

RECEIVED

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: 29-14178

)

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 Creek
3. **X** **Quantity**
 Should be: .04 cfs
4. **X** **Priority Date**
 Should be: 06/01/1894
5. **X** **Point of Diversion**
 Should be: Township 10 South, Range 33 East, Section 36, NE1/4NE1/4,
 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 10 South, Range 33 East, Section 36, NE1/4NE1/4,
 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)

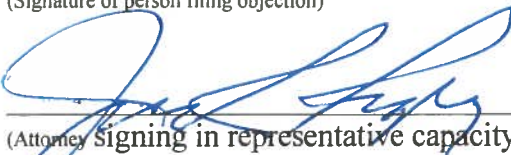
STATE OF IDAHO,)
 SS
County of Madison.)

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

(Name of person filing objection)

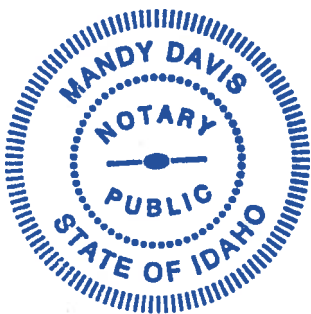
That I am the party/claimant filing this objection, as defined by I.C. §§ 42-1401A(1) and (6) or that I am the attorney for the party/claimant objecting and that I have read this objections, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)



(Attorney signing in representative capacity)

Subscribed and sworn before me on: July 21, 2016




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

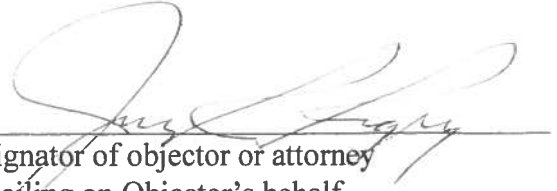
Thomas J. Budge
P.O. Box 1391
Pocatello, ID 83204-1391

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. 29-14178

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

Stockwater right 29-10384 on the same place of use tends to indicate that livestock were present on the property as early as June 1, 1893. Absent efforts to confine the stock to use of the ephemeral stream, stock also would have utilized other water sources on the property, including Bannock Creek. There is no known reason to suppose that such an effort would have been made.

In addition, the attached survey plat dated February 21, 1900 clearly shows a house within the place of use. Presence of a house tends to indicate human habitation. As this is not a historical mining district, human habitation tends to indicate agricultural production of crops and/or livestock. Livestock production directly indicates stockwater use, and crop production in 1900 indicates the presence of draft animals, which also require stockwater. Further, it would be highly unlikely in 1900 for an automobile to have been the sole means of transportation for the residents. Even absent agricultural use, this tends to indicate the presence of saddle animals 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>

Finally, the attached deeds show private ownership of the place of use commenced on August 5, 1911. Private ownership tends to indicate use of the land, which in 1911 would have been either livestock grazing or farming with draft animals.

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

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 NE ¼ of the NE ¼ of Section 36, Township 10S, Range 33E, Power County, Idaho.

The reviewer references water right 29-10384, which is for stockwater from an unnamed stream that is mapped by the USGS as ephemeral. Field observation in 2016 confirms the ephemeral nature of the stream. An ephemeral water source cannot be reliable for livestock production. The reviewer also discusses a pond, but no stockwater right has been identified for the pond. The pond is mapped by the USGS as separated from any surface contribution from the ephemeral stream and this also is confirmed by field observation.

The reviewer indicates a lack of indication of livestock grazing from aerial photographs. This could be explained by a number of factors, such as a difference in timing of aerial images and the timing of modern pasture rotation, or the duration and intensity of cattle pressure on the parcel and the resulting degree that effects of grazing might or might not be visible in an aerial image. These factors confirm the adage that "lack of evidence does not constitute evidence of lack." The attached affidavit² from Mr. Newport, longtime resident of the valley and longtime neighbor of this property, 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.

