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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 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; AND STEVE SNEAD, DIRECTOR OF BALLENTYNE DITCH COMPANY,** Defendants.	Case No. CV-OC-1317406 **DEFENDANTS' BALLENTYNE DITCH COMPANY, AARON RICKS, SHAUN BOWMAN, JOE KING AND STEVE SNEAD MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendants Ballentyne Ditch Company, Limited, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead (hereinafter collectively referred to as "Ballentyne"), by and through their attorneys of record, Sawtooth Law Offices, PLLC, and hereby submits this Memorandum in Support of the Ballentyne's Motion for Summary Judgment filed concurrently herewith.

I. INTRODUCTION

This case should involve the sole issue of the ownership of stock. Period. The issues in this case have been blown out of proportion and Plaintiff, DL Evans Bank ("DL Evans") has misleadingly attempted to turn the case into something it is not. It is not entirely clear from DL Evans' pleadings and prior correspondence that it fully understands what its position is in this case. Nevertheless, it is **not** about the ownership of water rights which have already been decreed in the name of Ballentyne by the Snake River Basin Adjudication ("SRBA") Court. It is **not** about business decisions of the Ballentyne Directors to remain neutral and follow their own bylaws and stock certificates. It is **not** about whether the Idaho Department of Water Resources ("IDWR") should or should not have required Ballentyne to deliver water to a non-shareholder. It is about whether DL Evans or Defendant Thomas Mecham Ricks own certain stock in Ballentyne following the foreclosure of real property by Plaintiff.[1]

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[1] The Idaho Supreme Court's Order denying the change of venue to the SRBA Court did not explain its rationale for denying the other than stating the Court did not have jurisdiction to change venue to the SRBA Court. However, given the SRBA Court was established to adjudicate water rights in the Snake River Basin, as well as the Administrative Order issued by the Idaho Supreme Court on December 9, 2009 (Exhibit B to the *Affidavit of Chris M. Bromley* dated September 2, 2014) and the Administrative Order issued by the SRBA Court dated July 1, 2010 (Exhibit C to the *Affidavit of Chris M. Bromley* dated September 2, 2014) which provide judicial review of IDWR decisions shall be assigned to SRBA Court, one

The facts in this case are straight-forward. DL Evans foreclosed on real property owned by Ricks. It is unclear and unresolved as to whether the foreclosure included certain stock in Ballentyne.

1. Ricks' position has been that the stock is personal property, DL Evans did not perfect its interest in the personal property via a UCC-1 financing statement or other means and thus the stock remains separate from the real property foreclosed upon.

2. DL Evans' position is that the stock was or should have been included with the foreclosure of the real property because stock represents an interest in the water rights held by Ballentyne and thus the stock is akin to an appurtenance.[2]

3. Ballentyne's position has been to remain neutral on the issue as to whether the stock is considered personal property or an appurtenance and whether Ricks or DL Evans owns the stock. Consistent with this position Ballentyne has maintained the status quo, meaning it has not transferred the stock currently issued and on the books in the name of Ricks to DL Evans. Ballentyne's position of maintaining the status quo is entirely consistent with its Bylaws and the stock certificate which provide that there

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can only infer that lack of jurisdiction was because the Supreme Court did not view this as a water rights case but rather as a stock ownership case.

[2] As referenced throughout this *Motion* and *Memorandum*, it is not entirely clear what DL Evans' position in this case but the prior statement is what it is assumed to be. DL Evans suggests it owns water rights even though it cannot be decreed water rights by this Court. DL Evans suggests that Ballentyne should have transferred shares to DL Evans even though it states in prior correspondence to Ballentyne that it is not seeking to transfer the shares. DL Evans suggests it is entitled to use the Ballentyne Ditch to deliver water under I.C. § 42-912 even though it has never made a demand upon Ballentyne under I.C. § 42-912 and it would be seeking delivery of water to which Ballentyne does not have title, which is something expressly forbidden by I.C. § 42-912. Thus, even though DL Evans does not know what its position is going to be, Ballentyne has taken the liberty of summarizing it for DL Evans.

shall be no transfer to a new owner until the current owner surrenders or assigns the original stock certificate.

