

DEV ✓

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case IDWR will produce new water right number(s) for the split(s).

Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
ADJ 29-13779	same				
ADJ 29-13781	same				

RECEIVED

JUN 10 2009

Department of Water Resources
Eastern Region

2. The following **REQUIRED** information must be submitted with this form:
- A. The appropriate **FILING FEE**. See instructions for fee amounts.
 - B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
 - C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).
- OR**
- D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

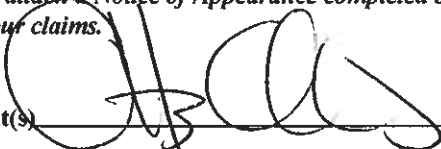
3.	Name and Address of Former Owner/Claimant(s)	Colman S. Paniogue 22 Colgate Pocatello, ID 83201
4.	New Owner/Claimant(s)	Shoshone-Bannock Tribes
	New Mailing Address	PO Box 306
	City, State and ZIP Code	Fort Hall, ID 83203
	New Telephone Number	(208) 239-4580
		Email: eteton@sbtribes.com

5. Date you acquired the property 02/13/2009

6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in line 1, then skip this line and go to line 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (you may copy this page, if necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right will not be split, skip this area and proceed to line 7)		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Water Right and/or Adjudication Claim Number <u>29-13779</u>		
Irrigation	.580 CFS/116.8 AFY	29.2 acres
Stock	.020 CFS/ 048 AFY	36 range cattle
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number <u>29-13781</u>		
Irrigation	1.180 CFS	59 acres
Stock	.020 CFS	36 range cattle
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number _____		
Irrigation		
Stock		
Domestic		
Other		
Totals		

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

7. Signature(s) of New Owner(s) or Claimant(s)  (title if applicable)
Alonzo A. Coby
 Fort Hall Business Council Chairman (title if applicable)

IT IS IMPORTANT TO FILE THIS COMPLETED FORM AT THE APPROPRIATE IDWR OFFICE, WITH PAYMENT OF THE FILING FEE AND THE OWNERSHIP DOCUMENT(S), AS REFERRED TO IN LINE 2.

For IDWR Office Use Only:

Received by _____	Date _____	Receipt Amt. _____
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____



Pioneer Title Co.

GOING BEYOND

135 N. Arthur Ave. / Pocatello, Idaho 83204 / (208) 233-9595

Shoshone-Bannock Tribes
PO Box 306
Fort Hall, ID 83203

Re: Escrow No.: 20080125 SMK CG
Policy No.: OX 308787
Seller: Coleman S. Paniogue and Janet M. Paniogue, husband and wife
Buyer: Shoshone-Bannock Tribes
Property:

The closing of your purchase of the above-noted property has now been completed. Enclosed is your Original Recorded Warranty Deed and Title Insurance Policy. These documents contain important information about the property you have just purchased. If you have not elected to apply for the homeowner's exemption at the time of closing, the Warranty Deed will need to be taken to the County Assessors Office to apply. The policy is your guarantee of ownership, please read it and retain it with your other valuable papers.

A complete and permanent file of the records concerning your transaction will be maintained in our office under the assigned Policy and File number. These records will assure prompt processing of future work and save much valuable time should you wish to sell or obtain a loan on your property.

We appreciate having had this opportunity to be of service to you and will be glad to assist you in any way in regard to your future escrow or title service needs.

Sincerely,

Celeste Gunn
Title Officer
PIONEER TITLE COMPANY OF BANNOCK COUNTY

Enclosures

RECEIVED

MAR 23 2009

SHOSHONE-BANNOCK TRIBES
TRIBAL ADMINISTRATION DEPARTMENT

Received By Cit
Index No. 600
Refer to RESOLUTION, CAC, WARR
Disposition B/V

Orig. to resolution

received
3/24/09



Pioneer Title Co.

135 N. Arthur Ave. / Pocatello, Idaho 83204
(208) 233-9595

Instrument # 195697

POWER COUNTY, IDAHO
2-25-2009 02:20:19 No. of Pages: 32
Recorded for : PIONEER TITLE
CHRISTINE STEINLICHT Feb. 26.09
Ex-Officio Recorder Deputy

Order No. 20080125 SMK CW

WARRANTY DEED

For Value Received

Coleman S. Paniogue and Janet M. Paniogue, husband and wife

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Shoshone-Bannock Tribes

hereinafter referred to as Grantee,

whose current address is P.O. Box 306, Fort Hall, ID 83203

the following described premises, to-wit:

LEGAL DESCRIPTION EXHIBIT "A" ATTACHED

ALSO SUBJECT TO EXHIBIT "B" AND EXHIBIT "C" ATTACHED

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises; and that Grantor will warrant and defend the same from all claims whatsoever.

(Handwritten initials)

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises; and that Grantor will warrant and defend the same from all claims whatsoever.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee, his heirs and assigns forever. And the said Grantor does hereby covenant to and with the said Grantee, that Grantor is the owner in fee simple of said premises; that said premises are free from all encumbrances except current years taxes, levies, and assessments, and except U.S. Patent reservations, restrictions, easements of record, and easements visible upon the premises; and that Grantor will warrant and defend the same from all claims whatsoever.

Dated: February 13, 2009

Coleman S. Paniogue

Coleman S. Paniogue

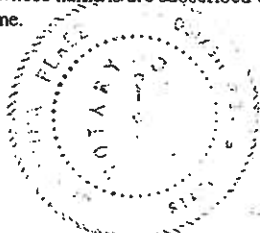
Janet M. Paniogue

Janet M. Paniogue

STATE OF NEW MEXICO

COUNTY OF Dona Ana

On this 17th day of February, in the year of 2009, before me THE UNDERSIGNED, notary public personally appeared COLEMAN S. PANIOGUE and JANET M. PANIOGUE known or identified to me to be the person/persons whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same.



Christina Perez

Notary Public of New Mexico
Residing at Las Cruces
Commission expires: 1/30/2013

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EXHIBIT A

Parcel 1

Lots 1 and 2 in Section 19, Township 6 South, Range 33 East, Boise Meridian, Power County, Idaho, except the following described parcels:

Beginning at the West 1/4 corner of Section 19, Township 6 South, Range 33 East, Boise Meridian; thence North 658.72 feet to the POINT OF BEGINNING; thence North 255.0 feet; thence South 89°38' East 170.60 feet; thence South 255.0 feet; thence North 89°38' West 170.6 feet to the TRUE POINT OF BEGINNING, all within the NW 1/4 of Section 19, Township 6 South, Range 33 East, Boise Meridian, Power County, Idaho

Also except that portion conveyed to the State of Idaho under Warranty Deed recorded February 18, 1971 under instrument no. 96672 described as follows:

A parcel of land being on the Northwestern side of the centerline of Interstate 15W, Project No. I-15W-4(12)81 Highway Survey as shown on the plans thereof, now on file in the office of the Department of Highways of the State of Idaho, and being a portion of Government Lot 2 of Section 19, Township 6 South, Range 33 East, Boise Meridian, described as follows, to-wit:

Commencing at the Southwest corner of Government Lot 2 of Section 19, Township 6 South, Range 33 East, Boise Meridian; thence South 89°33'51" East along the South line of said Government Lot 2, a distance of 1,229.0 feet, more or less, to a point in a line parallel with and 240.0 feet Northwesterly from the centerline and bears North 21°48'53" West from Station 372+82.51 of said Interstate 15W, Project No. I-15W-4(12)81 Highway Survey and being the REAL POINT OF BEGINNING; thence Northeasterly along said parallel line being an 28,427.90 feet radius curve left 101.70 feet to a point in the East line of said Government Lot 2 and bears North 22°01'11" West from Station 373+85 of said Highway Survey; thence Southerly along said East line 40.0 feet, more or less, to the Southeast corner of said Government Lot 2; thence North 89°33'51" West along the South line of said Government Lot 2, a distance of 100.0 feet, more or less, the REAL POINT OF BEGINNING.