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.

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.

Close

IDAHO DEPARTMENT OF WATER RESOURCES
Water Right Report

7/15/2016

WATER RIGHT NO. 29-10384

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	JERRE EVANS 5050 BAILEY RD ARBON, ID 83212 (208) 335-2168

Priority Date: 06/01/1893

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
UNNAMED STREAM	BANNOCK CREEK

<u>Beneficial Use</u>	<u>From</u>	<u>To</u>	<u>Diversion Rate</u>	<u>Volume</u>
STOCKWATER	1/01	12/31	0.05 CFS	
Total Diversion			0.05 CFS	

Location of Point(s) of Diversion:

UNNAMED STREAM|NENE|Sec. 36|Township 10S|Range 33E|POWER County

Place(s) of use:

Place of Use Legal Description: STOCKWATER POWER County

<u>Township</u>	<u>Range</u>	<u>Section</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>	<u>Lot</u>	<u>Tract</u>	<u>Acres</u>
10S	33E	36		NENE			NWNE							

Conditions of Approval:

1. N13 THE QUANTITY OF WATER UNDER THIS RIGHT SHALL NOT EXCEED 13,000 GALLONS PER DAY.
2. N11 THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL USE.
3. PARCEL NO. RP D2305-02 STOCKWATER, 200 CATTLE

Dates:

Licensed Date:

Decreed Date: 06/22/1998

Enlargement Use Priority Date:

Enlargement Statute Priority Date:

Water Supply Bank Enrollment Date Accepted:

Water Supply Bank Enrollment Date Removed:

Application Received Date:

Protest Deadline Date:

Number of Protests: 0

Other Information:

State or Federal: S

Owner Name Connector:

Water District Number:

Generic Max Rate per Acre:

Generic Max Volume per Acre:

Civil Case Number:

Old Case Number:

Decree Plaintiff:

Decree Defendant:

Swan Falls Trust or Nontrust:

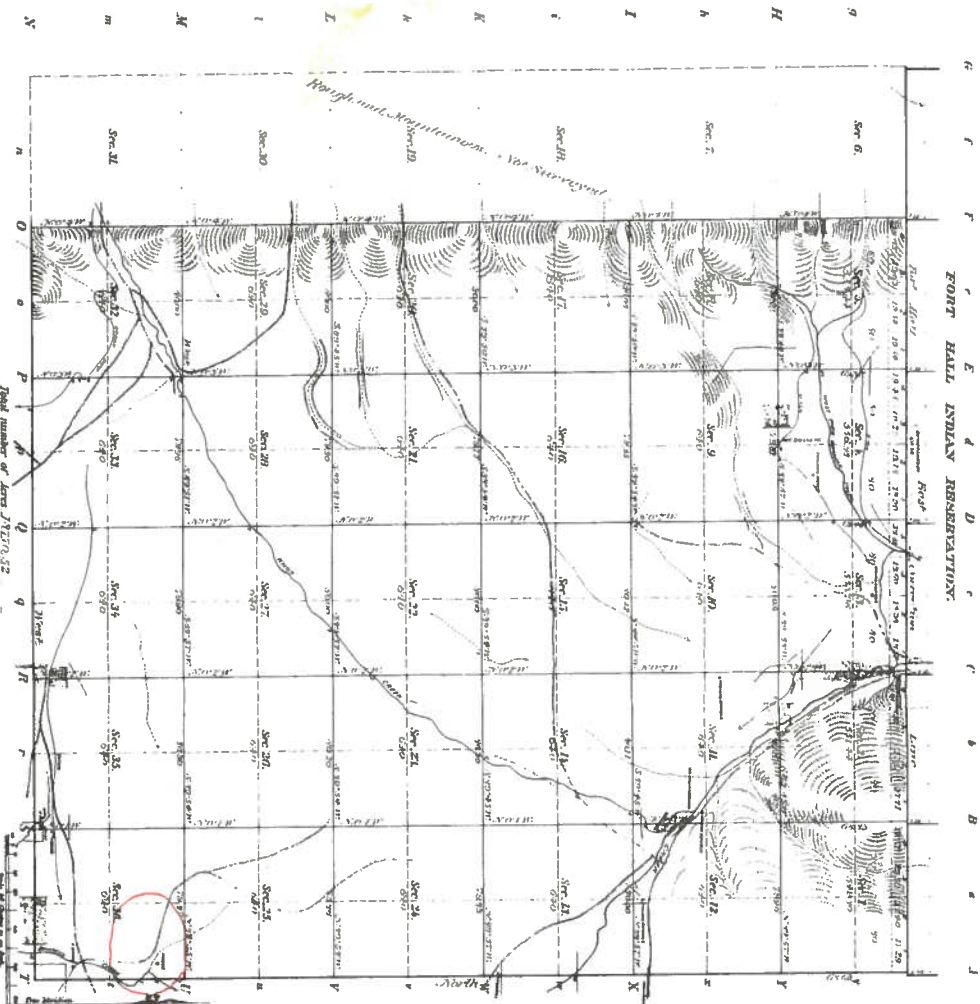
Swan Falls Dismissed:

DLE Act Number:

Cary Act Number:

Mitigation Plan: False

FORT HALL INDIAN RESERVATION.

[illegible][illegible]

The editor, *Chicago Daily Tribune*, Feb 20, 1902. . . Chicago, Feb 23, 1902 of the
 "The Editor, *Washington*, Feb 23, 1902. . . is kindly requested to send
 copies of the *Chicago Tribune* to the *Washington* office, which has been examined and approved.
 Chicago, Feb 23, 1902. . .
 Editor, *Chicago Tribune*.
 Yours truly,
 J. Edgar Hoover

and seal the day and year first above written.

Signed, Sealed and Delivered in the presence of:

A. C. Sallee, Sr. (Seal)

STATE OF IDAHO,
County of Bannock.

On this 24th day of September in the year 1930, before me, Ben W. Davis a Notary Public in and for said state, personally appeared A. C. Sallee, widower, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

(Seal)

Ben W. Davis,
Notary Public, Residing at Pocatello, Idaho

Recorded at the request of J. J. Cullen at 1:00 o'clock, P.M., September 26, 1930, in Book 86 of Deeds at Page 150. C. A. Coon, Recorder, by Edria Hansen, Deputy.

INDEXED

Instrument No. 45919

STATE OF IDAHO

Deed No. 5079

COMPARED

Certificates Nos. 4336-4337-4338-4339.

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

WHEREAS, on the 5th day of August, 1911, all that tract or parcel of School land of the State of Idaho, hereinafter mentioned and particularly described, was sold in the manner provided by law to W. L. Giffen of Fowler, County of and State of California, for the aggregate prices of Two Thousand and no DOLLARS,

AND WHEREAS, The said sum of Two Thousand and no/100 DOLLARS has been fully paid to the proper receiving officer for the State of Idaho, by William Allard, (Assignee) as shown by the records in the office of the State Board of Land Commissioners the said sum being the whole amount of the purchase price for the said tract or parcel of land herein-after described.

NOW, KNOW YE, That the said State of Idaho, in pursuance of law in such case made and provided, and in consideration of the premises aforesaid, and of the aforesaid sum of Two Thousand and no/100 DOLLARS to the said State of Idaho paid, doth by these presents grant, bargain, sell, convey and confirm, in fee, unto the said William Allard his heirs and assigns, all of the said tract and parcel of land situated in the County of Power and State of Idaho, and described as follows, to-wit:

The Northeast Quarter (NE $\frac{1}{4}$) of Section Thirty-six (36), Township Ten (10) South, Range Thirty-three (33) East of the Boise Meridian, containing One Hundred Sixty (160) acres, more or less.