Despite Ballentyne's attempts to remain neutral as to the stock ownership dispute between Ricks and DL Evans, and despite Ballentyne's obligations to follow its Bylaws and the statements on the stock certificates, DL Evans continues to maintain a cause of action against Ballentyne and now its Board of Directors. However, Plaintiff cannot maintain a cause of action against Ballentyne for its business judgment decision to follow its existing Bylaws and stock certificates. Moreover, there no evidence to support a claim against the Directors individually, DL Evans has not even plead a claim to pierce the corporate veil, and simply second guessing their business decisions is not actionable. Thus, all claims against Ballentyne and its Directors should be dismissed. Finally, Ballentyne, as it has maintained throughout this litigation and in its Interpleader claim, will abide by the Court's order and direction as to the ownership of the shares between DL Evans and Ricks and will transfer the shares on its books accordingly.

II. UNDISPUTED FACTS

Concurrently herewith Ballentyne has filed a separate Statement of Facts in Support of Motion for Summary Judgment.

II. STANDARD OF REVIEW

Summary judgment must be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). The court liberally construes

the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. *Friel,* 126 Idaho at 485, 887 P.2d at 30 (citing *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. Dept. of Health and Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992)). If reasonable people could reach different conclusions or draw conflicting inferences from the evidence, a summary judgment motion must be denied. *Stevenson*, 125 Idaho at 272, 869 P.2d at 1367. However, if the evidence reveals no disputed issues of material fact, what remains is a question of law, over which the court exercises free review. *Id.*

III. ARGUMENT

DL Evans' claims are summarized below:

a. Count I of DL Evans' Amended Complaint is directed at Ricks and his refusal to transfer his interest in water to DL Evans. *Amended Complaint*, ¶ 23;

b. Count II of DL Evans' Amended Complaint is directed at Ballentyne and its refusal to deliver water to DL Evans apparently under I.C. § 42-912. *Amended Complaint*, ¶ 32-33;

c. Count III of DL Evans' Amended Complaint is directed at the Directors of Ballentyne and suggests their actions in denying the delivery of water to DL Evans was "ultra vires" (*Amended Complaint*, ¶ 41) rendering the Directors personally liable, and suggests the Directors were "negligent" in denying the delivery of water to DL Evans (*Amended Complaint* ¶ 42); and

d. Counts IV and V of DL Evans' Amended Complaint is directed at IDWR and alleges that IDWR failed to fulfill its statutory duties by not requiring Ballentyne to deliver water to DL Evans even though DL Evans owned no stock in Ballentyne because "Idaho law does not

recognize ownership of water independent of ownership of ground to which it is appurtenant." *Amended Complaint*, ¶ 50. This Court has already recognized that this allegation is an incorrect statement of Idaho law. *See Memorandum Decision Allowing Amendment of Complaint and Denying Interpleader* on July 23, 2014.

For the reasons discussed below, those claims against Ballentyne and its Directors, namely Counts II and III should be summarily dismissed.

A. There is No Dispute that Ballentyne Owns the Water Rights.

While it seems self evident that this is not a water rights ownership case, DL Evans continues to make assertions suggesting ownership of water rights decreed in the name of Ballentyne. Thus, a threshold question concerns the ownership of the water rights which have been decreed in the name of Ballentyne. Once it is determined it is not a water right ownership case then the case is a stock ownership case and whether Ballentyne has the right to apply its own bylaws pertaining to the transfer of its stock.

1. SRBA and Ballentyne's Decreed Water Rights.

The SRBA was initiated in 1987 to resolve and decree all water rights in the Snake River Basin. This included Basin 63 where the Ballentyne Ditch and the lands which DL Evans foreclosed upon are located. As part of said adjudication, Ballentyne submitted claims to certain water rights to divert water from the Boise River and delivery said water to lands within its boundaries. Ballentyne was "partially decreed" seven (7) water rights in its name by the SRBA Court. Those decrees were issued on December 10, 2007 by Judge Melanson, the then presiding judge of the SRBA Court. While the water rights were referred to as "Partial Decrees" each of the

seven decrees were certified under Rule 54(b) of the Idaho Rules of Civil Procedure as final judgments upon which appeal may be taken under the Idaho Appellate Rules. No appeals were taken.

In addition, and even though the water rights were final judgments, the SRBA Court issued its *Final Unified Decree* on August 26, 2014. All partial decrees issued by the SRBA Court are contained in the SRBA Court's Final Unified Decree and are binding. I.C. §§ 42-1413, - 1420. The SRBA Court "retains jurisdiction of this proceeding to: a) resolve any issues related to the Final Unified Decree that are not reviewable under the Idaho Administrative Procedures Act and/or the rules of the Idaho Department of Water Resources . . . ." *Affidavit of Chris Bromley*, Exhibit F (p. 13, ¶ 17).

