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S. BRYCE FARRIS
[Idaho State Bar No. 5636]
SAWTOOTH LAW OFFICES, PLLC
Golden Eagle Building
1101 W. River St., Ste. 110
P. O. Box 7985
Boise, Idaho 83707
Telephone: (208) 629-7447
Facsimile: (208) 629-7559
E-mail: bryce@sawtoothlaw.com

Attorney for Defendants Ballentyne Ditch Company, Limited, Aaron Ricks, Shaun Bowman, Joe King and Steve Snead

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 REPLY 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 Reply Memorandum in Support of the Ballentyne's Motion for Summary Judgment.

I. INTRODUCTION/SUMMARY

On January 22, 2015, Ballentyne filed a Motion for Summary Judgment, as well as supporting affidavits and Memorandum, seeking summary judgment as to Plaintiff, DL Evans Bank's ("DL Evans") claims against Ballentyne and summary judgment as to Ballentyne's claim for interpleader. On or about February 6, 2015, DL Evans filed a Response Brief as well as its own statement of facts and affidavit of Robert Squire. This is Ballentyne's Reply to DL Evans' Response.

One thing that remains clear is that DL Evans is not clear as to its own position in this case. On the one hand DL Evans asserts this case involves water rights, including ownership and title to water rights decreed by the Snake River Basin Adjudication ("SRBA") Court in the name of Ballentyne. On the other hand, DL Evans recognizes that its right to delivery of water is conditioned upon its ownership of stock, which provides its ownership interest in Ballentyne Ditch Company and the water rights owned by and decreed to Ballentyne Ditch Company.

Despite these inconsistent positions, DL Evans continues to second guess the decisions to abide by its Bylaws and share certificates and remain neutral as to the stock ownership dispute between Defendant Thomas Ricks ("Ricks") and DL Evans. Such decisions are not ultra vires, bad faith or negligence. Rather, Ballentyne is caught in the middle of two competing claims as to the

ownership of shares by Ricks and DL Evans and it has followed its own Bylaws and share certificates, which both existed well before any of these current Directors were on the Ballentyne Board. Ballentyne has attempted to remain neutral as to whether the stock is personal property, as suggested by Ricks, or appurtenant and real property, as suggested by DL Evans, and thus the attempt to stay out of the dispute and follow its own governing bylaws and share certificates should not create a cause of action against them simply because DL Evans now wants to second guess those decisions. The bottom line continues to be a stock ownership dispute between Ricks and DL Evans and if DL Evans is correct that it should be transferred title to the shares of stock currently in Ricks' name then Ballentyne can and will abide by such a decision.

Ballentyne's Reply to DL Evans arguments in response to Ballentyne's Motion can be summarized as follows:

1. DL Evans own arguments make it clear that its right to a proportional interest in the water rights decreed to Ballentyne is based upon DL Evans' ownership of stock. The water rights have been decreed to Ballentyne and those decrees cannot be set aside or modified by this Court. Rather, the dispute continues to be whether the stock in question is owned by Ricks or DL Evans and the owner of such stock would be entitled to a proportional interest in the assets and water rights of the Ballentyne;

2. DL Evans has raised no valid claims against the Directors of Ballentyne. DL Evans has made no assertions or attempts to pierce the corporate veil of Ballentyne to allow DL Evans to hold the Directors personally liable. Moreover, despite DL Evans own twisted and confusing letters to clarify its position, DL Evans is doing nothing more than second guessing Ballentyne's business

judgment to attempt to remain neutral and follow its own bylaws. DL Evans cannot maintain an action for negligence against Ballentyne or its Directors and there is no showing of bad faith, willful conduct or intentional disregard for the law.

3. It is not ultra vires for Ballentyne to follow its own bylaws and share certificates with regard to the transfer of shares, and given DL Evans inconsistent and conflicting positions as to what it is seeking, it is not ultra vires or actionable for Ballentyne to deliver water to its shareholders. If Ballentyne delivers water to a non-shareholder then it is arguable ultra vires but this is precisely why the issue in this case concerns the ownership of shares between DL Evans and Ricks. Moreover, Ballentyne cannot be required to deliver water to a non-shareholder when it does not have title to said water rights and DL Evans has not made proper demand under I.C. § 42-912.