Said land is located within the Fort Hall Reservation of the Shoshone-Bannock Tribes

Parcel 2

The West 1/2 of the East 1/2 of the Northwest Quarter, Township 6 South, Range 33 East, Boise Meridian, Power County, Idaho, except that portion conveyed to the State of Idaho under Warranty Deed recorded February 18, 1971 under instrument no. 96673 described as follows:

A parcel of land being on both sides of the centerline of Interstate 15W, Project No. I-15W-4(12)81 Highway Survey as shown on the plans thereof now on file in the office of the Department of Highways of the State of Idaho, and being a portion of the Southeast Quarter of the Northwest Quarter of Section 19, Township 6 South, Range 33 East, Boise Meridian, described as follows, to-wit:

Beginning at the Southeast corner of the Southeast 1/4 Northwest 1/4 of Section 19, Township 6 South, Range 33 East, Boise Meridian; thence North 0°16'38" East along the East line of said SE1/4NW1/4, a distance of 664.0 feet, more or less, to a point in a line parallel with and 260.0 feet Northwesterly from the centerline and opposite Station 388+53.91 of said Interstate 15W, Project No. I-15W-4(12)81 Highway Survey; thence along said parallel line as follows; South 66°24'08" West-679.93 feet to a point opposite Station 381+73.98 of said Highway Survey; thence Southwesterly along a 28, 387.90 foot radius curve right 618.32 feet to a point that bears North 22°20'59" West from Station 375+50 of said Highway Survey; thence South 52°42'05" West leaving said parallel line 154.33 feet to a point in a line parallel with and 220.0 feet Northwesterly from the centerline and bears North 22°02'59" West from Station 374+00 of said Highway Survey; thence Southwesterly along a 28, 427.90 foot radius curve right 14.88 feet to a point in the West line of said SE1/4NW1/4 and bears North 22°01'11" West from Station 373+85 of said Highway Survey; thence Southerly along said West line 40.0 feet, more or less, to the Southwest corner of said SE1/4NW1/4; thence South 89°33'51" East along the South line of said SE1/4NW1/4, a distance of 1320.0 feet, more or less, to the PLACE OF BEGINNING.

Said land is located within the Fort Hall Reservation of the Shoshone-Bannock Tribes

Parcel 3

The East 1/2 of the East 1/2 of the Northwest Quarter, Township 6 South, Range 33 East, Boise Meridian, Power County, Idaho, except that portion conveyed to the State of Idaho under Warranty Deed recorded February 18, 1971 under instrument no. 96673 described as follows:

A parcel of land being on both sides of the centerline of Interstate 15W, Project No. I-15W-4(12)81 Highway Survey as shown on the plans thereof now on file in the office of the Department of Highways of the State of Idaho, and being a portion of the Southeast Quarter of the Northwest Quarter of Section 19, Township 6 South, Range 33 East, Boise Meridian, described as follows, to-wit:

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WP
R

~~Beginning at the Southeast corner of the Southeast 1/4 Northwest 1/4 of Section 19, Township 6 South, Range 33 East, Boise Meridian; thence North 0°16'38" East along the East line of said SE1/4NW1/4, a distance of 664.0 feet, more or less, to a point in a line parallel with and 260.0 feet Northwesterly from the centerline and opposite Station 388+53.91 of said Interstate 15W, Project No. I-15W-4(12)81 Highway Survey; thence along said parallel line as follows; South 66°24'08" West-679.93 feet to a point opposite Station 381+73.98 of said Highway Survey; thence Southwesterly along a 28, 387.00 foot radius curve right 618.32 feet to a point that bears North 22°20'59" West from Station 375+50 of said Highway Survey; thence South 52°42'05" West leaving said parallel line 154.33 feet to a point in a line parallel with and 220.0 feet Northwesterly from the centerline and bears North 22°02'59" West from Station 374+00 of said Highway Survey; thence Southwesterly along a 28, 427.90 foot radius curve right 14.88 feet to a point in the West line of said SE1/4NW1/4 and bears North 22°01'11" West from Station 373+85 of said Highway Survey; thence Southerly along said West line 40.0 feet, more or less, to the Southwest corner of said SE1/4NW1/4; thence South 89°33'51" East along the South line of said SE1/4NW1/4, a distance of 1320.0 feet, more or less, to the PLACE OF BEGINNING.~~

Said land is located within the Fort Hall Reservation of the Shoshone-Bannock Tribes

CHP
[Signature]
[Signature]

EXHIBIT B

Shoshone Bannock Tribes of the Fort Hall Indian Reservation, by and through its governing body of the Fort Hall Business Council (the Tribe), used funds from the United States of America, acting through the Department of Energy, Bonneville Power Administration (BPA), to acquire real property pursuant to the Southern Idaho Wildlife Mitigation Agreement (the MOA) between the Tribes and BPA dated December 1997. A copy of the Memorandum of Agreement can be obtained from Bonneville Power Administration, Manager, Real Property Services TER-3, P.O. BOX 3621, Portland, OR 97208 or 905 NE 11th Avenue, Portland, OR, 97232. The Tribes agree to use this property for wildlife habitat protection permanently and that title to this property shall vest in BPA (1) upon determination by BPA that this real property is not being managed for wildlife habitat protection as described in the MOA and (2) BPA choosing to accept conveyance of the property. The BPA and the Tribes may revoke this executor interest to permit a sale or trade of this real property interest pursuant to Section 0 of the MOA.



JUL 08 1998

EXHIBIT C

COPY

Southern Idaho
Wildlife Mitigation Agreement

Bonneville Power Administration

Shoshone-Bannock Tribes of the Fort Hall Indian Reservation



December 1997

SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

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Attachments

SOUTHERN IDAHO WILDLIFE MITIGATION

MEMORANDUM OF AGREEMENT

This Agreement is made between the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation (hereinafter Tribe), and the United States of America, acting through the Department of Energy and the Bonneville Power Administration (hereinafter BPA), and is binding on the parties, their successors and assigns.

RECITALS

- A. The Shoshone-Bannock Tribes has the authority to enter into this Agreement pursuant to the Treaty With the Eastern Band Shoshoni and Bannock, 1868.
- B. BPA is a power marketing agency within the United States Department of Energy. The Pacific Northwest Electric Power Planning and Conservation Act, P.L. 96-501 (Act) directs BPA to protect, mitigate, and enhance fish and wildlife affected by the development and operation of federal hydroelectric projects of the Columbia River and its tributaries, in a manner consistent with the purposes of the Act, the program adopted by the Pacific Northwest Electric Power and Conservation Planning Council (Council) under subsection 4(h) of the Act, and other environmental laws.
- C. The Tribe and the Palisades, Anderson Ranch, Black Canyon, and Minidoka Interagency Work Groups have developed the Southern Idaho Wildlife Mitigation Project (hereinafter Project). The Project has been approved by the Council and BPA. BPA has completed an Environmental Assessment, DOE/EA No. 0956 and reached a finding of no significant impact (September 1995), for the South Fork Snake/Palisades Project, and completed the Wildlife Mitigation Program Final Environmental Impact Statement (March 1997) and Record of Decision (June 1997), all pursuant to the National Environmental Policy Act (NEPA), 42 U.S.C. 4321-4370c.
- D. When fully implemented, the Project will include numerous real property interests (Property or Properties)--conservation easements and fee-title land acquisitions--as well as habitat improvement activities. The Tribe will dedicate the Properties in the Project to wildlife habitat protection permanently, and will manage the Properties according to the terms of this Agreement and site-specific management plans (Management Plans) that the Tribe will prepare; however, the

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Properties within the Project may vary from time to time as parcels are acquired or sold as provided under this Agreement.