2. DL Evans' Claims to Water Rights are Barred.

DL Evans, while not entirely consistent in its arguments, seeks relief to alter Ballentyne's SRBA partial decrees by changing the water right elements, particularly ownership by alleging that this Court should issue an order directing IDWR "to stop recognizing Ballentyne as a valid water delivery system, and to transfer the water rights listed in Ballentyne's name to the owners of the property to which the water right is appurtenant." *See Amended Complaint*, ¶ 66. However, neither IDWR or this Court have the authority to grant the relief requested by DL Evans. The water right decrees issued by the SRBA Court, and included in its Final Unified Decree, remain under the authority of the SRBA Court and only the SRBA Court would have the authority to entertain the claims suggested by DL Evans. The partially decreed water rights in the name of Ballentyne are not under this Court jurisdiction to modify, alter or amend and thus any claims of DL Evans asserting

such relief must be dismissed.

Moreover, even if this Court had jurisdiction to consider modifying, altering or amending the partial decrees issued by the SRBA Court for the sake of argument, any claims of DL Evans are barred under the doctrines of res judicata and claim preclusion. DL Evans did not file claims on its own behalf as part of the SRBA, did not appeal the partial decrees issued to Ballentyne more than seven (7) years ago, and did not appeal or challenge the Final Unified Decree. *See Lu Ranching Co. v. United States*, 138 Idaho 606, 67 P.3d 85 (2003) (upholding constitutionality of SRBA notice procedures).

The bottom line is that title to the water rights remains in the name of Ballentyne, this Court has no jurisdiction to split or otherwise modify those water rights and thus summary judgment should be granted as to any and all claims of DL Evans suggesting ownership of Ballentyne's water rights. Once it is resolved that this is not a water rights ownership case then the issues and claims are narrowed to involve the ownership of stock, which as discussed below, is an issue Ballentyne seeks to remain neutral on. Even though it seeks to remain neutral its actions of failing to transfer the stock to DL Evans is not actionable.

B. DL Evans Cannot Maintain a Claim based upon Ballentyne's Business Judgment.

Count III of DL Evans' Amended Complaint is directed towards the Directors of Ballentyne and suggests their actions in denying the delivery of water to DL Evans was "ultra vires" (Amended Complaint, ¶ 41) rendering the Directors personally liable, and suggests the Directors were "negligent" in denying the delivery of water to DL Evans (Amended Complaint ¶ 42).

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1. DL Evans Has not Plead a claim to Pierce the Corporate Veil of Ballentyne.

Noticeably absent from DL Evans' are any claims relating to the right to pierce the corporate veil of Ballentyne, that the corporate existence of Ballentyne should be disregarded or that Ballentyne has failed to follow any corporate formalities. In *Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 329 P.3d 368 (2014), the Court upheld the district court's granting of summary judgment because the developer did not raise a material fact evidencing unity of interest among the members and the company. The Court applied the doctrine of alter ego or veil piercing to a limited liability company and Idaho law that a limited liability company is a legal entity "distinct from its members" and "its members are not liable for the misconduct of the company unless it is proven the company is the alter ego of the member." *Id.* at 594 (citing I.C. §§ 30-6-104(1) and 30-6-304(1)). The same analysis and statutes applicable to non-profit corporations, such as Ballentyne, also provide a "member of a corporation is not, as such, personally liable for the acts, debts, liabilities or obligations of the corporation." I.C. § 30-3-39. Thus, the only means for DL Evans to hold the Directors liable for the conduct of the corporation is to pierce the corporate veil. However, DL Evans has plead no facts (because no facts exist) to warrant piercing the corporate veil and holding the Directors personally liable. If a claim to pierce the corporate veil had been plead, under the theory of piercing the corporate veil, "factors to consider include the level of control that the shareholder exercises over the corporation, the lack of corporate formalities, the failure to operate corporations separately, keeping separate books, and the decision-making process of the entity." *Id.*

at 594.

