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DEPARTMENT OF
WATER RESOURCES

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Attorney 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

**MOTION AND MEMORANDUM FOR
ATTORNEY FEES**

Weitz & Company, Inc. (“Weitz”) by and through its counsel of record, Schroeder Law Offices, P.C., hereby submits this request for reasonable attorney fees. This Motion is supported by the *Affidavit of Laura A. Schroeder for Attorney Fees* (“Schroeder Affidavit”) filed herewith.

Pursuant to Idaho Rule of Civil Procedure 54(e), Weitz is entitled to reasonable attorney fees under Idaho Code (I.C.) 12-117(1) by virtue of being the prevailing party and for having to defend against an action brought by the Mountain Home Irrigation District (“MHID”) that has no reasonable basis in law or fact. Weitz’s request is reinforced by the ability afforded this Court under I.C. 10-120(1-2) to award attorney fees to the prevailing party in a civil action where the pleaded amount is \$35,000 or less.

BACKGROUND

On October 5, 2020, MHID initiated this action by filing a *Verified Petition for Declaratory Judgment* (“Petition”), seeking declaratory rulings on the Snake River Basin Adjudication’s (“SRBA”) alleged invalidation of Water Right No. 61-248 and full satisfaction of



1 a storage, delivery and access contract between the parties' predecessors in interest. *Id.*, p. 13.

2 On December 15, 2020, Weitz filed counterclaims for damages resulting from a breach of
3 fiduciary duty and a declaratory ruling regarding a beneficial ownership in Water Right No. 61-
4 10419. *Counterclaims to Verified Petition for Declaratory Judgment* ("Counterclaim"), p. 4.

5 Also on December 15, 2020, Weitz filed a motion to change venue of the contractual
6 elements of this matter to the Fourth Judicial District Court for Elmore County. Pursuant to that
7 motion, this Court on January 22, 2021 ordered the proceeding bifurcated, retaining jurisdiction
8 over Count I and Counterclaim II. Following determination on those claims, the remainder of the
9 proceeding would be transferred to Elmore County. *Order on Motion to Dismiss or in the*
10 *Alternative Motion to Change Venue* ("Transfer Order"), pp. 2-3.

11 The parties subsequently filed cross motions for summary judgment on the retained
12 counts, and a hearing was held before this Court on March 18, 2021. In a ruling issued April 22,
13 2021, this Court denied MHID's Count I while granting Weitz's Counterclaim II to the extent
14 that Weitz owns a beneficial interest in 61-10419. *Order on Cross-Motions for Summary*
15 *Judgment* ("Summary Judgment Order"), p. 11. The Summary Judgment Order was confirmed
16 by this Court in the *I.R.C.P. 54(b) Partial Judgment* issued May 20, 2021.

17 **APPLICABLE STANDARD FOR ATTORNEY FEES**

18 Idaho courts have the discretion to determine whether attorney fees are reasonable. *Bott*
19 *v. Idaho State Bldg. Auth.*, 128 Idaho 580, 592, 917 P.2d 737, 749 (1996). That determination of
20 reasonableness is based on the following factors listed in I.R.C.P. 54(e)(3):

- 21 (A) the time and labor required;
- 22 (B) the novelty and difficulty of the questions;
- 23 (C) the skill requisite to perform the legal service properly and the experience and ability
of the attorney in the particular field of law;
- 24 (D) the prevailing charges for like work;
- 25 (E) whether the fee is fixed or contingent;
- 26 (F) the time limitations imposed by the client or the circumstances of the case;
- (G) the amount involved and the results obtained;
- (H) the undesirability of the case;

{P0536681; 1637.01 LMM }



- (I) the nature and length of the professional relationship with the client;
(J) awards in similar cases;
(K) the reasonable cost of automated legal research (Computer Assisted Legal Research),
if the court finds it was reasonably necessary in preparing a party's case;
(L) any other factor which the court deems appropriate in the particular case.

Sun Valley Potato Growers, Inc. v. Tex. Refinery Corp., 139 Idaho 761, 769, 86 P.3d 475, 483 (2004). While the court must consider all 12 factors in weighing reasonableness, it does not need to specifically address each so long as the record clearly indicates that all were indeed considered. *Boel v. Stewart Title Guar. Co.*, 137 Idaho 9, 16, 43 P.3d 768, 755 (2002). Therefore, Weitz offers the following summary of factors enumerated in I.R.C.P. 54(e)(3) as they apply in this instance.

(A) Time and Labor Required: Weitz claims a total of 314.6 hours and \$83,094.04 in fees for legal services provided by Schroeder Law Offices, which includes work undertaken by three attorneys, three paralegals and two legal assistants. *Schroeder Affidavit*, pp. 3-4.