E. BPA funding under this Agreement will be provided in a manner consistent with section 4(h)(10)(D) of the Act after BPA receives a recommendation from the Council that the measure be funded at a particular level and BPA accepts that recommendation. This process is referred to as prioritization.

F. The underlying purpose of the Agreement is to protect, mitigate, and enhance wildlife and wildlife habitat permanently, through the acquisition, protection and management of lands.

NOW THEREFORE IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. BPA Obligations (a) In consideration of the promises and covenants made and set out herein, BPA shall make monetary transfers to the Tribe in amounts agreed upon by the parties within 10 days of receipt of a signed Intergovernmental Contract and invoice from the Tribe.

(b) In addition, BPA shall reimburse the Tribe's costs of complying with federal real property acquisition law, including the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655; provided, for any acquisition involving potential relocation costs of \$5,000 or more, the Tribe shall enlist the assistance and follow the direction of BPA's Manager, Real Property Services, before taking any action or making any commitments that will necessitate reimbursement by BPA under this paragraph.

2. Operation and Maintenance (a) On or before the beginning of fiscal year 1999 (October 1, 1998), BPA shall start providing a reasonable amount of additional funds for continued operation and maintenance (O&M) of the mitigation to maintain or provide positive wildlife and/or wildlife habitat benefits.

(i) For properties acquired in fee with BPA funds, reasonable may be defined as sufficient funding to, among other things, maintain the staffing and equipment needed to protect habitat through limiting grazing trespass, maintain the property boundary fences, suppress noxious weed infestations, perform habitat improvement and monitoring activities as delineated in the Management Plans, performing Habitat Evaluation Procedures (HEPs), and where necessary, paying in-lieu property taxes, county weed assessments, and fire suppression costs.

(ii) For properties acquired as conservation easements with BPA funds, reasonable may be defined as including funding for monitoring and enforcement of easement terms and performing habitat improvements.

(iii) For habitat improvements made with BPA funds on properties acquired or managed by the Tribe with funds from a source other than BPA, reasonable may be defined as amounts sufficient to protect those habitat improvements through limiting grazing trespass, maintaining the property boundary fences, suppressing noxious weed infestations, monitoring activities and other activities as delineated in the Management Plans.

(b) By June 30, 2001 the parties shall make their best efforts to negotiate an operation and maintenance funding scheme for the Project. Payment may be on an annual basis, lump sum, or by any other means agreed to by the parties. Funding negotiated for operations and maintenance will be subject to prioritization.

(c) Net revenue received from managing the Properties, including conservation reserve program payments or other similar payments, shall be used only to (i) pay costs associated with the land managed, including but not limited to payment of in-lieu property taxes, county weed assessments, and fire suppression costs, or (ii) to implement the Management Plans. Net revenues may be subtracted from O&M funds that would otherwise have been provided by BPA, unless otherwise agreed by the parties.

3. Shoshone-Bannock Tribe's Obligations (a) The monies provided pursuant to sections 1 and 2 above, any interest earned from them, and net income earned from the Properties shall constitute the Fund. The Tribe shall deposit the Fund in an interest bearing account and maintain grant accounting to allow tracking of all expenditures from the Fund.

(b) The Tribe may use the Fund only to purchase the Properties, improve them, conduct inventories, HEPs (pursuant to guidelines published by the U.S. Fish and Wildlife Service), develop Management Plans, and to accomplish reasonable operation and maintenance. Expenditures from the Fund must be pursuant to the Management Plans; provided, the Tribe may use the Fund for acquisitions prior to developing a Management Plan for a particular site.

The Tribe may also use the Fund to improve habitat on public lands, including those owned or managed by the Tribe in the mitigation area. The Fund may be used for wildlife mitigation purposes only, and will not be used in lieu of expenditures the Tribe or other entities must make under other agreements or provisions of law. The Fund may not be used to pay fees-

in-lieu of property taxes, county weed assessments, operation and maintenance, or fire suppression on lands that were not purchased for purposes of Southern Idaho wildlife mitigation or that the Tribe owned or operated prior to this Agreement. Nor may the Fund be used for any activities on lands owned or managed by a person or entity having a wildlife mitigation agreement with BPA calling for that person or entity to be responsible for operation and maintenance or habitat improvement costs.

(c) The Tribe will use the Fund to implement wildlife mitigation activities as outlined in the Intergovernmental Contracts and within the area delineated in Attachment A of this Agreement. The Tribe may utilize its own processes in conducting any and all pre-acquisition activities, that include, by way of example, appraisals, drafting and presenting to sellers earnest money agreements, purchase and sale agreements, hazardous materials audits, and conducting surveys; provided, the Tribe will comply with federal real property acquisition laws, such as the Uniform Relocation Assistance and Real Property Acquisition Policies Act, 42 U.S.C. §§ 4601-4655. Where the Tribe has no established procedure, it will follow BPA or federal procedures.

(d) The Tribe shall protect the properties in the Project as wildlife habitat permanently on behalf of BPA, preventing any and all uses of the properties that are inconsistent with this Agreement, the Council's Program, and the Management Plans.

(e) Property acquired pursuant to this Agreement is subject to the condition that it be managed for wildlife under this Agreement. If BPA determines that a Property is not being managed for wildlife, as evidenced by a twenty percent drop in the highest documented HEP values, then the Property shall vest in BPA in fee simple absolute, unless BPA provides written consent to such cessation of use or lack of compliance. To allow the Property to vest in BPA, the Tribe shall take title to real property it purchases under this Agreement by a Deed Conveying Fee Simple With an Executory Limitation Over including the language provided in Attachment C. This provision is inapplicable if the twenty percent drop in HEP values is proximately caused by force majeure as described in section 6 or BPA's failure to provide additional funds for operation and maintenance as described in section 2.

4. Management Plans (a) The Tribe shall use the Fund to develop an inventory of the resources existing on the Properties. Based on the information obtained from the inventories the Tribe shall develop a site specific management plan (Management Plan) for each mitigation site within two years of the date of acquisition. The Management Plans will describe the mitigation in

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detail, including its baseline HEP results and how and when estimated HUs from improvement activities will be achieved and sustained. The Management Plans will focus on habitat management concerns including: the management of noxious weeds, the use of grazing and other means of manipulating habitat to reach desired conditions for wildlife, road closures, access, and other management practices designed to protect wildlife and their habitats. BPA will not approve proposed management practices that in its opinion may impede the increase in HEP value of improvement HUs or will not result in habitat that is self-sustaining and in need of little or no O&M. Upon completion, the Management Plans shall be incorporated and made a part of this Agreement.

(b) The NEPA documents mentioned in Recital C of this Agreement will be incorporated by reference into the Management Plans. The Tribe will use the Fund to manage the properties to benefit wildlife permanently, according to the Management Plans, the terms of this Agreement, and the Environmental Assessment performed by BPA. BPA must approve the Management Plans before implementation, and it may not withhold its approval unreasonably.

5. Incidents of Ownership The Tribe will have all management and operational control of the Project and Properties, and will therefore be solely responsible for all incidents of ownership of real property interests acquired with the Fund. The Tribe agrees to take lawful actions to hold harmless and indemnify BPA from any liability from any incident of ownership that may arise in the implementation of the Management Plan. Such incidents of ownership include, but are not limited to, hazardous waste response, cultural resource mitigation, taxes, and tort liability.

6. Force Majeure Should an unforeseen event, such as a flood, wildfire, drought, or pestilence, destroy or diminish the Properties' values as wildlife habitat, the Tribe shall have no obligation to reproduce the Properties' pre-existing wildlife values any faster than natural regeneration reproduces them.