Here, even if DL Evans had plead such a claim to pierce the corporate veil, the undisputed evidence is that Ballentyne was formed more than one hundred years ago, well before the current Board volunteered to be Board members, and there is not dispute that the it continues to be a non-profit corporation in good standing. DL Evans can point to no evidence which would suggest that the corporate formalities have been disregarded, books and bank accounts are not kept separate and even the decisions which DL Evans now desires to second guess were put to a vote and rational reasons rejecting said claims were provided.

2. Negligence.

Not only has DL Evans failed to plead a claim to pierce the corporate veil, but Ballentyne is a non-profit corporation. As such, Idaho Code § 6-1605 specifically provides that directors and officers of non-profit corporations shall be personally immune from civil liability if the conduct is within the course and the scope and duties of the functions of the director. The immunity is not applicable if the conduct is willful, wanton, fraudulent or a knowing violation of the law. I.C. § 6-1605.[3] Thus, Plaintiff cannot maintain a negligence action against Ballentyne or its Directors as there can be no negligent cause of action against the Directors of a non-profit entity. It must be more

[3] Regardless of the outcome of DL Evans claims against Ballentyne, which Ballentyne submits should be all dismissed on summary judgment, this Court should at a minimum dismiss all causes of action against Ballentyne's Directors. There is no evidence of willful, wanton or knowing violations of law by Ballentyne's Directors. To the contrary, Ballentyne and its Directors have attempted to follow its own bylaws and stay out of this dispute between DL Evans and Ricks.

than negligence and DL Evans has not alleged, willful, wanton, fraudulent or knowing violations of law by the Directors. Moreover, in order to maintain a negligence cause of action against Ballentyne or its Directors there must be a duty owed to DL Evans. DL Evans has not identified a recognized duty which would be owed to it as a non-shareholder of a private, non-profit corporation and thus there can be no negligence action when Ballentyne and its Directors owe no duty to DL Evans.

Even if there was a duty for the sake of argument, there can be no negligence based upon a business decision just because DL Evans does not like the decision. The undisputed facts are that the bylaws and share certificates of Ballentyne unequivocally provide that stock ownership will not be transferred until the stock is surrendered by the prior owner. Decisions to abide by such are not actionable and do not result in any breach of a duty owed to DL Evans as a non-shareholder. To the extent DL Evans is complaining about the decision of Ballentyne to not allow the delivery of a water right to which Ballentyne did not own, the undisputed evidence is that Ballentyne did consider the request, determined in its business judgment that such an action could cause injury to other shareholders/members on the ditch. Again, the decision, simply because DL Evans does not like it is not negligence or actionable under a theory of negligence.

3. Ultra Vires.

Ultra vires is typically raised as a defense to void an action or transaction due to the action exceeding the broad discretion or authority of a corporation. *See* I.C. § 30-3-26 (a corporation's

power to act may be challenged in a proceeding against the corporation to enjoin an act where a third party has not acquired rights). "An act is ultra vires when corporation is without authority to perform it under any circumstances or for any purpose. By doctrine of ultra vires a contract made by a corporation beyond the scope of its corporate powers is unlawful." *Black's Law Dictionary*, 6th Ed. Ultra vires does not render a board member personally liable for the actions or inactions of a corporation and it is not ultra vires when there are circumstances, namely bylaws and share certificates, which prevent the very action DL Evans now is second guessing. Ballentyne and its Board of Directors have the discretion and right to follow its own bylaws with regard to the transfer of shares and it should not and does not render them liable. It especially should not render their Board of Directors personally liable.[4] Ballentyne has the right to make business decisions concerning the transfer of shares and the applicability of its bylaws and just because DL Evans does not like those decisions does not render Ballentyne liable for damages. If anything, DL Evans would be entitled to a writ of mandate if this Court agrees with DL Evans position as to the ownership of shares but even this is unnecessary because Ballentyne is willing to abide by the Court's order or decision on this matter as part of its Interpleader claim.

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[4] In order to hold the Directors personally liable it would be necessary for this Court to disregard the separate entity of the Ditch Company and pierce the corporate veil. Again, DL Evans has plead no facts which would warrant such an action and to the contrary the undisputed facts are that Ballentyne is a separate entity and no facts exist to disregard said entity. Indeed, DL Evans' Amended Complaint does not mention "pierce the corporate veil" or "disregard of the corporate formalities" which may warrant holding the Directors personally liable.

a. Failure to Transfer Shares is Not Actionable.

