

JUL 28 2014

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13 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
14 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

15 -----  
16 D.L.EVANS BANK, )  
17 ) Case No. CV OC 1317406  
18 )  
19 Plaintiff, )  
20 )  
21 vs. )  
22 )  
23 BALLENTYNE DITCH COMPANY, ) AMENDED COMPLAINT  
24 LIMITED; THOMAS MECHAM RICKS; )  
25 GARY SPACKMAN, IN HIS OFFICIAL )  
26 CAPACITY AS DIRECTOR OF THE )  
IDAHO DEPARTMENT OF WATER )  
RESOURCES; IDAHO DEPARTMENT )  
OF WATER RESOURCES; AARON )  
RICKS, DIRECTOR OF BALLENTYNE )  
DITCH COMPANY; SHAUN BOWMAN, )  
DIRECTOR OF BALLENTYNE DITCH )  
COMPANY; JOE KING, DIRECTOR )  
OF BALLENTYNE DITCH COMPANY; )  
STEVE SNEAD, DIRECTOR )  
OF BALLENTYNE DITCH COMPANY )  
Defendants. )

COMES NOW, Plaintiff, which for its cause of action alleges:

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP  
LAWYERS  
BURLEY, IDAHO

PARTIES

1  
2  
3 1. Plaintiff, D.L. Evans Bank (“Plaintiff”) is a valid existing corporation duly  
4 authorized to conduct business in the State of Idaho.

5 2. Defendant Ballentyne Ditch Company, Limited (“Ballentyne”), is a corporation  
6 organized and existing under the laws of the State of Idaho.

7 3. Defendant Thomas Mecham Ricks (“Ricks”) is a resident of Ada County,  
8 Idaho, and is a Director of Ballentyne Ditch Company.

9 4. Defendant Idaho Department of Water Resources (“IDWR”) is an executive  
10 department of the State of Idaho charged with controlling and supervising the appropriation,  
11 allotment, and distribution of waters within the boundaries of the State of Idaho.

12 5. Gary Spackman is the Director of the Idaho Department of Water Resources.

13 6. Shaun Bowman is a resident of Ada County, Idaho, and is a Director of  
14 Ballentyne at all times relevant to this Complaint.

15 7. Aaron Ricks is a resident of Ada County, Idaho, and is a Director of Ballentyne  
16 at all times relevant to this Complaint.

17 8. Joe King is a resident of Ada County, Idaho, and is a Director of Ballentyne at  
18 all times relevant to this Complaint.

19 9. Steve Snead is a resident of Ada County, Idaho, and is a Director of Ballentyne  
20 at all times relevant to this Complaint.

JURISDICTION

21 10. Plaintiff seeks a determination of its right to delivery of water, a declaratory  
22 judgment determining its rights to water and to stock in Ballentyne, an order directing the  
23 delivery of Ballentyne stock and water to Plaintiff, and an order requiring the Idaho  
24 Department of Water Resources to fulfill its statutory duties under the Idaho Code. This Court  
25 AMENDED COMPLAINT – PAGE 2

1 has jurisdiction under Idaho Code §§ 1-701 and -705. Venue in this District is proper under  
2 Idaho Code §§ 5-401 and -404.  
3

4 COUNT I

5 11. On or about January 17, 2008, Plaintiff entered into a Promissory Note,  
6 identified as Note No. 2015302921 (“Note No. 2921”), with Ricks in the original amount of  
7 \$1,185,000.00. The Note superseded previous notes executed by Ricks.

8 12. The indebtedness under Note No. 2921 was secured by a Deed of Trust  
9 executed and recorded on June 7, 2007, as Instrument No. 107082317 (“DOT No. 2317”). The  
10 Deed of Trust was modified on September 17, 2007, and further modified on October 23,  
11 2007, and January 17, 2008. Ricks provided security for Note No. 2921 through DOT No.  
12 2317.  
13

14 13. Per DOT No. 2317, Ricks irrevocably granted, bargained, sold, and conveyed to  
15 the trustee in trust, with power of sale, for Plaintiff’s benefit as beneficiary under the deed of  
16 trust, all of Ricks’ “right, title, and interest in and to the following described real property,  
17 together with all existing or subsequently erected or affixed buildings, improvements and  
18 fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch  
19 rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties,  
20 and profits relating to the real property, including without limitation all minerals, oil, gas,  
21 geothermal and similar matters.” The deed of trust then referred to an Exhibit A, which  
22 described two parcels of land covered by DOT No. 2317.  
23

24 14. The real property described in DOT No. 2317 has had appurtenant water rights  
25 at all material times in common with all land within the boundaries of Ballentyne. The Snake  
26 River Basin Adjudication has adjudicated these appurtenant rights.