TO HAVE AND TO HOLD the said premises and parcel of land above particularly described, with the appurtenances thereon, unto the said William Allard his heirs and assigns, in fee simple forever.

IN WITNESS WHEREOF, I, H. C. Baldridge, the Governor of the State of Idaho, have hereunto signed my name and caused the Great Seal of the State of Idaho and the Seal of the State Board of Land Commissioners to be hereunto affixed, this 31st day of July, A.D. 1929.

Countersigned: Fred E. Lukens,
Secretary of State
Countersigned: I. H. Naah,
State Land Commissioner.

H. C. Baldridge,
Governor.

(SEAL).

STATE OF IDAHO,
County of Ada.

On this 31st day of July A. D. 1929, before me, a Notary Public in and for said State, personally appeared H. C. Baldridge, known to me to be the Governor, and Fred E. Lukens, known to me to be the Secretary of State, and I. H. Naah, known to me to be the Land Commissioner, of the State of Idaho, and acknowledged to me that they, as such Governor, Secretary of State and State Land Commissioner, of the State of Idaho, and the State of

Recorded at the request of Idaho Land Co. at 11:25 o'clock, A.M., October 11, 1930, in Book 86 of Deeds at Page 152. C. A. Coon, Recorder, by Edria Hansen, Deputy.

Idaho executed the foregoing deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the day and year last above written.

(Notarial Seal)

Jeanne L. Anderson,
Notary Public, residing at Boise, Idaho.

Recorded at the request of Wm. Allard at 4:05 o'clock, P.M., October 6th, 1930, in Book 86 of Deeds at Page 151. C. A. Coon, Recorder, by Edria Hansen, Deputy.

COMPARED

Instrument No. 45920

STATE OF IDAHO

Deed No. 5222

INDEXED

Certificates Nos. 4864-4865

the day and year first above written.

STATE OF IDAHO)

COUNTY OF BANNOCK)

ss.

On this 1st day of June, 1951, before me, H. J. SWANSON, a Notary Public for Idaho, personally appeared William Allard, a widower, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

H. J. SWANSON
Notary Public for Idaho
Residence: Pocatello, Idaho
My Commission Expires: Nov. 18, 1954

Recorded at the request of William Allard at 9:50 o'clock A.M. this 4th day of June, 1951 in Book 99 of Deeds at page 303. Fee \$2.00

HAZEL STUART, Recorder

By Helen Hall, Deputy

Instrument No. 69959 INDEXED

DEED OF GIFT

COMPARED

THIS INDENTURE, Made and delivered this 29th day of May, in the year of our Lord, one thousand nine hundred and fifty-one (1951) between WILLIAM ALLARD, a widower, of Pocatello, Bannock County, Idaho, the party of the first part, and ELEANOR E. NUCKOLS, daughter of the said party of the first part, of Arbon, Power County, Idaho, the party of the second part to this deed,

WITNESSETH: That the said party of the first part for and in consideration of the love and affection which he, the said party of the first part, bears unto his said daughter, the party of the second part hereto, and to secure and insure her maintenance, support, protection and livelihood, has given and granted, and by these presents does give, grant, alien, and convey and confirm unto the said party of the second part, his daughter, and to her heirs and assigns, forever, the following described real property, lying and being in Power County, Idaho and described as follows, to-wit:

2
2
South One-half (32) of Section Twenty-six (26), and
North One-half (N2) of Northeast One-quarter (NE1/4),
Section Thirty-six (36), all in Township 10 S., R. 33 E.,
B. M., being 400 acres more or less, according to the
Government survey thereof made by the U. S. Surveyor General,

together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, the reversion and reversions, remainder and remainders, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part, to be her sole and separate property, but subject to a life estate reserved in said property by the grantor.

The party of the first part hereto covenants that the foregoing property is his own sole and separate property.