4. Finally, DL Evans has done nothing to respond to Ballentyne's claim for interpleader. This case involves the ownership of stock between Ricks and DL Evans, nothing more. Despite DL Evans attempts to turn it into something it is not, this case should focus on the ownership of stock and Ballentyne will abide by the Court's order as to the transfer of stock if necessary and/or deposit a stock certificate for the disputed shares with the Court.

II. ARGUMENT

A. Water Rights or Stock Ownership.

One of the most glaring errors with DL Evans response is the suggesting that name and title to a water right is not an element. Ownership of the water right is an element to the water right and in many cases ownership of the water right itself is precisely what was disputed, resolved and then decreed by the SRBA Court. Idaho Code § 42-1412(6) provides that the partial decree issued by

the SRBA Court shall include "a statement of each element of a water right as stated in subsections (2) and (3) of section 42-1411" which provides that element number one is "the name and address of the claimant." I.C. § 42-1411(2)(a). There can be no dispute that Ballentyne is the owner of such water rights decreed in its name by the SRBA Court and such decree cannot be modified or amended except by the SRBA Court. Thus, any claim, assertion or suggestion by DL Evans that it owns the water rights already decreed in the name of Ballentyne, other than that it would own proportionally as a shareholder, must be summarily dismissed. Once it is acknowledged that ownership of the decreed water rights is not at issue, then the issue remains whether DL Evans or Ricks owns the stock entitling them to an interest in the water rights owned by Ballentyne.

DL Evans mistakenly, or purposefully, confuses a landowner within an irrigation district with a stock holder of a non-profit, private irrigation company. In an irrigation district, established under Title 43 and which apportion benefits to lands pursuant to I.C. § 43-404, landowners are apportioned benefits, which entitle them to an interest in the water rights held in trust by the irrigation district. *See* I.C. § 43-316; *Bradshaw v. Milner Low Lift Irrigation District*, 85 Idaho 528, 381 P.2d 440 (1963). This is distinct and different from a canal or ditch company because the interest is not based upon being a landowner within the irrigation district,[1] the interest is based upon being a shareholder or stock holder in the company. As recognized by DL Evans:

A mutual irrigation company is a non-profit corporation established for "convenience

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[1] DL Evans suggestion that Ballentyne's "post-SRBA decree world" is that "landowners within a mutual irrigation company's boundaries no longer have any right to delivery and use of water on their land" is completely misplaced. *DL Evans' Response*, pg. 2. Unlike an irrigation district, delivery of water is not based upon being a landowner within the boundaries but rather is based upon being a stockholder of the company which provides the stockholder with a proportional interest in the water rights of the company.

> of [the corporation's] **members** in the management of the irrigation system and in the distribution to them of water for use upon their lands **in proportion to their respective interests**" in the corporation. *Ireton v. Idaho Irr. Co.*, 30 Idaho 310, 164 P. 687, 689 (Idaho 1917). The corporation is owned by the **stockholders**, who are landowners within the corporation's boundaries, and **the stock represents water rights made appurtenant to the landowner-stockholders' land**. *Id.; see also, e.g. Twin Falls Canal Co. v. Shippen*, 46, Idaho 787, 271 P. 578 (Idaho 1928).

DL Evans' Response Brief, pg. 6 (emphasis added).

In other words, as suggested by DL Evans, one must be a "member" or stockholder to have a proportional interest in the water rights of the corporation and it is the stock that represents the proportional interest in right to use the water rights and irrigation system.[2] If one does not own stock or is not a member then one is not entitled to a proportional interest.[3] This is precisely what Ballentyne has been suggesting from day one - the ownership of stock represents a proportional right to receive irrigation water from the Ballentyne Ditch via the water rights owned by Ballentyne and its shareholders. If DL Evans does not own stock, then DL Evans does not own a proportional interest in the water rights held by Ballentyne for its stockholders. This brings the issue full circle back to whether DL Evans owns stock or whether it is still owned by Ricks. This is an issue between DL Evans and Ricks.

