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Attorneys for Defendants Gary Spackman and
the Idaho Department of Water Resources

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

D.L. EVANS BANK,

Plaintiff,

vs.

BALLENTYNE DITCH COMPANY,
LIMITED; THOMAS MECHAM RICKS,
GARY SPACKMAN, IN HIS OFFICIAL
CAPACITY AS THE DIRECTOR OF THE
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

Case No. CV-OC-2013-17406

ANSWER TO COMPLAINT

Fee Category: Exempt

Defendants.

COME NOW, Defendants the Idaho Department of Water Resources, and Gary Spackman, Director of the Idaho Department of Water Resources (“Director”), collectively referenced to herein as (“IDWR”), by and through the undersigned deputy attorneys general, and for their answer to the Plaintiff’s *Amended Complaint* on file herein, admits, denies and alleges as follows:

PARTIES

Responding to paragraph nos. 1 and 2 of the *Amended Complaint*, IDWR admits to the allegations contained therein.

Responding to paragraph no. 3 of the *Amended Complaint*, IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegation contained therein and therefore denies each and every allegation.

IDWR admits the allegations contained in paragraph nos. 4 and 5 of the *Amended Complaint*.

Responding to paragraph nos. 6 through 9 of the *Amended Complaint*, IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies each and every allegation.

JURISDICTION

Responding to paragraph no. 10 of the *Amended Complaint*, IDWR admits jurisdiction is proper in district court. IDWR denies that venue is proper in Ada County. Pursuant to the Administrative Order of the Fifth Judicial District Court dated July 1, 2010, which implemented Idaho Supreme Court Administrative Order dated December 9, 2009, and set out procedural

rules governing actions for declaratory judgments of decisions of IDWR, venue is proper in Twin Falls County. The Amended Complaint appears to contest certain elements of water rights owned by Defendant Ballentyne Ditch Company, Limited (“Ballentyne”) that were decreed previously by the Snake River Basin Adjudication District Court, and certified as final judgments in accordance with I.R.C.P. 54(b). Venue is therefore proper in Twin Falls County, before the Snake River Basin Adjudication District Court. I.C. §§ 1-1603 & 1-1901.

COUNT I

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nos. 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 23, and 24 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraphs.

IDWR denies the allegations contained in paragraph no. 14 of the *Amended Complaint*.

IDWR denies the allegations contained in paragraph no. 21 of the *Amended Complaint*.

COUNT II

Responding to paragraph no. 25 of the *Amended Complaint*, IDWR acknowledges Plaintiff’s assertion that the previous paragraphs of the *Amended Complaint* are incorporated into Count II, for which IDWR reasserts its answers provided above.

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nos. 26 through 31, 33, and 34 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraphs.

Responding to paragraph no. 32 of the *Amended Complaint*, IDWR admits that this is a restatement of Idaho Code § 42-912.

COUNT III

Responding to paragraph no. 35 of the *Amended Complaint*, IDWR acknowledges Plaintiff's assertion that the previous paragraphs of the *Amended Complaint* are incorporated into Count III, for which IDWR reasserts its answers provided above.

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nos. 36 through 44 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraphs.

COUNT IV

Responding to paragraph no. 45 of the *Amended Complaint*, IDWR acknowledges Plaintiff's assertion that the previous paragraphs of the *Amended Complaint* are incorporated into County IV, for which IDWR reasserts its answers provided above.

IDWR admits the allegations contained in paragraph no. 46 of the *Amended Complaint*.

Responding to paragraph no. 47 of the *Amended Complaint*, IDWR admits that, pursuant to Idaho Code § 42-602, the Director "shall have direction and control of the distribution of water from all natural water sources within a water district to the canals, ditches, pumps and other facilities diverting therefrom." The Director shall also "distribute water in water districts in accordance with the prior appropriation doctrine." *Id.* IDWR denies it has the specific statutory duty to respond to and resolve complaints regarding how ditch companies distribute water to their patrons.

Responding to paragraph no. 48 of the *Amended Complaint*, IDWR admits the allegation that the Ballentyne is not an irrigation district pursuant to Title 43 of the Idaho Code, but is without knowledge or information to admit or deny the remainder of the allegations contained therein and therefore denies the same.

