

filed contemporaneously herewith. Also filed contemporaneously herewith is the *Affidavit of Thomas M. Ricks in Support of Thomas M. Ricks' Motion for Summary Judgment* ("Ricks Affidavit") and the *Affidavit of Chris M. Bromley in Support of Thomas M. Ricks' Motion for Summary Judgment* ("Bromley Affidavit").

STATEMENT OF FACTS

1. Ballentyne Ditch Co. Ltd. ("Ballentyne") is a corporation, in good standing, with the laws of the State of Idaho. *Ricks Affidavit* at 1, ¶ 1.

2. By filing claims in the Snake River Basin Adjudication ("SRBA") and receiving recommendations for its claims from the Idaho Department of Water Resources ("IDWR"), Ballentyne was issued decrees from the SRBA district court for water right nos. 63-00195, 63-00198AA, 63-00258A, 63-00260B, 63-00264, 63-00285, and 63-31808 ("Water Rights"). *Exhibit 1* to the *Bromley Affidavit*. The priority date of Ballentyne's rights pre-dated the November 19, 1987 commencement of the SRBA. *Id.* The decreed source of Ballentyne's Water Rights is the Boise River. *Id.* The decreed place of use for the Water Rights is described by "digital boundary," as follows: "This Right is Limited to the Irrigation of 741 Acres within the Boundary of Ballentyne Ditch Company. The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary." *Id.* The "map" referred to in the Water Rights is included in *Exhibit 1* to the *Bromley Affidavit*.

3. Ballentyne diverts water from the Boise River into its system of canals, laterals, and ditches. *Ricks Affidavit* at 1, ¶ 3. After water is diverted from the Boise River by Ballentyne and placed into Ballentyne's system of canals, laterals, and ditches, Ballentyne's shareholders are authorized to use water according to established rotations and schedules. *Id.* Water diverted by Ballentyne into its system of canals, laterals, and ditches is applied to land within its decreed place of use. *Id.*

4. Shareholders in Ballentyne are issued certificated shares of stock. *Ricks Affidavit* at 1, ¶ 4. The shares of stock authorize use of water from Ballentyne's system of canals, laterals, and ditches. *Id.* Only shareholders can use water from Ballentyne's canals, laterals, and ditches. *Id.* The shares of stock do not reference any lands to which the shares of stock are appurtenant. *Exhibit 3 to the Ricks Affidavit.*

5. Since the early 1980s, Thomas M. Ricks ("Ricks") has been on the Ballentyne Board of Directors. *Ricks Affidavit* at 1, ¶ 2. Since 2004, Ricks has been a shareholder in Ballentyne. *Id.* At all times relevant to these proceedings, Ricks has maintained possession of his shares of stock. *Id.* at p. 3, ¶ 15. Ricks still maintains possession of his shares of stock in Ballentyne. *Id.*

6. On or about January 17, 2008, D.L. Evans Bank ("Bank") entered into a Promissory Note, identified as Note No. 2015302921 ("Promissory Note"), with Ricks. *Exhibit 4 to the Ricks Affidavit.*

7. A Deed of Trust was executed, *Exhibit 5 to the Ricks Affidavit*, which superseded previous notes executed by Ricks, *Amended Complaint* at 3, ¶11. The Deed of Trust was modified on a number of occasions. *See Exhibit 6, Exhibit 7, Exhibit 8 to the Ricks Affidavit.* In the Deed of Trust, Ricks did:

[I]rrevocably 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.

Exhibit 5 to the Ricks Affidavit.

8. Pursuant to the Deed of Trust, Ricks was required to pay the total obligation due and owing under the Promissory Note on January 5, 2009. *Amended Complaint* at 4, ¶ 16.

Later, a non-judicial foreclosure was initiated by the Bank. *Ricks Affidavit* at 3, ¶ 12.