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[2] Whether the stock is appurtenant to the land or personal property is an issue between DL Evans and Ricks but it should be noted that the cases cited by DL Evans, including *Ireton v. Idaho Irr. Co.*, 30 Idaho 310, 164 P. 687 (1917), deal with Carey Act Canal Companies which are distinct and different from non-profit canal companies like Ballentyne.

[3] This is also consistent with the language in I.C. § 42-108 concerning changes in the elements of water rights and the statement that "if the right to the use of such water, or the use of the diversion works or irrigation system is represented by shares of stock in a corporation" then such change will not be allowed without the consent of the corporation. The key is that the right to use of water is represented by shares of stock in the corporation. If there is no stock ownership, then there is no right to use the water, diversion works or irrigation system.

To summarize this issue, Ballentyne does not dispute that an owner of stock in Ballentyne is entitled to a proportional issue in the ditch rights and water rights held by Ballentyne, and so long as all assessments against those shares of stock are paid, the stock holder is entitled to receive a proportional share of the water rights held by Ballentyne. This only begs the issue of who owns the stock as between Ricks and DL Evans. Both Ricks and DL Evans have briefed the issue as to the ownership of stock, whether it is personal property or not, as part of Ricks' motion for summary judgment. The determination of this issue by this Court will dictate whether DL Evans owns stock in Ballentyne and thus is entitled to a proportional interest in the ditch rights and water rights held by Ballentyne.

The recognition that this case does not involve the ownership of decreed water rights, but rather whether DL Evans owns stock in Ballentyne which would entitled it to delivery and use of the Ballentyne Ditch and those water rights held by Ballentyne, is also important for reasons discussed, *infra*, that Ballentyne did not act negligently, in bad faith or ultra vires when determining whether to deliver water to a non-shareholder or to follow its bylaws as to the transfer of shares.

B. Claims Against Directors.

1. DL Evans has made no claims to Disregard the Legal Entity of Ballentyne.

Without citing any authority, DL Evans suggests that because Ballentyne is a non-profit corporation, there is no necessity to pierce the corporate veil in order to disregard the separate existence of Ballentyne and assert claims against its Directors. This is not the case and it makes no sense for a non-profits directors to have less protection than a for profit entity. Ballentyne is a valid and existing non-profit corporation, has been in existence for more than one hundred years, and

Idaho law recognizes as a valid entity owning water rights and ditch rights. Generally, every corporation will be regarded as a separate legal entity, and the powers of a court to disregard a corporate entity must be exercised cautiously. *Alpine Packing Co., v. H.H. Keim Co., Ltd.,* 121 Idaho 762, 828 P.2d 325 (Ct.App. 1991). The non-profit corporation statutes specifically provide that 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. In order to disregard this separate corporate entity, DL Evans must pierce the corporate veil which requires a showing that the Board of Directors are the alter ego of Ballentyne.[4] DL Evans has not attempted to do so and more importantly the evidence is clear that is not the alter ego of the five Directors for a corporation which is more than one hundred years old. Instead, DL Evans simply suggests that the vote was to be by oral vote as opposed to a more convenient method of corresponding by electronic mail.[5] In any event, it does not amount to disregard of a corporate entity or show that the Ballentyne Ditch Company is the alter ego of any of the Directors.

2. DL Evans' Attempts to Second Guess the Business Judgment of Ballentyne.

DL Evans argues that the standard for liability of a director of a non-profit corporation falls

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[4] The test courts in Idaho use in determining whether to disregard the corporate entity has two requirements. *Alpine Packing Co., v. H.H. Keim Co., Ltd.,* 121 Idaho 762, 828 P.2d 325 (Ct. App. 1991). First, "there be such a unity of interest and ownership that the separate personalities of the corporation and the individual no longer exist." *Id.* at 763, 828 P.2d at 326. Second, the court must determine "that if the acts are treated as those of the corporation and inequitable result will follow." *Id.* The "inequitable result" has also been defined as "sanctioning fraud or promoting injustice." *Id.* (quoting *Baker v. Kulczyk*, 112 Idaho 417, 420, 732 P.2d 386, 389 (Ct. App. 1987)).

