

75-14167

Luce

AFFIDAVIT

RECEIVED

STATE OF IDAHO)

OCT 25 2004

**DEPARTMENT OF
WATER RESOURCES**

County of Lemhi) ss:

Comes Now, **Helen Brower** who being duly sworn, deposes and says:

1. That I am a current resident of Lemhi County, Idaho. My home is located on 200 Highway 28, Salmon, Idaho 83467.

2. I am the daughter of Chauncey Stroud and Pearl Wyant Stroud. I was born at our Twelve Mile Ranch home on April 10, 1920. The Twelve Mile Ranch is located near the Salmon River about 12 miles from Salmon, Lemhi County, Idaho. The name of the large creek and drainage is Twelve Mile Creek.

3. My paternal grandparents, Thomas J. Stroud and Sarah Reddington Stroud were early pioneers in Lemhi County. Thomas J. Stroud owned the large Twelve Mile Ranch since at least 1915 and probably before that date.

4. My parents were married in 1915. They moved to the Twelve Mile Ranch and lived there most of their lives. My older sister, Virginia Stroud Klinger was born in 1917.

5. This month, October 6, 2004 I traveled with attorney, Fred Snook from

my home out to our old Twelve Mile Ranch. The ranch home has been remodeled but it is still located in the same spot where it was when I was born. I was born at the Twelve Mile Ranch house.

6. I met Tommy F. Luce (Tom) and his wife, Sandra Welch Luce (Sandra) at their property on Twelve Mile. I am told the address is 7 Pepper Lane. Their property is part of our (Stroud) Twelve Mile Ranch property. Their property is only about fifty yards from the home I was born in.

7. I am very familiar with their (Luces) property. It was just outside and downstream from our yard. Their property was part of our irrigated pasture. The gravity flow ditches were in place for as long as I can remember. I remember my father often going out with his shovel to change the water on what is now the Luces' property. I remember the ditch came out of Twelve Mile Creek. We often fished in Twelve Mile Creek. We had an established orchard near their property and there was a potato cellar near their property. I am told by Mr. and Mrs. Luce that some of the old ditches are still in place and in use. I did observe some of the ditches as we drove into the Luce property. I would estimate the Luces' property has been irrigated since at least 1915 and possibly before that date. I do not know how long before 1915 my grandparents owned the Twelve Mile Ranch.

8. The property located directly west, across and below the present US Highway 93 was not irrigated when I was a child. It was sagebrush and undeveloped. It is now irrigated hay ground with some type of a pole plant also located on it. (This property is not part of Luces' property.) The current Highway 93 on the east side of the Salmon River did not exist when I was a child. We crossed the river in a boat to go to school or to town etc. as the "old highway" was across the river on the west side.

9. I lived on the Twelve Mile Ranch property from birth until after I graduated from Salmon High School in 1938. I later married Carl Brower and we resided in California where we raised our family. I did visit Lemhi County regularly throughout my adult life as my parents continued to reside in Lemhi County. After Carl's death, I returned to Salmon in 1980 and have lived here ever since. At all times over the years, that I have observed what is now the Luces' property, the property has been in agricultural use and appeared to be irrigated.

10. I have been shown the copy of the land patent issued by The United States of America to Thomas J. Stroud that is attached hereto as Exhibit A. It is my belief that is the patent to our Twelve Mile Ranch. The property described is one hundred sixty and forty-six acres and is located in Section one, Township 19

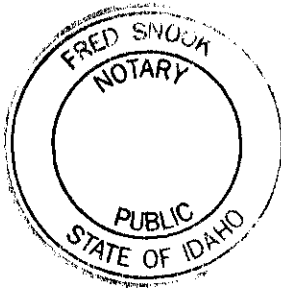
North, Range 21 East Boise Meridian, Idaho being Lots one, two, three, four, seven and eight. The Luces' property (Exhibit B attached) is located in Lot 3, of said Section one, Township 19 North, Range 21 East Boise Meridian, Idaho.