TO HAVE AND TO HOLD, all and singular the said premises, together with the appurtenances, unto the said party of the second part, her heirs and assigns forever, but the grantor reserves to himself a life estate in the above described property, and reserves to himself, during his lifetime, the right to occupy, exclusively, any or all of the above described premises, and also likewise reserves to himself during his life time, all of the rents, issues, and the profits therefrom.

IN WITNESS WHEREOF, the party of the first part, has hereunto set his hand and seal the day and year first above written.

WILLIAM ALLARD

Party of the First Part

STATE OF IDAHO)

ss.

COUNTY OF BANNOCK)

On this 1st day of June, 1951, before me, H. J. SWANSON, a Notary Public for Idaho, personally appeared William Allard, a widower, known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

(SEAL)

H. J. SWANSON
Notary Public for Idaho
Residence: Pocatello, Idaho
My Commission Expires: Nov. 18, 1954.

Recorded at the request of William Allard at 9:55 o'clock A.M. this 4th day of June, 1951 in Book 99 of Deeds at page 304. Fee \$2.00

HAZEL STUART, Recorder

By Helen Hall, Deputy

Instrument No. 69960

INDEXED

Warranty Deed

COMPARED

74660-6

WARRANTY DEED

For Value Received

James D. Nuckols and Eleanor A. Nuckols, husband and wife,
357 Valley View, Pocatello, Idaho,

the grantors, do hereby grant, bargain, sell and convey unto

Montu Evans and Cheri Evans, husband and wife, and
Jerre Evans and Toni Evans, husband and wife,

whose current address is

Arbon Valley, Idaho 83212,

the grantees, the following described premises, in Power County Idaho, to wit:

N 1/2 NE 1/4, Section 36, T. 10 S, R. 33
E B.M., Power County, Idaho.

TOGETHER WITH water rights, if any, and 50% of gas, oil and other mineral and geothermal energy located upon or under the described property, if any, PROVIDED, HOWEVER, that Grantors do not guarantee or warrant that the described property contains any water rights or gas, oil, mineral or geothermal energy.

GRANTORS EXPRESSLY RESERVE 50% of all gas, oil and other minerals and geothermal energy located upon or under the described real property.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all incumbrances

and that they will warrant and defend the same from all lawful claims whatsoever, excepting water rights, gas, oil and other mineral and geothermal energy which are not warranted.

Dated: May 24, 1982

James D. Nuckols
JAMES D. NUCKOLS

Eleanor A. Nuckols
ELEANOR A. NUCKOLS

STATE OF IDAHO, COUNTY OF Bannock

On this 24th day of May, 1982

before me, a notary public in and for said State, personally appeared James D. Nuckols and Eleanor A. Nuckols, husband and wife,

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

Residing at Pocatello
Comm. Expires 10/15/84

David L. Biddis
Notary Public
Idaho

INDEXED

137124

Instrument No.

State of Idaho

County of Power } SS

I hereby certify that this instrument was filed for record at the request of

James D. Nuckols
Filed at 3:26

o'clock P.M. this 1 day of May 1982 and recorded as instrument

No. 137124 in Drawer

#1

M. Stancik
Recorder

By J. L. Biddis
Deputy

Published by the AMERICAN LAND TITLE CO., Pocatello, Idaho

THIS INDENTURE, made this 15 day of April, 1985, between Monte and Cheri Evans, husband and wife,

of Arbon, County of POWER, State of Idaho,
the party of the first part and Jerre and Toni Evans, husband and wife

of Arbon, County of POWER, State of Idaho,
the party of the second part.

WITNESSETH, that the said party of the first part, for and in consideration of the sum of ONE DOLLAR AND OTHER VALUABLE CONSIDERATION Dollars

lawful money of the United States of America

to party of the first part in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents, does grant, bargain, sell and convey and confirm unto the said party of the second part, and to party of the second part's heirs and assigns, forever, all the following described real estate situated in Arbon, County of POWER,

State of Idaho, to-wit:

Township 10 South, Range 33 East Boise Meridian

Section 36, NE 1/4

Together with water rights, if any, and 50% of gas, oil and other mineral and geothermal energy located upon or under the described property, if any, provided, however, that grantors do not guaranty or warrant that the described property contains any water rights or gas, oil, mineral or geothermal energy.