(B) Novelty and difficulty of questions: The underlying issue in this matter, the rightful ownership of beneficial use established and historically exercised under 61-248, required this Court to weigh the finality of the SRBA against concepts regarding legal and equitable title of water rights. Developing Weitz's position, which this Court ultimately found persuasive, required extensive research.

(C) Requisite skill to properly perform legal service and attorneys' experience and ability in that field of law: Laura Schroeder has been licensed to practice law in Idaho since 1988, founded Schroeder Law Offices 1991 and since that time has established the firm and its attorneys as premier lawyers focused on water rights and associated real property issues. [Laura A. Schroeder - Schroeder Law Offices \(water-law.com\)](http://www.Laura A. Schroeder - Schroeder Law Offices (water-law.com)) Schroeder Law Offices practices in a specialized area of law and is well-known with an excellent reputation. James Browitt has been licensed to practice law



1 in Idaho since 2013 and has been associated with Schroeder Law Offices all of that
2 time, currently serving in an of-counsel capacity. Jim Browitt, Of Counsel Attorney -
3 Schroeder Law Offices (water-law.com)

4 **(D) Prevailing charges for like work:** Based on Weitz's knowledge, the fees charged by
5 Schroeder Law Offices are consistent with those charged by other attorneys handling
6 water law-related matters within Idaho.

7 **(E) Whether fee is fixed or contingent:** As reflected in the *Schroeder Affidavit*, legal
8 work was billed on an hourly rate.

9 **(F) Time limitations imposed by circumstances of case:** Weitz is an irrigator, and is
10 therefore reliant on the delivery of water from MHID during irrigation season. MHID
11 has also acknowledged the time-sensitive nature of the matter. *Petition*, ¶ 43.

12 **(G) Amount involved and results obtained:** Although a monetary amount was not
13 pleaded in this portion of the matter, *see* Section B of Argument, *infra*, the value of
14 beneficial title is unquestionably significant. Thus, Weitz was justified in aggressively
15 pursuing the favorable result this Court granted.

16 **(H) Undesirability of case:** While this matter may be considered undesirable by
17 attorneys who do not practice in the area of water law, it was and is appealing to
18 Schroeder Law Offices, which specializes in this particular realm.

19 **(I) Nature and length of professional relationship with client:** Schroeder Law Offices
20 was retained by Weitz in October of 2020 specifically because water law is the firm's
21 field of expertise.

22 **(J) Awards in similar cases:** This Court has not hesitated to award attorney fees in
23 water-related disputes when an award is provided for by statute and the required
24 elements are satisfied.

25 **(K) Reasonable cost of automated legal research:** Schroeder Law Offices subscribes to
26 LexisNexis, and its attorneys and paralegals use the service for the majority of its



1 legal research. However, the only costs of this nature reflected herein are those
2 incurred as billable time in the course of research.

3 **(L) Other factors which court deems appropriate:** As articulated below, Weitz
4 maintains its was forced to defend against an action that MHID did not have a
5 reasonable basis, in either fact or law, to bring. Weitz has made a substantial
6 investment in this effort, and is equitably entitled to recover some if not all of that
7 expense.

8 ARGUMENT

9 **A. Weitz meets the requirements set forth in I.C. 12-117(1) and is therefore entitled 10 to reasonable attorney fees**

11 It is indisputable that Weitz, a corporation, and MHID, a political subdivision, meet the
12 “adverse party” definitions set forth in I.C. 12-117¹, which authorizes a court to award the
13 prevailing party reasonable attorney fees in civil actions. It is likewise unquestionable that Weitz
14 is the prevailing party in the portion of the matter heard and determined by this Court.
15 Accordingly, the only remaining consideration is whether MHID, the non-prevailing party,
16 brought and pursued this matter under a reasonable context or mere pretense. The findings of this
17 Court reveal that MHID’s actions represented the latter.

18 MHID’s stance rested on the erroneous deduction that 61-248, or more specifically
19 Weitz’s beneficial interest in said water right, was disallowed by operation of the SRBA.
20 *Petition*, ¶¶ 1, 47; *MHID Memorandum in Support of Motion for Summary Judgment*, pp. 5, 8.
21 Not only did MHID reject Weitz’s credible assertions to the contrary, it disregarded a
22 fundamental principle of Idaho irrigation law, incontrovertible evidence that 61-248 was indeed

23
24 ¹ I.C. 12-117(6) For purposes of this section:

25 (c) “Person” means any individual, partnership, limited liability partnership, corporation, limited liability
company, association or any other private organization.

26 (d) “Political subdivision” means a city, a county, any taxing district or a health district.
(Emphases added)



1 claimed in the SRBA, and settled case law – all points upon which Weitz’s position was
2 grounded.

