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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
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11 In Re SRBA
12 Case No. 39576
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Subcases No. 61-248 and 61-10419

**WEITZ'S RESPONSE TO MHID'S
MOTION TO STRIKE PORTIONS OF
AFFIDAVITS OF TIMOTHY M. HEALY,
DANIEL P. WEITZ, AND EXHIBIT 1 TO
MEMORANDUM IN SUPPORT OF
WEITZ'S MOTION FOR SUMMARY
JUDGMENT**

17 Weitz & Company, Inc., ("Weitz") by and through its counsel of record, Schroeder Law
18 Offices, P.C., hereby files this Response in opposition to the Mountain Home Irrigation District's
19 ("MHID") February 26, 2021 *Motion to Strike Portions of the Affidavits of Timothy M. Healy,*
20 *Daniel P. Weitz, and Exhibit 1 to Memorandum in Support of Weitz's Motion for Summary*
21 *Judgment* ("Motion") and MHID's contemporaneously filed Memorandum in Support thereof.
22 MHID's motion should be denied for the reasons set forth below.

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ARGUMENT

A. Weitz has made no judicial admission regarding the existence of 61-248.

In moving to strike portions of affidavits executed by Timothy M. Healy (“Healy Affidavit”) and Daniel P. Weitz (“Weitz Affidavit”), MHID leans heavily on an assertion made in its *Memorandum in Response to Weitz Memorandum in Support of Motion for Summary Judgment* (“MHID Response”) – that Weitz has acknowledged Water Right No. 61-248 no longer exists, which qualifies as a judicial admission. Accordingly, MHID contends that allegedly contradicting statements in the *Healy Affidavit*, ¶ 6, and the *Weitz Affidavit*, ¶¶ 5, 6 and 7, constitute hearsay, which is inadmissible pursuant to Idaho Rule of Evidence (I.R.E.) 802. Weitz adamantly disputes this argument, and has thoroughly rebutted it in its *Reply to MHID’S Response to Weitz’s Motion for Summary Judgment* (“Weitz Reply”), Sec. I.A. In sum, MHID has taken portions of statements made in briefing by Weitz and framed them to suggest that Weitz has thereby acknowledged that 61-248 has been unequivocally invalidated. But a reading of Weitz’s complete statements, along with Weitz’s unwavering posture on the continued existence of the substance of 61-248, *id.*, demonstrates that no “deliberate, clear, and unequivocal statement” had been made to the contrary. *Strouse v. K-Tek, Inc.*, 129 Idaho 616, 619, 930 P.2d 1361, 1364 (Ct. App. 1997).

B. Statements made in Weitz and Healy Affidavits are based on personal knowledge so I.R.E. 701(c) is inapplicable to their admissibility.

Weitz challenges MHID’s allegations that the affiants’ statements identified above are inadmissible because they include “legal analysis couched as factual knowledge.” *Motion*, Sec. I. While MHID is correct in identifying Mr. Weitz and Mr. Healy as “fact” rather than expert witnesses, it is erroneous to suggest that their respective statements regarding water use on Bennett Ranch amounts to unqualified opinions based on “technical or other specialized knowledge.” I.R.E. 701(c).



1 Conversely, the statements of both affiants can be directly attributed to personal
2 knowledge – Mr. Weitz as the owner of the property historically known as Bennett Ranch, *Weitz*
3 *Affidavit*, ¶ 3, and Mr. Healy as the longtime manager of farm operations at Bennett Ranch.
4 *Healy Affidavit*, ¶¶ 2, 3 and 4. Mr. Weitz can certainly speak to the extent of the interests he
5 obtained in acquiring Bennett Ranch in 2006, including a historic beneficial use of water, *Weitz*
6 *Affidavit*, ¶ 5, which was and has continued to be used for the purpose of irrigation. *Id.*, ¶¶ 6-7.
7 Mr. Healy presumably understands the basis for said beneficial use and Weitz’s entitlement to it,
8 being that he has been responsible for coordinating with MHID the delivery of water to Bennett
9 Ranch since 1987, *Healy Affidavit*, ¶ 5, and would not need familiarity with “MHID’s internal
10 management,” *Motion*, p. 4, to carry out those responsibilities. Indeed, these are factual
11 observations by persons uniquely qualified to make them.

