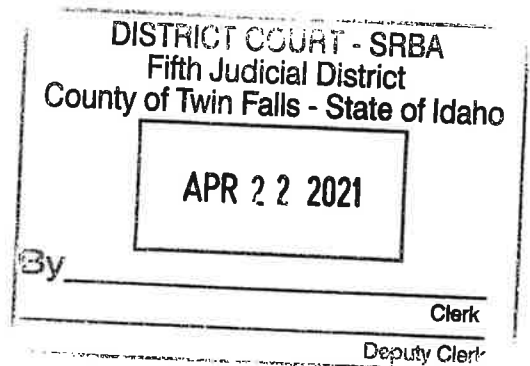


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APR 27 2021

DEPARTMENT OF
WATER RESOURCES



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) Subcase No. 61-248 and 61-10419
Case No. 39576)
)
) **ORDER ON CROSS-MOTIONS**
) **FOR SUMMARY JUDGMENT**
)
)

I.

BACKGROUND

On October 5, 2020, the Mountain Home Irrigation District (“District”) filed a *Verified Petition For Declaratory Judgment* in the above-captioned subcases. Count I seeks a declaratory ruling that water right 61-248 was disallowed in the Snake River Basin Adjudication (“SRBA”) and ceases to exist. Count II seeks a declaratory ruling that a 1923 contract between the parties’ predecessors is fully satisfied. Weitz and Company, Inc. (“Weitz”) filed counterclaims against the District on December 15, 2020. Counterclaim I seeks damages against the District for breach of fiduciary duty. Counterclaim II seeks a declaratory ruling as to whether Weitz has a beneficial ownership interest in water right 61-10419.

Pursuant to motion, the Court bifurcated this proceeding.¹ It entered an *Order* directing that count I of the *Petition* and counterclaim II will be retained and determined by this Court. After that determination, the Court will transfer count II of the *Petition* and counterclaim I to Elmore County for further proceedings.

On February 16, 2021, the parties filed cross-motions for summary judgment on the issues retained by the Court. The District asserts water right 61-248 was disallowed in the

¹ Weitz filed motions requesting that this proceeding be bifurcated and that venue for Count II of the *Petition* be transferred to Elmore County.

SRBA and is no longer a valid water right as a matter of law. Weitz asserts it holds a beneficial ownership interest in water right 61-10419 as a matter of law. Each party opposes the other's motion. The parties briefed the issues and a hearing on the cross-motions was held before the Court on March 18, 2021.

II.

STANDARD OF REVIEW

Summary judgment is properly granted when the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(a) & (c). Where the case will be tried without a jury, the district court, as the trier of fact, is entitled to draw the most probable inferences from the undisputed evidence properly before it and grant the summary judgment motion in spite of the potential of conflicting inferences. *P.O. Ventures, Inc. v. Loucks Family Irrev. Trust*, 144 Idaho 233, 237, 159 P.3d 870, 874 (2007). The burden of demonstrating the absence of a genuine issue of material fact, and that summary judgment is proper as a matter of law, is on the moving party. *McCorkle v. Northwestern Mut. Life Ins. Co.*, 141 Idaho 550, 554, 112 P.3d 838, 842 (Ct. App. 2005). "The fact that the parties have filed cross-motions for summary judgment does not change the applicable standard of review, and this Court must evaluate each party's motion on its own merits." *Potlatch Educ. Ass'n v. Potlatch Sch. Dist. No. 285*, 148 Idaho 630, 633, 226 P.3d 1277, 1280 (2010).

III.

ANALYSIS

A. History of water right 61-248 and 61-10419.

i. Pre-SRBA.

In the early 1900s, an action proceeded before the Elmore County district court to determine the amount and priorities of water rights from Canyon Creek. The court entered its decree on August 1, 1914, decreeing water right 61-248 to Richard Bennett. *Verified Petition*, Ex. 1, p.1. The right authorized Bennett to divert 160 inches (i.e., 3.2 cfs) from Canyon Creek for purposes of irrigation pursuant to an April 8, 1885, priority date. *Id.* Bennett owned a ditch

about four miles in length that he used to deliver water under the right from Canyon Creek to his land. *Bennett v. Nourse*, 22 Idaho 249, 254, 125 P. 1038, 1040 (1912).