7. Historic Properties The Tribe will assume the responsibilities for historic property protection pursuant to a subsequent agreement between the parties, in a manner substantially equivalent to that described in Attachment B (a draft programmatic agreement), for all mitigation actions under this Agreement. The Tribe will integrate management planning for historic and cultural resources, as defined by the National Historic Preservation Act, with the wildlife management practices as a means of avoiding impacts to cultural and historic resources. Surveys shall be done before initiating non-exempt ground-disturbing activities. The Tribe will also avoid

sensitive sites if at all possible in implementing habitat improvement actions. Only ground-disturbing activities approved in the Management Plans may be undertaken. The Tribe may use the Fund, or if it is exhausted seek additional monies through the prioritization process, for the surveys or any cultural or historic resource mitigation necessitated as a result of the Tribe's actions under this Agreement.

8. Recording by Shoshone-Bannock Tribe (a) For any real property the Tribe acquires under this Agreement, the Tribe shall have a deed with an executory interest over and this Agreement acknowledged and recorded with all appropriate authorities under Idaho law, and if the property is placed in trust, under Bureau of Indian Affairs recording regulations. Recording will be done when the Tribe takes title to or assumes control of such property. Within 30 days of recording(s), the Tribe shall submit to the BPA contracting officer a copy of the recorded documents showing the recording information. In the event the Tribe exercises its option to sell or exchange any of the lands acquired for mitigation, as authorized in Section 9 of this Agreement, the parties will release the Deed Conveying Fee Simple with an Executory Limitation Over on the property to be sold and the Tribe shall lawfully acknowledge and record a Deed Conveying Fee Simple with an Executory Limitation Over with the newly acquired property within 30 days of assuming control of that property.

(b) For properties the Tribe acquires in less than fee interest under this Agreement, the Tribe shall ensure (i) the restrictions on the deeds include third party enforcement language approved by BPA, and (2) the deeds are acknowledged and recorded under Idaho and, if appropriate, federal law.

9. Acquisition, Trade, Sale If a sale or trade of a property would provide a net gain in HUs or aid in the fulfillment of the management objectives as stated in this Agreement and the Management Plan, then the Tribe may sell or trade any Property after meeting the following conditions:

(a) obtaining written concurrence by the BPA Manager, Fish and Wildlife Division, and

(b) demonstrating that the new real property interests are of equal or greater wildlife habitat value, as measured by a habitat evaluation procedure, to the species targeted in this Agreement, or aid in fulfillment of the Management Plan or facilitate management of real property already acquired.

(c) In completing the transaction the Tribe will record a Deed Conveying Fee Simple With an Executory Limitation Over, Attachment C, with all appropriate authorities, ensuring the property being acquired through acquisition, sale, or trade is permanently protected for wildlife and wildlife habitat.

The Fund may be used to facilitate the acquisition, sale or trade or to perform HEPs related to it.

10. Protection of Tribal Rights Nothing in this Agreement is intended to nor shall abrogate any federally protected or reserved Indian right. Furthermore, BPA will not oppose application by the Tribe to transfer the Properties to trust status.

11. BPA Monitoring For properties the Tribe manages, BPA shall have the right to enter upon the properties at reasonable times to monitor the Tribe's compliance with this Agreement and to enforce its terms.

12. Shoshone-Bannock Tribe Reporting Beginning January 30, 1999, and every January 30 thereafter, the Tribe shall provide BPA an annual report including, but not necessarily limited to, the following information: general descriptions of the real property interests in the Project, any HEP analyses undertaken or in progress, management activities undertaken or in progress, violations of easement terms and enforcement action taken. The Tribe shall also provide an accounting of the Fund, including any expenditures, interest earned, and net income derived from the management of the Project. At its own expense, BPA may audit the Tribe's accounting records related to the Project.

13. Public Access The public shall have reasonable access to the properties the Tribe owns or manages. Public access is encouraged, but not required, for mitigation properties not managed by the Tribe under this Agreement. The Tribe may regulate access, provided that access and transportation regulations shall apply equally to tribal members and non-tribal members. Public access and use may not result in adverse impacts to wildlife, the reduction of wildlife habitat values, or the destruction of other natural resource values for which the Properties are managed, or impede the increase in HEP value of improvement HUs. Nothing in this Agreement limits the authority or ability of the Tribe to manage the properties for lawful hunting, fishing or trapping, public safety, wildlife habitat conservation, or to preserve and protect cultural, historic, and religious sites.

14. BPA Credit: The Tribe shall support BPA's taking of the following protection, mitigation, and enhancement credit:

(a) For having used BPA funds to purchase and manage Properties BPA shall receive as a credit to wildlife mitigation under the Act, at a minimum, the HUs agreed upon in the Intergovernmental Contracts, and as a maximum, the actual HUs achieved or acquired.

(b) The Tribe will conduct HEPs for breeding bald eagle, wintering bald eagle, Canada goose, mallard, black-capped chickadee, mink, ruffed grouse, mule deer/elk, pheasant, sharp-tailed grouse, sage grouse, river otter, and yellow warbler. The results of the HEPs shall be used to evaluate the credit due on each specific mitigation site. For mitigation actions involving partnerships, BPA shall receive full credit proportional to its investment in the acquisition, improvement costs, or operations and maintenance.

(c) For all Properties: The parties may agree to conduct subsequent HEP studies at any time. The party requesting the study shall fund it unless the parties agree otherwise.

(d) The Tribe agrees that BPA's expenditure of money is consistent with section 4(h) of the Act. The Tribe shall support BPA's obtaining full credit for its expenditures with respect to protecting and managing existing habitat on the Properties, and for habitat improvements when implemented on the Properties, so long as BPA complies with the terms of this Agreement.

(e) BPA shall use the credit recognized by the Tribe under this Agreement toward satisfaction of BPA's wildlife mitigation responsibility for Palisades, Anderson Ranch, Black Canyon, and Minidoka Dams and Reservoirs and any other hydroelectric projects amended into the Council's Program for Southern Idaho and agreed to by the parties. Provided, if another crediting methodology is imposed by applicable law or by judicial decision, agreed to between BPA and the Tribe, or adopted by BPA through rulemaking, that formula shall be used to recompute the credit provided in this part and the recomputed credit shall be used for all purposes, including the final determination of BPA's ultimate obligation to provide wildlife mitigation, protection, and enhancement; however, in no event will any such recalculation affect BPA's obligations under this Agreement.

14/30

15. Limitation of Credit The credit BPA obtains for the consideration paid to implement the Project as required and provided in this Agreement shall not be affected or diminished as a result of the failure of the Tribe to carry out its obligations to maintain the Properties as provided in this Agreement.

16. Binding Effect This Agreement shall be binding on the parties and their assigns and successors. Either party shall have the right to enforce the terms of this Agreement as provided herein.

17. Dispute Resolution BPA and the Tribe agree to submit in good faith any disputes regarding the implementation of this Agreement or the management of the properties to non-binding mediation. This provision shall be triggered when one party makes a written request for the other party to join in mediation. Within 30 days of this provision being triggered, the parties shall select a mediator, or if they are unable to select a mediator, each party shall select a mediator and the two selected will choose a third mediator who shall be the sole mediator. The parties shall use their best efforts to resolve the dispute in mediation. After a dispute has been in mediation for at least 60 days and there have been at least two mediation sessions, any party may initiate legal action to resolve the dispute. Except as provided in this part, pending completion of mediation no party shall initiate any legal proceeding except in aid of mediation or to avoid irreparable harm from a direct threat to the wildlife resources protected under this Agreement. Each party shall pay its own mediation costs and fees, including those incurred in selection of a mediator; the parties shall share the costs and fees of the mediator equally.