Dated this 19th day of October, 2004.

Helen Brower
Helen Brower

Subscribed & sworn to before me this 19th day of October, 2004.

(Seal)



Fred Snook
Notary Public for Idaho
Residing in Salmon, Idaho.
Commission Expires: 8/04/2005

EXHIBIT A
Instrument No. 33951

4-1003

Salmon

Hailey 020381

THE UNITED STATES OF AMERICA,

To all to whom these presents shall come, Greeting:

WHEREAS, a Certificate of the Register of the Land Office at Hailey, Idaho, has been deposited in the General Land Office, whereby it appears that, pursuant to the Act of Congress of May 20, 1862, "To Secure Homesteads to Actual Settlers on the Public Domain," and the acts supplemental thereto, the claim of THOMAS J. STROUD, has been established and duly consummated, in conformity to law, for the

Lots one, two, three, four, seven and eight of Section one in Township nineteen north of Range twenty-one east of the Boise Meridian, Idaho, containing one hundred sixty acres and forty-six hundredths of an acre, according to the Official Plat of the Survey of the said Land, returned to the General Land Office by the Surveyor-General:

NOW KNOW YE, That there is, therefore, granted by the UNITED STATES unto the said claimant the tract of Land above described; TO HAVE AND TO HOLD the said tract of Land, with the appurtenances thereof, unto the said claimant and to the heirs and assigns of the said claimant forever; subject to any vested and accrued water rights for mining, agricultural, manufacturing, or other purposes, and rights to ditches and reservoirs used in connection with such water rights, as may be recognized and acknowledged by the local customs, laws, and decisions of courts; and there is reserved from the lands hereby granted a right of way thereon for ditches or canals constructed by the authority of the United States.

IN TESTIMONY WHEREOF, I, Calvin Coolidge, President of the United States of America, have caused these letters to be made Patent, and the seal of the General Land Office to be hereunto affixed. GIVEN under my hand, at the City of Washington, the TWENTY-FOURTH day of OCTOBER in the year of our Lord One thousand nine hundred and TWENTY-THREE and of the Independence of the United States the one hundred and FORTY-EIGHTH.

S E A L -

RECORDED: Patent Number 921706

By the President: Calvin Coolidge
By Viola B. Pugh, Secretary.
M. P. LeRoy, Recorder of the General Land Office.

Recorded at the request of W. C. Smith, February 10th, 1928, at - minutes past 1 o'clock P.M.; in Book 29 of Deeds, page 69, Records of Lemhi County, Idaho.

Fee: 1.00

W. C. Simmonds
County Recorder.

EXHIBIT B

A PARCEL OF LAND LOCATED IN U.S. GOVERNMENT LOT 3, SECTION 1, T. 19 N., R. 21 E., B.M., LEMHI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 1, A DISTANCE OF 1039.48 FEET ON A BEARING OF S. $69^{\circ} 04' 41''$ W. TO A POINT ON THE EAST RIGHT-OF-WAY OF U.S. HIGHWAY NO. 93; THENCE S. $31^{\circ} 28' 31''$ E., 15.80 FEET ALONG THE EAST RIGHT-OF-WAY TO THE SOUTH SIDE OF AN EXISTING ROAD AND THE REAL POINT OF BEGINNING.

