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9 IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE  
 10 STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

12 -----  
 13 D.L.EVANS BANK, )  
 14 Plaintiff, )

Case No. CV OC 1317406

15 vs. )

16 BALLENTYNE DITCH COMPANY, )  
 17 LIMITED; THOMAS MECHAM RICKS; )  
 18 GARY SPACKMAN, IN HIS OFFICIAL )  
 19 CAPACITY AS DIRECTOR OF THE )  
 20 IDAHO DEPARTMENT OF WATER )  
 21 RESOURCES; IDAHO DEPARTMENT )  
 22 OF WATER RESOURCES; AARON )  
 23 RICKS, DIRECTOR OF BALLENTYNE )  
 24 DITCH COMPANY; SHAUN BOWMAN, )  
 25 DIRECTOR OF BALLENTYNE DITCH )  
 26 COMPANY; JOE KING, DIRECTOR )  
 OF BALLENTYNE DITCH COMPANY; )  
 STEVE SNEAD, DIRECTOR )  
 OF BALLENTYNE DITCH COMPANY )

STATEMENT OF FACTS  
 IN SUPPORT OF D.L. EVANS'  
 RESPONSE BRIEF TO THOMAS  
 M. RICKS' MOTION FOR  
 SUMMARY JUDGMENT

Defendants. )

PARSONS, SMITH, STONE, LOVELAND & SHIRLEY, LLP  
 LAWYERS  
 BURLEY, IDAHO

1 COMES NOW, Plaintiff, D.L. Evans Bank, which hereby submits the following  
2 Statement of Facts in support of its Response Brief to Thomas M. Ricks' Motion for  
3 Summary Judgment.  
4

5 **STATEMENT OF FACTS**

6 **A. The Ballentyne Ditch Co., Ltd.**

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

16 incident to and appurtenant to the lands lying under and heretofore irrigated  
17 by means of said canal, and none of said capital stock shall be transferred,  
18 or transferrable upon the books of the corporation without a transfer of the  
19 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.

20 *Id.* Article VI further provided that the stock certificates were to "describe the lands to  
21 which the same are appurtenant," and defined what land could have appurtenant  
22 Ballentyne stock by identifying the lands irrigated by the Ballentyne Ditch. *Id.* As stated  
23 in Article VIII, the corporation was "not formed for profit, but for the mutual operation of  
24 said canal and irrigating system and for its better maintenance and conduct." *Id.*  
25  
26

1 In 1924 or 1929,<sup>1</sup> Ballentyne amended its Articles with a new Article VI. *King*  
2 *Affidavit*, Exhibit B. Amended Article VI continued to provide that shares in the  
3 corporation were:

4  
5 inseparably attached the right to the use of an equal and proportionate part  
6 of the waters of said canal available for the irrigation of the lands  
7 thereunder, and only such amounts of said capital stock shall be issued as  
8 shall be inseparably attached and appurtenant to the lands lying under and  
9 irrigated by means of said canal.

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

11 *Id.*

12 In 1948, the Articles were again amended. *King Affidavit*, Exhibit C. At that time,  
13 Article VI was amended to read: “This corporation shall have a total authorized capital  
14 stock of 10,000 divided into 1,000 shares of the par value of (\$10.00) per share.” *Id.* From  
15 that time forward, Ballentyne’s Articles no longer related ownership of stock to the  
16 ownership of land served by the common ditch nor delivery of water to such lands. *See*  
17 *King Affidavit* ¶ 3.

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

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

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<sup>1</sup> 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.

1 or Vice-President and attested by the Secretary, with the corporate seal, and  
2 express on their face their number, date of issuance, number of shares for  
3 which, and person or persons to whom issued.

