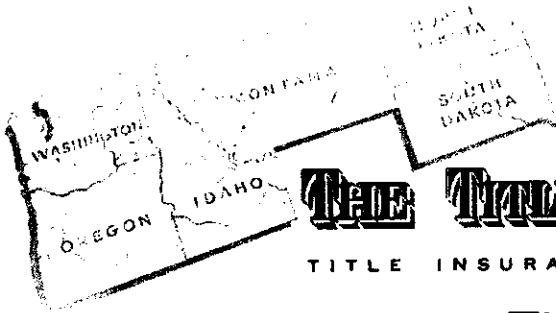


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Department of Water Resources



THE TITLE INSURANCE COMPANY

TITLE INSURANCE BUILDING • BOISE, IDAHO

Title Insurance Policy

Policy **Nº 14- 2940**

Order No. 495

\$ 165,000.00

THE TITLE INSURANCE COMPANY, a corporation (incorporated under the laws of the State of Idaho), hereinafter called the Company, for a valuable consideration paid for this policy of title insurance,

Does Hereby Insure

CORNELIUS IEST AND TINA IEST,
HUSBAND AND WIFE

together with the persons and corporations included in the definition of "the insured" as set forth in the stipulations of this policy, against loss or damage not exceeding

ONE HUNDRED SIXTY FIVE THOUSAND AND NO/100 - - - - - dollars,
which the insured shall sustain by reason of:

1. Title to the land described in Schedule A being vested, at the date hereof, otherwise than as herein stated; or
2. Any defect in, or lien or encumbrance on, said title existing at the date hereof, not shown or referred to in Schedule B; or
3. Any defect in the execution of any mortgage or deed of trust shown in Schedule B securing an indebtedness, the owner of which is insured by this policy, but only insofar as such defect affects the lien or charge of such mortgage or deed of trust upon said land; or
4. Priority over any such mortgage or deed of trust of any lien or encumbrance upon said land existing at the date hereof, except as shown in Schedule B, such mortgage or deed of trust being shown in the order of its priority.

all subject, however, to SCHEDULES A and B, and the STIPULATIONS herein, all of which schedules and stipulations are hereby made a part of this policy.

IN WITNESS WHEREOF, THE TITLE INSURANCE COMPANY has caused its corporate name and seal to be hereunto affixed by its duly authorized officers, this 15th day of May, 1961, at 5 P. M.

This policy not valid unless countersigned by
Security Title Company
by Lieuru W. Lucke

SECURITY TITLE COMPANY

By

Lieuru W. Lucke

THE TITLE INSURANCE COMPANY

By

John B. Bee
President

Attest:

J.M. Epeneter
Secretary

SCHEDULE A

The fee simple title to said lands, is at the date hereof, vested in:

CORNELIUS IEST AND TINA IEST,
HUSBAND AND WIFE

The land referred to in this policy is described as:

Township 5 South, Range 16 East of the Boise Meridian

Section 10: $SE\frac{1}{4}$

Section 11: $S\frac{1}{2}$ of the $NW\frac{1}{4}$ and $S\frac{1}{2}$

Section 12: $W\frac{1}{2}$ of the $SW\frac{1}{4}$, $NE\frac{1}{4}$ of the $SW\frac{1}{4}$

Section 14: $NW\frac{1}{4}$ of the $NE\frac{1}{4}$, and $NW\frac{1}{4}$

Section 15: $NE\frac{1}{4}$ and $S\frac{1}{2}$ of the $NW\frac{1}{4}$

IN THE COUNTY OF LINCOLN, STATE OF IDAHO

SCHEDULE B

This policy does not insure against loss by reason of the matters shown or referred to in this Schedule except to the extent that the owner of any mortgage or deed of trust is expressly insured in Paragraphs numbered 3 and 4 on page 1 of this policy.

1. Rights or claims of persons in possession or claiming to be in possession, easements, liens or incumbrances including material or labor liens, which are not shown by the public records; reservations in patents or state grants; mineral rights, water rights, claims or title to minerals or water.

2. Questions of location, boundary and area; overlaps and encroachments by improvements belonging to these or adjoining premises; all dependent upon actual survey for determination.

3. Assessments which are not shown as existing liens by the public records; taxes not yet payable; pending proceedings for vacating, opening or changing streets or highways preceding entry of the final ordinance or order therefor.