On October 15, 1923, a contract was entered into between the Mountain Home Co-Operative Irrigation Company (“Co-Op”) and Flora Bennett.² The Co-Op owned a water delivery system in Elmore County consisting of reservoirs and canals. The Co-Op used the system to divert, carry, store, and deliver irrigation water from Canyon Creek to irrigators who beneficially used the water. In the contract, the Co-Op desired to acquire the right to use Bennett’s ditch for purposes of incorporating it into its water delivery system. It also sought the right to enlarge the ditch for purposes of delivering water to irrigators:

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

Verified Petition, Ex. 2, p.2. In exchange for conveying these rights to the Co-Op, Bennett received the ability to store water under water right 61-248 in the Co-Op’s reservoirs and to have the Co-Op divert, carry, store, and deliver that water to her land for purposes of irrigation.³

The District is a successor in interest to the Co-Op. In or about 1934, it brought a declaratory judgment action concerning the 1923 contract before the Elmore County district court. In interpreting the contract as it pertained to low water years, the court held:

[The District] purchased the irrigation system from the [Co-Op], and took its title burdened with this contract.

Under the terms of the contract and the evidence, the contract was entered into as a compromise to settle recurring disputes as to [Bennett’s] water. The agreement is clear and unambiguous, and the quantity of water is definite and certain; and by the terms of such contract [Bennett] is entitled to 500 acre feet of water to be delivered each and every season for the lands described therein.

The question of water shortage or exceptional drouth is only to be considered as a matter of defense to an action for damages brought for non-delivery.

Verified Petition, Ex. 3, pp.4-5.

² Flora Bennett was the widow of Richard Bennett, who was deceased at the time of contract.

³ Water right 61-248 as decreed by the Elmore County district court was a natural flow right, not a storage water right. The contract right of Bennett to store and demand delivery of water is subject to certain terms and conditions set forth in the contract.

In 1976, Mayme Bennett, as trustee under the will of Flora Bennett, petitioned the District to annex the land served by water right 61-248 into its boundaries. On April 6, 1976, the District entered a resolution and order granting the petition, and the land was annexed into the District. In addition to water right 61-248, the annexed land is entitled to receive 70 shares of water from the District. Weitz is a successor in interest to the land historically served by water right 61-248, and is an irrigator, shareholder, and landowner within the boundaries of the District. *See Verified Petition*, ¶ 24. (“Pursuant to Petition for Annexation and Resolution, Weitz is a shareholder of MHID”).

ii. SRBA.

On November 19, 1987, the SRBA District Court commenced the SRBA. In 1989, the District filed a *Notice of Claim* in the SRBA for water right 61-10419. The *Notice of Claim* was for the diversion of 18.10 cfs and/or 8,688 afa from Canyon Creek for irrigation, irrigation storage, and irrigation from storage purposes. In its *Notice of Claim*, the District clarified that the claim is a composite claim made up of six previously disparate parts, including water right 61-248: “This is a combination of water right numbers A61-00249, A61-00248, A61-00267, A61-00268, A61-00259, AND A61-00265.” *Verified Petition*, Ex. 6., p. 7 (emphasis added). Thus, the District’s composite claim for water right 61-10419 incorporated and included a claim for water right 61-248. Neither Weitz nor its predecessors objected to the District’s claim.

On February 12, 1999, the Director of the Idaho Department of Water Resources issued his recommendation for water right claim 61-10419. The Director recommended the right be decreed with the same priority date, diversion rate, volume, and purposes of use as claimed by the District. No objections were filed to the recommendation and the Court entered a *Partial Decree* for the water right consistent with the recommendation on October 26, 2000.⁴ The *Partial Decree* was issued in the name of the District.

