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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 STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

DEFENDANTS' BALLENTYNE DITCH COMPANY, ET AL STATEMENT OF FACTS IN  
SUPPORT OF MOTION FOR SUMMARY JUDGMENT - 1

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 its Statement of Facts in Support of the Ballentyne's Motion for Summary Judgment filed concurrently herewith.

**A. Ballentyne Ditch Company.**

1. Ballentyne Ditch Company is a **non-profit corporation** organized and existing under the laws of the State of Idaho. *See Affidavit of Joe King*, Exhibit A, page 3, Article VII; *See also Amended Complaint*, ¶ 2. The Board members of Ballentyne Ditch Company are volunteers and do not receive wages or compensation for the service as members of the Board of Directors. *See Affidavit of Joe King*.

2. Ballentyne Ditch Company was incorporated in 1910. *See Affidavit of Joe King*, Exhibit A; *See also Amended Complaint*, ¶ 15. Its Articles of Incorporation were amended in 1929 and 1948 relating to stock changes and in 1960 to extend the duration to perpetual. *See Affidavit of Joe King*, Exhibits B, C and D; *See also Affidavit of Bruce Hunsaker*, filed June 6, 2014, ¶ 32, Exhibit B.

3. Ballentyne Ditch Company's Bylaws, which have not been amended, are dated April 17, 1947. *See Affidavit of Bruce Hunsaker*, filed June 6, 2014, ¶ 33, Exhibit C. *See also Affidavit of Joe King*, Exhibit E. Article VII of said Bylaws provides the following with respect to the "Transfers of Stock:"

Section 1. The shares of stock in this company may be transferred at any time **by the owner thereof in person, or by attorney legally constituted or by legal representative, by endorsement on the certificate of stock. But no transfer shall**

**be valid as against the corporation until the surrender of the certificate of stock** and the entry of such transfer on the books of the corporation; no transfer shall be made while the holder thereof is indebted to the Company, on any account whatever, without the consent of the Board of Directors. **No certificate shall be issued until the certificate in lieu of which it is issued shall have been surrendered to the Secretary** and cancelled, and the Secretary shall hold the cancelled certificate as a voucher.

(Emphasis added).

4. Ballentyne Ditch Company issues share certificates to its shareholders. A copy of the share certificate at issue in this case is attached to the *Affidavit of Bruce Hunsaker* as Exhibit D. *See also Affidavit of Joe King*, Exhibit E. This Share Certificate at issue in this case is in the name of "Thomas M. Ricks" and is for 71.5 shares. Said share certificate provides the following: **"Transferable only upon the books of the Corporation by the holder hereof in person or by Attorney upon surrender of this Certificate properly endorsed or assigned."** *Id.*

**B. Water Rights Decreed in the Name of Ballentyne Ditch Company.**

5. On December 7, 2007, the Snake River Basin Adjudication ("SRBA") Court issued seven partial decrees, in the name of Ballentyne Ditch Co. Ltd., to irrigate 741 acres of land near Eagle, Idaho. *See Affidavit of Joe King*, Exhibit F. The water rights are diverted out of the Boise River in Township 4 North, Range 1 East, Section 16, NWNESE and into the Ballentyne Ditch which is owned and operated by the Ballentyne Ditch Company for delivery of irrigation water to its shareholders. *Affidavit of Joe King*, ¶ 6.

6. Plaintiff, DL Evans Bank, did not assert or claim a water right in the SRBA with a point of diversion from the Boise River or the Ballentyne Ditch. Nor did the Plaintiff file any objection to the claims of Ballentyne Ditch Company. *Affidavit of Joe King*, ¶ 7.

7. On August 26, 2014, the SRBA Court issued a Final Unified Decree which incorporated therein all previously issued partial decrees, including those water rights decreed in the name of Ballentyne Ditch Company. *See Affidavit of Chris M. Bromley in Support of Defendant Thomas M. Ricks' Motion and Memorandum for Change of Venue*, Exhibit F, dated September 2, 2014. Plaintiff has not appealed or challenged the Final Unified Decree.

**C. Property and Shares Owned by Defendant Thomas M. Ricks.**

8. In 2008, Plaintiff entered into a promissory note with Defendant Thomas Mecham Ricks (hereinafter "Ricks"), which was secured by a deed of trust. *See Affidavit of Bruce Hunsaker*. The deed of trust concerned property in Ballentyne's service area, which was irrigated from the Ballentyne Ditch pursuant to shares in Ballentyne held by Ricks.

9. Ricks defaulted on the promissory note in 2009, and Plaintiff initiated foreclosure proceedings. The property was successfully foreclosed on in 2013. *See Affidavit of Bruce Hunsaker*.

**D. Dealings between Ballentyne and Plaintiff.**

10. On March 19, 2013, Dustin Smith on behalf of Plaintiff sent an e-mail to Ballentyne inquiring about the ownership of water rights for certain properties Plaintiff successfully foreclosed upon. *See Affidavit of Joe King*, Exhibit G. Plaintiff did not provide any shares for surrender or which had been assigned to Plaintiff.

11. On March 22, 2013, Joe King forwarded the e-mail correspondence from Dustin Smith to Thomas M. Ricks and Mr. King inquired as to Ricks intent to transfer the shares. *See Affidavit of Joe King*, Exhibit H.

12. On March 22, 2013, Ricks sent an e-mail to Joe King responding to the prior e-mail correspondence and which provided the following:

There will not be any transfer of water rights by me for any shares that I own. We have discussed, on other occasions, that water rights in the Ballentyne Ditch Co. are personal property and are not attached to the real property. DL Evans Bank et al. are now owners of real property that does not have any water rights in an irrigation company. A dry land farm so to speak. I also informed you earlier that only by a court order will any water rights be transferred that are currently under my ownership. If you choose to do otherwise, you and the ditch company will be in violation of a federal stay order and the corresponding penalties that would come with that. In order to protect my interests, the ditch company would also be exposed to a lawsuit by me. I would strongly suggest that you tell DL Evans Bank that the ditch company is only a facilitator and does not have the right to transfer shares without the owners permission or a court order.