15. Ballentyne incorporated in 1910. Its bylaws, which have never been amended,  
AMENDED COMPLAINT – PAGE 3

1 are not specific to, nor appropriate for, a ditch company delivering water to the real property to  
2 which it is appurtenant. They do not mention water rights. They do not mention delivery of  
3 water. They do not require ownership of ground within Ballentyne's boundaries as a condition  
4 of stock ownership. They do not require stock ownership as a condition of water delivery.  
5

6 16. Pursuant to Note No. 2921, Ricks was required to pay the total obligation due  
7 and owing under the Note on January 5, 2009. That obligation was not met.

8 17. Ricks filed a series of bankruptcy cases, both as an individual and as an entity,  
9 incorporating the property rights associated with DOT No. 2317 into those cases, and  
10 protecting the property from foreclosure for intermittent periods between January 2009, and  
11 November 2012.  
12

13 18. After Ricks defaulted on Note No. 2921, and during the periods when the  
14 property securing DOT No. 2317 was not involved in a bankruptcy case, Plaintiff initiated  
15 and/or rescheduled non-judicial foreclosure proceedings against the property several times.  
16 The foreclosure sales were stayed by each successive bankruptcy filing.  
17

18 19. After the property was released from the protection of an August 28, 2012,  
19 bankruptcy, Plaintiff successfully foreclosed on the property securing DOT No. 2317 on  
20 January 22, 2013.

21 20. As a result of the January 22, 2013, foreclosure sale, Plaintiff received a  
22 Correction Trustee's Deed (the "Trustee's Deed"). By the Trustee's Deed, the trustee under  
23 DOT No. 2317 conveyed to Plaintiff "all of the real property situated in the County of Ada  
24 County, State of Idaho, described as follows," referring to an Exhibit A that includes the legal  
25 description for the two parcels identified in DOT No. 2317.  
26

Per Idaho Code § 55-101, "real property" is defined as "1. Lands, possessory rights to  
land, ditch and water rights, and mining claims, both lode and placer. 2. That which is affixed

1 to land. 3. That which is appurtenant to land.”

2 21. The Trustee’s Deed transferred the water rights as an appurtenance to the land.

3 22. Ricks is not applying the water covered by the water right to a beneficial  
4 purpose.  
5

6 23. The development value of the property transferred to Plaintiff by Ricks is  
7 significantly lower without water than it is with water. Ricks’ refusal to recognize the transfer  
8 of the interest in water with the transfer of the land to which the water is appurtenant has  
9 prevented Plaintiff from effectively marketing and selling the property at its true market value  
10 with appurtenant water.  
11

12 24. The difference in value between the property with appurtenant water and  
13 without has damaged Plaintiff in the amount of \$500,000.00.

14 COUNT II

15 25. The previous paragraphs are incorporated herein.

16 26. Subsequent to the conveyance of the property rights to Plaintiff by the Trustee’s  
17 Deed, Plaintiff leased the land to be farmed. The lease was to Blue Diamond Turf, LLC (“Blue  
18 Diamond”), and Plaintiff was to have received \$4,800.00 under the lease.  
19

20 27. On or before March 21, 2013, Plaintiff approached Ballentyne, and requested  
21 delivery of water appurtenant to the land transferred pursuant to the Trustee’s Deed. In  
22 subsequent conversations, Plaintiff indicated it was willing to pay any applicable assessments  
23 for the delivery of the appurtenant water, or for the wheeling of other water, to the parcels.  
24

25 28. On or about March 27, 2013, Plaintiff sent Ballentyne supporting documents,  
26 including a copy of DOT No. 2317, identifying that Ricks had pledged the transfer of water  
under the deed of trust.

29. Ballentyne responded to Plaintiff, indicating it would not deliver the water

1 appurtenant to the land conveyed to Plaintiff by the Trustee's Deed without a court order  
2 directing it to do so, and that it would not allow for the wheeling of any water to the parcels.

3  
4 30. As a result of Ballentyne's refusal to deliver the water, Plaintiff was not able to  
5 maintain the contract with Blue Diamond or receive the benefits of that contract.

6 31. Without water, Plaintiff's ability to continue to use the parcels for agricultural  
7 purposes is in question, potentially placing an agricultural tax exemption associated with the  
8 parcels at risk.

