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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

**STATEMENT OF FACTS IN SUPPORT
OF MOTION TO DISMISS**

Defendants.

The Director (“Director”) of the Idaho Department of Water Resources (“IDWR”) submits this statement of facts in support of IDWR’s *Motion to Dismiss*.

FACTS

1. Ballentyne Ditch Company, Limited (“Ballentyne”) incorporated in 1910 to manage the Ballentyne Ditch for irrigation purposes. *Amended Complaint* ¶ 15.

2. On December 10, 2007 the Snake River Basin Adjudication (“SRBA”) Court issued seven partial decrees in the name of Ballentyne to irrigate 741 acres of land near Eagle, Idaho. The water rights are diverted out of the Boise River in Township 4 North, Range 1 East, Section 16, NWNESE. Exhibit A, attached to *Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks’ Motion and Memorandum for Change of Venue* (Sept. 2, 2014).

3. D.L. Evans Bank (“D.L. Evans”) received notice of the commencement of the SRBA in April of 2004. *Affidavit of Carter Fritschle* ¶ 5 (January 23, 2015).

4. D.L. Evans did not object to the SRBA Court issuing partial decrees in Ballentyne’s name. Exhibit A, attached to *Affidavit of Meghan Carter in Support of Defendant IDWR’s Motion to Dismiss* ¶ 2 (January 23, 2015).

5. There are at least 30 other water delivery companies in the Boise River basin alone that, like Ballentyne, own water rights and deliver water to their patrons. *Affidavit of Elizabeth Anne Cresto* ¶ 4 (January 23, 2015).

6. When administering water rights the Water Master supervises the allotment of water from the natural water course to the point of diversion and does not track the water from

there. *Affidavit of Rex Barrie* ¶ 4 (January 22, 2015).

7. In 2008, D.L. Evans entered into a promissory note with Defendant Thomas Mecham Ricks (“Ricks”), which was secured by a deed of trust. *Amended Complaint* ¶¶ 11 & 12. The deed of trust concerned property in Ballentyne’s service area, which was irrigated from shares in Ballentyne owned by Ricks. *Amended Complaint* ¶ 14; *Answer of Defendants’ Ballentyne Ditch Company, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead to Amended Complaint and Re-Stated Complaint for Interpleader* ¶ 9.

8. Ricks defaulted on the promissory note in 2009, and D.L. Evans initiated foreclosure proceedings. *Amended Complaint* ¶¶ 16 & 18. The property was successfully foreclosed on in 2013. *Amended Complaint* ¶ 19.

9. There is a dispute as to whether or not D.L. Evans foreclosed on the shares of water Ricks had in Ballentyne Ditch. *See Amended Complaint, Answer of Defendants’ Ballentyne Ditch Company, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead to Amended Complaint and Re-Stated Complaint for Interpleader, and Answer of Defendant Thomas M. Ricks to Amended Complaint.*

10. D.L. Evans approached Ballentyne about delivering water to the foreclosed property in March of 2013. *Amended Complaint* ¶ 27. Ballentyne per its bylaws will only deliver water to shareholders on the books of the company. *Answer of Defendants’ Ballentyne Ditch Company, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead to Amended Complaint and Re-stated Complaint for Interpleader* ¶ 9. D.L. Evans has not provided sufficient documentation to Ballentyne for the Ditch Company to change the ownership of the shares from Ricks to D.L. Evans and therefore, will not deliver water to D.L. Evans. *Id.*

11. In May of 2013, D.L. Evans petitioned IDWR to force Ballentyne to deliver water to the foreclosed property. Exhibit D, attached to *Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks' Motion and Memorandum for Change of Venue* (Sept. 2, 2014) ("Petition"). IDWR issued a preliminary order ("Order") denying the Petition, which became final on June 26, 2013. Exhibit E, attached to *Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks' Motion and Memorandum for Change of Venue* (Sept. 2, 2014). D.L. Evans commenced this lawsuit on September 25, 2013, and amended its complaint to include IDWR on July 28, 2014. *Register of Action CV-OC-2013-17406*.

RESPECTFULLY SUBMITTED this 26th day of January 2015.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th 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:

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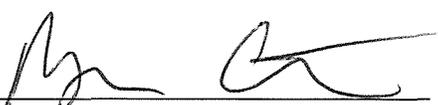
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