

**DIRECTOR'S REPORT OF DEFERRED
DE MINIMIS DOMESTIC AND / OR STOCK WATER USE**

Claim No. 29-14177

In Re SRBA
Twin Falls County Civil Case No. 39576

Report to the SRBA District Court

Prepared by the Idaho Department of Water Resources
Gary Spackman, Director
Carter Fritschle, Manager, Adjudication Section

June 23, 2016

DESCRIPTIVE SUMMARY

This is a Director's Report of Deferred De Minimis Domestic and / or Stock Water Use submitted by the Director of the Idaho Department of Water Resources (IDWR).

INTRODUCTION

A Motion for Determination of Deferred De Minimis Domestic or Stock Water Use (Motion), as well as a Notice of Claim to Water Right, were submitted to the Court on March 24, 2016, under water right claim no. 29-14177. The claimants, Jerre and Monte Evans, published notice of the Motion, and the Director has now completed his examination of the water right claim. The examination was conducted by Carter Fritschle, Manager, Adjudication Section on behalf of the Director. The materials used in and results of the examination of the elements of water right claim 29-14177 are discussed below.

DISCUSSION

Priority Date – The priority date claimed (6/1/1894) predates the acquisition of this land by a private party. A land patent dated 9/1/1914 was issued to Hyrum D. Powell under the Homestead Act of 1862, and that land patent consisted of 159.89 acres in the South ½ of the Northeast ¼, the Northwest ¼ of the Southeast ¼ and Lot 2 (NWNE) of Section 1, Township 11 South, Range 33 East. The claimed point of diversion and place of use is in SE ¼ of the NE ¼ of Section 1. The document submitted with the claim, an excerpt from Bannock Valley by Laurie Ward with a copyright of 1982, suggests there was a possessory claim to the land prior to it being opened to homesteading. However, Hyrum D. Powell's name does not appear in the lists titled "Possessory Claims" or "Water Rights" in the document. Three people with the last name of

Evans (T.B. Evans, Lorenzo B. Evans and Susannah Evans) are noted with a small line next to their names under “Water Rights” with sources of Meadow Springs and Locomotive Springs.

However, there is no information provided to link the people listed or water sources listed to Bannock Creek in the SE ¼ of the NE ¼ of Section 1, Township 11 South, Range 33 East.

The general requirements of the Homestead Act of 1862 were that each homesteader had to live on the land, make improvements (construct a 14-by-28 dwelling) and farm or cultivate the land for 5 years before they were eligible to "prove up" and receive a land patent. Therefore, Hyrum D. Powell must have met the homestead requirements to obtain the land on 9/1/1914. However, the ownership of livestock does not appear to be a homestead requirement. All 159.89 acres of the Hyrum D. Powell land patent are now owned by Evans Brothers according to the tax lot information that was updated on 2/22/2016 and obtained by IDWR from Power County.

Point of Diversion – The claimed point of diversion for 29-14177 is in T11S, R33E, S01, SENE. Bannock Creek as it traverses the SE ¼ of the NE ¼ of Section 1 from south to north. Under the description of the diverting works (Item 5 on the claim) the information entered is “Stock drink from stream” but the location as to where the stock drink is not shown on the map that accompanied the claim. This description implies an in-stream livestock water use that would have typically been claimed with a beginning point of diversion and an ending point of diversion. Aerial photos for various years from 1987 to 2015 were examined, and there were no obvious locations visible (paths leading to and from the stream) as to where the livestock might have accessed Bannock Creek. However, what appears to be the remnant of a road is visible in several of the aerial photos, and if that feature is a road, it may have crossed Bannock Creek

approximately 175 feet south of the north boundary of the SE ¼ of the NE ¼ of Section 1. It is from this location to the north boundary of the SE ¼ of the NE ¼ of Section 1 that the riparian zone along Bannock Creek appears to be the narrowest in the ESRI one-foot resolution aerial photo. If livestock had been drinking water directly from Bannock Creek, this appears to be the most likely area in which they were accessing the stream.

Source – Bannock Creek appears to be the only surface water source within T11S, R33E, S01, SENE.

Place of Use – The ESRI one-foot resolution aerial photo cannot be used to confirm the presence of livestock in the SE ¼ of the NE ¼ of Section 1. However, if the land were being grazed by livestock, access to Bannock Creek for drinking directly from the stream does not appear to be restricted.

Purpose of Use and Period of Use – Some of the more recent aerial photos depict markings on the ground that appear as more or less parallel lines on the west side of Bannock Creek. However, these markings appear to have been made by machinery and not by cattle, horses or sheep. More documentation is required to confirm the presence of livestock in the SE ¼ of the NE ¼ of Section 1.

Quantity – No flow information is available. The 0.04 cfs claimed diversion rate would be “excessive” for livestock that are watering directly from a stream source without any diversion works. If documentation can be obtained to confirm livestock are drinking water directly from Bannock Creek in the SE ¼ of the NE ¼ of Section 1, then 0.02 cfs would be the maximum diversion rate that could be recommended, and be consistent with the findings in SRBA Basin-

Wide Issue 12.

CONCLUSION

Because the use of water by livestock could not be confirmed, the recommendation for claim 29-14177 is disallowed because no beneficial use was found. Pursuant to Judge Wildman's *Order Granting Motion Governing Procedures in the SRBA for Adjudication of Deferred De Minimis Domestic and Stock Water Claims*, dated June 28 2012, the Director submits this Director's Report of Deferred De Minimis Domestic Water Use, Claim No. 29-14177, which includes a recommendation of deferred de minimis water right no. 29-14177 of disallowed.

Respectfully submitted this 23rd day of June, 2016.



CARTER FRITSCHLE
Manager, Adjudication Section

06/14/2016

IDAHO DEPARTMENT OF WATER RESOURCES
CLAIMS / RIGHTS NOT RECOMMENDED

<u>W.R. NUMBER</u>	<u>NAME AND ADDRESS</u>	<u>CLAIM DISPOSITION</u>	<u>REASON</u>
29-14177	MONTE EVANS 5050 BAILEY RD ARBON ID 83212	Disallowed	No beneficial use found.
	JERRE EVANS 5050 BAILEY RD ARBON ID 83212		

CERTIFICATE OF SERVICE

I certify that on June 24, 2016, I caused to be served a true and correct copy of this Director's Report of Deferred De Minimis Domestic and / or Stock Water Use, to the following persons, in the manner indicated and addressed as follows:

1. Original to:

Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
P.O. Box 2707
Twin Falls, ID 83303-2707

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2. Copies to:

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United States Department of Justice
Environment & Natural Resources Div.
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Power County Courthouse
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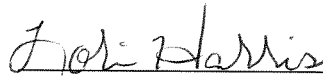
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