Undisputed facts are that any claim by DL Evans related to Ballentyne or its Director's failure to transfer shares to DL Evans is countered by the bylaws and share certificates which provide that there can be no transfer until the original owner surrenders the shares. DL Evans cannot establish that any such denial is a willful, wanton or intentional denial if their very governing laws, established well before this dispute, prevent them from taking the action now being second guessed by DL Evans. The undisputed facts continue to be that the bylaws and share certificates provide that the shares will not be transferred until the original shareholders surrenders the shares. Ricks has declined to do so and instead has threatened litigation against Ballentyne should it not follow its own bylaws and share certificates. Whether Ricks' position is correct or not, Ballentyne's decision to not transfer the shares is not negligence or ultra vires which would render it subject to damages and it certainly does not render any of the its Directors personally liable.

Interestingly, even DL Evans Bank is not clear that it desires to have the stock transferred to it. A closer look at the correspondence from DL Evans shows that it does not know what it wanted. On the one hand it requested that Ballentyne provide its position but then it sent subsequent letters clarifying its position and stating that "the bank does not request any changes be made to the property the Ballentyne Ditch Co.'s records indicate is Mr. Ricks' property." *Affidavit of Joe King*, Exhibit R. A month later on May 20, 2013, DL Evans sent a letter to Ballentyne Ditch Company following up on its prior letters and now stating that "D.L. Evans Bank is not seeking any change in stock

ownership at this time." *Affidavit of Joe King*, Exhibit S. It is difficult, if not impossible, to understand how DL Evans can now complain of Ballentyne and its Director's decisions when it has not clearly clarified its own position.

b. Ballentyne's Failure to Deliver Water to a Non-Shareholder is Not Actionable.

Again, it is not clear from DL Evans or its pleadings, but DL Evans appears to suggests that Ballentyne and its Directors are liable for failing to deliver water to DL Evans, even though it is admittedly not a current share holder, under I.C. § 42-912.[5] As discussed, *supra*, Ballentyne and its Directors have the authority to make business decisions concerning the delivery of water to its shareholders and non-shareholders. Shareholders have a contract or right to receive water from the Ballentyne Ditch by virtue of being a current shareholder. Again, DL Evans is currently not a shareholder and the transfer of shares to it is governed by the bylaws and share certificates. As to non-shareholders, which DL Evans currently is, Ballentyne and its Directors have authority and discretion to determine whether to delivery irrigation water to such non-shareholders, which do not own an interest in Ballentyne or its water rights so Ballentyne would be agreeing to carry in its ditch the water rights of another. Ballentyne cannot be forced to deliver water to a non-shareholder, which would require delivery of a water right to which Ballentyne did not own, without a contract

[5] DL Evans pays lip service to I.C. § 42-912 in its Amended Complaint but can provide no facts supporting such a claim or that the denial of such a claim warrants personal liability of the Ballentyne's Directors. This is nothing more than another claim to deflect from the real issue which involves the ownership of shares between Ricks and DL Evans.

to do so or a condemnation of the right to do so.

c. Idaho Code § 42-912 is Inapplicable.

Idaho Code § 42-912 provides the following:

> Any person, company or corporation owning or controlling any canal or irrigation works for the distribution of water **under a sale or rental thereof**, shall furnish water to any person or persons owning or controlling any land under such canal or irrigation works for the purpose of irrigating such land or for domestic purposes, upon a proper demand being made **and reasonable security being given** for the payment thereof: provided, that **no person, company or corporation shall contract to deliver more water than such person, company or corporation has a title to**, by reason of having complied with the laws in regard to the appropriation of the public waters of this state.

(Emphasis added).

The plain and unambiguous language of the I.C. § 42-912 specifically states that the entity cannot deliver more water than it as "title" to. Ballentyne does not have "title" to the extra water DL Evans wants delivered through the Ballentyne Ditch. To the contrary, the renter of DL Evans requested that Ballentyne deliver water which it had or would rent from others. In other words, it was not Ballentyne's water rights which were being proposed to be delivered to the property but rather a third party water right, which would mean Ballentyne does not have "title" to the right.