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph no. 49 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraph.

Responding to paragraph no. 50 of the *Amended Complaint*, IDWR admits that Ballentyne is listed as the current owner of the water rights serving lands within its boundary. IDWR denies the conclusion of law in paragraph no. 50 regarding Idaho law and ownership of water rights.

IDWR denies the allegations contained in paragraph nos. 51 and 52 of the *Amended Complaint*.

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph no. 53 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraph.

Responding to paragraph no. 54 of the *Amended Complaint*, IDWR only admits that it issued an administrative order dated June 12, 2013, concluding that it did not have the authority to grant the relief sought by the Plaintiff. IDWR denies that its administrative order concluded it is appropriate to include IDWR in a future district court action involving a dispute between Ballentyne and the Plaintiff.

IDWR denies the allegations contained in paragraph nos. 55 through 58 of the *Amended Complaint*.

COUNT V

Responding to paragraph no. 59 of the *Amended Complaint*, IDWR acknowledges Plaintiff's assertion that the previous paragraphs of the *Amended Complaint* are incorporated into County V, for which IDWR reasserts its answers provided above.

IDWR is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph nos. 60 through 63 of the *Amended Complaint* and therefore IDWR denies each and every allegation contained in said paragraphs.

Responding to paragraph no. 64 of the *Amended Complaint*, IDWR acknowledges that it is aware of the duties within Idaho Code Section 42-1805 (9).

IDWR denies the allegations contained in paragraph nos. 65 and 66 of the *Amended Complaint*.

IDWR denies all allegations made in the *Amended Complaint* not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

IDWR for their first affirmative defense allege and state: failure to state a claim upon which relief can be granted. Plaintiff owns no Idaho water rights and is not entitled to requested relief. IDWR does not possess the authority under Idaho law to grant the relief Plaintiff has requested.

SECOND AFFIRMATIVE DEFENSE

IDWR for their second affirmative defense allege and state venue is not proper in Ada County. The matter before the court contests water rights that were decreed previously by the Snake River Basin Adjudication District Court, and certified as final judgments in accordance with I.R.C.P. 54(b). Venue is therefore proper in Twin Falls County, before the Snake River Basin Adjudication District Court.

THIRD AFFIRMATIVE DEFENSE

IDWR for their third affirmative defense allege and state that Plaintiff has failed to exhaust available administrative remedies under Idaho’s Administrative Procedures Act. Plaintiff did not appeal IDWR’s June 12, 2013 Order and that Order is entitled res judicata.

REQUEST FOR ATTORNEYS’ FEES AND COSTS

IDWR, in order to defend against this action, which is without a reasonable basis in fact or law, has been required to incur attorney’s fees, witness fees and reasonable expenses. Therefore, IDWR requests attorney’s fees and costs under I.C. § 12-117 in an amount to be later proven.

PRAYER FOR RELIEF

WHEREFORE, IDWR prays for declaratory judgment against Plaintiff as follows:

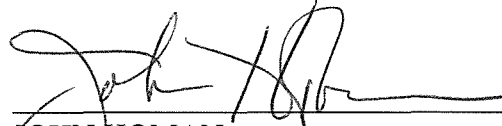
- A. That IDWR be dismissed as a Defendant in this action.
- B. That Plaintiff be denied attorneys’ fees pursuant to applicable provisions of Idaho law; and,
- C. That IDWR be granted attorneys’ fees for defending this action, which is without a reasonable basis in fact or law,
- D. For such other and further relief as the Court may deem just and equitable under the circumstances.

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DATED this 19 day of August, 2014.

LAWRENCE G. WASDEN
Attorney General

CLIVE J. STRONG
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read "John Homan", written over a horizontal line.

JOHN HOMAN
GARRICK L. BAXTER
Deputy Attorneys General
Idaho Department of Water Resources

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2014, I caused a true and correct copy of the foregoing **ANSWER TO COMPLAINT** to be filed with the Court and served on the following parties by the indicated methods:

Original to:
Clerk of the Court
Ada County District Court
200 W. Front Street
Boise, Idaho 83702
Facsimile: (208) 287-6919

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile
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