18. Effective Date This Agreement shall be effective when signed by the Chair of the Shoshone-Bannock Tribe's Board of Trustees as consistent with the Shoshone-Bannock Tribal Constitution and By Laws, Art. ___ § ___, and Tribal Business Council Resolution # _____ (Attachment D); BPA's Manager, Real Property Services; and BPA's Group Vice President of the Office of Environment, Fish and Wildlife.

19. Contract Approval If a court of competent jurisdiction finds a portion of this Agreement that relates to the Properties and their use or the ability of BPA to exercise its rights with respect to the Properties is unauthorized or not binding on the Tribe, this Agreement shall be terminated. BPA may then determine, without further findings, the Properties acquired under this Agreement and owned by the Tribe are not being managed pursuant to the Agreement. Title to such Properties shall vest in BPA in fee simple absolute--if BPA chooses to accept any or all of

the Properties. The Tribe shall also immediately convey to BPA all personal property acquired with funding provided by BPA under this Agreement, and remit any remainder sums in the Fund to BPA, after which time the parties will have no further obligations to each other under this Agreement. Provided, that unless agreed to by the parties, the parties shall use their best efforts to enter into a new and binding agreement that carries out the intent of this Agreement. Either party may invoke the dispute resolution provisions of this Agreement to facilitate the negotiation of a new agreement.

20. Modification The parties by mutual agreement may modify the terms of this Agreement. Any such modification shall be in writing signed by both parties.

21. Enforcement of Agreement This Agreement is enforceable in any court of competent jurisdiction, whether for equitable relief or damages. The Tribe grants a limited waiver of its sovereign immunity if the claim 1) is made by the BPA or its successors or assigns, 2) alleges a breach of an obligation or duty assumed by the Tribe under this Agreement, and 3) seeks specific action to bring the Tribe into compliance with this Agreement and/or payment of a monetary obligation arising from noncompliance with this Agreement.

22. Attorney Fees In the event of litigation involving this Agreement each party shall bear its own costs and attorney fees, including those incurred on appeal.

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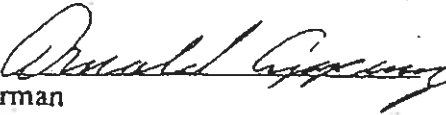
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23. Waiver: The failure of any party to require strict performance of any term of this Agreement or a party's waiver of performance shall not be a waiver of any future performance or of a party's right to require strict performance in the future.

IN WITNESS WHEREOF, the parties have signed this Agreement below.

By: 
Chairman
Fort Hall Business Council

Date: _____

By: Alexandra B. Smith *pk*
Alexandra B. Smith
Group Vice President
Environment, Fish and Wildlife
Bonneville Power Administration

Date: 7/1/98

By: John R. Cowger
John R. Cowger
Manager, Real Property Services
Bonneville Power Administration

Date: 6/30/98

ATTACHMENT A

DESCRIPTION OF PROJECT AREA

The project area includes wildlife mitigation project sites in southern Idaho associated with Palisades, Anderson Ranch, Minidoka, Black Canyon hydroelectric projects and any other hydroelectric projects amended into the Council's program and agreed to by the parties.

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ATTACHMENT B

DRAFT PROGRAMMATIC AGREEMENT

19/27

DRAFT PROGRAMMATIC AGREEMENT
among
**THE BONNEVILLE POWER ADMINISTRATION,
THE ADVISORY COUNCIL ON HISTORIC PRESERVATION,
AND THE IDAHO STATE HISTORIC PRESERVATION OFFICER**
regarding implementation of
SOUTHERN IDAHO WILDLIFE MITIGATION PROJECTS

WHEREAS, the Bonneville Power Administration is a Federal Power Marketing Agency (PMA), created under the authority of the Bonneville Project Act (16 U.S.C. §§ 832-832I);

WHEREAS, the Advisory Council on Historic Preservation (Council) was established as an independent agency by the National Historic Preservation Act (NHPA) at 16 U.S.C. § 470I. Pursuant to Section 106 of the NHPA, the Council provides comments to an Agency Official on the effects of undertakings on historic properties in accordance with its implementing regulations, "Protection of Historic Properties," 36 CFR Part 800.

WHEREAS, the role of the state historic preservation officer (SHPO) in regard to programmatic agreements is set out in 36 C.F.R. § 800.1(c)(1)(ii);

WHEREAS, the Bonneville Power Administration (BPA) and other potential managing entities such as the Idaho Department of Fish and Game (IDFG); the Bureau of Land Management (BLM); the United States Forest Service (USFS); and the Shoshone-Bannock Tribes (Tribes) propose to protect, mitigate and enhance wildlife and wildlife habitat adversely affected by the development of the Federal Columbia River Hydrosystem in accordance with the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact and the Wildlife Programmatic Environmental Impact Statement;

WHEREAS, BPA recognizes that mitigation efforts related to the development of the Federal Columbia River Hydrosystem could possibly affect historic properties. For the purposes of this PA, the term "historic properties" means any prehistoric or historic district, site, building, structure, or object, or any property of traditional religious and cultural importance to an Indian tribe, that is included in, or eligible for inclusion in, the National Register. This term includes artifacts, records, and remains that are related to and located within such properties;

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DRAFT PROGRAMMATIC AGREEMENT 2
South Fork Snake River Management Plan

WHEREAS, the parties have consulted with the Council, and among themselves, as required by Section 106 of NHPA and the Council's implementing regulations, 36 CFR Part 800, and have chosen to develop this Programmatic Agreement in accordance with 36 CFR Section 800.13 of the Council's regulations;

WHEREAS, the Shoshone-Bannock Tribes (Tribes) have been invited to consult and to sign the Agreement in concurrence; and the Tribes' Cultural Committee is hereby designated as the Tribes' representative for purposes of this agreement;

[add a whereas for the Shoshone-Paiutes? - Nancy, ACHP]

WHEREAS, BPA, in the mitigation effort, may acquire and/or transfer real property or real property interests to other entities who will then assume the responsibility for cultural preservation on said property consistent with this agreement;

NOW, THEREFORE, the Council and the parties agree that the mitigation of wildlife and habitat adversely affected by development of the Columbia River Hydropower System shall be conducted in accordance with the following stipulations, which will fully satisfy BPA's duties pursuant to Section 106 of NHPA.

STIPULATIONS

BPA, with the cooperation of the Idaho Department of Fish and Game and the Shoshone-Bannock Tribe, will ensure that the following measures are carried out:

1. Survey and Evaluation

The entity responsible for managing BPA-funded fish and wildlife mitigation on lands in Southern Idaho shall identify and evaluate historic properties potentially affected by land management activities in accordance with the following procedure:

- (a) Activities typically requiring survey and evaluation are included in but not limited to those listed in Appendix B. BPA and the managing entity will determine the project's area of potential effects and conduct surveys, that will be done following the recommendations of the Interior Secretary's "Standards and Guidelines for Identification" (48 Fed. Reg. 44716, 44720 (Dep't Int. 1983)). Surveys and evaluations by the managing entity will be conducted in consultation with the SHPO, Tribes, and BPA. Consultation at a minimum will include opportunity for at least a ten (10) day review of survey plan(s). Evaluation of historic properties shall be in

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accordance with 36 C.F.R. part 63, "Determination of Eligibility for Inclusion in the National Register of Historic Places." The managing entity shall forward survey and evaluation results to BPA for review, after which BPA will forward the results to the SHPO and Tribes for a 30-day review.

(b) If cultural material is discovered during any surveys or evaluations, the materials will be noted but left in place unless, in the judgement of the surveying archaeologist, collection is necessary for protection purposes.

(c) If no historic properties are identified during the survey, the project may proceed after the 30-day review by the SHPO and Tribes described in stipulation 1(a).

