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DEPARTMENT OF
WATER RESOURCES

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R.C. Stone
Jason R. Naess
**PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP**
137 West 13th Street
P.O. Box 910
Burley, Idaho 83318
(208)878-8382 - Phone
(208)878-0146 - Fax
Idaho State Bar #1890
Idaho State Bar #8407
Attorneys for Plaintiff

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

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

D.L.EVANS BANK,)	Case No. CV OC 1317406
)	
Plaintiff,)	
)	
vs.)	
)	
BALLENTYNE DITCH COMPANY,)	ANSWER OF COUNTERCLAIM
LIMITED; THOMAS MECHAM RICKS;)	DEFENDANT D.L. EVANS BANK
GARY SPACKMAN, IN HIS OFFICIAL)	TO BALLENTYNE DITCH
CAPACITY AS DIRECTOR OF THE)	COMPANY'S RESTATED
IDAHO DEPARTMENT OF WATER)	COMPLAINT FOR INTERPLEADER
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.)	
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COMES NOW, Counterclaim Defendant D.L. Evans Bank (“D.L. Evans”) by and through counsel, and hereby answers Counterclaimants Ballentyne Ditch Company’s (“Ballentyne”) and Directors Aaron Rick’s, Shawn Bowman’s, Joe King’s, and Steve Snead’s (collectively, the “Directors”) Restated Complaint for Interpleader, which was included as a Counterclaim in Ballentyne’s and the Director’s Answer to D.L. Evans Amended Complaint.

RESTATED COMPLAINT FOR INTERPLEADER

1. D.L. Evans denies each and every allegation not specifically admitted herein.

2. With respect to paragraph 1 of the Restated Complaint for Interpleader, D.L. Evans admits it approached Ballentyne and requested delivery of water through the Ballentyne Ditch to lands owned by D.L. Evans. D.L. Evans is without sufficient knowledge or information to admit or deny whether the water shares for D.L. Evans’ land were still held by Defendant, Thomas Mecham Ricks (“Ricks”) on Ballentyne’s books, and therefore denies the allegation. D.L. Evans admits that, while it was told by Ballentyne’s secretary in February 2013, that D.L. Evans would be transferred four and a half water shares associated with another property, that transfer did not occur on Ballentyne’s books until June 19, 2013, and D.L. Evans was not a shareholder on Ballentyne’s books at the time it requested delivery of water. D.L. Evans admits it provided documentation to Ballentyne regarding a Deed of Trust between D.L. Evans and Ricks. D.L. Evans contends the assertion that the Deed of Trust documentation was not sufficient to provide documentation assigning, transferring, or ordering the transfer of shares from Ricks to D.L. Evans is a legal conclusion, the determination of which is one of the purposes of this action, and, to the extent a response is required, D.L. Evans denies the same. D.L. Evans admits that Ballentyne informed it that it would not provide D.L. Evans with water until receiving a court order directing Ballentyne to

1 transfer the shares associated with D.L. Evans' land, and that Ballentyne has indicated to D.L.
2 Evans that its position regarding the ownership of shares is "neutral" and it views the present
3 action as a dispute between D.L. Evans and Ricks. D.L. Evans hereby denies every assertion
4 in paragraph 1 not specifically admitted to herein.
5

6 3. With respect to paragraph 2 of the Restated Complaint for Interpleader, any
7 determination of what Ballentyne is entitled to, or the extent to which the shares shall be
8 encumbered by costs and fees, is a legal conclusion, a response to which appears not to be
9 required. To the extent a response is required, D.L. Evans denies the statements of paragraph
10 2.
11

12 4. In answer to paragraph 3 of the Restated Complaint for Interpleader, any
13 determination of whether Ballentyne is entitled to attorney's fees and costs in this action is a
14 legal conclusion and no response appears to be required. To the extent the response is
15 necessary, D.L. Evans denies the statements of paragraph 3.
16

17 ANSWER TO BALLENTYNE'S AND THE DIRECTOR'S PRAYER FOR RELIEF

18 1. In answer to paragraph 1 in the Prayer for Relief included in Ballentyne's and
19 the Director's Restated Complaint for Interpleader, Ballentyne denies the allegations and
20 conclusions contained therein.

21 2. In answer to paragraph 2 of the Prayer for Relief, D.L. Evans denies any
22 allegations contained therein.

23 3. In answer to paragraph 3 of the Prayer for Relief, D.L. Evans denies any
24 allegations therein.

25 4. In answer to paragraph 4 of the Prayer for Relief, D.L. Evans denies the
26 allegations contained therein.

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FIRST AFFIRMATIVE DEFENSE

Failure to State a Claim for Interpleader

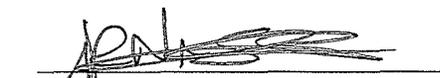
1. Ballentyne's Restated Complaint for Interpleader fails to state an interpleader action. Per Idaho Code § 5-321, such actions may be commenced by a person possessing specific personal property claimed by two or more other persons to determine to whom the property should be delivered. The party requesting to be discharged from liability through the interpleader action must turn over the personal property or its value to the clerk of the court. The cause of action brought by D.L. Evans involves real property water rights, not personal property, and Ballentyne has not asserted it possesses personal property claimed by D.L. Evans and Ricks. To the contrary, Ballentyne and the Directors appear to assert that any personal property involved in this case is in the possession of Ricks, not Ballentyne or the Directors.

COURT COSTS AND ATTORNEY'S FEES

D.L. Evans asserts it is entitled to attorney's fees and costs incurred in defending against Ballentyne's and the Director's Restated Complaint for Interpleader pursuant to Idaho Code § 12-120 and § 12-121, and any other applicable statute or rule.

DATED this 8th day of September, 2014.

PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP



Jason R. Naess

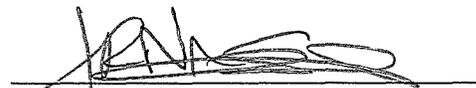
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 8th day of September, 2014, I caused a true and correct copy of the ANSWER OF COUNTERCLAIM DEFENDANT D.L. EVANS BANK TO BALLENTYNE DITCH COMPANIES RESTATED COMPLAINT FOR INTERPLEADER to be served upon the following person(s) in the following manner:

S. Bryce Farris	<u>x</u>	U.S. Mail
SAWTOOTH LAW OFFICE, PLLC	___	Via Facsimile
P.O. Box 7985	___	Via Overnight Carrier
Boise, ID 83707	___	Via Hand Delivery
Chris Bromley	<u>x</u>	U.S. Mail
McHugh Bromley, PLLC	___	Via Facsimile
380 S 4 th St, Ste 103	___	Via Overnight Carrier
Boise, ID 83702	___	Via Hand Delivery
John Homan	<u>x</u>	U.S. Mail
Idaho Department of Water Resources	___	Via Facsimile
P.O. Box 83720-0098	___	Via Overnight Carrier
Boise, ID 83720	___	Via Hand Delivery

**PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP**



Jason R. Naess
Attorneys for Plaintiff
P.O. Box 910
Burley, Idaho 83318