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Department of Water Resources
Adjudication Bureau

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

Case No. 39576

A. Subcase 27-12108

(Insert water right number)

STANDARD FORM 1
OBJECTION

Please fill in the following information:

B. NAME AND ADDRESS OF PERSON OBJECTING

Name: United States of America

Address: c/o Bureau of Indian Affairs, U. S. Department of the Interior, Pacific Northwest Region
911 NE 11th Ave, Portland Or 97232-4169

Daytime Phone: 503.231.6927

Name & Address of Attorney, if any:
Peter C. Monson, U.S. Dept. of Justice ENRD

999 18th Street - Suite 945

Denver, CO 80202-2439

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

Name: Smith-Maxwell Ditch Co., c/o Layne Hamilton

Address: 839 W Riverton Rd

Blackfoot ID 83221

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

1. ☐ **Name and Address**
Should be: _____
2. ☒ **Source** See Attachment
Should be: _____
3. ☒ **Quantity** See Attachment - Must include the annual volume of diversion,
Should be: as necessary for the proper administration of the water right. _____
4. ☒ **Priority Date** See Attachment
Should be: _____
5. ☐ **Point of Diversion**
Should be: _____
6. ☐ **Instream Flow Beginning and Ending Point**
Should be: _____
7. ☐ **Purpose(s) of Use**
Should be: _____
8. ☐ **Period of Year**
Should be: _____
9. ☐ **Place of Use**
Should be: _____
10. ☒ **I object because:**
☒ This water right Should not exist.

☐ This water right was not recommended, but Should be recommended with the elements described above.

E. REASONS SUPPORTING OBJECTIONS(S): _____

See Attachment

ATTACHMENT

E. REASONS SUPPORTING OBJECTIONS

Smith-Maxwell irrigates lands in Basin 27 exclusively with water diverted from the Snake River main-stem, which water is then conveyed by the Reservation Canal to be injected into the Blackfoot River, and then re-diverted by the Smith-Maxwell Ditch Co. This trans-basin diversion is facilitated by the United States, pursuant to an agreement dated June 7, 1929 between the United States and the Smith-Maxwell Ditch Co.

ELEMENT 2. SOURCE. The source of this water right is the Snake River, not the Blackfoot River. See Element 10 *infra* regarding why this right should not exist. Any water diverted from the Blackfoot River cannot exceed that quantity diverted from the Snake River and injected into the Blackfoot River pursuant to Water Right No. 01-10058.

ELEMENT 3. QUANTITY. We have three objections to quantity. First, The quantity (diversion rate) recommended by the Director for this water right exceeds the diversion rate claimed for Right No. 01-10058. The diversion rate should not exceed the 12.400 c.f.s. as stated in the Notice of Claim to a Water Right No. 01-10058, dated 05/09/1989. As noted above, any diversion by Smith-Maxwell Ditch Co. from the Blackfoot River cannot exceed the quantity diverted under Right No. 01-10058 and injected into the Blackfoot River.

Second, should the Court deem it appropriate to decree this water right, it should be made clear in the general provision, or another appropriate place in the decree for this water right, that any diversions out of the Blackfoot River cannot exceed the quantity imported from the Snake River into the Blackfoot River basin by the claimant through the federally-owned Reservation Canal.

Third, the annual diversion volume must be stated for this right. In order to administer all surface and groundwater rights on the Blackfoot River, it is necessary for the total annual volume of diversion to be decreed with respect to each and every water right in Basin 27. The Director's report recommends the total annual diversion volume for some, but not all, water rights. This water right is one of those where this necessary element is omitted. Tribal water rights are defined by the total annual diversion volume. See, e.g., Tribal Water Right No. 27-11375.ii. The Partial Final Consent Decree Determining the Rights of the Shoshone-Bannock Tribes to the Use of Water in the Upper Snake River Basin, (August 2, 1995), contains a provision whereby, the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation and the United States agree to effectively subordinate the exercise of tribal water right No. 27-11375 to certain private surface water rights in the Blackfoot River. See water right No. 27-11375.x.d. The subordination provision was based upon an estimate that the total annual diversion volume of these water rights would not exceed 45,000 acre-feet per year (AFY) in total annual diversion volume. Thus, in order to comply with the above-referenced Decree of this Court, to administer all water rights in the basin and to comply with Idaho water law, it is necessary that all water right decrees issued by the Court in this basin must include a total annual diversion volume measured in acre-feet per year (AFY).