12 While I.R.E. 602 states that “[a] witness may testify to a matter only if evidence is
13 introduced sufficient to support a finding that the witness has personal knowledge of the matter,”
14 it also clarifies that “[e]vidence to prove personal knowledge may, but need not, consist of the
15 witness’s own testimony.” *Taft v. Jumbo Foods, Inc.*, 155 Idaho 511, 516, 314 P.3d 193, 198
16 (2013). Therefore, the involvement of Mr. Weitz and Mr. Healy in this matter and their
17 understanding of the proximate circumstances should not be disregarded. Yet even if this Court
18 were to view the statements of Mr. Weitz and Mr. Healy as opinions, they would not be
19 precluded by I.R.E. 701(c) because they do not involve “technical” or “specialized knowledge.”

20 In regard to Mr. Healy’s statement in question, *Healy Affidavit*, ¶ 6, Weitz would
21 stipulate to striking all but the following language: “Water delivered to Bennett Ranch by
22 Mountain Home Irrigation District is owned by Weitz & Company, Inc., or its predecessors in
23 interest.”

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1 **C. AJ Memo is relevant because it serves as a “Guidance Document” for existing**
2 **IDWR policy.**

3 Weitz submitted *Adjudication Memo #26* (“AJ Memo”) as an exhibit to the *Memorandum*
4 *in Support of Weitz’s Motion for Summary Judgment* for illustrative purposes, not as dispositive
5 evidence. The Idaho Department of Water Resources (“IDWR”) describes it as a “Guidance
6 Document” for the process of “splitting or combining existing water rights in adjudications
7 claims,” which is at the heart of this matter.

8 MHID argues that since the AJ Memo was issued nine years after 61-10419 was partially
9 decreed as a combination of six water rights, including 61-248, “it cannot be relevant for any
10 purpose.” *Motion*, Sec. C. But that misrepresents the intent of the document, which does not
11 relate to “new law but is an agency interpretation of existing law.” *AJ Memo*, p. 1. IDWR’s
12 adjudication bureau chief emphasized that the “following procedure must be followed whenever
13 a claim splits or combines existing water right(s).” *Id.* The AJ Memo is dated April 9, 2009,
14 which generally corresponded with the commencement of the North Idaho Adjudication
15 involving the Coeur d’Alene-Spokane River Basin,¹ suggesting that IDWR wanted staff to
16 adhere to policy it had followed during the Snake River Basin Adjudication – and in integrating
17 61-248 into 61-10419.

18 Considering the AJ Memo’s explanatory value concerning the process for combining
19 water rights in an adjudication claim – details regarding determining the date of priority and
20 claim renumbering are particularly relative to this matter – Weitz hereby requests this Court take
21 judicial notice of the document pursuant to I.R.E. 201(c).

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¹ See, e.g., Commencement Notice for Kootenai County Property Owners,
26 <https://idwr.idaho.gov/files/adjudication/Commencement-Notice-CSRBA-83814-83815-83816-Kootenai-Co.pdf>.



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.

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5 DATED this 15th day of March, 2021.

6 SCHROEDER LAW OFFICES, P.C.

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9 _____
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CERTIFICATE OF MAILING

I hereby certify that on March 15, 2021, I caused a true and correct copy of the foregoing ***WEITZ'S RESPONSE TO MHID'S MOTION TO STRIKE PORTIONS OF AFFIDAVITS OF TIMOTHY M. HEALY, DANIEL P. WEITZ, AND EXHIBIT 1 TO MEMORANDUM IN SUPPORT OF WEITZ'S MOTION FOR SUMMARY JUDGMENT*** to be mailed with sufficient first-class postage to the following:

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Dated this 15th day of March, 2021.



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