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JUL 25 2016

DEPARTMENT OF
WATER RESOURCES

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA

)

A. Subcases: 29-14177

)

Case No. 39576

)

(Insert Water Right Number)

)

)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: Monte Evans
Jerre Evans
Address: 5050 Bailey Rd.
Arbon, ID 83212

Daytime Phone:

Name and Address of Attorney, if any:

JERRY R. RIGBY
P.O. BOX 250
REXBURG, IDAHO 83440

C. CLAIMANT OF WATER RIGHT AS LISTED IN DIRECTOR'S REPORT

Name: Monte Evans
Jerre Evans
Address: 5050 Bailey Rd.
Arbon, ID 83212

D. I object to the following elements as recommended in the Director's Report. (Please check the appropriate box(es).)

1. **X** **Name and Address**
 Should be: Monte Evans, 5050 Bailey Rd., Arbon, ID 83212
 Jerre Evans, 5050 Bailey Rd., Arbon, ID 83212
2. **X** **Source**
 Should be: Bannock
3. **X** **Quantity**
 Should be: .04 cfs
4. **X** **Priority Date**
 Should be: 06/01/1894
5. **X** **Point of Diversion**
 Should be: Township 11 South, Range 33 East, Section 1, SE1/4NE1/4,
 Power County
6. ☐ **Instream Flow Beginning and Ending Point**
 Should be:
7. **X** **Purpose(s) of Use**
 Should be: Stockwater
8. **X** **Period of Year**
 Should be: 01/01 to 12/31
9. **X** **Place of Use**
 Should be: Township 11 South, Range 33 East, Section 1, SE1/4NE1/4, Power
 County
10. **X** **I object because:**
 ☐ This water right Should not exist.

 X Although this water right was not recommended, it should be recommended as
 claimed.

E. REASONS SUPPORTING OBJECTION(S):

See the attached response prepared by Rocky Mountain Environmental producing the evidence claimed lacking in the Director's Report.

F. VERIFICATION (must be completed)

STATE OF IDAHO,)
 ss
County of Madison.)

Jerry R. Rigby, duly sworn, upon oath, deposes and says:

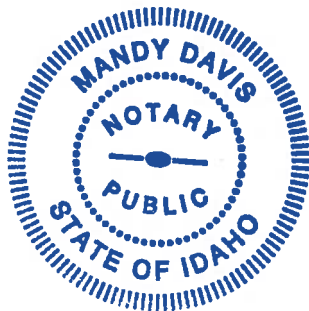
(Name of person filing objection)

That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objections, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

(Attorney signing in representative capacity)

Subscribed and sworn before me on: July 21, 2016



Mandy Davis
Notary Public for Idaho
Residing at: St. Anthony, Idaho
My Commission Expires: 6/24/17

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filing will not be accepted.** You must also send a copy to all the parties listed below in the Certificate of Mailing.

G. CERTIFICATE OF MAILING

I certify that on July 21, 2016, I mailed the original and copies of this objection, including all attachments, to the following persons:

1. Original to:
Clerk of the District Court
Snake River Basin Adjudication
253 Third Avenue North
PO Box 2707
Twin Falls, ID 83303-2707

2. One copy to the claimant of the water right at the following address:

Monte Evans
Jerre Evans
5050 Bailey Rd.
Arbon, ID 83212

3. Copies to:
IDWR Document Depository
P. O. Box 83720
Boise, ID 83720-0098

Chief, Natural Resources Division
Office of the Attorney General
State of Idaho
P. O. Box 83720
Boise, ID 83720-0010

Thomas J. Budge
P.O. Box 1391
Pocatello, ID 83204-1391

Blake Johnson
P.O. Box 47
Arbon, ID 83212

United States Department of Justice
Environment and Natural Resources Div.
550 West Fort Street, MSC 033
Boise, ID 83724