The Idaho Department of Water Resources has reported to the Court on a general methodology to estimate annual volumes of water required at field headgates throughout the state of Idaho. See "Report Regarding Development of Standards for Annual Volume of Irrigation Requirements at the Field Headgate" (August 1, 1996). Maps of Basin 27 identify that field headgate requirements are 4.0 acre-feet per acre in the lower reaches of the watershed and 3.5 acre-feet per acre in the upper watershed. The Technical Team (state, federal and tribal representatives) utilized in the final negotiations for the Partial Final Consent Decree for the Fort Hall Indian Water Rights Agreement estimated an average conveyance efficiency of 66 percent for the overall basin. Applying this efficiency to the field headgate diversion volumes noted above, results in river diversion volumes of 6.0 acre-feet per acre and 5.3 acre-feet per acre in the lower and upper areas, respectively, of Basin 27. These figures should be applied to derive the total annual volume for this water right.

ELEMENT 4. PRIORITY DATE. The priority date should be September 30, 2005, the date when this water right was first claimed. The recommended priority date of "06/07/1929" appears to be coincident to the date of the conveyance contract between the United States and the Smith-Maxwell Ditch Co. That contract sets forth the terms and conditions by which native Snake River water will be conveyed by the Reservation Canal into the Blackfoot River Drainage, but does not authorize any diversion of native Blackfoot River water. Therefore, it cannot be used in support of a priority date for the diversion of native Blackfoot River Water.

ELEMENT 10. THIS WATER RIGHT SHOULD NOT EXIST. No separate water right should be awarded which would permit Smith-Maxwell to irrigate lands in Basin 27 with water which originates from the Blackfoot River basin, and indeed no such water right was claimed until September 30, 2005. To the extent that a separate Blackfoot River water right should be recognized to account for the re-diversion of Snake River water out of the Blackfoot River, this water right should be expressly conditioned so as to preserve the status quo and not to increase the diversion of native Blackfoot River water.

F.

VERIFICATION (must be completed)

State of Colorado)
)ss.
County of Denver)

United States of America, 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 objection, know its contents and believe that the statements are true to the best of my knowledge.

(Signature of person filing objection)

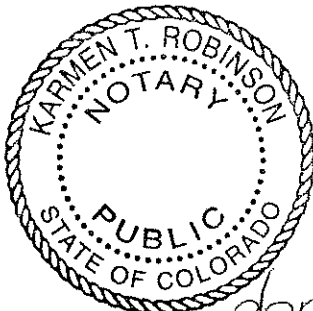
[Signature]
(Attorney signing in representative capacity)

Subscribed and sworn to before me on:

March 9, 2006

[Signature]

Notary Public for Colorado
Residing at: Denver, Colorado
My Commission Expires: 3/25/09



My Commission Expires 3/25/09

INSTRUCTIONS FOR MAILING

You must mail the objection, to the Clerk of the court. **FAX filings 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 March 9, 2006, 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:

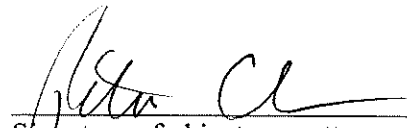
Name: Smith-Maxwell Ditch Co., c/o Layne Hamilton
Address: 839 W Riverton Rd
Blackfoot ID 83221

3. Copies to:

IDWR Document Depository
PO Box 83720
Boise, ID 83720-0098

United States Department of Justice
Environment & Nat'l Resources Div
550 W Fort Street, MSC 033
Boise, ID 83724

Chief, Natural Resources Division
Office of Attorney General
PO Box 44449
Boise, ID 83711-4449



Signature of objector or attorney
mailing on Objector's behalf