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

6 *See id.*

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

11 **B. Transactions with Thomas Ricks.**

12 Thomas Ricks ("Ricks") obtained a loan from D.L. Evans Bank ("D.L. Evans") in  
13 2008. *Affidavit of Thomas M. Ricks in Support of Thomas M. Ricks' Motion for Summary*  
14 *Judgment* ("Ricks Affidavit") ¶7. In exchange for the loan, Ricks entered a Deed of Trust  
15 with the Bank (the "Deed of Trust"), securing the loan with property owned by Ricks  
16 within Ballentyne's boundaries. *See Ricks Affidavit*, Exhibit 5. The Deed of Trust  
17 provides that Ricks did:  
18

19  
20 irrevocably grant, bargain, sell, and convey in trust, with power of sale, to  
21 Trustee for the benefit of the Lender as Beneficiary, all of Grantor's right,  
22 title, and interest in and to the following described real property, together  
23 with all existing or subsequently erected or affixed buildings, improvements  
24 and fixtures; all easements, rights of way, and appurtenances; all water,  
25 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:

26 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.

1 *Ricks Affidavit*, Exhibit 5. When Ricks defaulted on the loan, D.L. Evans foreclosed on the  
2 Deed of Trust, and purchased the property at the foreclosure sale. *Id.* ¶¶ 12-14, Exhibit 10.  
3 The Trustee’s Deed issued as a result of the foreclosure sale indicated it conveyed the two  
4 parcels of land included in the Deed of Trust, but did not mention water rights or other  
5 appurtenances. *Id.*, Exhibit 10.  
6

7 The foreclosed on parcels are within Ballentyne’s boundaries, and are covered by  
8 the SRBA decrees in Ballentyne’s name. *Answer of Defendant Ballentyne Ditch Company*  
9 *and Complaint for Interpleader* ¶ 4 (indicating “[w]ith respect to the allegations contained  
10 in paragraphs (sic) 9 of the Plaintiff’s Complaint, the Ditch Company admits the  
11 allegations contained therein.” Paragraph 9 of the referred to Complaint provided: “The  
12 parcels have historically been irrigated by appurtenant water rights in the name of  
13 Ballentyne, and are located within Ballentyne’s boundaries.”); *see also King Affidavit*,  
14 Exhibit G (each of the decrees indicate the water right is limited to the irrigation of 741  
15 acres within the boundary of Ballentyne).  
16

17 **C. Post-sale Communication Regarding Water Rights and the Foreclosed on**  
18 **Land.**

19 After the foreclosure sale, D.L. Evans contacted Shaun Bowman (“Bowman”), a  
20 director of Ballentyne, and inquired whether Ballentyne was “over the water rights for [the  
21 foreclosed on] properties.” *See King Affidavit*, Exhibit H. Joe King (“King”), another  
22 director of Ballentyne, then contacted Ricks, a third director of Ballentyne, by email,  
23 copying Bowman, and indicated that D.L. Evans had contacted Ballentyne regarding the  
24 “water right” for the properties previously owned by Ricks. *Id.*, Exhibit I (“The DL Evans  
25 Bank has contacted us regarding water right (sic) for properties that you previously  
26 owned.”). King indicated Ballentyne had responded to D.L. Evans that it was “over” the

1 water rights. *Id.* King then asked Ricks whether he, Ricks, had “any plans to not transfer  
2 these water shares to the bank.” *Id.*

3  
4 Ricks responded to King, by email, that “[t]here will not be any transfer of water  
5 rights by me,” and that there had been prior discussions among them “that water rights in  
6 the Ballentyne Ditch Co. are personal peroperty (sic) and are not attached to the real  
7 property.” *Id.*, Exhibit J. Ricks stated “DL Evans Bank et. al. are now owners of real  
8 property that does not have any water rights in an irrigation comapny (sic.),” and  
9 threatened to sue Ballentyne if it transferred any “water rights.” *Id.*

