

MAR 20 2015

CHRISTOPHER D. RICH, Clerk
By JANINE KORSEN
DEPUTY

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;
AARON RICKS, DIRECTOR OF THE
BALLENTYNE DITCH COMPANY;
SHAUN BOWMAN, DIRECTOR OF THE
BALLENTYNE DITCH COMPANY; JOE
KIND, DIRECTOR OF THE BALLENTYNE
DITCH COMPANY; STEVE SNEAD,
DIRECTOR OF THE BALLENTYNE
DITCH COMPANY,

Defendants.

Case No. CV-OC-2013-17406

FINAL PRETRIAL ORDER

APPEARANCES:

Jason Naess for Plaintiff
Chris Bromley for Defendant Thomas Mecham Ricks
S. Bryce Farris for Defendant Ballentyne Ditch Company and its Board
Meghan Carter for Defendants Idaho Department of Water Resources and Gary Spackman

This matter came before the Court for a final pretrial conference on March 18, 2015.

This case will go to trial according to the Notice of Trial Setting and Order Governing Further Proceedings entered December 22, 2014. The court has one criminal trial also set to begin that

day. If both cases remain on for trial, it is anticipated an alternate judge may be required to try one. If an alternate judge will hear the case, an amended pretrial order will be entered and sent to all the parties.

So, at this time, the court anticipates Judge Norton will try this case on Monday, April 27, 2015 from 9 a.m. to 5 p.m.—the parties need to be present in the courtroom at 8:30 a.m.; Tuesday, April 28, 2015 from 8 a.m. until 12:30 p.m.; and Wednesday, April 29, 2015 from 9 a.m. to 5 p.m.

If the court needs to further amend the trial schedule, the court will send out an amended pretrial order.

Earlier in the day of the pretrial conference, the court entered its summary judgment decision dismissing Mr. Spackman and IDWR as defendants but they had already filed an exhibit list.

Defendant Ricks had already filed an exhibit list and a lay witness list which were already in the court file; the Plaintiff had filed a Disclosure of Lay Witnesses which was already in the court file. The Plaintiff had also filed matters in the clerk's office which had not yet made it into the court file. At the pretrial conference, the Ballentyne defendants filed a witness and exhibit list and proposed findings of fact and conclusions of law; and the Plaintiff filed proposed findings of fact and conclusions of law. The court recognizes that the parties did not have the opportunity to review or thoroughly review the courts summary judgment decisions before these documents needed to be filed. Therefore, they can be amended by the parties if necessary after they have had the opportunity to review the court's decisions.

At the pretrial conference, the court and parties discussed whether there were stipulations to the admissibility of evidence, stipulations of facts, or an exchange of exhibits. The parties are

to meet and confer before the trial related to these stipulations and to review the other party's exhibits so these matters can be presented to the court on the morning the trial begins.

It was agreed at the pretrial conference that the Plaintiff will use numbers to mark exhibits; the Ballentyne defendants will use capital letters to mark exhibits; and Defendant Ricks will use Roman numerals to mark exhibits. The parties should contact Judge Norton's Ada County Clerk, Janine Korsen, if there are questions about marking exhibits.

No motions are currently pending before the court.

The Plaintiff anticipates calling up to twelve witnesses; the Defendant Ricks anticipates up to three witnesses disparate from those identified by the Plaintiff; and the Ballentyne Defendants did not anticipate calling any witnesses disparate from those identified by the other parties. The parties are to meet and confer about the flow of the trial to determine whether latitude will be permitted during the Plaintiff's case-in-chief for questions by defense counsel that would traditionally be direct examination in the defense case-in-chief rather than cross examination to accommodate scheduling of witnesses. The court permits direct examination and redirect examination pursuant to I.R.C.P. 43(b)(5) but does not permit re-redirect examination without further leave from the court. None of the parties have requested exclusion of witnesses from the courtroom pursuant to I.R.E. 615(a).

None of the parties were aware of any scheduling conflict with any of the witnesses. Any additional scheduling conflicts of witnesses should be noticed to the court, with that notice also provided to the other parties, in advance of the trial.

The parties should also meet and confer about the order of examinations. The court would anticipate that the cross examination of witnesses by the Ballentyne defendants would occur before the cross examination by Defendant Ricks, unless the parties choose to proceed

otherwise. The court selected this method by their order of appearance on the heading of the case. The court will ask again about the parties' preferences for the course of examination of the witnesses on Monday morning of the trial when we meet at 8:30 a.m. The final decision of the order of defense counsel examination is left in the discretion of the judge given multiple defendants.

The Court discussed the presentation of evidence. The parties anticipated only hard-copy exhibits. If the parties intend to use computer or other electronic devices in the courtroom during the trial for presentation of evidence, they must notify the court the Thursday the week before trial so that a courtroom with the necessary equipment can be assigned. If a powerpoint or other digital presentation is presented to the court, **the version presented to the court** must be saved on a CD and given to the Clerk for preservation in the court file.

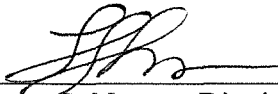
All parties will be given the opportunity to give either an oral or a written closing argument. The parties are not required to submit closing arguments in the same manner as other parties. The court will again ask during the trial the parties' preferences. If a party requests written closing arguments, the court will set a briefing schedule for the arguments and any rebuttal at the close of the trial.

If the parties reach a settlement in this case prior to trial, such settlement must be in writing and conform to the requirements of Idaho Rules of Civil Procedure 54, 60 and 75. A trial will not be vacated until all settlement documents are filed with the court **and the court approves such settlement**. Please plan accordingly.

If any party desires an additional status or settlement conference with the court pursuant to I.R.C.P. 16, please contact the court clerk for a date and time for such hearing and then notice the hearing to all parties.

AND IT IS SO ORDERED.

Dated this 18th day of March, 2015.



Lynn G. Norton, District Judge

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of March, 2015, I mailed (served) a true and correct copy of the within instrument to:

Jason R Naess
Attorney at Law
PO Box 910
Burley ID 83318

S Bryce Farris
Attorney at Law
PO Box 7985
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Christopher Michael Bromley
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Meghan Carter
Attorney at Law
PO Box 83720
Boise ID 83720-0098

CHRISTOPHER D. RICH
Clerk of the District Court

By: 
Deputy Court Clerk