Idaho Code § 42-912 does not provide the relief DL Evans is requesting. Ballentyne's decision to not deliver the water was based upon the capacity of the Ballentyne Ditch to supply this additional water right and the impact it may have on existing shareholders. *See Gerber v. Nampa & Meridian Irrigation District*, 16 Idaho 1, 100 P. 80 (1908) (holding a contract of an irrigation

company to furnish more water than it had ability to furnish were illegal); *State v. Twin Falls Salmon River Land & Water Co.*, 30 Idaho 41, 166 P. 220 (1916) (holding a water company or corporation is forbidden to contract or sell more water than it is entitled to and must not sell more water than it has). Assuming there was sufficient capacity for argument's sake, DL Evans' relief is not under I.C. § 42-912. Instead, DL Evans' relief would be to condemn the unused capacity under the condemnation statutes. *See Canyon View Irrigation Co. v. Twin Falls Canal Co.,* 101 Idaho 604, 619 P.2d 122 (1980), cert. denied, 451 U.S. 912, 101 S.Ct. 1983, 68 L. Ed. 2d 301 (1981) (holding that a ditch company had the right to condemn a right to use the existing canal to the extent there was unused capacity so long as they paid the proportionate operation and maintenance costs). Ballentyne disagrees that there is any additional capacity and/or that DL Evans would be allowed to condemn a right to delivery a separate water right in the Ballentyne Ditch, but the point is that I.C. § 42-912 is inapplicable and DL Evans' claim fails as a matter of law. DL Evans has not plead a right to condemnation, complied with any of the requirements of the condemnation statutes or sought such relief.

Yet another requirement of I.C. § 42-912 which has not been met is that DL Evans must make "proper demand" and must provide reasonable security. Thus, assuming for arguments sake that I.C. § 42-912 is applicable, DL Evans must make a proper demand and "tender" security. DL Evans has not make any demand as there is no written demand from DL Evans and the only request to have Ballentyne deliver water was from its renter, Josh Janicek, to deliver water to which

Ballentyne did not have title and the "demand" never made mention of I.C. § 42-912.

In *Bardsly v. Boise Irrigation & Land Co.*, 8 Idaho 155, 67 P. 428 (1901), the court held that the person requesting water must "comply with the terms of the statute as to payment or security for compensation to the irrigation company. His right of action could not be maintained until such compensation, or other security thereof, should be tendered." *Id.* at 160. The court then dismissed the plaintiffs cause of action because plaintiff did not actually tender compensation and thus the complaint did not show a cause of action. *Id.* at 161. Here, DL Evans has not made a proper demand and has not tendered payment to maintain an action under I.C. § 42-912. Indeed, its correspondence to Ballentyne makes no mention of I.C. § 42-912 and it even takes inconsistent positions as to whether it is seeking a transfer of stock.

C. Ballentyne's Claim for Interpleader.

The issue of stock ownership may be addressed or decided as part of the summary judgment motions filed by Ricks and/or DL Evans. However, in the event the Court does not then grant summary judgment to either party as to the ownership of the disputed shares, this Court should grant summary judgment to Ballentyne based upon its claim for interpleader, and, pursuant to Rule 22 of the IDAHO RULES OF CIVIL PROCEDURE and I.C. § 5-321, dismiss Ballentyne from this action, direct DL Evans Ricks to litigate the ownership of the stock at issue between themselves and direct Ballentyne to transfer the shares or retain the shares on the books as directed/ordered by this Court.

While there is no money/funds to be deposited with the Court, the amount of shares is not

in dispute, is identifiable and ascertainable, as being 35 shares in Ballentyne.[6] Ballentyne can and will either transfer the shares as directed by the Court following the decision of this Court. Or, if the Court deems it a requirement to deposit/deliver the stock with the Court to comply with I.C. § 5-321, then Ballentyne can and will deposit a share certificate in the name of DL Evans for the disputed amount of shares, 35 shares, in Ballentyne with the Court to be held by the Court until the issue of ownership is resolved. Either way, the ownership of the shares should not involve Ballentyne, this Court should grant its claim for Interpleader, and allow Ballentyne to be dismissed from this action.

IV. CONCLUSION

For the above stated reasons, Ballentyne respectfully requests that the Court grant its motion for summary judgment and enter judgment in favor of Ballentyne and against Plaintiff on all causes of action.

DATED this 22 of January, 2015.

SAWTOOTH LAW OFFICES, PLLC

by: _____
S. Bryce Farris

[6] This Court issued a *Memorandum Decision Allowing Amendment of Complaint and Denying Interpleader* on July 23, 2014 wherein the Court stated neither the quantity or value of the stock has been provided.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 22 day of January, 2015 by the following method:

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