9. On December 28, 2012, January 4, 2013, and January 11, 2013, a Rescheduled Notice of Trustee's Sale was published in the Idaho Business Review, noticing the sale of Ricks' real property, consistent with Idaho Code § 45-1506. *Exhibit 10 to the Ricks Affidavit.* The Bank purchased the real property, with a Trustee's Deed recorded in Ada County on January 22, 2013 as Instrument No. 113008017. *Exhibit 9 to the Ricks Affidavit.* A Correction Trustee's Deed was recorded in Ada County on January 24, 2013 as Instrument No. 113008750. *Exhibit 10 to the Ricks Affidavit.* Both the Trustee's Deed and Correction Trustee's Deed referred to an Exhibit A, which described two parcels of land. *Exhibit 9 and Exhibit 10 to the Ricks Affidavit.*

10. Ricks was never asked by the Bank to sign a security agreement relating to Ricks' shares of stock in Ballentyne, nor has Ricks signed a security agreement in favor of the Bank.

Ricks Affidavit at 4, ¶ 16.

11. A January 22, 2015 review of the records of the Idaho Secretary of State shows the Bank has never filed a Uniform Commercial Code 1 financing statement as to Ricks.

Bromley Affidavit at 2, ¶ 3.

12. On September 25, 2013, the Bank commenced this lawsuit. *See Complaint*. On July 28, 2014, the Bank amended its complaint. *See Amended Complaint*.

13. On January 13, 2015, United States Bankruptcy Judge Terry L. Myers stated any claim the Bank has is an “unsecured” claim. *Bromley Affidavit* at 3, ¶ 5; *Exhibit 3* to the *Bromley Affidavit*.

14. On August 26, 2014, the Honorable Eric. J. Wildman entered the SRBA *Final Unified Decree*. *Exhibit 2* to the *Bromley Affidavit*.

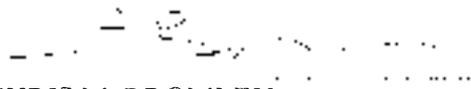
15. The Snake River Basin Adjudication was commenced on November 19, 1987. *Bromley Affidavit* at 2, ¶ 4. Ballentyne is located in Eagle, Idaho, which is in Ada County. *Ricks Affidavit* at p. 2, ¶ 3. All of Ada County was located wholly within the boundaries of the SRBA. *Bromley Affidavit* at 2, ¶ 4. Other than claims to *deminimis* domestic and stockwater, “all classes of water uses . . . within the water system [must] be adjudicated as part of the Snake River Basin adjudication.” *Bromley Affidavit* at 2, ¶ 4. “This Final Unified Decree is conclusive as to the nature and extent of all water rights within the Snake River Basin within the State of Idaho with a priority date prior to November 19, 1987” *Id.* “All other water rights with a priority before November 19, 1987, not expressly set forth in this Final Unified Decree are hereby decreed as disallowed.” *Id.*

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16. Ballentyne is governed by Articles of Incorporation, as amended, and Bylaws. *Ricks Affidavit* at 2, ¶ 5; *Exhibit 1* to the *Ricks Affidavit* (Articles of Incorporation and Amendments thereto) *Exhibit 2* to the *Ricks Affidavit* (Bylaws).

Respectfully submitted this 27 day of January, 2015.

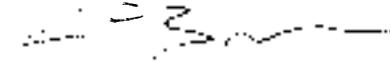
MCHUGH BROMLEY, PLLC


CHRIS M. BROMLEY
Attorneys for Thomas M. Ricks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23 day of January, 2015, a true and correct copy of the foregoing document was served as follows:

Jason R. Naess	<input checked="" type="checkbox"/>	First Class Mail
Parsons Smith Stone Loveland & Shirley, LLP	<input type="checkbox"/>	Hand Delivery
PO Box 910	<input type="checkbox"/>	Facsimile
Burley, ID 83318	<input type="checkbox"/>	Overnight Delivery
John Homan	<input type="checkbox"/>	First Class Mail
Idaho Department of Water Resources	<input checked="" type="checkbox"/>	Hand Delivery
PO Box 83720-0098	<input type="checkbox"/>	Facsimile
Boise, ID 83720	<input type="checkbox"/>	Overnight Delivery
S. Bryce Farris	<input type="checkbox"/>	First Class Mail
Sawtooth Law Offices, PLLC	<input checked="" type="checkbox"/>	Hand Delivery
PO Box 7985	<input type="checkbox"/>	Facsimile
Boise, ID 83707	<input type="checkbox"/>	Overnight Delivery


CHRIS M. BROMLEY