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MAY 09 2011

Department of Water Resources
Eastern RegionSTATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

77231

APPLICATION FOR TRANSFER OF WATER RIGHT – POINT(S) OF DIVERSION

This form may be used to apply to change and/or add points of diversion for existing water rights and to report an ownership change for an entire water right(s) in connection with the proposed point of diversion change(s). Do not use this form to apply for changes to other elements of a water right or to report an ownership change for a portion of a water right. See the *Application for Transfer Instructions* for help completing this form and for mailing addresses of Department offices where your application can be submitted.

Check all that apply:

☒ Change diversion point(s)☐ Add diversion point(s)☐ Ownership change1. APPLICANT(S) Smith-Maxwell Ditch Co. Phone 208-785-06662. MAILING ADDRESS 839 West Riverton Road City BlackfootState ID Zip 83221 Email hamiltons999.aol.com

- ☐ If the applicant is not an individual and not registered to do business in the State of Idaho, attach documentation identifying officers authorized to sign for the applicant.
- ☐ If the applicant is not the current water right(s) owner, attach documentation of authority to file the application.
- ☐ If the application includes a change in ownership of water right(s), attach a copy of the conveyance document, such as a warranty deed, court decree, contract of sale, etc. The conveyance document must include a legal description of the property conveyed or description of the water right if no land is conveyed.
- ☐ If the application is not signed by the applicant, attach a Power of Attorney or other documentation providing authority to sign for the applicant.

3. LIST WATER RIGHT NUMBER(S) 01-10058

- ☒ Attach a copy of the water right(s) as recorded, available at www.idwr.idaho.gov, *Water Right Transfers, Step 1*, or by contacting any Department office.

4. TOTAL AMOUNT OF WATER transferred is 10.58 cubic feet per second and/or _____ acre-feet per annum.
(diversion rate) (storage volume)5. POINT OF DIVERSION – Describe all the point(s) of diversion to be included on the water right(s) after the proposed change.

- ☐ Attach Eastern Snake Plain Aquifer (ESPA) analysis if this transfer proposes to change a point of diversion affecting the ESPA. ESPA analysis information is available at www.idwr.idaho.gov, *Water Right Transfers, Online Resources*.

Twp	Rge	Sec	Govt Lot	¼	¼	¼	County	Source	Local name or tag #
02S	36E	8		NE	NE	SE	Bingham	Snake River	Corbett Slough Cnl
03S	35E	10		SE	SE	SE	Bingham	Snake River (Injection)	Corbett Slough Rtrn
03S	34E	23		SW	SW	SW	Bingham	Snake River (rediversion)	Smith-Maxwell Dtch

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6. GENERAL INFORMATION

- a. Describe the complete diversion system, including how you will accommodate a measuring device and lockable controlling works should they be required now or in the future:

Water will be diverted from the Snake River through the Corbett Slough Canal, injected into the Blackfoot River, and rediverted through the Smith-Maxwell Ditch.

- b. Who owns the property at the point(s) of diversion? Corbett Slough Ditch Co. (easement) / Layne Hamilton
If other than the applicant, describe the arrangement enabling the applicant to access the property for the diversion system:

Copy of conveyance agreement will be provided.

- c. To your knowledge, has/is any portion of the water right(s) proposed to be changed:

Yes No

- ☐ ☒ undergone a period of five or more consecutive years of non-use,
☐ ☒ currently leased to the Water Supply Bank,
☐ ☒ currently used in a mitigation plan limiting the use of water under the right(s), or
☐ ☒ currently enrolled in a Federal set-aside program limiting the use of water under the right(s)?

If yes, describe _____

7. MAP – ☒ Attach a map of the diversion, measurement, control and distribution system. Clearly label the map with township, range, section and $\frac{1}{4}$ $\frac{1}{4}$ of section information. The *Map Tool*, available at <http://maps.idwr.idaho.gov/TransferApplicationLayouts> provides a satisfactory template for creating the required map.

8. SIGNATURE - The information in this application is true to the best of my knowledge. I understand any willful misrepresentations in this application may result in rejection of the application or cancellation of an approval.

<u>Layne Hamilton</u>	<u>Layne Hamilton Secretary</u>	<u>May 4 2011</u>
Signature of applicant or authorized agent	Print name and title if applicable	Date
	<u>Smith Maxwell Ditch Company</u>	
Signature of applicant or authorized agent	Print name and title if applicable	Date

9. FEE - ☐ The application filing fee provided in Section 42-221, Idaho Code, must be submitted with the application for transfer. The Application fee is based on the total amount of water proposed for transfer in Item 4: the larger fee for either cubic feet per second (diversion rate) or acre-feet per annum (storage volume). The *Fee Schedule* is available at www.idwr.idaho.gov, *Water Right Transfers, Step 4* and in the *Application for Transfer Instructions*.