[5] Interestingly, DL Evans attempts to take issue with whether the bylaws were followed with respect to voting orally or by electronic mail, but then fails to address the fact that the bylaws specifically require the shares to be surrendered in order to transfer shares.

under I.C. § 30-3-80 which provides "General Standards for Directors" and provides that a director shall act in good faith, with the care of an ordinary prudent person, and in a manner the director reasonably believes in the best interest of the corporation. This is essentially the business judgment rule which "immunizes management from liability in corporate transaction undertaken with both power of the corporation and authority of management where there is a reasonable basis to indicate that transaction was made in good faith." *See Leppaluoto v. Warm Springs Hollow Homeowners Association, Inc.*, 114 Idaho 3, 9-10, 752 P.2d 605 (1988) (citation omitted) (upholding grant of summary judgment to a non-profit corporation for business decisions it made to resolve an assessment dispute with a bank). However, the business judgment rule does not eliminate the need to pierce the corporate veil and disregard the separate corporate entity in order to hold individual directors liable. In any event, the facts in this case are clear that there is a "reasonable" basis to not transfer the shares to DL Evans Bank when Ballentyne's own bylaws provide that such a transfer cannot occur without the surrender of the original share certificate. This is especially true when there is a known dispute as to the ownership of the shares and original owner is adamant that they will not transfer the shares, and they will pursue legal action if Ballentyne does so in violation of its bylaws and share certificates.

Finally, it is worth repeating, that DL Evans' own requests were unclear as to what it wanted and whether it wanted Ballentyne to transfer stock to it when it 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. This second letter (Exhibit S), indicating they did not want to change the stock ownership, was the last written correspondence sent by DL Evans to Ballentyne prior to DL Evans initiating this lawsuit. It is difficult to understand how DL Evans can complain about Ballentyne's business decisions when DL Evans itself clarified that they did not want the stock transferred and they continued to take misleading and inconsistent positions.

3. DL Evans Cannot Maintain an Action for Negligence or Under I.C. § 6-1605.

The standard suggested by DL Evans in I.C. § 30-3-80, which provides for "reasonably believes" and "care of an ordinary prudent person", is similar to a negligence standard which directly contradicted by the more specific statute and standard provided in I.C. § 6-1605. 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 exceptions provided in the statute is that the immunity is not applicable if the conduct is willful, wanton, fraudulent or a knowing violation of the law. I.C. § 6-1605.[6] DL Evans cannot maintain a negligence action against Ballentyne or its Directors as there

[6] 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

can be no negligent cause of action against the Directors of a non-profit entity.

DL Evans never mentions or suggests that Ballentyne's business judgment decision were willful, wanton, fraudulent or a knowing violation of law which is required to obviate the immunity under I.C. § 6-1605. Instead, DL Evans suggests the actions were not in good faith because the vote was not oral and their actions were not consistent with Idaho law. *DL Evans' Response*, pg. 16. However, whether the decision was by oral vote or electronic mail is not sufficient to warrant individual liability of these Directors and whether their decision to not transfer shares is inconsistent with Idaho law is yet to be determined but it certainly is not an "intentional misconduct, fraud or knowing violation of the law" as required by I.C. § 6-1605(1)(d). To the contrary, Ballentyne followed its own bylaws and whether the stock in question is personal property or not is an unresolved issue in which Ballentyne in its business judgment has determined to stay neutral on.

4. DL Evans Cannot Maintain an Action for Ultra Vires.

As to DL Evans' suggestion of ultra vires, DL Evans' argument centers around the same misguided premise that Ballentyne "decided not to transfer D.L. Evans its appurtenant water." *DL Evans' Response*, pg. 17. As addressed, *supra*, and as recognized by DL Evans, the right to receive water from the Ballentyne Ditch and the water rights owned by Ballentyne is contingent upon stock ownership in Ballentyne. DL Evans then indicated that it did not want the stock transferred at this time. DL Evans' suggestion that Ballentyne would transfer some small amount of a water right to

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bylaws and stay out of this dispute between DL Evans and Ricks.