(d) Other land management activities (those listed in Appendix A) are generally exempt from the need for advance survey and evaluation. However, the managing entity shall promptly report to BPA, Tribes and the SHPO any potential historic properties encountered during implementation of these activities, and shall consult with the SHPO, BPA, and the Tribes about the need to survey and evaluate such properties.

2. Historic Properties Management Plan (HPMP)

In order to fulfill BPA's Section 106 obligations, the managing entity shall prepare an HPMP for projects with historic properties discovered through implementation of stipulation 1 (above).

(a) The HPMP shall be developed in consultation with BPA, the Tribes and the SHPO within one year of the determination of eligibility, and amended as warranted by changing conditions and discovery of additional historic properties. A single HPMP may be prepared for each parcel of land within contiguous boundaries, or where the managing entity is managing other properties similarly situated, and it may include multiple historic properties.

(b) In preparing HPMPs, they shall be prepared by or under the supervision of an individual who possesses the qualifications recommended by the Interior Secretary's "Professional Qualifications Standards" (48 Fed. Reg. 44,716, 44,738).

(c) The HPMP shall include the following:

- 1) An overview, synthesizing available information on the history, prehistory, and ethnography of the area, as a context for management of historic properties;
 - 2) an inventory of historic properties present, including a description of each historic property, the significant element or elements of each property that qualifies it for inclusion in the National Register, and appropriate maps, plans, and photographs;
 - 3) a discussion of the potential for and intended use of historic properties in ways that do not cause significant damage to or deterioration of the property;
 - 4) means to preserve historic properties in place, including protection from vandalism;
 - 5) if treatment other than preservation in place is proposed, the HPMP should also discuss the alternative treatment(s), such as research value, interpretive potential, cultural importance to descendants of site creators, cost of preserving the site in place, or lack of alternatives to achieving the project goals;
 - 6) a balancing of BPA's mission and historic property preservation or other proposed treatments;
 - 7) stipulations for compliance with appropriate sections, where applicable, of NAGPRA (25 U.S.C. §§ 3001-3013), NHPA (16 U.S.C. §§ 470-470x-6), ARPA (16 U.S.C. §§ 470aa-470mm) and the American Indian Religious Freedom Act (AIRFA) (42 U.S.C. § 1996), including definition of a consultation process between BPA and the Shoshone-Bannock Tribes to ensure adequate communication of the actions to be taken under the Wildlife Mitigation Projects. Consultation with the Tribes shall be maintained specifically to solicit input on traditional use or other tribal concerns directly related to this consultation process and Programmatic Agreement.
- (d) The managing entity or BPA will provide copies of the draft HPMP to the SHPO, Tribes, Council and other interested parties for review and comment. BPA will direct the managing entity not to take action with potential adverse effect on a historic property until the HPMP is implemented, or section 106 responsibilities are otherwise fulfilled.

3. Discoveries

If cultural material that is not covered by the HPMP (Stipulation 2) is discovered during the implementation of the Project, the managing entity will ensure that all work in the area of the discovery will immediately cease and the managing entity will contact BPA, the Tribes, and the SHPO. BPA, in consultation with the SHPO and Tribes, will determine if the cultural material represents an historic property which is eligible to the National Register of Historic Places. If the material does represent an historic property, BPA will determine the appropriate treatment of the historic property in consultation with the SHPO and the Tribes, as appropriate.

4. Curation

The parties recognize that Tribal traditions do not normally support curation. However, if curation of non-burial materials is deemed necessary as discussed under stipulation 1(b), BPA and the managing entity shall ensure that all curation of records and other items resulting from identification, evaluation, and data recovery efforts proceeds in accordance with 36 CFR 79 and, where applicable, the provisions of the Native American Graves Protection and Repatriation Act (PL101-601). Collections and records will be curated at an appropriate repository. Materials shall be maintained in accordance with 36 CFR 79 until any specified analyses are complete and they are curated or returned to their owners.

5. Human Remains

BPA and the land-managing entity shall ensure that any human remains encountered during the course of this undertaking are treated in a respectful manner. No construction activities will be allowed in the vicinity of the discovery until a Notice to Proceed is provided by BPA and/or the land managing entity. A reasonable and good-faith effort shall be made to identify the appropriate ancestors, Native American or otherwise, related to the burial, and consult with them concerning the treatment of remains. If human remains are encountered on Federal lands, the land-managing entity shall consult with Native Americans, or other groups related to the burial, to determine treatment and disposition measures consistent with applicable Federal law (such as the Native American Graves Protection and Repatriation Act). BPA, SHPO and the Shoshone-Bannock Tribe will address specific NAGPRA procedures regarding the discovery of human skeletal remains in an MOA.

If human remains are encountered on State or private lands, BPA shall ensure, in consultation with the SHPO, that they are treated according to the provisions of Idaho's 1984 Protection of Graves Act, Sections 27-501 through 27-504. If Native American remains are encountered, the appropriate tribal policy will be followed. If objections are raised by any party to this Agreement regarding the treatment of human remains, BPA shall consult to resolve the objections in accordance with Stipulation 9.

6. Training

Managing entity staff shall attend training in cultural resources management and/or the Section 106 review process, or demonstrate knowledge of these subjects.

7. Annual Report

The managing entity shall prepare an annual report regarding implementation of this PA, and shall distribute the report to BPA, the SHPO, the Tribes and the Advisory Council. Annual reports should include:

- a. Name of contact person for each wildlife management area;
- b. a summary of general land management activities for the year;
- c. a specific description of the survey, evaluation and HPMP activity undertaken in that year;
- d. a discussion of problems and successes in managing historic properties and implementing this PA, including the views of Tribes and other interested parties;
- e. training undertaken by managing entity staff per stipulation #6; and
- f. anticipated date of the next annual report.

This report shall be the basis for BPA, the land managing entity, SHPO, Council, Tribes, and other interested parties annually reviewing the implementation of the PA and determining if changes in the PA or implementation are necessary. The first report is due not later than one year from execution of this PA, or as otherwise agreed in writing by the consulting parties.

8. Amendment of the Agreement

Any party to the agreement may request that this PA be amended, whereupon the parties will consult in accordance with 36 C.F.R. § 800.13

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to consider such amendment. Any amendment or addendum to this agreement shall be executed in the same manner as the original.

9. **Dispute Resolution**

Should BPA, the SHPO, or the Tribes be unable to resolve a dispute regarding implementation of this PA, they may consult with the Council staff. If the dispute is still not resolved after a period of 60 day, the SHPO shall request the further comments of the Council pursuant to 36 C.F.R. § 800.6(b).

10. **Termination**

BPA or the SHPO may terminate this PA by providing 120 days' notice, in writing, to the other parties, including concurring parties, provided that the parties will meet during the period prior to termination to seek agreement, amendment, or other action that would avoid termination. It is the intent of the parties that this agreement last for the duration of the South Fork Snake River Programmatic Management Plan. In the event of termination, BPA and the land management entity will comply with 36 C.F.R. §§ 800.4-800.6 with regard to land management activities.

11. **Other Indian Tribes**

Nothing in this agreement is intended to affect the interests or rights of any other Indian tribe.