U.S. Attorney's Office
800 Park Blvd., Ste. 600
Boise, ID 83712

U.S. Department of Justice
950 Pennsylvania Ave., NW
Washington, D.C. 20530-0001



Signator of objector or attorney
mailing on Objector's behalf



**Technical Responses to
Director's Report on Deferred De Minimis
Domestic and/or Stock Water Use**

Claim No. 29-14177

According to long-standing guidance¹ from Idaho Department of Water Resources (IDWR):

1. "Each claim filed in the Adjudication is the claimant's affidavit of the elements of the water right.... Some claimants in the Adjudication will be required to submit additional evidence... IF... 2. *The claim is NOT a small domestic and stockwater claim*" (emphasis in original).
2. "Generally, the document will be sufficient if it tends to show that water was used..."
3. "Conclusive evidence is not required."

Based on this guidance, the following responses are offered to the Director's Report and recommendation for disallowal.

Priority Date

The reviewer identified a land-patent date of September 1, 1914, to Hyrum D. Powell, and listed some requirements of obtaining a patent, including "live on the land, make improvements... and farm or cultivate the land for five years...." This tends to indicate agricultural use of the land as early as September 1, 1909.

The reviewer states "the ownership of livestock does not appear to be a homestead requirement." However, in 1909, "farming or cultivation of the land" tends to indicate the presence of draft animals, which require stockwater. Further, it would have been extremely unlikely in 1901 for a person to "live on the land... for a period of five years" with only an automobile for transportation. Proving up on a homestead therefore tends to indicate the presence and use of saddle animals, and/or animals to pull light wagons or buggies. These animals also would have required stockwater.

¹ <https://www.idwr.idaho.gov/files/adjudication/evidence-of-priority-pamphlet.pdf>

The combined weight of these factors provides adequate information for the reviewer to assign a reasonable priority date of September 1, 1909.

Point of Diversion

The attached revised map shows the beginning and ending points of the reach where stock use the water. Both are as described in the claim, in the SW ¼ of the NE ¼ of Section 1, Township 11S, Range 33E, Power County, Idaho.

In his discussion of Point of Diversion, the reviewer indicates a lack of indication of livestock grazing from aerial photographs. Attached documentation of a 1988 conservation plan clearly references livestock use on the place of use. The plan was associated with a temporary CRP contract, which was superseded by a permanent contract. The permanent contract precluded grazing and is still in effect. Enrollment in CRP maintains the validity of underlying water rights. The attached affidavit² from Mr. Newport, longtime resident of the valley and longtime neighbor of this property, also confirms livestock use on the property.

Source

The affidavit from Mr. Newport indicates that livestock utilize Bannock Creek. The attached photo shows the flat topography of the reach of the creek utilized by stock, accessible along its entire traverse of the place of use.

Place of Use, Purpose of Use and Period of Use

The affidavit from Mr. Newport confirms livestock use on the parcel.