TOGETHER with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, and rents, issues and profits thereof, and all estate, right, title and interest in and to the said property, as well in law as in equity, of the said party of the first part.

TO HAVE AND TO HOLD, all and singular the above mentioned and described premises together with the appurtenances unto the party of the second part, and to party of the second part's heirs and assigns forever. And the said party of the first part, and said party of the first part's heirs shall and will warrant and by these presents forever defend the said premises in the quiet and peaceable possession of the said party of the second part, and party of the second part's heirs and assigns, against the said party of the first part, and party of the first part's heirs, and against all and every person and persons whomsoever, lawfully claiming or to claim the same.

If construing this deed and where the context so requires, the singular includes the plural.

IN WITNESS WHEREOF, the said party of the first part hereunto has set his hand.

Monte Evans
Cheri Evans

STATE OF IDAHO,

County of BANNOCK

On this 15 day of

April

in the year 1985, before me

Monte and Cheri Evans, husband and wife

, a Notary Public in and for said State, personally appeared

known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Frances Ashcroft

Notary Public for the State of Idaho
Residing at Pocatello, Idaho.
My commission expires 8-7-87

INDEXED
No. 137126
WARRANTY DEED
(FORM No. 311)

TO

Dated _____, 19____

STATE OF IDAHO,

County of _____

I hereby certify that this instrument was filed for record at request of _____

at _____ minutes past _____

o'clock P. M., this _____ day of _____

office, and duly entered in Book _____

of _____

at page _____

By _____

Notary Public

Deputy

Fees, \$ _____

Mail to _____

QUITCLAIM DEED

FOR VALUE RECEIVED, Monte M. Evans and Cheri Evans, husband and wife, do hereby convey, and forever quitclaim unto ~~Jerre~~ ^{Jerre L.} Evans and Tonie Evans, husband and wife, whose current address is 5050 Bailey Road, Arbon, Idaho 83212 the following described parcel of real property to wit:

Section 36: NB1/4NE1/4
Township 10 South, Range 33 East, Boise Meridian, Power
County, Idaho.

together with their appurtenances.

DATED this 18 ^{July} day of ~~May~~, 2010.

Monte M Evans

Monte M. Evans

Cheri Evans

Cheri Evans

STATE OF IDAHO)

:ss

County of Bannock)