3 First, Idaho’s Constitution establishes that when water is appropriated for agricultural
4 purposes, appropriators or their successors in interest shall not, without their consent, “be
5 deprived of the annual use of the same.” *Idaho Const.* Art. XV, § 4. Weitz’s predecessors
6 established the beneficial use recognized under 61-248, and said use has been continually
7 exercised by appropriators within that chain of title. Although said use was claimed by MHID in
8 the SRBA, MHID did so without the consent of Weitz. *Memorandum in Support of Weitz’s*
9 *Motion for Summary Judgment*, p. 6, ll. 12-16. Therefore, the proposition that the beneficial use
10 established and historically exercised under 61-248 now belongs to MHID under 61-10419,
11 *Petition*, ¶ 9, amounts to an unconstitutional deprivation of Weitz’s proprietary interest – in other
12 words, it has no reasonable legal basis.

13 Second, MHID has inaccurately alleged throughout the course of this matter that the
14 beneficial use historically recognized under 61-248 was not claimed in the SRBA. Substantial
15 evidence indicates otherwise. *See, e.g., Petition*, ¶ 25; Exhibit 6 to *Petition*; *Order*, p. 6, fn. 9.
16 Further, as this Court acknowledged, the portion of MHID’s claim substantively incorporating
17 61-248 would not have been viable if that beneficial use had not been developed and exercised
18 by Weitz and its predecessors in interest. *Order*, p. 6.

19 Weitz has not disputed that, pursuant to the enabling legislation of the SRBA and the
20 statutory authority established thereby, historic (pre-1987) beneficial uses such as 61-248 would
21 have been lost if they were not claimed. Nor has Weitz declared that Weitz or its predecessors
22 submitted a claim for the use recognized under 61-248 during the SRBA’s filing period, which
23 concluded November 30, 2011 in Basin 61. *Order Establishing Deadline for Late Claim Filings*.
24 But as has been thoroughly demonstrated, a claim **was filed** for said use in the SRBA, and it was
25 memorialized within 61-10419. Consequently, MHID introduced and perpetuated a theory that
26 has no factual basis.



1 And third, MHID has asserted an ownership interest to which case law says it is not
2 entitled. As initially delineated in *Nevada v. United States*, 463 U.S. 110, 126, 103 S. Ct. 2906,
3 2916 (1983) and embraced by the Idaho Supreme Court in *United States v. Pioneer Irrigation*
4 *Dist. (In re SRBA Case No. 3957)*, 144 Idaho 106, 112, 157 P.3d 600, 608 (2007), public
5 appropriators, such as MHID, have at most “nominal legal title” in water rights while beneficial
6 or equitable title rested with owners of the land. This division of ownership interests signifies a
7 trust relationship, in which property acquired by an irrigation district, including water rights, is
8 held in trust for the benefit of landowners within district boundaries. I.C. 43-316. *See also, e.g.,*
9 *Jensen v. Boise-Kuna Irrigation Dist.*, 75 Idaho 133, 141, 269 P.2d 755, 760 (1954), and *Yaden*
10 *v. Gem Irr. Dist.*, 37 Idaho 300, 308-309, 216 P. 250, 253 (1923). So Weitz, which owns and
11 irrigates land within MHID’s boundaries, is owed a trust/fiduciary duty by MHID, which holds
12 legal title in the portion of 61-10419 that was historically recognized under 61-248, but nothing
13 more. Given this limited interest, MHID’s efforts to prevent Weitz from utilizing its more
14 cognizable beneficial title, *Black Canyon Irrigation Dist. v. State (In re SRBA Case No. 39576)*,
15 163 Idaho 144, 151-152, 408 P.3d 899, 906-907 (2018), were not legally sustainable.

16 Under I.C. 12-117, an award of attorney fees is not left to the court’s discretion; if it finds
17 an adverse party that falls within the description of I.C. 12-117(6) did not act with a reasonable
18 basis in fact or law in a proceeding involving a party that prevails in the action, fees shall be
19 awarded. *Rincover v. Dep’t of Fin.*, 132 Idaho 547, 549, 976 P.2d 473, 475 (1999) (emphasis in
20 original). As illustrated above, MHID brought and pursued this matter under the pretense of legal
21 and factual support when in actuality its position was not reasonably grounded in either. Weitz,
22 who was forced to defend against an action that threatened its legally recognized proprietary
23 interest, is therefore entitled to an award of reasonable attorney fees pursuant to I.C. 12-117(1).