4. Any laws, governmental acts or regulations, including but not limited to zoning ordinances, restricting, regulating or prohibiting the occupancy, use or enjoyment of the land or any improvement thereon, or limiting the height of improvements, or prohibiting a reduction in the dimensions or area, or separation in ownership, of any lot or parcel of land; or the effect of any violation of any such restrictions, regulations or prohibitions.

5. 1961 taxes which are a lien, but not yet levied.

6. These premises are within the boundaries of American Falls Reservoir District No. 2 and are subject to the levies and assessments thereof, and restrictions and limitations thereof as specifically set forth in contract by United States of America with American Falls Reservoir District No. 2, dated September 21, 1927 and recorded October 20, 1928 in Book 4 Agreements Pages 326 to 413 inclusive, records of Lincoln County, Idaho. (American Falls office orally reports there are no assessments due as of the date of this policy)

7. These premises are within the boundaries of Big Wood Canal Company and are subject to the levies and assessments thereof. There are no assessments due as of the date of this policy.

8. Power Line Easements to Idaho Power Company, a corporation, its licensees, successors and assigns, granting rights of way and easements to erect, construct, reconstruct and maintain an electric transmission, distribution and telephone lines and circuits of Grantee, attached to a line of poles or other supports, together with guys, stubs, cross arms and other attachments and incidental equipment thereon, and appurtenances, over, on and across the lands described.

Together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements granted, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions, which may injure or interfere with the Grantee's use of these easements and the operation, maintenance and repair of Grantee's electrical system:

(a) Dated -- , by D. Sid Smith and Alta G. Smith, his wife, over: E $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$ Sec. 11 Twp. 5 S. R. 16 E.B.M. Recorded August 13, 1942 in Book 5 Agreements Page 205,

(b) Dated August 10, 1946, by D. Sid Smith and Alta G. Smith, his wife, over: NW $\frac{1}{4}$ SE $\frac{1}{4}$ Sec. 11, Twp. 5 S. R. 16 E.B.M.

Recorded June 25, 1947, in Book 5 Agreements Page 270, and (c) Dated June 2, 1954, by D. Sid Smith and Alta G. Smith, his wife, over: W $\frac{1}{2}$ SE $\frac{1}{4}$ Sec. 11, Twp. 5 S. R. 16 E.B.M. Recorded August 22, 1955 in Book 5 Agreements Page 555.

9. Ditch and Water Agreement as set forth in agreement dated September 8, 1954 and recorded July 3, 1956 in Book 5 Agreements Page 594, records of Lincoln County, Idaho. (see Abstract sheet attached hereto)

10. Judgment re irrigation water as set forth in Decree in Case No. 3644, filed February 28, 1959 and recorded in Book 7 Judgments Page 522, records of said County. (see Abstract sheet attached hereto)

End of Schedule B

D. Sid Smith and Alta G.
Smith, his wife, and
Ross Boyd and Marguerite Boyd,
his wife, First Parties

DITCH AND WATER AGREEMENT.
Dated, September 8, 1954
Recorded, July 3, 1956, 9 A.M.
Book 5 Agreements Page 594

Max Boesiger and Ruth H. Boe-
siger, his wife, and Mary
Boesiger, a widow,
Second Parties

William G. Tews and Mary Tews,
his wife, Lawrence Z. Tews and
Elizabeth Tews, his wife;
Clarence R. Tews, a bachelor;
Marguerite Tews, a spinster;
Dean B. Cox and Beatrice J. Cox,
his wife; D. D. Velasquez and
Josephine Velasquez, his wife,
Third Parties.

For the purpose of effecting a mutual understanding and agree-
ment between the contracting parties relative to ditch and water
rights in Coulee 700 and the water flowing therein, which Coulee
empties into Big Wood River in the approximate southwest corner of
Section 11, Township 5 South, Range 16 E.B.M., Lincoln County, Idaho,
and for the purpose of compromising and settling the controversy
involved in the case of Smith vs. Lowry, #3345, now pending in the
District Court of Lincoln County, Idaho,

It is Hereby Mutually Understood and Agreed:

First parties, D. Sid Smith and Alta G. Smith, are the owners
of the following described lands in Lincoln County, Idaho, which are
irrigated in part from the water of said coulee:

SE $\frac{1}{4}$ of Section 10;
S $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ and the W $\frac{1}{2}$ SE $\frac{1}{4}$ of Section 11;
NW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ of Section 14; and
NE $\frac{1}{4}$ NE $\frac{1}{4}$ and S $\frac{1}{2}$ N $\frac{1}{2}$ of Section 15 all in Township 5 South, Range
16 E.B.M.