FOR DEPARTMENT USE ONLY

Transfer includes 4 pages of attachments. Received by JRC Date 5/9/11
 Fee paid \$650.00 Date 5/9/11 Received by KM Receipt # E036634
 Preliminary review completed by _____ Date _____

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 1-10058

WATER RIGHT NUMBER: 1-10058

<u>Owner Type</u>	<u>Name and Address</u>
Original Owner	CONTINENTAL LIFE INSURANCE CO
	, ID
Original Owner	GAYLEN CHRISTENSEN PO BOX 307 TREMONTON, UT 84337 (801)257-3361
Original Owner	B D HANSEN
	BLACKFOOT, ID 83221
Original Owner	EVAN WILLIAMS
	, ZZ
Current Owner	SMITH-MAXWELL DITCH CO C/O LAYNE HAMILTON 839 W RIVERTON RD BLACKFOOT, ID 83221 (208)785-0666
Original Owner	C F SMITH
	, ID
Original Owner	D J BRENNAN
	, ID
Original Owner	EDGAR FJELDSTED
	BLACKFOOT, ID 83221
Original Owner	EMMA THOMPSON
	BLACKFOOT, ID 83221
Original Owner	JO JARVIS
	, ID
Original Owner	HARRY HAMILTON
	BLACKFOOT, ID 83221

Priority Date: 02/21/1890

Basis: Decreed

Status: Active

<u>Source</u>	<u>Tributary</u>
SNAKE RIVER	COLUMBIA RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	04/01 to 10/31	10.580 CFS	
	<u>Total Diversion:</u>	10.580 CFS	

Location of Point(s) of Diversion

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 1-10058

Snake River	L2 (NE1/4SW1/4SE1/4)	Sec. 24, Twp 02S, Rge 36E, B.M.
Bingham County	(Injection)	
Snake River	SW1/4SW1/4SW1/4	Sec. 23, Twp 03S, Rge 34E, B.M.
Bingham County	(Rediversion)	
Snake River	L7 (SW1/4NE1/4)	Sec. 31, Twp 01N, Rge 37E, B.M.
Bingham County		

Place of Use

IRRIGATION

Twp	Rge	Sec	NE				NW				SW				SE				Totals
			NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	NE	NW	SW	SE	
03S	34E	21												X	X		X	X	
														L3	L5		L4	L5	
03S	34E	22				X					X	X	X	X	X	X	X	X	
						L1					L3	L4							
03S	34E	27					X	X	X	X									
							L1		L2										
03S	34E	28	X	X	X	X	X	X	X	X	X								
					L4	L5		L1	L2		L3								
03S	34E	29	X			X									X				

Total Acres: 695

Conditions of Approval:

1. C18 This partial decree is subject to such general provisions necessary for the definition of the rights or for the efficient administration of the water rights as may be ultimately determined by the Court at a point in time no later than the entry of a final unified decree. Section 42-1412(6), Idaho Code.
2. E51 Right Nos. 1-10058 and 27-12108 are limited to a total combined diversion rate of 13.9 cfs.
3. C03 Right includes accomplished change in point of diversion pursuant to Section 42-1425, Idaho Code.
4. K06 This right is limited to the irrigation of 263.5 acres within the place of use described above in a single irrigation season.
5. C05 Right includes accomplished change in place of use pursuant to Section 42-1425, Idaho Code.
6. E56 The rights listed below are limited to the irrigation of a combined total of 695 acres in a single irrigation season. Combined Right Nos.: 27-12108 and 1-10058.
7. 135 The boundary encompassing the place of use for this water right is described with a digital boundary as defined by I.C. Section 42-202B(2) and authorized pursuant to I.C. Section 42-1411(2)(h). The data comprising the digital boundary are incorporated herein by reference and are stored on a CD-ROM disk issued in duplicate originals on file with the SRBA District Court and the Idaho Department of Water Resources. A map depicting the place of use is attached hereto to illustrate the place of use described by the digital boundary.
8. 129 Place of use is within the area served by Smith-Maxwell Ditch Company.
9. P29 This right is a combination of old Right Nos. 1-28C, 1-28E, 1-87B, 1-87C, 1-87D, 1-169F, and 1-169G.

IDAHO DEPARTMENT OF WATER RESOURCES

Water Right Report 1-10058

10. G01 Point of injection into and point of redirection from Blackfoot River.

Remarks:Comments:

1. mholliday 12/10/2007 boundary & acres

Comment: Updated boundary in order to resolve BLM objection. Also adjusted acreage count based on additional acreage found on 1987 photo by Layne Hamilton.