Instrument # 198610

POWER COUNTY, IDAHO

7-20-2010 12:29:19 No. of Pages: 1

Recorded for: JERRE L. EVANS

CHRISTINE STEINLICHT

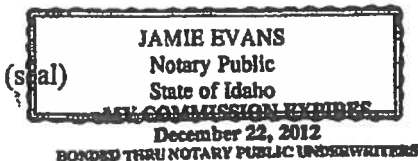
Fee: 10.00

Ex-Officio Recorder Deputy

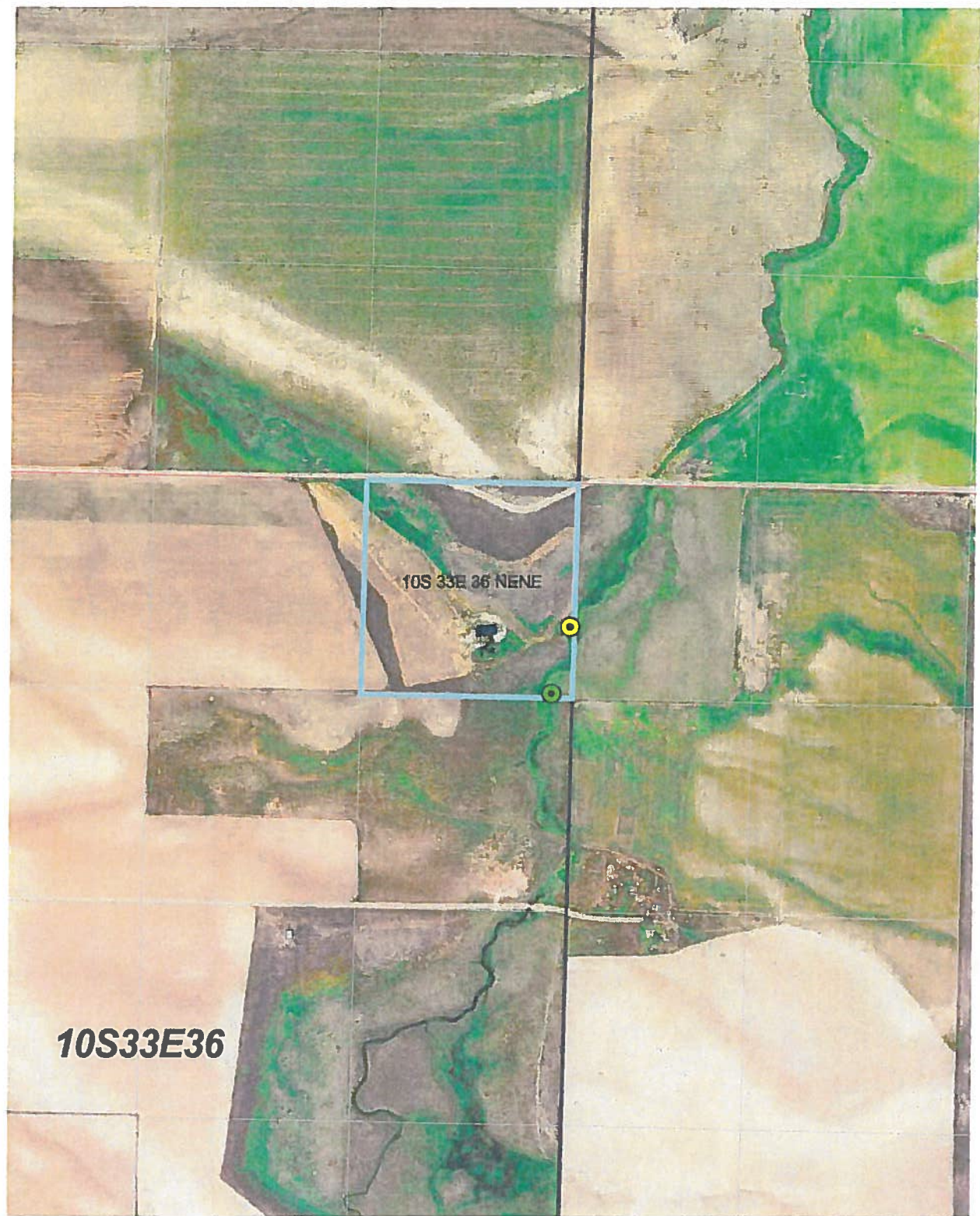
Margen Schulte

On this 18 day of July, 2010, appeared Monte M. Evans and Cheri Evans, known or identified to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



J Evans
NOTARY PUBLIC FOR IDAHO
Residing at: Bannock County
My Commission Expires: 12-22-2012



440 0 440 880 Feet



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

Evans Deferred Stockwater Claim 29-14178

- | | |
|-----------|---------------|
| POU / POD | POD beginning |
| Township | POD end |
| Section | |
| QQ | |

Project 15-0034

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* ~~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 ½ 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* *for* 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.