First parties, Ross Boyd and Marguerite Boyd, his wife, are the
owners of (not affecting lands included herein)
which is irrigated in part from the waters of said coulee.

All of the parties of the second and third parties are the owners
of (not affecting lands included herein)

Each and all of the parties also utilize waters from said coulee
for domestic and stock water purposes on their respective lands.

It is understood and agreed:

That each of the third parties shall have the right to continue
diverting water from said coulee in the amount and for the irrigation
of the quantity of lands, including domestic and stock water purposes
thereon, that they have heretofore diverted. They agree that the
waste and return flow from such diversions shall continue to return
to said coulee in the future as the same have in the past, and they
agree that no increased acreage will be irrigated by them from said
Coulee 700.

It is understood and agreed that second parties shall have the

right to continue pumping and diverting water from said coulee for irrigation of the lands lying east of said Coulee 700 in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, for diverting water for domestic purposes and stock water thereon, to the same extent and in the same manner heretofore enjoyed by them. They agree that the waste and return flow from said ditches shall continue to return to said Coulee 700 in the future as the same have in the past, and they agree that no increased acreage will be irrigated through said diversion and pumps.

The remainder of the waters in said coulee 700 shall be owned and divided equally by first parties and second parties, one-half thereof by first parties and one-half by second parties. Such waters shall be diverted at the diversion point on said coulee where second parties have heretofore been diverting their water from said coulee, the same being a check or dividing box which is located in the approximate center of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2 Township 5 South, Range 16 E.B.M. There shall be operated and maintained at said point a two-way diversion box so constructed and maintained as to divert one-half the flow of said coulee at said point westerly into the ditch of second parties, and to permit one-half the flow of said coulee at such point to continue flowing in said coulee 700 for the use and benefit of first parties and their lands.

First parties and second parties will share equally in the cost of constructing, maintaining and operating said diversion box and check, and the same shall be maintained and operated in such manner as to at all times and under all conditions, so far as reasonably possible, divert the flow at such point equally between first and second parties, so that each shall have a continuous flow of his share of such water for irrigation, domestic and stock water purposes. All other contracting parties shall individually maintain and keep in repair their respective diversion works. All general expenses and costs of cleaning, repairing and keeping in condition the coulee proper, as distinguished from the diversion works, will be paid by the parties to this contract on a pro rata basis.

All water rights enjoyed by the contracting parties in and to the water of said coulee, as well as all ditch rights and rights of way in said coulee, shall have and enjoy the same priority, so that no person to this contract shall have or own any prior right to any other user from the coulee.

It is further understood and agreed that the contracting parties shall endeavor to operate said coulee and diversion works without the necessity of a ditchrider or watermaster, but in the event of disagreements or the inability of the parties to operate in this manner and it becomes necessary and advisable to employ a ditch rider or watermaster, then nothing in this contract shall prevent procedure being adopted for that purpose in the manner provided for by the laws of the State of Idaho.

Each of the contracting parties shall have the right to enter upon the lands and property of each of the other parties at such reasonable times and to such reasonable extent as may be necessary to maintain the coulee and the diversion works therefrom of the respective parties.

It is agreed that the several parties to this contract are individually entitled to receive water through their respective diversions

at such times and in such amounts as may be reasonably necessary for the irrigating of their lands and for domestic and stock water purposes thereon.

The agreements herein contained shall constitute covenants running with the lands of the respective parties, and shall be binding upon the contracting parties and the successors in interest of the contracting parties.

When this contract has been fully executed the case of Smith vs. Lowry, mentioned in the first paragraph hereof, shall be dismissed without prejudice and without costs.

