

**LAWRENCE G. WASDEN**  
ATTORNEY GENERAL

**CLIVE J. STRONG**  
Deputy Attorney General  
Chief, Natural Resources Division

**GARRICK L. BAXTER, ISB #6301**  
**JOHN HOMAN, ISB #3927**  
**MEGHAN CARTER, ISB #8863**  
Deputy Attorneys General  
Idaho Department of Water Resources  
P.O. Box 83720  
Boise, Idaho 83720-0098  
Telephone: (208) 287-4800  
Facsimile: (208) 287-6700  
[garrick.baxter@idwr.idaho.gov](mailto:garrick.baxter@idwr.idaho.gov)  
[john.homan@idwr.idaho.gov](mailto:john.homan@idwr.idaho.gov)  
[meghan.carter@idwr.idaho.gov](mailto:meghan.carter@idwr.idaho.gov)

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**

**MOTION TO DISMISS**

Defendants.

The Director (“Director”) of the Idaho Department of Water Resources (“IDWR”) moves this Court to be dismissed from this case pursuant to I.R.C.P. 12(b)(6) on the grounds that Plaintiff D.L. Evans Bank (“D.L. Evans”) has failed to state a claim upon which relief can be granted against IDWR.

There is no legal authority upon which IDWR can address D.L. Evans’ claims. D.L. Evans does not own any water rights. IDWR does not maintain authority to deliver water without a water right. In addition, D.L. Evans failed to properly pursue judicial review of IDWR’s Order and should be procedurally barred from including IDWR in this lawsuit. For these reasons IDWR requests that the Court grant its motion to dismiss in IDWR’s favor.

This motion is supported by the *Memorandum in Support of Motion to Dismiss*; the *Statement of Facts in Support of Motion to Dismiss*; the *Affidavit of Elizabeth Anne Cresto*; the *Affidavit of Rex Barrie*; the *Affidavit of Carter Fritschle*; and the *Affidavit of Meghan Carter in Support of Motion to Dismiss*.

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RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of January 2015.

LAWRENCE G. WARDEN  
Attorney General

CLIVE J. STRONG  
Chief, Natural Resources Division

A handwritten signature in black ink, appearing to read 'Meghan Carter', is written over a horizontal line.

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

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of January 2015, I caused a true and correct copy of the foregoing document 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
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- Facsimile
- Email

R.C. Stone  
Jason R. Naess  
Parsons, Smith, Stone, Loveland  
& Shirley, LLP  
137 West 13<sup>th</sup> Street  
P.O. Box 910  
Burley, Idaho 83318  
Facsimile: (208) 878-0146  
[rcstone@pmt.org](mailto:rcstone@pmt.org)  
[jason@pmt.org](mailto:jason@pmt.org)

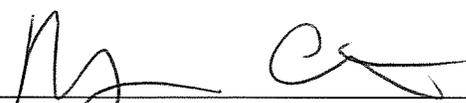
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S. Bryce Farris  
Sawtooth Law Offices, PLLC  
1101 W. River Street, Ste. 100  
Boise, Idaho 83707  
Telephone: (208) 629-7447  
Facsimile: (208) 629-7559  
[bryce@sawtoothlaw.com](mailto:bryce@sawtoothlaw.com)

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

Chris Bromley  
McHugh Bromley  
Attorneys at Law, PLLC  
380 South 4th Street, Suite 103  
Boise, Idaho 83702  
Facsimile: (208) 287-0864  
[cbromley@mchughbromley.com](mailto:cbromley@mchughbromley.com)

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

  
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MEGHAN CARTER  
Deputy Attorney General