Dates and Other Information:

Licensed Date:
 Decreed Date: 12/3/2009
 Enlargement Use Priority Date:
 Enlargement Statute Priority Date:
 State or Federal: S
 Owner Name Connector: OR
 Water District Number: 01
 Generic Max Rate Per Acre:
 Generic Max Volume Per Acre:
 Decree Defendant:
 Decree Plaintiff:
 Civil Case Number: 39576
 Judicial District: FIFTH
 Swan Falls Trust or Nontrust:
 Swan Falls Dismissed:
 DLE Act Number:
 Carey Act Number:
 Mitigation Plan: False

Combined Use Limits:

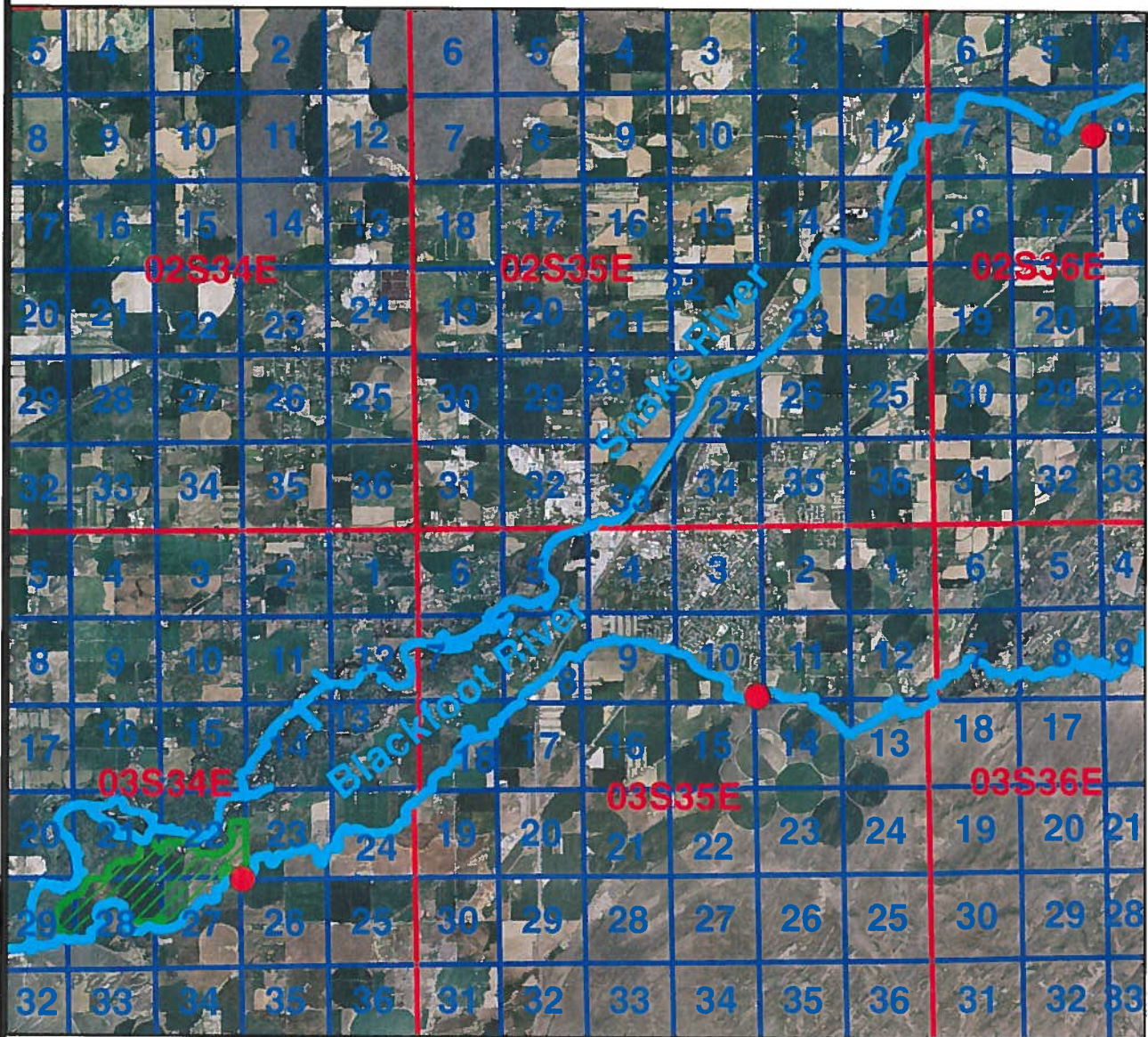
<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
13.9		695

Combined Water Rights: 1-10058

<u>Rate</u>	<u>Volume</u>	<u>Acres</u>
13.44		672

Combined Water Rights: 1-10058

Smith-Maxwell Transfer (01-10058)



Legend

- Rivers
- New POD
- Smith-Maxwell POU
- Township/Range
- Sections

0 1 2 4 Miles



2009 Aerial Photography

Map prepared on March 25, 2011

Smith Maxwell Ditch Company

Meeting April 7, 2011

Present were:

Ron Thompson
Layne Hamilton
Shayne Hamilton
Rhitt Hamilton
Chase Carter

Layne reported on the current status of our applications for water rights, the legal issues with the Fort Hall agreement, The Blackfoot River management plan, and the equitable adjustment.