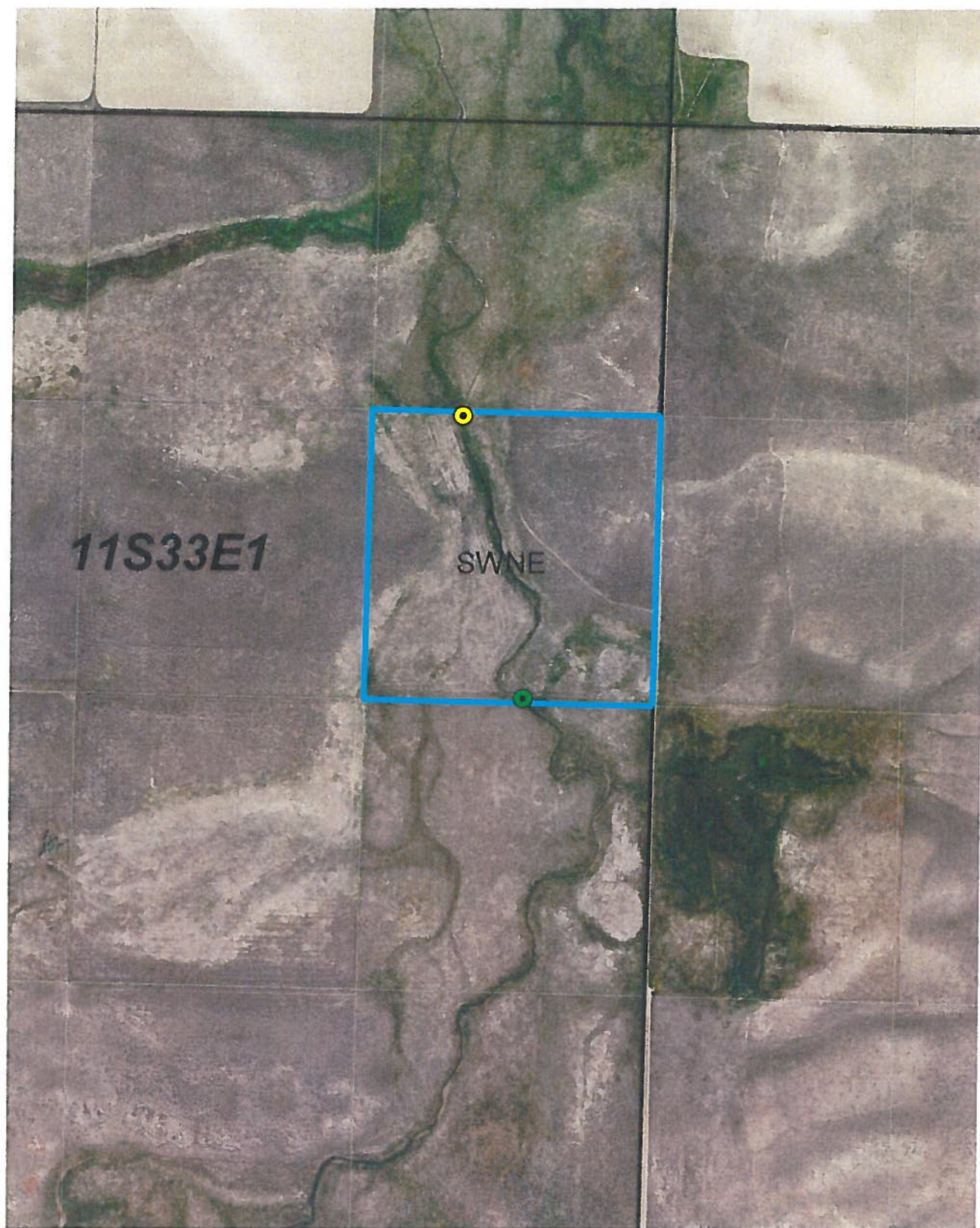
Quantity

A recommendation of 0.02 cfs for de minimis stockwater use is supported by the evidence provided.

Recommendation

On a technical level, the evidence presented meets the standard of tending to indicate the claimed elements of the water right.

² The attachment is a photocopy; the original is presented in the response to the Director's Report for 29-14176, to which the affidavit also applies.