24 ///

25 ///

26 ///



1 **B. If the Court determines MHID acted reasonably, Weitz is entitled to fees under**
2 **I.C. 12-120 as the prevailing party**

3 Similar to I.C. 12-117, I.C. 12-120 requires an award when the underlying conditions are
4 met. As pertains here, Weitz satisfies these conditions simply by being the prevailing party in a
5 civil action where the amount pleaded was less than \$35,000.² I.C. 12-120(1). Further, this
6 statute is applicable because it involves a counterclaim, I.C. 12-120(2), in which Weitz served
7 notice that it would seek this specific award. *Counterclaim*, p. 4.

8 However, there is a notable distinction from I.C. 12-117 that is set forth in the following
9 language of 12-120(1): “[T]here **shall be taxed and allowed to the prevailing party**, as part of
10 the costs of the action, a reasonable amount to be fixed by the court as attorney’s fees” (emphasis
11 added). Consequently, the reasonableness of a party’s approach in bringing and pursuing an
12 action do not factor into the court’s analysis.

13 [I.C. 12-120] exhibits no punitive purpose. Rather, it treats reasonable attorney fees
14 as a cost of using the court system to resolve disputes ... and it allocates this cost
15 between the parties. Because the allocation turns solely upon a determination of the
16 prevailing party, the statute is facially neutral. It identifies no favored category of
17 litigant to be rewarded, nor disfavored category to be penalized.

18 *De Wils Interiors v. Dines*, 106 Idaho 288, 291, 678 P.2d 80, 83, (Idaho App. 1984), *see also*
19 *Eighteen Mile Ranch, LLC v. Nord Excavating & Paving, Inc.*, 141 Idaho 716, 720, 117 P.3d
20 130, 134, (2005) (The court may not use the award or denial of attorney fees to vindicate his
21 sense of justice beyond the judgment rendered on the underlying dispute between the parties.)
(internal quotations omitted).

22 So while one of the acknowledged purposes of I.C. 12-117 is to serve as a deterrent to
23 groundless or arbitrary action, *Reardon v. Magic Valley Sand and Gravel, Inc.*, 140 Idaho 115,

24
25 ² Although Weitz pleaded damages of up to \$3,000,000, *Counterclaim*, p. 4, said amount was pleaded under
26 Counterclaim I, which this Court will transfer to Elmore County for further proceedings. *Transfer Order*, p. 1. No
monetary amount was pleaded by Weitz in Counterclaim II, which is the portion of the matter heard by this Court
and the subject of this Motion. *Counterclaim*, p. 4



1 118, 90 P.3e 340. 343 (2004), I.C. 12-120 proffers no such effect. It merely “produces a benefit
2 for the prevailing party and a correlative burden for the nonprevailing party,” *De Wils Interiors*,
3 106 Idaho at 291, 6788 P.2d at 83, and would be appropriate in these circumstances should this
4 Court find that MHID acted reasonably in pursuing this action.

5 **CONCLUSION**

6 Weitz submits that MHID did not have a reasonable basis of law or fact for engaging in
7 this proceeding, and respectfully requests an award of attorney fees under I.C. 12-117(1).
8 Alternatively, or in conjunction with I.C. 12-117, Weitz is entitled to attorney fees under I.C. 12-
9 120(1-2) by virtue of being the prevailing party.

10
11 DATED this 1st day of June, 2021.

12 SCHROEDER LAW OFFICES, P.C.

13 

14
15 _____
16 Laura A. Schroeder, ISB #3799
17 James Browitt, ISB #9016
18 *Attorneys for Weitz & Company, Inc.*



CERTIFICATE OF MAILING

I hereby certify that on June 1, 2021, I caused a true and correct copy of the foregoing ***MOTION AND MEMORANDUM FOR ATTORNEY FEES*** to be mailed with sufficient first-class postage to the following:

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Dated this 1st day of June, 2021.



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June 1, 2021

RECEIVED

JUN 03 2021

**DEPARTMENT OF
WATER RESOURCES**

VIA FEDERAL EXPRESS

SRBA Court
253 Third Avenue North
Twin Falls Idaho, 83303-2707

RE: SRBA Case No. 39576, Subcases 61-248 & 61-10419

Dear Clerk of the Court:

Enclosed please find for filing two (2) copies each of Weitz's *Motion and Memorandum for Attorney Fees* and *Affidavit of Laura A. Schroeder for Attorney Fees*.

A copy of the *Memorandum of Attorney's Fees Submitted by Vernon K. Smith on Behalf of Weitz & Co., Inc.* is being provided to the service list. It was filed with the court on May 28, 2021.

We appreciate your assistance with this matter. If there are any questions or concerns, please contact our office at (775) 786-8800.

Very truly yours,
SCHROEDER LAW OFFICES, P.C.

Lisa M. Gage
Paralegal

LMG:lmg

Enclosures

cc: Service List – via U.S. mail
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