Ron Thompson informed the group that he intended to flood irrigate part of his ground and would be using some of his surface water.

Layne Hamilton reported that the Fort Hall project engineer has indicated they would like to stop carrying the Smith Maxwell water. Layne has asked them to provide a formal request to end the contract between the U.S Government and the Smith Maxwell Ditch Company.

*David Kn 5/10/11
Bollinger*

Layne has been involved in discussions with the Corbett Clough and they are interested in conveying the water. They would charge \$100 per year plus a proportionate share of any repairs to their main headgate on the Snake River. After considerable discussion it was proposed that we change our point of diversion to the Corbett Slough if the following conditions are met:

1. We receive a request for Fort Hall to end the existing contract.
2. That no Smith Maxwell water is carried by the reservation canal, thus ending any exchange agreements that involve Smith Maxwell water.

All were in favor.

Once we know the costs for this year Layne will send out assessments at \$2/share. Also send a letter to Keith Munns that there continues to be past assessments due including penalties and interest against the 91 inches of Smith Maxwell water on Coral Creek.

WATER CONVEYANCE AGREEMENT

THIS AGREEMENT made and entered into this _____ of _____
2011 by and between the Corbett Slough Canal Company, party of the first
part, and the Smith-Maxwell Ditch Company, party of the second part.

That WHEREAS, the party of the first part is the owner of an irrigation
canal known as the Corbett Slough Canal for the purpose of delivering water
from the Snake River to its members.

WHEREAS, the stockholders of the party of the second part have a
Snake River Water Right (01-10058) for 10.58 CFS with a priority date of
February 21, 1890 for 695 acres in Sections 21-22-24-27 & 28
Township 3 Range 34.

WHEREAS, the party of the second part is desirous of securing a right to
convey said water through the Corbett Slough Canal to the Blackfoot River,
Thence through the Blackfoot River to a diversion point on the North bank
of the Blackfoot River in the SE 1/4 of Section 22 T 3 South R. 34 E.
For this conveyance, the party of the second part agrees to pay a one
hundred (100) dollar per year conveyance fee and a propionate share of any
major repair costs to the Corbett Canal's main headgate on the Snake River.

*Thanks James For your Help. This is a rough
copy of our agreement with The Corbett Slough. They
will make some changes and additions. We will
provide ~~with~~ a copy of The Final. Thank you*
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It is further agreed that the party of the first part does not undertake or assume any responsibility for the delivery of water for the party of the second part beyond the point at which it enters the Blackfoot River channel from the Corbett Slough Canal. The delivery of water from that point to the diversion dam of the party of the second part, being under the regulation and control of the Blackfoot River watermaster for District 27.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the party of the first part shall not be liable for any payment of damages or refund of money paid hereunder because of any failure to carry water in said canal occasioned by hostile diversion, unusual drought, interruption of service made by necessary repairs, damages caused by floods or other acts of nature, unlawful acts, unavoidable accidents, unforeseen urgency and valid prior right of other parties. The diversion of water herein provided for and the use of carrying capacity shall be only during the irrigation season, which for the purpose of this agreement shall be between the 1st day of April and the 15th day of October when the Corbett Canal is delivering water to its' members.

It is further expressly understood and agreed that the party of the first part, its successors and assigns shall at all times have exclusive control of the canal, and the party of the second part shall not in any manner at any time interfere with or assume the management of said canal or of any water

flowing therein or of any of the structures belonging to and built by the party of the first part for regulation and measurement or control thereof. And the party of the first part is hereafter further expressly released from any manner whatsoever arising in connection with this agreement for the things to be done or omitted in relation thereto, not specifically provided for herein.

IT IS EXPRESSLY UNDERSTOOD AND AGREED that the party of the first part shall be obligated to carry the water for the party of the second part only at such times as there may be capacity in the Corbett Canal and the said party of the First part shall not be bound to divert, carry or deliver the said 10.58 CFS water or any part thereof except when the Snake River is sufficiently high to permit the diversion of water in excess of the right of the party of the first part; nor shall the party of the first part be bound or obligated to place obstructions in the river or to remove gravel bars or other deposits from the diversion works or canal in order to provide the necessary capacity for carrying the 10.58 CFS water or to do any other work except such as may be necessary for the conveyance of its own water.

The party of the second part agrees that it will bear its proportionate share of the losses in transmission through the Corbett Slough Canal and also pay the yearly assessments on the Smith-Maxwell water as determined by the District 27 watermaster.