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.}
)

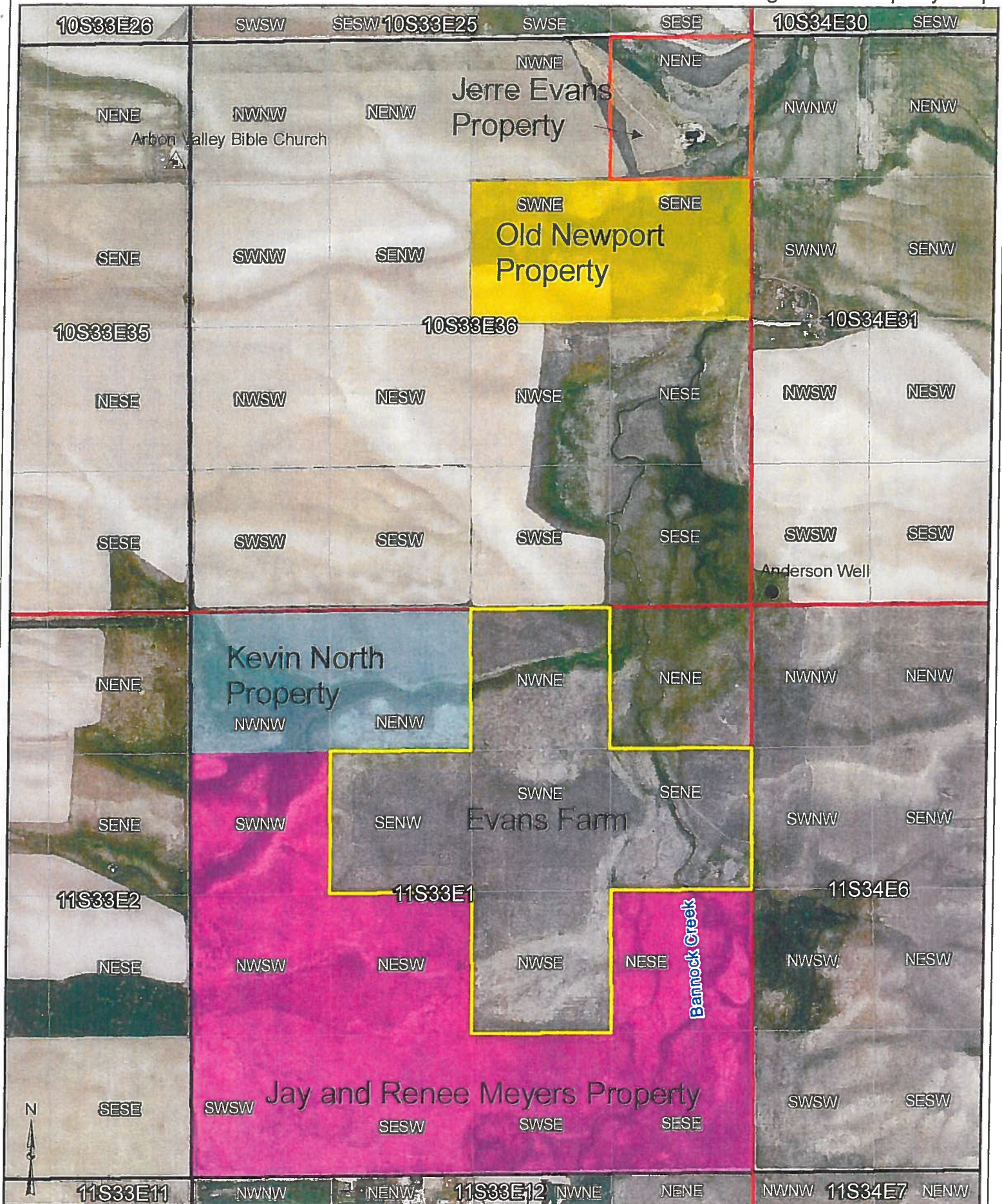
On this, the 30th day of June, 2016, before me a notary public, the undersigned officer, personally appeared **John Newport**, proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

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



Place of Use - 29-14178.

Red shows approx AQ boundary.

Black shows alignment of creek.