9 32. Idaho Code § 42-912 provides that "[a]ny person, company or corporation  
10 owning or controlling any canal or irrigation works for the distribution of water under a sale or  
11 rental thereof, shall furnish water to any person or persons owning or controlling any land  
12 under such canal or irrigation works for the purpose of irrigating such land or for domestic  
13 purposes, upon a proper demand being made and reasonable security being given for the  
14 payment thereof: provided, that no person, company or corporation shall contract to deliver  
15 more water than such person, company or corporation has a title to, by reason of having  
16 complied with the laws in regard to the appropriation of the public waters of this state."

17  
18 33. Plaintiff is a party owning and controlling land within Ballentyne's boundaries.  
19 Plaintiff made a demand for delivery of water for irrigation or domestic purposes and offered  
20 to provide payment for such water. Plaintiff is entitled to delivery of such water as the owner  
21 of the land to which such water is appurtenant.  
22

23  
24 34. Ballentyne is required to deliver water to Plaintiff in accordance with Idaho law,  
25 and the Court should compel Ballentyne to do so. Ballentyne's refusal to deliver water has  
26 impaired the value of Plaintiff's property, damaging Plaintiff in the amount of \$500,000.00.

COUNT III

35. The previous paragraphs are incorporated herein.

1           36.     The water appurtenant to the property transferred to Plaintiff by Ricks is  
2 delivered through infrastructure managed by Ballentyne.

3           37.     All assessments associated with the water appurtenant to the property  
4 transferred to Plaintiff by Ricks have been paid.

5           38.     Ricks has maintained that the water is not appurtenant to ground and that the  
6 right thereto is controlled by ownership of stock in Ballentyne. This treats water as severable  
7 from ground, the ownership of which can be transferred with the stock. Ballentyne has ratified  
8 this departure from the Idaho Constitution and statutes and has denied or prevented the  
9 delivery of water to the property to which it is appurtenant, conditioning the right to delivery  
10 not upon appurtenancy, but on stock ownership.

11           39.     Ballentyne's denial or prevention of the delivery of water to the land to which  
12 the water is appurtenant has prevented Plaintiff's ability to market and sell the property for its  
13 true market value with appurtenant water.

14           40.     Thomas Ricks, Aaron Ricks, Shaun Bowman, Joe King, and Steve Snead are  
15 directors of Ballentyne, or were directors at the time Ballentyne decided to deny Plaintiff  
16 water.

17           41.     The actions of Ballentyne's directors and officers were in direct violation of  
18 Idaho law and are therefore ultra vires rendering the Directors personally liable for Plaintiff's  
19 damages. The actions of Ricks as a Director are also a direct conflict of interest, rendering it  
20 ultra vires.

21           42.     The Directors did not exercise a duty of care in directing Ballentyne to deny or  
22 prevent the delivery of water to Plaintiff, that decision was made in bad faith, and the Directors  
23 were negligent in directing or allowing Ballentyne to prevent or deny the delivery of water to  
24 Plaintiff.



1           52.     IDWR has refused to perform its duty under Idaho Code §§ 42-101, 42-602, 42-  
2 907, and 42-1805(9) to order delivery by Ballentyne to the ground to which it is appurtenant.

3           53.     The shares of Ballentyne do not represent the right to use Ballentyne's  
4 infrastructure, and are not related to water or the delivery of water.

5           54.     Plaintiff requested IDWR make a determination as to delivery of the water to  
6 the property acquired by Plaintiff pursuant to the January 2013, foreclosure. IDWR denied  
7 Plaintiff's request and indicated the appropriate forum for a determination as to whether  
8 Ballentyne is required to deliver water to the property is district court.

9           55.     IDWR's refusal to lawfully administer the water and carry out its statutory  
10 duties has allowed Ballentyne, a private ditch company, to treat a water right as severable from  
11 ground, as an incident of stock ownership, and as freely transferable with the ownership of  
12 stock. All of this is done though there is no statutory or other authorization for appropriating  
13 water to a corporation or to a share of stock.

14           56.     Under the system established and/or recognized by IDWR, the protections  
15 provided to those entitled to use water under the statutory scheme are eliminated. Instead, the  
16 ditch company is provided control over which properties within the ditch company's  
17 boundaries receive water, and which do not, regardless of whether water has become the  
18 complement of, or one of the appurtenance of, the land to which such water has been applied.

