STATEMENT OF FACTS IN SUPPORT OF D.L. EVANS' RESPONSE BRIEF TO THOMAS M. RICKS' MOTION FOR SUMMARY JUDGMENT – PAGE 1
COMES NOW, Plaintiff, D.L. Evans Bank, which hereby submits the following Statement of Facts in support of its Response Brief to Thomas M. Ricks’ Motion for Summary Judgment.

STATEMENT OF FACTS

A. The Ballentyne Ditch Co., Ltd.

The Ballentyne Ditch Company, Ltd. (“Ballentyne”), was formed by filing Articles of Incorporation on April 15, 1910. Affidavit of Joe King in Support of Motion for Summary Judgment (“King Affidavit”) ¶ 3, Exhibit A. As described in the Articles, the purpose of Ballentyne was to “take over, own, hold, conduct, and manage that certain irrigating ditch, commonly known as the Ballentyne Ditch.” King Affidavit, Exhibit A at Article II. Balletyne’s Articles established a five member board of directors which was to exercise the corporation’s corporate powers. Id. at Article V. Article VI provided for the issuance of capital stock and provided that the stock would be:

incident to and appurtenant to the lands lying under and heretofore irrigated by means of said canal, and none of said capital stock shall be transferred, or transferrable upon the books of the corporation without a transfer of the lands to which the same is appurtenant and any other person than the owner of such lands, holding such stock, or any of it, shall be deemed to hold the same as trustee to the use and benefit of of (sic) the owner of said lands.

Id. Article VI further provided that the stock certificates were to “describe the lands to which the same are appurtenant,” and defined what land could have appurtenant Ballentyne stock by identifying the lands irrigated by the Ballentyne Ditch. Id. As stated in Article VIII, the corporation was “not formed for profit, but for the mutual operation of said canal and irrigating system and for its better maintenance and conduct.” Id.
In 1924 or 1929, Ballentyne amended its Articles with a new Article VI. *King Affidavit*, Exhibit B. Amended Article VI continued to provide that shares in the corporation were:

inseparably attached the right to the use of an equal and proportionate part of the waters of said canal available for the irrigation of the lands thereunder, and only such amounts of said capital stock shall be issued as shall be inseparably attached and appurtenant to the lands lying under and irrigated by means of said canal.

*Id.* Stock certificates were still to describe the lands “to which the same are appurtenant.”

*Id.*

In 1948, the Articles were again amended. *King Affidavit*, Exhibit C. At that time, Article VI was amended to read: “This corporation shall have a total authorized capital stock of 10,000 divided into 1,000 shares of the par value of ($1.00) per share.” *Id.* From that time forward, Ballentyne’s Articles no longer related ownership of stock to the ownership of land served by the common ditch nor delivery of water to such lands. *See King Affidavit ¶ 3.*

In 1947, Ballentyne adopted Bylaws. *See King Affidavit ¶ 4*, Exhibit E. The Bylaws established the duties of the corporation’s board of directors, which include, among others, holding directors’ meetings; overseeing personnel matters; “manag[ing] and control[ling] the affairs and business of the corporation . . . not inconsistent with the Laws of the State of Idaho;” and causing stock certificates to be issued to stockholders, which certificates are to represent the stockholders respective interests in the corporation. *Id., Exhibit E* at Art. III. As to the stock certificates, the Bylaws provide:

Certificates of stock shall be of such form and device as the Board of Directors may adopt, and such certificates shall be signed by the President.

---

1 The Amended Articles appear to refer to both years, with the number “4” written over by a “9” in several locations. *See King Affidavit*, Exhibit B.
or Vice-President and attested by the Secretary, with the corporate seal, and express on their face their number, date of issuance, number of shares for which, and person or persons to whom issued.

*Id.* at Art. VI. The description of stock certificates in the Bylaws contains no reference to land within the corporation’s boundaries or water delivered or managed by the corporation.

See *id.*

The Bylaws also describe the manner in which Board of Directors’ meetings are to be held, and indicate that all questions considered by the directors shall be decided by a majority vote of the directors present, “given orally.” *Id.* at Art. XI. In other words, such meetings are to be held in person.

**B. Transactions with Thomas Ricks.**

Thomas Ricks (“Ricks”) obtained a loan from D.L. Evans Bank (“D.L. Evans”) in 2008. *Affidavit of Thomas M. Ricks in Support of Thomas M. Ricks’ Motion for Summary Judgment* (“Ricks Affidavit”) ¶7. In exchange for the loan, Ricks entered a Deed of Trust with the Bank (the “Deed of Trust”), securing the loan with property owned by Ricks within Ballentyne’s boundaries. See *Ricks Affidavit*, Exhibit 5. The Deed of Trust provides that Ricks did:

> irrevocably grant, bargain, sell, and convey in trust, with power of sale, to Trustee for the benefit of the Lender as Beneficiary, all of Grantor’s right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the “Real Property”) located in Ada County, State of Idaho:

See Exhibit “A”, which is attached to this Deed of Trust and made a part of this Deed of Trust as if fully set forth herein.
Ricks Affidavit, Exhibit 5. When Ricks defaulted on the loan, D.L. Evans foreclosed on the Deed of Trust, and purchased the property at the foreclosure sale. Id. ¶¶ 12-14, Exhibit 10.

The Trustee’s Deed issued as a result of the foreclosure sale indicated it conveyed the two parcels of land included in the Deed of Trust, but did not mention water rights or other appurtenances. Id., Exhibit 10.