*Affidavit of Joe King, Exhibit I.*

13. On March 23, 2013, Mr. King sent a follow up e-mail to Ricks confirming that it was Ricks' position that there would be "no transfer of water without a court order" and that he "will not sign any water share certificate that is not supported with legal documentation." *See Affidavit of Joe King, Exhibit J.*

**E. Dealings between Ballentyne and Josh Janicek.**

14. On April 12, 2013, Josh Janicek with Blue Diamond Turf, LLC telephone Joe King and inquired about water for 50 acres within Ballentyne's service area (approximately 30 acres owned by DL Evans Bank and 20 acres owned by a Church but the entire 50 acres is one field). Mr. Janicek indicated that he rented the ground and wanted to know how his irrigation water would be delivered. Mr. Janicek never indicated he was representing DL Evans Bank or that he was making demand upon Ballentyne for delivery of water, for the transfer of shares or pursuant to I.C. § 42-912.

Mr. King explained that for the 20 acres owned by the Church it would be no problem but the water for the 30 acres owned by DL Evans Bank was tied up in a dispute as to the ownership of the shares between the previous owner (Ricks) and the new owner (DL Evans Bank). *See Affidavit of Joe King*. ¶ 12.

15. Mr. King and Mr. Janicek also discussed the possibility of Mr. Janicek renting water from the Water District 63 Rental Pool and to allow Mr. Janicek to utilize the Ballentyne Ditch for carriage of said rented water from the Boise River to the 30 acres owned by DL Evans Bank. This use has been referred to in this suit as “wheeling” or using the Ballentyne Ditch for carriage of a water right not belonging to the Ballentyne Ditch Company. *See Affidavit of Joe King*, ¶ 13.

16. On April 12, 2013, sent an e-mail to the Ballentyne Board of Directors informing them of Mr. Janicek’s phone call. *See Affidavit of Joe King*, Exhibit L.

17. On April 13, 2013, Mr. King received an e-mail response from Ricks indicating that he voted no and providing a rationale that 2013 was forecasted to be a bad water year “drought situation” and if Ballentyne allowed Janicek to use the Ballentyne Ditch to delivery of non-Ballentyne water then Ballentyne may be subject to a lawsuit from its shareholders. *See Affidavit of Joe King*, Exhibit M.

18. On April 13, 2013, Mr. King received an e-mail response from Steve Snead indicating he voted no and provided a rationale that he is at the very end of the Ballentyne Ditch and is concerned that allowing Janicek water would jeopardize his homeowner association’s use which was already threatened by a bad water year. *See Affidavit of Joe King*, Exhibit N.

19. On April 13, 2013, Mr. King received an e-mail response from Aaron Ricks

indicating he voted no and provided a rationale that he is concerned Mr. Janicek will not get his water as the flows decrease due to a shortage of water in the Boise River. *See Affidavit of Joe King, Exhibit O.*

20. On April 14, 2013, Mr. King sent an e-mail back to the Board of Directors acknowledging the vote to not “wheel” or allow Janicek to use the Ballentyne Ditch for carriage of a rented water right. Mr. King informed Mr. Janicek of the decision also. *See Affidavit of Joe King, Exhibit P.*

21. The 30 acres that DL Evans Bank owns is located at the very end of the Ballentyne Ditch (there is a large lateral that goes beyond Park Lane but the Ballentyne Ditch ends at Park Lane next to Eagle High School) and the end shareholders have often experienced low water situations.

2013 was a low water year, worst in over 20 years. In fact, many large canals were shut down on September 5, 2013 because they had used all their storage water. However, Ballentyne would have shut down early also except for the fact that around the 4<sup>th</sup> of July the Ballentyne Board made a decision to reduce its use by 33% thereby stretching the water supply to the end of the water year.

In hindsight, the judgment of the Board members that voted no to the “wheeling” of water was validated because it would have been difficult to impossible to manage the delivery of rented water (100%) to Mr. Janicek while cutting the existing shareholders by 33%. *See Affidavit of Joe King, ¶ 19.*


22. DL Evans Bank sent a letter to Ballentyne Ditch Company on April 15, 2013 which requested that Ballentyne Ditch Company clarify its position “why the water and water rights associated with the Property cannot be conveyed at this time.” *Affidavit of Joe King, Exhibit Q.*

On April 22, 2013, DL Evans sent another letter to Ballentyne Ditch Company to clarify its position and state 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. None of the above letters made reference to a demand under I.C. § 42-912 and in fact each of the letters inconsistently provides a different position with regard to the ownership of the stock and what DL Evans Bank is/was seeking from Ballentyne Ditch Company.

23. The amount of shares which DL Evans Bank desires to be transferred into its name, and which have not been surrendered by Mr. Tom Ricks, would be 35 shares for use and irrigation on the 35 acres owned by DL Evans Bank. Tom Ricks share certificate is currently in the amount of 71.5 shares. This means Ballentyne Ditch Company would issue a new share certificate to DL Evans Bank, assuming it is the owner, for 35 shares and a new certificate to Tom Ricks for 36.5 shares (which is the remainder of the shares owned by Mr. Ricks again assuming DL Evans Bank is the owner as ordered by this Court). *Affidavit of Joe King*, ¶ 21.

DATED this 22<sup>nd</sup> of January, 2015.

SAWTOOTH LAW OFFICES, PLLC

by:   
S. Bryce Farris



### CERTIFICATE OF SERVICE

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

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