

EASEMENT AND RIGHT OF WAY

This agreement, made on the date last mentioned below between Jess O. Smith and Addie B. Smith, husband and wife, first parties, of ^{Picabo} ~~Emmett~~, Idaho, and T. H. Gooding, Emmett Kelly, and W; R. Patterson, second parties, witnesseth that:

Whereas second parties are the duly appointed and acting members of the advisory board of Water District No. 11-A.B. of Blaine, Lincoln and Gooding Counties, Idaho, and are acting herein as such board on behalf of and as trustees for the water users of said water district.

First parties, in consideration of the sum of \$750.00 to be paid to them as hereinafter specified, hereby grant to second parties and their successors in office as such representatives of the water users of said district 11-A.B. having interests and rights in and to the water flowing through the channel of Silver Creek at the point where Silver Creek passes through the hereinafter mentioned lands an easement and right of way over and across the following described land of first parties, namely:

Two strips of land each 20 feet in width being one strip on each side of Silver Creek through the $W\frac{1}{2}$ $NW\frac{1}{4}$ and ~~SE $\frac{1}{4}$ NW $\frac{1}{4}$~~ ^{SE $\frac{1}{4}$ NW $\frac{1}{4}$} , Sec. 20, Twp. 2 S, R. 21, E. B. M. Blaine. County, Idaho, the said strips to be measured from the natural and normal waters edge of the respective sides of Silver Creek. The purpose hereof is to enable the interested water users of Silver Creek to reconstruct, build up, repair and maintain the banks and dredge and keep in order the channel of such creek to prevent loss of irrigation water by overflowing. Second parties shall have the right at any and all reasonable and proper times to go upon said strips of land with men, horses, machinery, and equipment, and shall have the right to remove from said strips of land such amounts of earth, gravel, stones, trees and timber as may be necessary to maintain the banks of Silver Creek at

sufficient heights to restrain the waters of said creek within its banks and permit the flow of such stream to pass to the water users down stream, provided, however, that the parties of the first part shall have the right to take and use such trees and shrubs as may be by the second parties cut from said rights of way, provided, however, that in such event the parties of the first part must promptly remove such cut trees and timber from said rights of way. Second parties shall have the right to dredge the channel of said stream and deposit the material so taken from the bed of the stream on said strips for the purpose of building up the banks of Silver Creek; and second parties shall have the right to erect and maintain embankments of earth, timber, stone or concrete upon said strips of land upon which the easement and right-of-way are so granted to second parties; and second parties shall have the right from year to year to enter upon said strips of land for the purpose of repairing, constructing and maintaining said embankments, provided, however, that the right to use said 20ft. strip shall give the parties of the second part no right to enter upon the remaining portions of the first parties' said tract of land.

In consideration of the rights herein given to the parties of the second part, the parties of the second part agree that the water master of the said water district shall, on or before July 20, 1941, pay to the first parties the sum of \$500 from the water master's funds of such district and also the sum of \$250 from the same source on or before May 1, 1942. It is agreed that the failure to make either of said payments at said specified times shall, at the option of the parties of the first part, terminate the rights of parties of the second part in and to said strips of land and each of them. In the event that after the payment of the said \$500 has been made, the rights of the second parties in said rights of way are terminated by reason of the failure of the second parties to make the \$250 payment, then and in that event the \$500 payment

shall be retained as liquidated and stipulated damages.

It is expected that the watermaster of said district will on or about April 1st, 1942, raise the banks of said Silver Creek through certain portions of the aforesaid lands of the parties of the first part and when such work is done it is understood and agreed that said watermaster will at said time construct in the east bank of said stream at the point where the waters of said stream have in the past broken out of said bank and flowed into a lake bed east of said stream on said lands, which said headgate shall be constructed of substantial planks and have a width of eight feet, and in this connection it is understood and agreed that if at any time in the future during the irrigation season it becomes impossible to hold all of the waters of said stream in the banks thereof on said lands, the watermaster shall open said headgate and permit such surplus to escape into said old lake bed. The purpose of this provision is to prevent the waters of said stream from flowing out upon any portion of the said lands of the parties of the first part except upon the said lake bed. In this connection it is further understood and agreed that during the nonirrigation season the parties of the first part shall themselves have the right to open said headgate when it becomes necessary to do so in order to prevent the waters of said stream breaking out of said stream bed and flooding the remaining portion of the said lands of the parties of the first part.

This agreement shall be binding upon the successors and assigns of all parties and shall be deemed a covenant running with the above described tract of land.

Given under our hands the 30 day of June 1941.

Jess AdSmith
Addie B. Smith
Parties of the First Part

[Handwritten signatures]

Parties of the Second Part.

STATE OF IDAHO)
 (SS.
COUNTY OF BLAINE)

On this 30 day of June, in the year 1941, before me, the undersigned, a Notary Public in and for said county, personally appeared Jess O. Smith and Addie B. Smith, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

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

Mabel G. Jones

Notary Public in and for the
State of Idaho; Residing at
Shoshone, Idaho.

My commission expires Nov. 24: 1942