440 0 440 880 Feet



482 Constitution Way, Idaho Falls, ID 83402
208-524-2353

Evans Deferred Stockwater Claim 29-14177



POU / POD



Township
Section
QQ



POD beginning



POD end

Project 15-0034

RECORD OF COOPERATOR'S DECISIONS
AND PROGRESS IN APPLICATION

FIELD NO.	PLANNED		APPLIED	MONTH AND YEAR	LAND USE AND TREATMENT
	AMOUNT	YEAR			
1	39 ac.	1989			<u>BRUSH MANAGEMENT:</u> Herbaceous plants will be controlled with chemicals in the spring of 1989.
1	39 ac.	1989			<u>HAYLAND PLANTING:</u> This field will be seeded to alfalfa and grass.
1	39 ac.	1989			<u>HAYLAND MANAGEMENT:</u> This field will be cut for hay in the summer and grazed when the cows are brought off of the BLM and National Forest in the fall. A stubble height of 4 inches will be maintained.
2	125 ac.	1988			<u>CRP:</u> This field will be kept in a grass-legume mixture until the end of the CRP program in 1996. All noxious weeds will be controlled. It will not be taken out of grass at the end of the contract but will be used as pasture.
3	34 ac.	1989			<u>NATIVE PASTURE:</u> This dryland field will be left in pasture. Approximately 10 acres will have sagebrush control. This will be used for spring pasture for heifer cows. Cows will be kept off until the grass is at least 6 inches tall.
COOPERATOR			ASSISTED BY		DATE
Jerro Evans			J. Stalnaker		7/22/88

CONSERVATION PLAN MAP

Owner Terre & Monte Evans Operator Same
County Power State Idaho Date 7/88
Approximate acres 198 Approximate scale 2" = 1 mi
Cooperating with Power SCD Conservation District
Plan identification _____ Photo number _____
Assisted by J. Stalnaker USDA Soil Conservation Service



Affidavit of John Newport

I, John Newport, currently residing in Blackfoot, Idaho, offer this affidavit to testify of my knowledge of farming and ranching practices in Arbon Valley, Idaho.

See Figure 1 attached for a property map.

In approximately 1930, my parents Lee and Gena Newport purchased land from a Mr. Thomas Bowen Evans, located in Township 11 South, Range 33 East, Section 1, NW1/4, among other tracts. This property is now owned by Kevin North. I remember as a kid in the 1940s and 1950s that Dad (Lee Newport) always had livestock, and I always helped him fence so we could keep our livestock in and the neighbor's livestock out. We did our fencing along the mutual property boundaries of the NENW ~~and~~ *for*

for SWNW of Section 1, Township 11 South, Range 33 East. Our cattle drank from the springs that surfaced and flowed through our property onto the neighbor's property to the east. Their cattle also drank from the same stream as it flowed through their property.

The property in the South 1/2 of Section 1, Township 11 South, Range 33 East was purchased by my parents and I, dba Rocking N Ranch Inc, in 1976, according to our business minutes. This property is now owned by Renee Meyers. After we purchased what is now the Meyer's property in 1976, we continued to maintain the existing fences along our mutual property boundaries in the NESW, SWSE, *SWNW* and NESE to separate our livestock from the neighbors. Our cattle drank from Bannock Creek on the east as it flowed north onto the Evans Farm. Their cattle also relied on the same source of water. *for*

I also owned property in the S1/2NE1/4 of Section 36, Township 10 South Range 33 East. Jerre Evans currently owns the NENE of Section 36. For many years, I leased my property in the SENE to Jerre Evans to run cows on mine and his property combined. Bannock Creek passed through my property and through the corner of his property. At the time, the cows drank from Bannock Creek on my property and three sources on Jerre's property, the spring, the pond, and Bannock Creek, whichever was closer and most available. The pond would freeze and cattle would water from the spring and Bannock Creek.

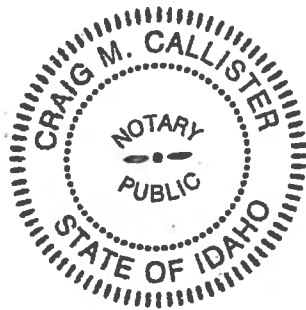
Respectfully submitted, this ____ day of July, 2016.