DRAFT PROGRAMATIC AGREEMENT 8
South Fork Snake River Management Plan

Execution of this PA by BPA, the SHPO, the Council, plus concurrence by the Tribes and implementation by the managing entity(ies) demonstrate that BPA has taken into account the potential effects of the South Fork Snake River/Palisades Wildlife Mitigation Project Final Environmental Assessment and Finding of No Significant Impact, in full compliance with the requirements of Section 106 of the NHPA.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

By: _____

Date: _____

Title: _____

BONNEVILLE POWER ADMINISTRATION

By: _____

Date: _____

Title: _____

IDAHO STATE HISTORIC PRESERVATION OFFICER

By: _____

Date: _____

Title: _____

Concur:
SHOSHONE-BANNOCK TRIBES

By: _____

Date: _____

Title: _____

IDAHO DEPARTMENT OF FISH AND GAME

By: _____

Date: _____

Title: _____

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APPENDIX "A"

Land Management Activities Normally Exempt from Prior Survey and Evaluation

- * Acquisition of a conservation easement (survey and evaluation normally will be required prior to implementation of Appendix B activities funded by BPA or the managing agency within the easement)
- * Management of vegetation not associated with structural landscaping (i.e., non-mechanical weed control or tree topping)
- * Maintenance of fences not requiring excavation
- * Construction and/or preparation of wildlife mitigation structures, facilities or alterations to land where such activities or their use will not involve excavation or ground disturbance, nor create a risk of unearthing historical items or resources

APPENDIX "B"

Examples of Land Management Activities Normally Requiring Prior Survey and Evaluation

- * Acquisition of land in fee (survey and evaluation would be limited to an overview-type survey for informational purposes only, with no testing) [SHPO wanted moved to here, BPA added qualifying parenthetical]
- * Construction of buildings, including site preparation
- * Removal of buildings more than 50 years old
- * Modification of buildings more than 50 years old

DRAFT PROGRAM MATRIC AGREEMENT 10
South Fork Snake River Management Plan

- * Excavation for trenches, ditches or ponds, or any other ground-disturbing activities
- * Construction of roads
- * Logging

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DRAFT of 12/5/97

ATTACHMENT C

SAMPLE EXECUTORY LIMITATION OVER LANGUAGE

The Deeds Conveying Fee Simple With an Executory Limitation Over shall include the following provision:

Title to this property shall vest in the United States, Bonneville Power Administration (BPA), upon (1) determination by BPA that this real property is not being managed for wildlife, as described in the December 1997 Shoshone-Bannock Tribes/BPA Southern Idaho Wildlife Mitigation Agreement recorded with this deed, and (2) BPA's choosing to accept conveyance of the property.

ATTACHMENT D

TRIBAL RESOLUTION APPROVING OF MOA AND AUTHORIZING SIGNATURE

RESOLUTION

WHEREAS, Bonneville Power Administration has agreed to mitigate for the loss of wildlife Habitat Units through the purchase of off-site Habitat Units; and

WHEREAS, In 1996 the Tribes and the Idaho Department of Fish & Game entered into a funding agreement regarding implementation of Southern Idaho Wildlife Mitigation under the Northwest Power Planning Act, for the loss of wildlife habitat units due to the construction of Palisades, Minidoka, Anderson ranch, and Black Canyon Dams; and

WHEREAS, This agreement outlined Tribal/State funding percentages of which the Tribes received 30% and the State receives 30%. It also identified the concept of "Common Share" projects, which will receive 40% of the funding for mutually agreeable projects; and

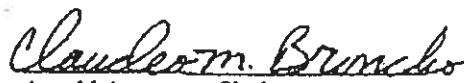
WHEREAS, There is a need for the Tribes to sign a Memorandum of Agreement with Bonneville Power Administration in order to utilize these funds; and

NOW, THEREFORE BE IT RESOLVED BY THE FORT HALL BUSINESS COUNCIL OF THE SHOSHONE-BANNOCK TRIBES, that the FHBC approves the signing of the Southern Idaho Wildlife Mitigation Memorandum of Agreement between the Tribes and Bonneville Power Administration.

BE IT FURTHER RESOLVED, the hold harmless clause will be applicable and included in this document.

Authority for the foregoing resolution is found in the Indian Reorganization Act of June 18, 1934 (48 Stat., 984) as amended and under Article VI, Section 1 (r) of the Constitution and Bylaws of the Shoshone-Bannock Tribes, Fort Hall Indian Reservation.

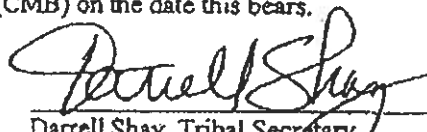
Dated this 03rd day of February, 1998.


Arnold Appeney, Chairman
Fort Hall Business Council

SEAL

CERTIFICATION

I HEREBY CERTIFY, that the foregoing resolution was passed while a quorum of the Fort Hall Business Council was present by a vote of 5 in favor, 1 absent (AA), and 1 not voting (CMB) on the date this bears.


Darrell Shay, Tribal Secretary
Fort Hall Business Council

GAME-98-0049

cc: Chad Colter, Fisheries Dept.

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OWNER'S POLICY OF TITLE INSURANCE



Policy Number **OX 308787**

Issued by Old Republic National Title Insurance Company

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

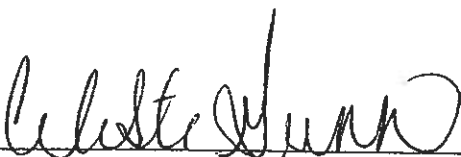
SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY, a Minnesota corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from:
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection

if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.

Countersigned:

OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY
A Stock Company
400 Second Avenue South, Minneapolis, Minnesota 55401
(612) 371-1111



Authorized Officer or Licensed Agent

By  President
Attest  Secretary

6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective

(a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records

- (i) to be timely, or
- (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.

10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to

- (i) the occupancy, use, or enjoyment of the Land;
- (ii) the character, dimensions, or location of any improvement erected on the Land;
- (iii) the subdivision of land; or
- (iv) environmental protection;

or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

(b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.

2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.

3. Defects, liens, encumbrances, adverse claims, or other matters

(a) created, suffered, assumed, or agreed to by the Insured Claimant;

- (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
- (c) resulting in no loss or damage to the Insured Claimant;
- (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
- (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.

4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is

- (a) a fraudulent conveyance or fraudulent transfer; or
- (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.

5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

Schedule A

OWNER'S POLICY

Agent #	State	Cty.	Prop.	Tran	Reissue Amt.	Re. Tran	Simultaneous Issue #		
A11007	11	77		010			OX 308788 OX 308789		
Code	Amt.	Code	Amt.	Code	Amt.	Code	Amt.	Code	Amt.
05100		05100		05100		05100		05100	

Name and Address of Title Insurance Company:

Pioneer Title Company of Power County
PO Box 1057, 135 N Arthur Ave.
Pocatello, ID 83204

File No.: 20080125 Policy No.: OX 308787

Address Reference:

Amount of Insurance:	\$340,000.00	Premium:	\$1,295.00
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Date of Policy: February 25, 2009 at 2:20 PM

1. Name of Insured:
Shoshone-Bannock Tribes
2. The estate or interest in the land to as covered by the policy is:
Fee Simple
3. Title to the estate or interest in the land is vested in:

Shoshone-Bannock Tribes
4. The land referred to in this policy is described as follows:
SEE ATTACHED EXHIBIT A

Schedule B

File No.: 20080125

Policy No.: OX 308787

Exceptions from Coverage

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
- (3) Easements, or claims or easements, not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or Acts authorizing the issuance thereof; (c) water rights, claims to title to water, whether or not the matters excepted under (a), (b), (c) are shown by the public records.
- (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices to such proceedings, whether or not shown by the records of such agency or by the public records.

END OF GENERAL EXCEPTIONS

1. Said real property is presently assessed as exempt from taxation. Any change in the status thereof either in ownership or otherwise, shall cause a re-assessment of said premises as more fully set forth in section 63-602Y of the Idaho Code.

Parcel No.: RPD0325-00 and RPD0327-00 (Parcel 1)

2. General taxes for the year 2009, which are liens, are not yet due and payable.

3. Reservations contained in Deed

Dated: December 5, 1919

Executed by: Edmo Pocatello and Tamatse Pocatello (heirs of Frank P. Pocatello)

In Favor of: Raphael Lavatta

Recorded: February 16, 1925

Instrument No.: 34761 (Book 46 of Deeds, page 553)

As Follows: "And there is reserved from the land hereby granted a right of way thereon for ditches or canals constructed by authority of the United States."