Recognizing that the taking of claims in the SRBA must at some point come to an end, the Court began the process of closing basins to the filing of claims in 2011. On September 23,

⁴ The priority date of water right 61-10419 is May 1, 1886. The priority date for water right 61-248 was April 8, 1885. The reason for the difference in priority is two-fold. First, the District claimed water right 61-10419 with a May 1, 1886, priority date as opposed to the April 8, 1885, date. Second, the difference in priority corresponds with the latest dates of priority of the six disparate parts that were combined to create composite claim 61-10419.

2011, the Court entered an *Order Establishing Deadline for Late Claim Filings* in basin 61 (“*Deadline Order*”).⁵ The *Deadline Order* established November 30, 2011, as the last date to file late claims in that basin. Attached to the *Deadline Order* was a list of water rights of record with the Department that had not yet been claimed in basin 61. With respect to those unclaimed rights the *Deadline Order* provided that “[i]f unclaimed, these water rights will be decreed as disallowed.” *Deadline Order*, p.3. Water right 61-248 was not on the list of unclaimed water rights attached to the *Deadline Order* as it had been claimed by the District as part of its composite claim for water right 61-10419.

The Court subsequently entered an *Order Closing Claims Taking* in basin 61, closing the basin to the filing of claims in accordance with the *Deadline Order* (“*Closure Order*”).⁶ The *Closure Order* included a list of water rights in basin 61 that were decreed as disallowed on the basis they were not claimed in the SRBA. Water right 61-248 was not included on that list.

On August 26, 2014, the Court entered a *Final Unified Decree* concluding the SRBA. By its terms, the *Final Unified Decree* “is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987.”⁷ *Final Unified Decree*, p.9. Attachment 5 to the *Final Unified Decree* is a list of water rights filed in the SRBA that were decreed disallowed by the Court. Water right 61-248 is not included on that list. Attachment 6 to the *Final Unified Decree* a list of water right numbers for those water rights of record with the Department that were required to be claimed but were not and therefore were decreed disallowed by this Court. Water right 61-248 is not included on that list. In addition to Attachments 5 and 6, the *Final Unified Decree* contained a catch all provision providing “[a]ll other water rights with a priority date before November 19, 1987, not expressly set forth in this Final Unified Decree are hereby decreed as disallowed.” *Final Unified Decree*, p.10.

⁵ *Order Establishing Deadline for Late Claim Filings in Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85 and 86*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Sept. 23, 2011).

⁶ *Order Closing Claims Taking Basins 23, 24, 25, 43, 51, 55, 57, 61, 81, 82, 83, 84, 85 and 86, and Disallowal of Unclaimed Water Rights*, SRBA main case no. 39576, SRBA subcase no. 00-92099 (Dec. 1, 2011).

⁷ Subject to certain exceptions not here applicable.

B. The beneficial use of water memorialized in the 1914 decree under water right 61-248 was not disallowed or lost in the SRBA.

The SRBA was a general adjudication commenced on November 19, 1987. Its enacting legislation recognized that “[e]ffective management in the public interest of the waters of the Snake River basin requires that a comprehensive determination of the nature, extent and priority of the rights of all users of surface and ground water from the system be determined.” 1985 Idaho Sess. Law 28. Therefore, one purpose of the SRBA was to inventory all surface and ground water rights existing within in the basin with a priority date before November 19, 1987. To achieve an inventory, beneficial uses of water within the Snake River basin that pre-dated November 19, 1987, were required to be claimed in the SRBA or be lost.⁸ I.C. §§ 42-1409(4) & 42-1420. This requirement applied to the beneficial use of water memorized in the 1914 decree for water right 61-248.