John Newport
John Newport

STATE OF IDAHO)
)
County of Bingham ss.
)

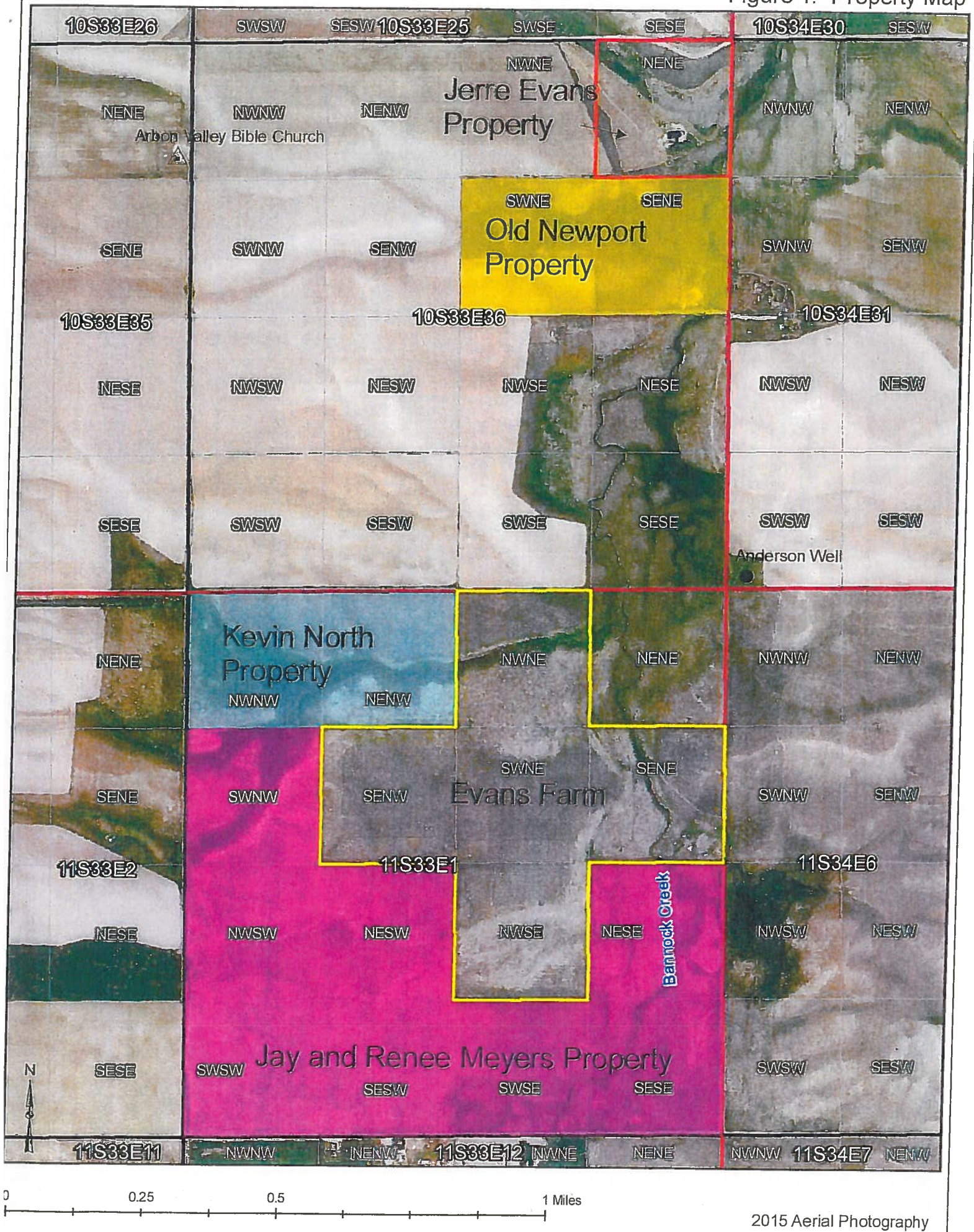
On this, the 30th day of June, 2016, before me a notary public, the undersigned officer, personally appeared John Newport, proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

In witness hereof, I hereunto set my hand and official seal.



Craig M. Callister
Notary Public for Idaho
Residing at: Blackfoot, ID
My Commission Expires: 3-13-21

Figure 1. Property Map



Bannock Creek looking upstream (south)
from near the center of 115 33 E 1 SW NE,
July 1, 2016.