Schedule B

File No.: 20080125

Policy No.: OX 308787

Exceptions from Coverage

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses that arise by reason of:

General Exceptions:

- (1) Rights or claims of parties in possession not shown by the public records.
- (2) Encroachments, overlaps, boundary line disputes, and any other matters which would be disclosed by an accurate survey or inspection of the premises including, but not limited to, insufficient or impaired access or matters contradictory to any survey plat shown by the public records.
- (3) Easements, or claims or easements, not shown by the public records.
- (4) Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
- (5) (a) Unpatented mining claims; (b) reservations or exceptions in patents or Acts authorizing the issuance thereof; (c) water rights, claims to title to water, whether or not the matters excepted under (a), (b), (c) are shown by the public records.
- (6) Taxes or special assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices to such proceedings, whether or not shown by the records of such agency or by the public records.

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Parcel No.: RPD0325-00 and RPD0327-00 (Parcel 1)

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In Favor of: Raphael Lavatta
Recorded: February 16, 1925
Instrument No.: 34761 (Book 46 of Deeds, page 553)
As Follows: "And there is reserved from the land hereby granted a right of way thereon for ditches or canals constructed by authority of the United States."

Section 19, Township 6, RANGE 3E

% Roma

Parcel 1

39.05

3010
Colman S. Paniogue
et-ux

Parcel 2

The Angela P.
Butterfield
Angela P.
Butterfield
Trustee
2560

Parcel 3

Carl W.
Brownley
et-ux
2410

North
4
E

COLEMAN

John F.
Butterfield

2
39.15

T-87
3760

T-87
3910

Carl W.
Brownley
et-ux

MICHAUD

RD.
4000

STA. 361+91.13

3
39.25

P.C. STA. 374+96.22
Bk. = STA.
371+73.98 And.

FRONTAGE
P.T. 381+73.98

INTERSTATE
PROJ. 1-15W-4(12)BI
50

OLD

UNION

1.9
636.80

THIS IS NOT A SURVEY. IT IS FOR
INFORMATIONAL PURPOSES
PIONEER TITLE COMPANY
NO REPRESENTATIONS

FORT

Schedule B

File No.: 20080125

Policy No.: OX 308787

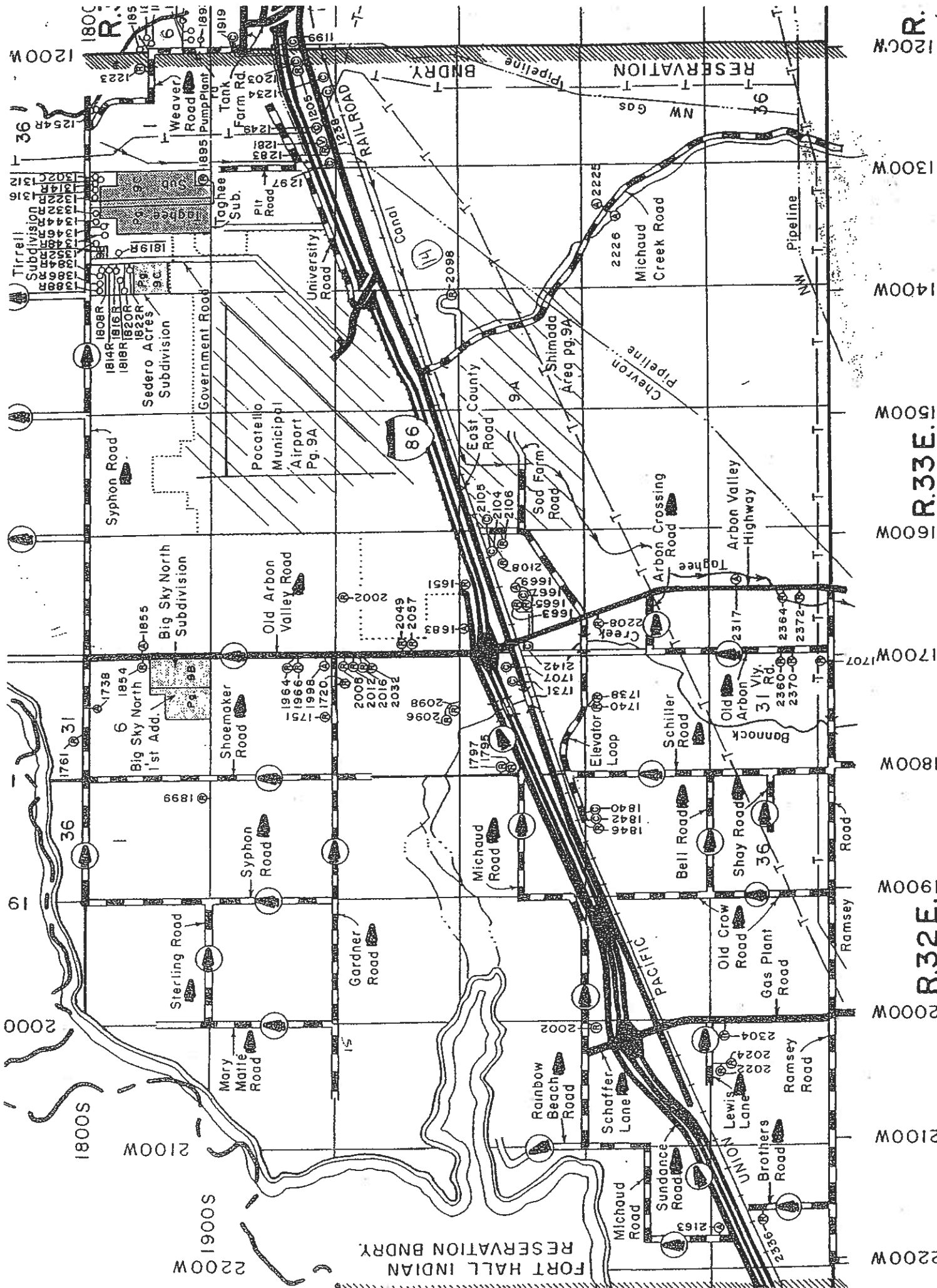
Exceptions from Coverage

4. Right, title and interest of the public in and to those portions of the above described premises falling within the bounds of roads or highways.
5. Rights and claims in and to those portions of said premises lying within the right of ways of ditches, canals and lateral.

END OF EXCEPTIONS

NOTE:

THERE IS NO NOTICE OF RECORD AND THEREFORE NO SEARCH HAS BEEN MADE FOR ANY UNPAID ASSESSMENTS, CHARGES OR FEES FOR SEWER, WATER, GARBAGE, IRRIGATION AND OTHER POSSIBLE UTILITY SERVICES.



CONDITIONS AND STIPULATIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.
- (g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.
- (h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.
- (i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.
- (j) "Title": The estate or interest described in Schedule A.
- (k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to

purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

- (a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.
- (b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.
- (c) Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

CONDITIONS AND STIPULATIONS (con't)

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

- (a) To Pay or Tender Payment of the Amount of Insurance.
To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.
Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.
- (b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.
 - (i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this

policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

- (ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay.

Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

- (a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of
 - (i) the Amount of Insurance; or
 - (ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.
- (b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,
 - (i) the Amount of Insurance shall be increased by 10%, and
 - (ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.
- (c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

- (a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.
- (b) In the event of any litigation, including litigation by the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.
- (c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

CONDITIONS AND STIPULATIONS (con't)

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons. Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this

policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this policy must be given to the Company at 400 Second Avenue South, Minneapolis, Minnesota 55401-2499.