It is the District’s position that water right 61-248 was disallowed by operation of law because no partial decree was issued for that water right number in the SRBA. The Court disagrees. This is not a case where the beneficial use of water memorialized under water right 61-248 was not claimed in the SRBA. To the contrary, the District expressly claimed it as part of its *Notice of Claim* for composite water right 61-10419. The District’s composite claim sought the full rates of diversion authorized under its six previously disparate parts, including the full diversion rate of 3.20 cfs from Canyon Creek authorized under 61-248.⁹ That portion of the District’s claim based on water right 61-248 was necessarily based on the historic beneficial use of water by Weitz and its predecessors. The record establishes it was Weitz and its predecessors that historically put water to beneficial use under water right 61-248, not the District. The District simply diverts, carries, stores, and delivers irrigation water. Without beneficial use by Weitz and its predecessors, that portion of the District’s composite claim based on water right 61-248 would not have been legally viable.¹⁰ See e.g., *U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106, 110, 157 P.3d 600, 604 (2007) (“Under either the constitutional or statutory method of

⁸ Subject to certain exceptions not here applicable.

⁹ 61-248 (3.20 cfs) + 61-246 (3.20 cfs) + 61-259 (3.20 cfs) + 61- 265 (3.20 cfs) + 61-267 (0.70 cfs) + 61-268 (4.60 cfs) = 18.10 cfs.

¹⁰ As will be explained in the following section, the District is a water delivery entity. While it diverts, carries, stores, and distributes irrigation water, it does not beneficially use that water for irrigation. Rather, beneficial use is accomplished by the irrigators the District serves.

appropriation, the appropriator must apply the water to a beneficial use in order to have a valid water right in Idaho”).

After investigating the District’s claim, the Director recommended water right 61-10419 be decreed for the full amount of diversion rate and volume claimed. Implicit in the recommendation is the Director’s recognition that the beneficial use of water for irrigation purposes under 61-248 has historically and continuously occurred. That beneficial use was accomplished by Weitz and its predecessors. The Court then entered a partial decree for water right 61-10419 for the full amount of water recommended. It is therefore inaccurate to conclude that the beneficial use of water memorialized in 1914 under water right 61-248 was disallowed or lost because of the SRBA. It was not. The use was claimed in the SRBA, recognized as viable and legally established by both the Director and the Court, and memorialized under the partial decree issued for composite water right 61-10419. While the number “61-248” is no longer used because it was folded into composite water right 61-10419, the right to divert and beneficially use 3.20 cfs of water as has historically occurred under water right 61-248 was not disallowed or lost. Rather, that right is now recognized under the partial decree issued for water right 61-10419.

That the beneficial use of water previously memorialized under water right 61-248 was not disallowed in the SRBA is supported by the plain language of the *Final Unified Decree*. Attachment 5 to the *Final Unified Decree* is a list of water rights filed in the SRBA that were decreed disallowed by the Court. Water right 61-248 is not included on that list as it was claimed and decreed under composite right 61-10419. Attachment 6 to the *Final Unified Decree* is a list of water right numbers for those water rights of record with the Department that were required to be claimed but were not and therefore were decreed disallowed by the Court. Water right 61-248 was not included on that list as it was claimed in the SRBA.¹¹ Last, the Court finds the *Final Unified Decree*’s catch all provision to be inapplicable to the facts of this case for the reason that water right 61-248 was claimed in the SRBA and decreed under composite right 61-10419. It follows the District’s *Motion for Summary Judgment* must be denied as a matter of law.

¹¹ Water right 61-248 was of record with the Department as it had been previously decreed by the Elmore County District Court in 1914. *Verified Petition*, Ex. 1, p.1.