THENCE S. $31^{\circ} 28' 31''$ W., 703.14 FEET ALONG SAID RIGHT-OF-WAY OF U.S. HIGHWAY NO. 93 TO THE SOUTH BOUNDARY OF LOT 3;

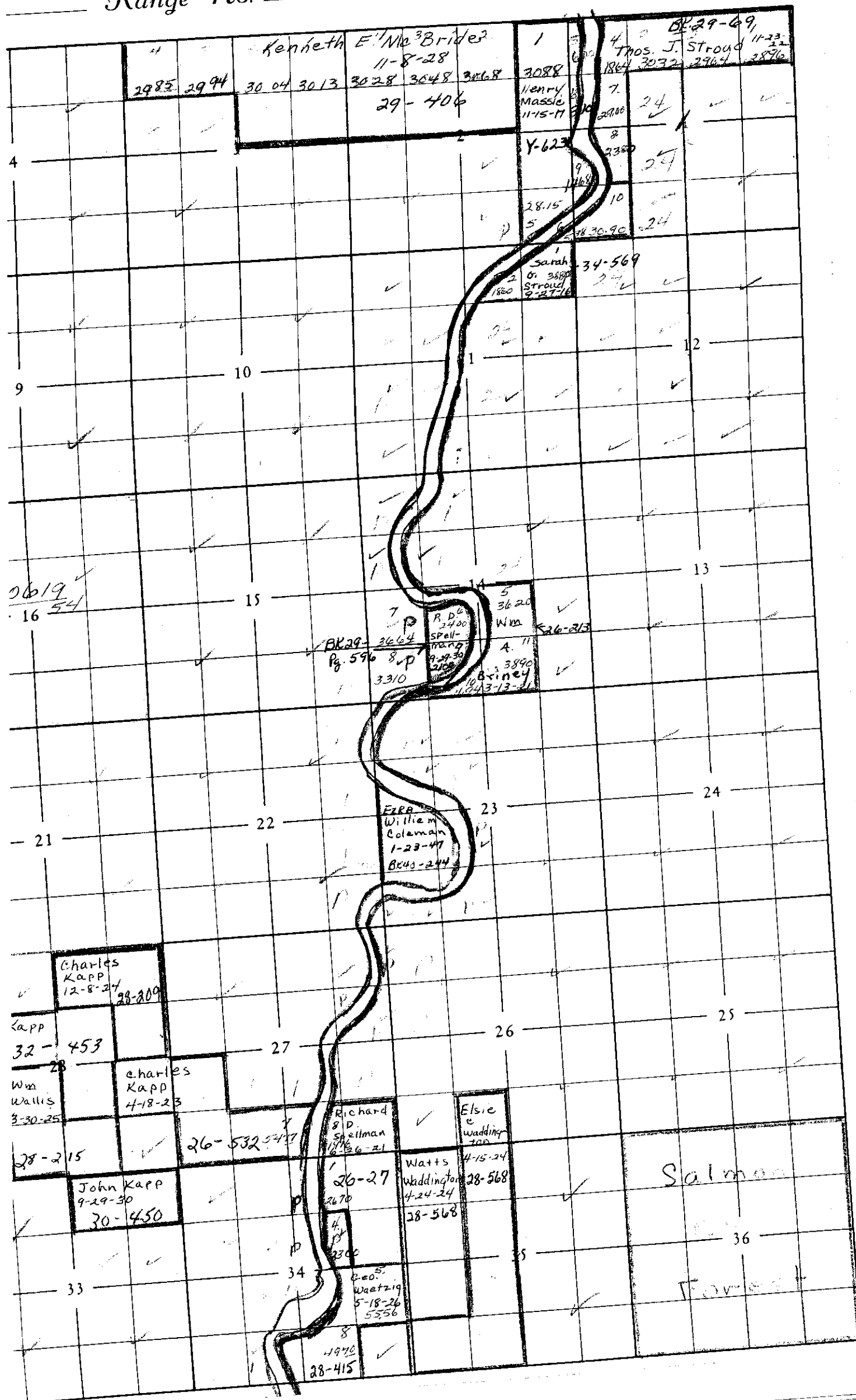
THENCE S. $89^{\circ} 46' 55''$ E., 677.65 FEET ALONG THE SOUTH BOUNDARY OF LOT 3;

THENCE N. $0^{\circ} 15' 10''$ E., 534.11 FEET TO A POINT ON THE SOUTH SIDE OF AN EXISTING ROAD;

THENCE A DISTANCE OF 43.93 FEET ALONG A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIAL OF N. $0^{\circ} 03' 10''$ W., 190.00 FEET AND A CENTRAL ANGLE OF $13^{\circ} 14' 49''$;

THENCE N. $76^{\circ} 48' 21''$ W., 276.64 FEET ALONG SAID EXISTING ROAD TO THE REAL POINT OF BEGINNING.

