnote 2 to Weitz's Response to MHID'S Motion for Summary Judgment* and MHID's contemporaneously filed Memorandum in Support thereof ("Memo"). MHID's motion should be denied for the reasons set forth below.

ARGUMENT

MHID takes issue with Weitz's attempt to introduce evidence that, in addition to rebutting the District's assertions, is offered for the ease and convenience of this Court. Although MHID's position might be understandable if this material had been extracted from some dubious source, it was retrieved from the record of the responsible agency, the Idaho Department of



1 Water Resources (“IDWR”), as the documents themselves would tend to indicate. Weitz is
2 remiss for not clarifying that upon introduction in its *Response to MHID’s Motion for Summary*
3 *Judgment* (“Weitz Response”), but said neglect does not negate the probative value of this
4 documentation nor should it preclude admissibility pursuant to Idaho Rule of Evidence (I.R.E.)
5 402.

6 MHID’s presumption regarding Weitz’s motive for introducing the exhibits in question is
7 misguided. Rather than attempting to establish “genuine issues of material fact,” *Memo*, p. 4,
8 Weitz was pointedly contradicting statements MHID represented as indisputable. This is
9 especially true regarding Exhibit 1, IDWR’s *Adjudication Claim Verification Report* for Claim
10 No. 61-10419, which rebutted MHID’s assertion that elements of 61-248 were not decreed in
11 another water right. *MHID Memorandum in Support of Motion for Summary Judgment* (“MHID
12 SJ Memo”), p. 8.

13 Page 8 of Exhibit 1 clearly shows that the 18.1 cfs diversion rate claimed by MHID in 61-
14 10419 incorporated the diversion rate historically recognized under 61-248, 3.2 cfs (or 160
15 miner’s inches). This not only reflects MHID’s intention of combining six water rights under 61-
16 10419, *see also* Exhibit 1, p. 1, it illustrates IDWR’s understanding of how MHID arrived at that
17 aggregate amount. Further, it directly refutes the District’s assertion that, pursuant to Idaho law,
18 the use established under 61-248 can no longer be diverted, *MHID SJ Memo*, p. 5. Indeed,
19 reading Exhibit 1 together with IDWR’s recommendation and partial decree for 61-10419,
20 Exhibits 7 and 9 to *Verified Petition for Declaratory Judgment* (“Petition”), shows that the 3.2
21 cfs exercised under 61-248 **is still being diverted**, pursuant to IDWR’s approval and this Court’s
22 authorization, under 61-10419.

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1 Exhibit 1 also provides insight as to the determination of the date of priority for 61-
2 10419. Of the six water rights combined into 61-10419, including 61-248, the most junior of
3 priorities, May 1, 1886, was associated with 61-259 and 61-265. Pursuant to IDWR policy¹, May
4 1, 1886 was recommended as the priority date for 61-10419. Exhibit 1, p. 2.

5 Exhibit 2, IDWR's *Water Right Claim Proof Reading Report* for 61-248, was introduced
6 solely for the purpose of demonstrating the place of use IDWR historically recognized under 61-
7 248. Said place of use, which had been irrigated by Weitz and its predecessors in interest, was
8 incorporated into MHID's service area. Exhibit 6 to *Petition*, ¶ 10.

9 Pursuant to I.R.E. 401, evidence is relevant if (a) it has a tendency to make a fact more or
10 less probable than it would be without the evidence; and (b) the fact is of consequence in
11 determining the action. Being that Exhibits 1 and 2 unquestionably satisfy both of those
12 requirements, the issue turns to whether they should be excluded due to concerns over unfair
13 prejudice, potential confusion or undue delay, or whether they represent an unnecessary
14 cumulation of evidence. I.R.E. 403.

15 Said Exhibits pose no such complications. Considering their probative and instructive
16 value, Weitz hereby requests this Court take judicial notice of both pursuant to I.R.E. 201(c).

17 As for MHID's challenge of Weitz's statement made in footnote 2, *Weitz Response*, p. 4,
18 Weitz points out that the same statement was made verbatim in its *Memorandum in Support of*
19 *Summary Judgment*, p. 5, fn. 2. So while MHID had a prior opportunity to address Weitz's
20 statement, or could have objected to it at that juncture of the proceeding, the District chose to do
21 neither.

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25 ¹ See *Adjudication Memorandum # 26*, Exhibit 1 to *Memorandum in Support of Weitz's Motion for Summary*
26 *Judgment*.



1 **CONCLUSION**

2 For the reasons stated above, this Court should deny MHID's Motion to Strike and admit
3 for consideration all evidence provided by Weitz.

4
5 DATED this 16th day of March, 2021.

6 SCHROEDER LAW OFFICES, P.C.

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9 _____
10 Laura A. Schroeder, ISB #3799

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12 *Attorneys for Weitz & Company, Inc.*



CERTIFICATE OF MAILING

I hereby certify that on March 16, 2021, I caused a true and correct copy of the foregoing
***WEITZ'S RESPONSE TO MHID'S MOTION TO STRIKE EXHIBIT 1, EXHIBIT 2, AND
FOOTNOTE 2 TO WEITZ'S RESPONSE TO MHID'S MOTION FOR SUMMARY
JUDGMENT*** to be mailed with sufficient first-class postage to the following:

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Dated this 16th day of March, 2021.



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