C. Weitz owns a beneficial interest in water right 61-10419 as a matter of law.

Water right 61-10419 was decreed in the name of the District. However, that fact alone does not resolve issue of ownership due to the nature of irrigation districts and the trust relationship that exists between a district and its irrigators. Irrigation districts are creatures of statute. I.C. §§ 43-101, *et. seq.* They are quasi-governmental entities formed under Title 43, Idaho Code “for the specific purpose of providing ways and means of irrigating lands within the district and maintaining an irrigation system for that purpose.” *Lewiston Orchards Irr. Dist. v. Gilmore*, 53 Idaho 377, 23 P.2d 720, 722 (1933). Because an irrigation district is a quasi-governmental entity formed to serve the irrigators within its boundaries, a trust relationship exists between an irrigation district and those irrigators. *Id.* As part of that relationship, legal title to property acquired by an irrigation district is held by the district in trust for the benefit of the irrigators it serves. I.C. § 43-316. This includes water rights, which are recognized as real property under Idaho law. *See e.g., Nelson v. Big Lost River Irr. Dist.*, 148 Idaho 157, 158 fn.1, 219 P.3d 804, 805 fn.1 (2009) (stating “[t]he irrigation district holds title to the storage water rights in trust for the benefit of landowners within the district”); *Jensen v. Boise-Kuna Irr. Dist.*, 75 Idaho 133, 141, 269 P.2d 755, 760 (1954) (stating, “the title to all property acquired by an irrigation district, including its water rights, is vested in the district and held by the district in trust for . . . the uses and purposes set forth in the law”).

The Court finds a trust relationship exists between the District and Weitz. The District historically diverted, carried, stored, and delivered irrigation water to the land owned by Weitz and its predecessors under water right 61-248 pursuant to the terms of the 1923 contract. Water was diverted, comingled, stored and distributed together with the District water despite the 61-248 water right only being authorized for natural flow. In 1976, the land was annexed into the District. Subsequent to annexation, the land was entitled to receive 70 shares of District water.¹² *Verified Petition*, p.7. Thereafter the District continued delivery of the water to the present consistent with the same practice and according to the terms of the 1923 contract.

¹² The record is unclear whether or not it was intended that the water be transferred in exchange for shares or whether Weitz actually received shares. Neither the Petition for Annexation nor the Resolution address the 61-248 water right in connection with the annexation. The *Verified Petition* states that Weitz is a shareholder in the District and that upon annexation the lands were entitled to receive shares. At oral argument counsel for MHID represented no shares were issued to Weitz’ predecessors upon annexation.

The Court therefore finds that Weitz is an irrigator within the boundaries of the District. The Court further finds that the District serves Weitz. Weitz is dependent upon the District for its water supply. It is the District that diverts, carries, stores, and delivers irrigation water to Weitz. Upon annexation, despite Weitz still retaining title to water right 61-248, the relationship between Weitz and the District was in all other aspects indistinguishable from that of an irrigator served by an irrigation district and the irrigation district. The nature of that relationship was confirmed upon entry of the partial decree for water right 61-10419 in the SRBA. The partial decree for water right 61-10419, which included water right 61-248, was based on an accomplished transfer in accordance with Idaho Code § 42-1425. *Affidavit of Craig L. Saxton*, ¶10. The partial decree memorialized the expanded the place of use for the former 61-248 water right to within the boundaries of the District and the storage component, neither of which were authorized by the prior decree. The 61-248 component of water right 61-10419 could neither have been recommended nor decreed under its earlier priority date without application of the accomplished transfer statute. Further, only a delivery entity, as opposed to a private water user, is authorized to hold a place of use description of this type. Therefore the partial decree not only resulted in transferring title to the 61-248 water right but also memorialized the historical nature of the relationship that existed between Weitz and the District prior to its entry. Implicit in the partial decree is that water right 61-248 was historically used according to the elements as decreed. Indeed, the entry of the partial decree in the name of the District was entirely consistent with this historical use. For these reasons, the Court finds that a trust relationship existed between Weitz and the District prior to the entry of the partial decree in the SRBA and of which exists to the present. The Court approaches the ownership of water right water right 61-10419 with that trust relationship in mind.

In turning to the issue of ownership, the Court relies upon the Idaho Supreme Court's decision in *U.S. v. Pioneer Irr. Dist.*, 144 Idaho 106, 157 P.3d 600, (2007). In that case, the Idaho Supreme Court examined a dispute over ownership of federal reclamation project water rights. *Id.* at 108, 157 P.3d at 602. The United States had filed claims in the SRBA for water rights associated with federal reservoirs near Boise. *Id.* Several irrigation entities, which had contracts with the United States for the storage and delivery of water, filed overlapping claims for the same rights. *Id.* In light of the competing claims, the Idaho Supreme Court was asked to address the issue of ownership of the federal reclamation project water rights.