10  
11 King replied to Ricks’ email, again copying Bowman, and reiterated Ricks’  
12 position was “no transfer of water without a court order,” and that he would pass the same  
13 on to D.L. Evans. *Id.*, Exhibit K. King indicated he was “pretty sure” Ricks wanted to  
14 retain “[his] water,” but felt he needed to ask Ricks so that he fulfilled his perceived  
15 responsibilities to Ballentyne, which he described as to “manage the Ballentyne Ditch  
16 business in accordance with directions from the Board and the rules/regulations/laws that  
17 govern issues like water rights.” *Id.*

18  
19 The other directors later ratified the decision to deny delivery of water to D.L.  
20 Evans when they subsequently deliberated, by email, whether to allow the delivery of  
21 water from other sources to D.L. Evans’ land. *See King Affidavit*, ¶¶ 12-19, Exhibits I-P.  
22 In the deliberations, the directors referred to D.L. Evans’ property as a “dry farm.” *See id.*,  
23 Exhibit O (“[T]his farmer knew he was leasing a dry farm.”). Prior to the foreclosure,  
24 however, the land was irrigated by Ricks with water delivered through the Ballentyne  
25 system. *See Answer of Thomas M. Ricks to D.L. Evans Complaint* ¶ 8 (admitting to the  
26 Complaint’s ¶ 9, which stated “Ricks farmed the land associated with [the Deed of Trust]

1 for several years, applying water to the properties through the Ballentyne water delivery  
2 system.”). All assessments for the delivery of water were paid prior to the foreclosure.

3  
4 *See Answer of Defendant Thomas M. Ricks to Amended Complaint* ¶ 29.

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

10 In March and April, 2013, D.L. Evans’ representative contacted Bowman,  
11 indicating D.L. Evans was ready and willing to pay for the delivery of water to D.L.  
12 Evans’ land. *Affidavit of Robert Squire in Support of D.L. Evans’ Response Brief to*  
13 *Motions for Summary Judgment* (“Squire Affidavit”) ¶1.

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

22 Ricks has a document that appears to represent either seventy one or (71.5) shares<sup>2</sup>  
23 of the “capital stock” of Ballentyne. *Ricks Affidavit*, ¶ 6, Exhibit 3. While the document  
24 contains Ricks’ name, it is not signed by Ballentyne’s President, attested to by  
25  
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<sup>2</sup> The document indicates it is for “Seventy One (71.5) Shares (sic).” *Ricks Affidavit*, Exhibit 3.

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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 5<sup>th</sup> day of February, 2015.

**PARSONS, SMITH, STONE,  
LOVELAND & SHIRLEY, LLP**

  
\_\_\_\_\_  
Jason R. Naess  
Attorneys for D.L. Evans Bank

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**CERTIFICATE OF DELIVERY**

I hereby certify that on the 5<sup>th</sup> 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                     | <input checked="" type="checkbox"/> | U.S. Mail             |
| SAWTOOTH LAW OFFICE, PLLC           | <input type="checkbox"/>            | Via Facsimile         |
| P.O. Box 7985                       | <input type="checkbox"/>            | Via Overnight Carrier |
| Boise, Idaho 83707                  | <input type="checkbox"/>            | Via Hand Delivery     |
| <br>                                |                                     |                       |
| Chris Bromley                       | <input checked="" type="checkbox"/> | U.S. Mail             |
| McHugh Bromley, PLLC                | <input type="checkbox"/>            | Via Facsimile         |
| 380 S 4 <sup>th</sup> St., Ste 103  | <input type="checkbox"/>            | Via Overnight Carrier |
| Boise, Idaho 83702                  | <input type="checkbox"/>            | Via Hand Delivery     |
| <br>                                |                                     |                       |
| John Homan                          | <input checked="" type="checkbox"/> | U.S. Mail             |
| Idaho Department of Water Resources | <input type="checkbox"/>            | Via Facsimile         |
| P.O. Box 83720-0098                 | <input type="checkbox"/>            | Via Overnight Carrier |
| Boise, Idaho 83720                  | <input type="checkbox"/>            | Via Hand Delivery     |

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\_\_\_\_\_  
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