Signed: D. Sid Smith

Alta G. Smith, deceased, by D. Sidney Smith
and William G. Smith, Executors

Ross Boyd

Marguerite Boyd, First Parties

Acknowledged: September 8, 1954, by D. Sid Smith, before Jack M. Murphy, Notary Public, State of Idaho (N.P. Seal)

Acknowledged: March 15, 1956, by Ross Boyd and Marguerite Boyd, his wife, before Jack M. Murphy, Notary Public, State of Idaho (N.P. Seal)

Acknowledged: June 19, 1956, by D. Sidney Smith and William G. Smith, as executors of the estate of Alta G. (Gooding) Smith, before Branch Bird, Notary Public, State of Idaho (N.P. Seal)

Properly signed and acknowledged by each of the parties of the second and third parties, before Notary Publics with Notary Public Seals.

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In the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Lincoln.

D. Sid Smith, Plaintiff

-vs-

Ross Boyd and Marguerite
Boyd, husband and wife,
 Defendants.

DECREE. Case #3644

Dated, February 27, 1959

Filed, February 28, 1959 and

Recorded in Book 7 Judgments

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This matter came regularly on for hearing in open court at Shoshone, Idaho February 26, 1959 at 11 A.M., the plaintiff appearing in person and by his attorneys Bird & Hobdey, and no appearance being made by or for the defendants, or either thereof; and it appearing that personal service was had upon said defendants and each of them in Lincoln County, Idaho November 7, 1958, that said defendants appeared by their attorneys and made a motion to make more certain, which motion was denied and overruled by order of Honorable D. H. Sutphen, December 8, 1958, which order allowed the defendants 20 days from that date within which to answer; and it further appearing that no answer or other pleading has been filed by or for said defendants, or either thereof, within the time so allowed or at all, and that clerk's default has been entered against said defendants, such default being dated and having been entered February 7, 1959, and the defendants thereby waiving the making and entry of findings of fact and conclusions of law;

And the plaintiff having submitted oral and documentary evidence in support of his complaint; and it appearing that the terms of a ditch and water agreement dated September 8, 1954 and recorded in book 5, page 594, records of agreements and bonds of said Lincoln County, the waters of that certain coulee 700, sometimes known as the Sim's slough, the same being waste waters originating in the foothills north of Sec. 1, Twp. 5 S. R. 16 E.B.M., Lincoln County, Idaho, and flowing in a general Southwesterly course into and through said coulee 700 or slough, were awarded and allocated to the parties to said ditch and water agreement, including the plaintiff and defendants herein, and it further appearing that in accordance with said ditch and water agreement a check or dividing box was located and installed in said coulee or slough at approximately the center of the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Sec. 2, Twp. 5 S. R. 16 E.B.M., Lincoln County, Idaho, which check or dividing box has since operated and is operating and maintained for the purpose of and does divert one-half the flow of said coulee or slough (after certain smaller diversions are taken out above said check or dividing box) westerly into the irrigation ditch jointly owned and operated by the plaintiff and the defendants, which joint diversion to the plaintiff and defendants was in accord with the provisions of said ditch and water agreement of September 8, 1954;

Now, Therefore, for the purpose of subdividing between the plaintiff and the defendants and decreeing and awarding to the plaintiff and defendants their respective rights to the said flow of said coulee or slough under and by virtue of said ditch and water agreement, it is hereby ordered, adjudged and decreed that those waters of said coulee or slough so diverted through said two-way diversion box jointly to plaintiff and defendant are hereby subdivided, decreed and

awarded to the plaintiff and defendants in the following respective amounts and for use upon the irrigable portions of the following described lands situate in Lincoln County, Idaho:

(1) To the plaintiff D. Sidney Smith for use upon the following described lands (of which 702.9 acres are susceptible of irrigation from the waters hereby decreed): $SE\frac{1}{4}$ of Sec. 10, $S\frac{1}{2}NW\frac{1}{4}$, $SW\frac{1}{4}$ and $SE\frac{1}{4}$ of Sec. 11; $NW\frac{1}{4}NE\frac{1}{4}$ & $NW\frac{1}{4}$ of Sec. 14; and $N\frac{1}{2}NE\frac{1}{4}$ & $S\frac{1}{2}N\frac{1}{2}$ of Sec. 15, all in Twp. 5 S. R. 16 E.B.M., 90 per cent of said waters;

(2) To the defendants Ross Boyd and Marguerite Boyd, husband and wife, for use upon $W\frac{1}{2}NE\frac{1}{4}$ Sec. 11, Twp. 5 S. R. 16 E.B.M., (of which 40 acres are susceptible of irrigation from the waters hereby decreed), 10 per cent of said waters.

Charles Scoggin, District Judge

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