each of its shareholders is absurd, and even if so, it would still require one to be a shareholder to obtain such an interest. DL Evans' interest in the Ballentyne water rights is conditioned upon stock ownership. It is the transfer of stock which DL Evans seeks, or at least should be seeking, and whether it owns such stock is still an issue in dispute between Ricks and DL Evans. It is not ultra vires to follow Ballentyne's own bylaws, which existed prior to this dispute and prior to any of these Directors being on Ballentyne's board. Indeed, it would be ultra vires to deliver water to non-shareholders. *See Yaden v. Gem Irrigation*, 37 Idaho 300, 216 P. 250 (1923); *Jensen v. Boise Kuna Irrigation Dist.*, 75 Idaho 133, 141, 269 P.2d 755 (1954) (holding that because of the guarantee to its landowners, it was ultra vires for an irrigation district to deliver to a non-landowner). The same would arguably be true for a non-profit irrigation company to deliver water to a non-shareholder when it is recognized that the members/shareholders have a proportional interest in the assets of the company. In any event, and as stated in Ballentyne's opening memorandum, ultra vires is intended to set aside an action because it is beyond the corporation's authority but it does not render its Directors' personally liable.

C. Claims Against Ballentyne.

DL Evans claims a "declaratory judgment" ordering Ballentyne "to transfer to Plaintiff the Ballentyne stock associated with the water transferred to Plaintiff under the Trustee's Deed." *Amended Complaint*, prayer for relief, lines 13-19, pg. 11. This is precisely the issue Ballentyne continues to suggest is not between Ballentyne and DL Evans but rather is between DL Evans and

Ricks. Ballentyne acknowledges and agrees that it will transfer the stock as directed by this Court and thus there is no controversy between Ballentyne and DL Evans and the Court should simply dismiss Ballentyne and grant its motion for interpleader.

With respect to the damage claims against Ballentyne, DL Evans cannot maintain damage claims against Ballentyne under theories of ultra vires or negligence for the reasons set forth above and in Ballentyne's opening memorandum. DL Evans is doing nothing more than second guessing Ballentyne's decision to abide by its bylaws and while the issue of whether the shares are real or personal property creates a novel legal issue, it is an issue between DL Evans and Ricks. Ballentyne's decision as to how to proceed on this issue is not actionable under negligence and even if it were actionable under ultra vires, which it is not, the relief again is to have the shares transferred into the name of DL Evans which Ballentyne is willing to do after this Court renders its opinion on the issue. With regard to whether Ballentyne has a duty to DL Evans, DL Evans again avoids the issue that it does not own stock in Ballentyne for the disputed land. Again, the right to water from the Ballentyne Ditch and from the water rights held by Ballentyne is based upon being a share/stock holder in Ballentyne and DL Evans is not such until it resolves its dispute with Ricks as to the ownership of the stock.

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1. DL Evans Cannot Maintain an Action under I.C. § 42-912.[7]

With respect to DL Evans' claims under I.C. § 42-912, DL Evans fails to address the points raised in Ballentyne's opening memorandum that it cannot maintain a cause of action under I.C. § 42-912 because it has not made a proper demand and Ballentyne cannot deliver more water that it has title to. Instead, DL Evans restates its position that the land previously received water and thus it should continue to receive water. The land previously received water when Ricks or his predecessor own the land and they also owned stock in Ballentyne. Thus, DL Evans has done nothing more than beg the question as to whether it owns stock in Ballentyne which would entitle it to receive a proportional share of Ballentyne's water rights. That said, DL Evans demands never cite to I.C. § 42-912 and are far from a proper demand as required under I.C. § 42-912. Indeed, DL Evans confusing and inconsistent positions do nothing more than state "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. A

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[7] DL Evans' *Amended Complaint*, Count II, paragraph 32, quotes I.C. § 42-912 and then later asserts a cause of action against "Ballentyne" not its Directors relating to a requirement to deliver water to DL Evans. *Amended Complaint*, ¶ 32-34, pg. 6. Nothing in said Count II is directed towards the Directors or suggests that the Directors should be personally liable to DL Evans for reasons set forth in I.C. § 42-912. Nevertheless, to the extent DL Evans suggests that the Directors are liable under I.C. § 42-912 they cannot be liable the reasons set forth herein and as provided in Ballentyne's opening memorandum. There decision as to whether to deliver water even if DL Evans made a proper demand under I.C. 42-912 is not actionable and could at most be characterized as a business judgment decision.