19           57.     Plaintiff is damaged by IDWR's development of, participation in, and/or  
20 complacency with a system that is in contravention to IDWR's statutory duties to supervise the  
21 allotment and appropriation of water to those who have used water for a beneficial purpose.  
22 By delegating control of water to an entity that has no statutory authorization to be "owner" of  
23 the water right and that has not beneficially applied the water to land, IDWR has abdicated its  
24 statutory duty and allowed Ballentyne to deny or prevent the delivery of water to Plaintiff.  
25  
26



1 system that has injured Plaintiff, and should be directed to follow and enforce the Idaho  
2 Constitution and statutes regarding the appropriation, distribution, and delivery of water.

3  
4 66. The Court should issue a mandatory injunction, directing Spackman and IDWR  
5 to uphold and enforce the Idaho statutes requiring delivery of water in accordance with the  
6 doctrine of prior appropriation, to compel Ballentyne to deliver water to Plaintiff, to stop  
7 recognizing Ballentyne as a valid water delivery system, and to transfer the water rights listed  
8 in Ballentyne's name to the owners of the property to which the water is appurtenant. In the  
9 alternative, the Court should issue a writ of mandamus requiring Spackman and IDWR to  
10 fulfill their statutory duties pursuant to Idaho Code §§ 42-101, 42-602, 42-907, and 42-  
11 1805(9).  
12

13 WHEREFORE, Plaintiff prays for a declaratory judgment that it is entitled to the use  
14 and delivery of the water appurtenant to its property and the stock in Ballentyne pledged to it  
15 by Ricks, and transferred to it pursuant to the Trustee's Deed; a declaratory judgment that  
16 Plaintiff is entitled to delivery of water by Ballentyne; and an order directing Ballentyne to  
17 deliver water to Plaintiff and to transfer to Plaintiff the Ballentyne stock associated with the  
18 water transferred to Plaintiff under the Trustee's Deed; and a mandatory injunction compelling  
19 Spackman, in his official capacity as Director of IDWR, and IDWR to (1) comply with their  
20 statutory duties and enforce the provisions of the Idaho Code, (2) cease recognizing Ballentyne  
21 as a valid water delivery system, and (3) remove any water rights from Ballentyne's name and  
22 place the rights in the names of the property owners that have beneficially applied the water to  
23 their land, or, in the alternative as to Spackman and IDWR, Plaintiff prays for a writ of  
24 mandamus directing Spackman and IDWR to comply with their statutory duties under Idaho  
25 Code §§ 42-101, 42-602, 42-907, 42-1805(2) and ensure water is delivered to Plaintiff's land  
26 in accordance with the doctrine of prior appropriation.

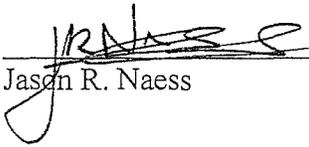
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In addition, Plaintiff prays for monetary damages in the amount of \$500,000.00 from Ballentyne; Ricks, individually and as a Director of Ballentyne; and Shaun Bowman, Aaron Ricks, Joe King, and Steve Snead, as Directors of Ballentyne.

Plaintiff requests that it be awarded its reasonable attorney fees incurred in prosecuting this action and such further relief as the Court deems equitable and proper.

DATED this 24<sup>th</sup> day of July, 2014.

PARSONS, SMITH, STONE,  
LOVELAND & SHIRLEY, LLP

  
\_\_\_\_\_  
Jason R. Naess

VERIFICATION

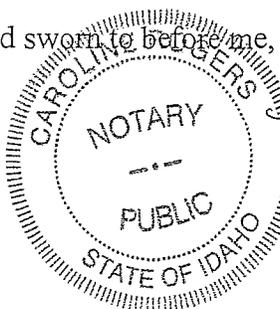
STATE OF IDAHO            )  
                                          ) ss  
County of Cassia            )

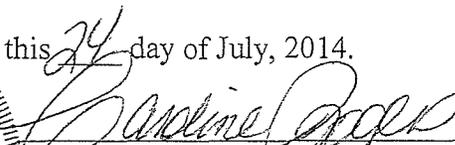
Bruce Hunsaker, being first duly sworn on oath, deposes and says:

That he is a Vice-President of D.L. Evans Bank, the plaintiff in the above-entitled action; that he has read the contents of the above and foregoing Complaint, and knows the contents thereof and the facts stated therein he believes to be true.

  
\_\_\_\_\_  
Bruce Hunsaker

Subscribed and sworn to before me, this 24 day of July, 2014.



  
\_\_\_\_\_  
Notary Public for Idaho  
Residing at Paul ED  
My commission expires on 2-18-2017