Recognizing the “connection between beneficial use of water and ownership rights,” the Court held:

[I]t is clear that the entity that applies the water to beneficial use has a right that is more than a contractual right. The irrigation entities in this case act on behalf of those who have applied the water to beneficial use and repaid the United States for the costs of the facilities. The irrigation districts hold an interest on behalf of the water users pursuant to state law, consistent with the Reclamation Act and U.S. Supreme Court cases that were properly recognized by the SRBA Court.

Id. at 115, 157 P.3d at 609. The Court concluded that although the name of the United States appears on the partial decrees, “title to the use of the water is held by the consumers or users of the water” as a matter of Idaho constitutional and statutory law. *Id.* The case established that the United States owns legal title to the federal reclamation project water rights, while the users of the water own a beneficial interest in those water rights. *Id.*

The same “connection between beneficial use of water and ownership rights” relied upon by the Court in *Pioneer* is applicable here. Like the United States in *Pioneer*, there is no dispute that the District does not beneficially use water for irrigation. Rather, it is a water deliver entity that diverts, carries, stores, and delivers irrigation water to irrigators within its boundaries. As a result, although the District’s name appears on the partial decree for water right 61-10419, the District simply holds legal title to that right in trust for its irrigators. *See e.g., Pioneer* 144 Idaho at 608, 157 P.3d at 608 (“Irrigation districts act as trustees for the landowners managing the water right”). Without the beneficial use of water by irrigators, and in this case Weitz and its predecessors, the District’s claim for composite water right 61-10419 would not have been viable. Therefore, by claiming water right 61-248 in the SRBA as a part of its claim for water right 61-10419, the Court holds the District gained legal title to what was water right 61-248. However, the District holds water right 61-10419 in trust for the irrigators, including Weitz, who owns a beneficial interest in the right. The ownership interest that Weitz has in water right 61-10419 is much the same as the ownership interest that an irrigator has in a federal reclamation project water right.

Absent any analysis of the contractual rights and obligations of the parties under the 1923 contract, the Court finds the scope of Weitz’ beneficial interest is not a particularized interest. Rather, it is an interest held in common with the other shareholders within the boundaries of the District. This finding is supported by the plain language of the partial decree. Specifically, the

place of use element set forth in the partial decree includes, but is is not limited to, Weitz' parcel of land. Rather, it encompasses the entire District. The fact that Weitz' beneficial interest in the right is not particularized does not resolve the issue of whether the District has an obligation to deliver water to Weitz pursuant to the 1923 contract as has occurred historically. The contractual rights and obligations of the parties under the 1923 contract is not an issue to be decided by this Court. The Court only notes that the law does allow that one irrigator within an irrigation district can have a more particularized interest than others based on agreement, contract, or other special status. *Bradshaw v. Miller Low Lift Irr. Dist.*, 85 Idaho 528, 381 P.2d 440 (1963). It follows that Weitz' *Motion for Summary Judgment* is granted to the extent it asserts Weitz owns a beneficial interest in water right 61-10419.

IV.
ORDER

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

1. The District's *Motion for Summary Judgment* dated February 16, 2021, is hereby denied.
2. Weitz' *Motion for Summary Judgment* dated February 16, 2021, is hereby granted to the extent it asserts Weitz owns a beneficial interest in water right 61-10419.

IT IS SO ORDERED.

Dated Apr. 122, 2021


ERIC J. WILDMAN
District Judge

CERTIFICATE OF MAILING

I certify that a true and correct copy of the ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT was mailed on April 22, 2021, with sufficient first-class postage to the following:

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MOUNTAIN HOME IRRIGATION DIST
VERIFIED PETITION FOR
DECLARATORY JUDGMENT