closer look at the letters also reveals that DL Evans request was for Ballentyne to "wheel" water to which Ballentyne did not hold title. Idaho Code § 42-912, even if it were applicable, specifically forbids the delivery of more water than it has title to. Again, DL Evans' request was to have Ballentyne deliver water rights to which it did not have title to and it clarified that it did not seek "any change in stock ownership." Based upon these positions, which were just a few months prior to DL Evans initiating this action, it is difficult, if not impossible, to understand how DL Evans can complain that Ballentyne is liable to it for failure to deliver water under I.C. § 42-912 when it never mentioned or made a demand under I.C. § 42-912.

Finally, there is nothing in I.C. § 42-912 to suggest that a denial of a request under I.C. § 42-912, even if DL Evans made such a request, is actionable for damages. Even if one assumes for argument's sake that DL Evans made proper demand under I.C. § 42-912, or that it posted proper security, or that Ballentyne could deliver water through the Ballentyne Ditch which it did not have title to, the denial is not actionable for damages. DL Evans relief is to bring a declaratory judgment action to order delivery of water. However, such a claim is not relevant given the real issue in this case still remains whether DL Evans or Ricks owns the stock. If DL Evans owns the stock then I.C. § 42-912 is irrelevant.

D. <u>Ballentyne's Claim for Interpleader</u>.

With regard to Ballentyne's motion to grant its claim for Interpleader, DL Evans simply asserts this case is about water rights and thus Ballentyne should not be dismissed on its claim for

interpleader. As discussed in Ballentyne's opening memorandum in support of summary judgment, and further discussed, *supra*, this case, despite DL Evans attempts to suggest otherwise, is about the ownership of stock between Ricks and DL Evans. If DL Evans is successful in convincing this Court that its foreclosure of Ricks' real property included the stock then Ballentyne will abide by the decision and transfer the shares to DL Evans on its books which then means DL Evans owns a proportional interest in the assets of Ballentyne, including the right to receive/use its water rights and the Ballentyne Ditch. DL Evans does not dispute the amount of shares provided in Ballentyne's opening memorandum nor does it dispute Ballentyne's suggestion that it could deposit a share certificate with the Court to hold until the share ownership dispute is decided.

III. 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 DL Evans on all causes of action.

DATED this 12th of February, 2015.

SAWTOOTH LAW OFFICES, PLLC

by: _____
S. Bryce Farris

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on the following on this 18th day of February, 2015 by the following method:

JASON R. NAESS
PARSONS, SMITH, STONE,
LOVELAND & SHIRLEY, LLP
PO Box 910
Burley, ID 83318
Telephone: (208) 878-8382
Facsimile: (208) 878-0146
E-Mail: jason@pmt.org
Attorneys for Plaintiff

[X] U.S. First Class Mail, Postage Prepaid
[ ] U.S. Certified Mail, Postage Prepaid
[ ] Federal Express
[ ] Hand Delivery
[ ] Facsimile
[X] Electronic Mail or CM/ECF

CHRIS BROMLEY
MCHUGH BROMLEY
380 S. 4TH Street, Suite 103
Boise, ID 83702
E-Mail: cbromley@mchughbromley.com
Attorneys for Defendant Ricks

[X] U.S. First Class Mail, Postage Prepaid
[ ] U.S. Certified Mail, Postage Prepaid
[ ] Federal Express
[ ] Hand Delivery
[ ] Facsimile
[X] Electronic Mail or CM/ECF

JOHN HOMAN
IDAHO ATTORNEY GENERAL
P.O. Box 83720-0098
Boise, ID 83720
Facsimile: (208)287-6700
E-Mail: john.homan@idwr.idaho.gov
Attorneys for Defendant IDWR

[X] U.S. First Class Mail, Postage Prepaid
[ ] U.S. Certified Mail, Postage Prepaid
[ ] Federal Express
[ ] Hand Delivery
[ ] Facsimile
[X] Electronic Mail or CM/ECF

S. Bryce Farris