

JUN 24 2021

DEPARTMENT OF
WATER RESOURCES

1 Laura A. Schroeder, ISB #3799
2 James Browitt, ISB #9016
3 Schroeder Law Offices, P.C.
4 1915 N.E. Cesar E. Chavez Boulevard
5 Portland, Oregon 97212
6 PHONE – (503) 281-4100 FAX – (877) 600-4971
7 counsel@water-law.com

8 *Attorney for Weitz & Company, Inc.*

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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
OBJECTION TO RESPONDENT'S
MEMORANDA OF ATTORNEY FEES**

Weitz & Company, Inc. ("Weitz") by and through its counsel of record, Schroeder Law Offices, P.C. ("Schroeder"), hereby submits this Response to Mountain Home Irrigation District's ("MHID") *Objection to Respondent's Memoranda of Attorney's Fees* filed June 10, 2021 ("Objection"). This Response also serves as a reply in support of Weitz's *Motion and Memorandum for Attorney Fees* filed June 3, 2021 ("Motion"), which addresses Weitz's request for reasonable attorney fees incurred by Schroeder in this matter.

MHID's objection is based on the supposition that a prevailing party has yet to be determined. *Objection*, pp. 2, 3, 8. This is categorically incorrect; the case law upon which MHID relies in advancing this erroneous conclusion does not correspond with the circumstances at issue here. Rulings by the Idaho Supreme Court that are analogous demonstrate that Weitz is the prevailing party pursuant to Idaho Rule of Civil Procedure ("IRCP") 54(d)(1)(B),



1 incorporated by reference within IRCP 54(e)(1), and is therefore entitled to reasonable attorney
2 fees under Idaho Code (I.C.) 12-117(1-2) or I.C. 10-120(1-2).

3 ARGUMENT

4 The Idaho Supreme Court recognizes a partial judgment issued pursuant to IRCP 54(b) as
5 a final judgment if it has been certified by the trial court. *Caldwell v. Cometto*, 151 Idaho 34, 40,
6 253 P.3d 708, 714 (2011). Here, this Court satisfied that requirement with its May 20, 2021
7 issuance of an *IRCP 54(b) Partial Judgment* (“May 20 Judgment”), which explicitly included
8 certification in accordance with IRCP 54(b)(1). Therefore, this Court is “empowered to award ...
9 fees pertaining either to a final judgment or to an action that has been completely
10 adjudicated.” *Caldwell*, 151 Idaho at 40, 253 P.3d at 714 (emphasis added).

11 MHID’s assertion to the contrary is unfounded. The purported guiding precedent that
12 MHID cites, *Berian v. Berberian*, 483 P.3d 937 (2020), shares certain characteristics with the
13 instant matter, but not relevant underlying facts.

14 *Berian* involved various disputes between brothers and subsequent lawsuits. *Id.* at 941.
15 The defendants moved for summary judgment, which the district court partially granted,
16 denying nine (9) of the plaintiffs’ ten (10) claims. *Id.* On appeal, the Supreme Court ruled that
17 defendants/respondents, who had requested attorney fees under I.C. 12-121, were not entitled to
18 attorney fees because the IRCP 54(b) judgment did not resolve all of the claims before the
19 district court. *Id.* at 953-54.

20 The instant matter is materially distinguishable. While *Berian* dealt with a partial
21 summary judgment, *Id.* at 941, the May 20 Judgment resolved the only claim that will be heard
22 by this Court – the ownership of the beneficial use of water established and exercised under
23 Water Right No. 61-248 and now recognized under 61-10419. The remainder of this action will
24 be heard in Elmore County, and transferred thereto when a remittitur is issued by the Supreme
25 Court. *May 20 Judgment*, ¶ 6; *Order on Motion to Dismiss or in the Alternative Motion to*
26 *Change Venue* (“Transfer Order”), ¶ 3. Accordingly, the May 20 Judgment is a ruling on the



1 parties' respective motions for summary judgment, not a partial judgment thereof – the
2 document's caption notwithstanding. This Court's continuing jurisdiction of the remainder of
3 this action is a mere formality; that portion of the case inevitably will be transferred to the proper
4 venue of Elmore County, *Transfer Order*, ¶ 3, regardless of how the instant matter proceeds.

5 But at this juncture, because the May 20 Judgment is final and is not subject to this
6 Court's revision, it is within this Court's discretion to recognize Weitz as a prevailing party and
7 award the requested fees. *Caldwell*, 151 Idaho at 40, 253 P.3d at 714. MHID's attempt to
8 characterize this action as being at the "interim stage," *Objection*, Sec. II.A, is both inaccurate
9 and irrelevant. If this Court finds that MHID proceeded without a reasonable basis in law or fact,
10 it should award Weitz reasonable fees under I.C. 12-117(1) or alternatively, I.C. 12-117(2),
11 which authorizes an award for a party that prevails "on a portion of a case."

12 While this flatly contradicts MHID's assertion that no statutory basis exists for an
13 "interim award of attorney's fees," *Objection*, p. 3, its rationale for declaring I.C. 12-120(1-2)
14 inapplicable to this action is dubious. This contention rests on the assumption that the dispute is,
15 "at its core, a constitutional issue." *Id.*, p. 5, citing *Nye v. Katsilometes*, 165 Idaho 455, 464
16 (2019). To be sure, Weitz has made reference to the constitutional implications, *see, e.g.,*
17 *Memorandum in Support of Weitz's Motion for Summary Judgment* ("SJ Memo"), p. 4, 16-21,
18 *Motion*, p. 6, 3-12, but has hardly promoted them as the cornerstone of its position. Rather, Weitz
19 has focused on the integration of 61-248 into 61-10419 and the distinction between legal and
20 beneficial interests of said use. *See, generally, SJ Memo.*

21 Pursuant to I.C. 12-120(1), "there shall be taxed and allowed to the prevailing party, as
22 part of the costs of the action, a reasonable amount to be fixed by the court as attorney's fees,"
23 and the statute treats reasonable attorney fees as a cost of using the court system to resolve
24 disputes. *De Wils Interiors v. Dines*, 106 Idaho 288, 291, 678 P.2d 80, 83, (Idaho App. 1984). As
25 the counterclaimant in an action where the pleaded amount was less than \$35,000, I.C. 12-120(1-
26



1 2), Weitz is entitled to a benefit simply by virtue of being the prevailing party while the
2 correlative burden falls on MHID. *De Wils Interiors*, 106 Idaho at 291, 6788 P.2d at 83.

3 **CONCLUSION**

4 For the reasons stated above, this Court should deny MHID's Objection and grant
5 Weitz's Motion for an award of reasonable attorney fees under I.C. 12-117(1-2) or I.C. 12-
6 120(1-2).

7
8 DATED this 21st day of June, 2021.

9 SCHROEDER LAW OFFICES, P.C.

10 
11

12 _____
13 Laura A. Schroeder, ISB #3799
14 James Browitt, ISB #9016
15 *Attorneys for Weitz & Company, Inc.*
16
17
18
19
20
21
22
23
24
25
26



CERTIFICATE OF MAILING

I hereby certify that on June 21, 2021, I caused a true and correct copy of the foregoing
***WEITZ'S RESPONSE TO MHID'S OBJECTION TO RESPONDENT'S MEMORANDA OF
ATTORNEY FEES*** 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*

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

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

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

Dated this 21st day of June, 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.