The foreclosed on parcels are within Ballentyne’s boundaries, and are covered by the SRBA decrees in Ballentyne’s name. Answer of Defendant Ballentyne Ditch Company and Complaint for Interpleader ¶ 4 (indicating “[w]ith respect to the allegations contained in paragraphs (sic) 9 of the Plaintiff’s Complaint, the Ditch Company admits the allegations contained therein.” Paragraph 9 of the referred to Complaint provided: “The parcels have historically been irrigated by appurtenant water rights in the name of Ballentyne, and are located within Ballentyne’s boundaries.”); see also King Affidavit, Exhibit G (each of the decrees indicate the water right is limited to the irrigation of 741 acres within the boundary of Ballentyne).


After the foreclosure sale, D.L. Evans contacted Shaun Bowman (“Bowman”), a director of Ballentyne, and inquired whether Ballentyne was “over the water rights for [the foreclosed on] properties.” See King Affidavit, Exhibit H. Joe King (“King”), another director of Ballentyne, then contacted Ricks, a third director of Ballentyne, by email, copying Bowman, and indicated that D.L. Evans had contacted Ballentyne regarding the “water right” for the properties previously owned by Ricks. Id., Exhibit I (“The DL Evans Bank has contacted us regarding water right (sic) for properties that you previously owned.”). King indicated Ballentyne had responded to D.L. Evans that it was “over” the
water rights. *Id.* King then asked Ricks whether he, Ricks, had “any plans to not transfer these water shares to the bank.” *Id.*

Ricks responded to King, by email, that “[t]here will not be any transfer of water rights by me,” and that there had been prior discussions among them “that water rights in the Ballentyne Ditch Co. are personal property (sic) and are not attached to the real property.” *Id.,* Exhibit J. Ricks stated “DL Evans Bank et. al. are now owners of real property that does not have any water rights in an irrigation company (sic.),” and threatened to sue Ballentyne if it transferred any “water rights.” *Id.*

King replied to Ricks’ email, again copying Bowman, and reiterated Ricks’ position was “no transfer of water without a court order,” and that he would pass the same on to D.L. Evans. *Id.,* Exhibit K. King indicated he was “pretty sure” Ricks wanted to retain “[his] water,” but felt he needed to ask Ricks so that he fulfilled his perceived responsibilities to Ballentyne, which he described as to “manage the Ballentyne Ditch business in accordance with directions from the Board and the rules/regulations/laws that govern issues like water rights.” *Id.*

The other directors later ratified the decision to deny delivery of water to D.L. Evans when they subsequently deliberated, by email, whether to allow the delivery of water from other sources to D.L. Evans’ land. *See King Affidavit,* ¶¶ 12-19, Exhibits I-P. In the deliberations, the directors referred to D.L. Evans’ property as a “dry farm.” *See id.,* Exhibit O (“[T]his farmer knew he was leasing a dry farm.”). Prior to the foreclosure, however, the land was irrigated by Ricks with water delivered through the Ballentyne system. *See Answer of Thomas M. Ricks to D.L. Evans Complaint* ¶ 8 (admitting to the Complaint’s ¶ 9, which stated “Ricks farmed the land associated with [the Deed of Trust]
for several years, applying water to the properties through the Ballentyne water delivery system.”). All assessments for the delivery of water were paid prior to the foreclosure. See Answer of Defendant Thomas M. Ricks to Amended Complaint ¶ 29.

D.L. Evans sent Ballentyne a series of letters, requesting an explanation for its denial of the delivery of water and water rights. King Affidavit, Exhibits Q-S. As the communication progressed, D.L. Evans clarified, in response to the potential automatic stay in Ricks’ ongoing bankruptcy regarding shares in Ballentyne, that all D.L. Evans was asking for was Ballentyne’s position regarding the delivery of water and water rights. Id.


In June 2013, Ballentyne provided D.L. Evans a stock certificate representing the water rights appurtenant to four and a half acres of land within Ballentyne’s boundaries. Id. ¶ 2. D.L. Evans received that land through a separate foreclosure sale not involving the other parties to this case. Id. ¶ 3. Ballentyne did not require a surrender of the previous stock certificate for the four and a half acres prior to issuing the new certificate to D.L. Evans. Id. ¶ 4. All that D.L. Evans was required to do to obtain the stock certificate was to present to Ballentyne the trustee’s deed conveying the foreclosed on land to D.L. Evans. Id.

Ricks has a document that appears to represent either seventy one or (71.5) shares2 of the “capital stock” of Ballentyne. Ricks Affidavit, ¶ 6, Exhibit 3. While the document contains Ricks’ name, it is not signed by Ballentyne’s President, attested to by

---

2 The document indicates it is for “Seventy One (71.5) Shares (sic).” Ricks Affidavit, Exhibit 3.
Ballentyne’s secretary, and does not bear Ballentyne’s corporate seal as required by Ballentyne’s Bylaws to be a stock certificate. *See King Affidavit, Exhibit E.*

DATED this _ _ day of February, 2015.

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP

[Signature]

Jason R. Naess
Attorneys for D.L. Evans Bank
CERTIFICATE OF DELIVERY

I hereby certify that on the 5th day of February, 2015, I served a copy of the foregoing STATEMENT OF FACTS IN SUPPORT OF D.L. EVANS’ RESPONSE BRIEF TO THOMAS M. RICKS’ MOTION FOR SUMMARY JUDGMENT upon the following named person(s) in the manner listed below:

S. Bryce Farris
SAWTOOTH LAW OFFICE, PLLC
P.O. Box 7985
Boise, Idaho 83707

Chris Bromley
McHugh Bromley, PLLC
380 S 4th St., Ste 103
Boise, Idaho 83702

John Homan
Idaho Department of Water Resources
P.O. Box 83720-0098
Boise, Idaho 83720

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP

Signed by
Jason R. Naess
Attorneys for D.L. Evans Bank