Range No. 21 - E Mer.



Notice.

Notice is hereby given to all whom it may concern: That I the undersigned claim the water here flowing in this stream known as Ten Mile, said stream empties into Salmon River at a point about 10 miles above Salmon City, Benli County, Idaho, to the extent of Two Hundred (200) inches measured under a four inch pressure,

The said water is to be diverted from said stream at a point thereon about 100 yards above its mouth and on the northerly bank thereof.

The water hereby claimed is to be used for agricultural and domestic purposes upon that certain ranch or tract of land owned by the undersigned and situated at the mouth of the said Ten Mile creek about ten miles southerly from Salmon City, Idaho, and is to be conveyed to and upon the said ranch or tract of land by means of a ditch four feet wide and two feet deep.

Dated the 24th day of December, 1894

James Manfull

Recorded at the request of James Manfull December 24th 1894, at 20 minutes past 2 o'clock P.M. in Book I of Water Rights page 92 Records of Benli County, Idaho.

Timothy Dore
County Recorder

Notice

Notice is hereby given to all whom it may concern: That I the undersigned claim the water here flowing in this stream which empties into Salmon River about 12 miles up said Salmon River from Salmon City, Idaho, said stream being known as and called Twelve Mile Creek, to the extent of Two Hundred (200) inches measured under a four inch pressure

Said water is to be diverted from said stream at a point thereon about 600 yards above the mouth thereof and about 100 yards above the State High Road on Salmon River.

The water hereby claimed is to be used for agricultural and domestic purposes upon that certain ranch or tract of land owned by the undersigned and situated at the mouth of the said Twelve Mile Creek, and is to be conveyed thereon by a ditch of the following size, about two feet deep and about three feet wide,

Dated this 24th day of December, 1894,

John C. Manfull

Recorded at the request of John C. Manfull December 24th 1894, at 20 minutes past 2 o'clock P.M. in Book I of Water Rights page 92 Records of Benli County, Idaho.

Timothy Dore
County Recorder

Quitclaim Deed.

Instrument No. 11074.

This Indenture, Made the Sixth day of December in the year of our Lord one thousand nine hundred and nine between Francis A. Macnab and Mary L. Macnab, his wife of the County of Lemhi and State of Idaho, the parties of the first part, and Thomas J. Stroud

of the County of Lemhi State of Idaho the party of the second part,

WITNESSETH, that the said part 1st of the first part, for and in consideration of the sum of Seven Thousand (\$7000.00) Dollars, lawful money of the United States to them in hand paid by the said part Y of the second part, the receipt of which is hereby acknowledged, do REMISE, RELEASE and forever QUITCLAIM unto the said part Y of the second part, and to his heirs and assigns, the following described real estate, situated in the

County of Lemhi and State of Idaho to wit: All of that certain ranch, or possessory claim, containing one hundred and sixty acres, more or less, situated at the mouth of that certain creek known as Twelve Mile Creek, on the easterly side of Salmon River, about twelve miles southerly from Salmon City, said ranch being more fully described in and by the notice of location of same, which notice is duly recorded in the Office of the County Recorder of said County, in Book "B" of Possessory Claims, on page 198, and said record is hereby referred to for a more full and complete description thereof.

Also all of that certain water right, claiming five hundred inches of the waters of said Twelve Mile Creek, located and appropriated by John C. Manful, December 24, 1894, as appears by the location notice of same, which is duly recorded in the aforesaid Recorder's Office, in Book "B" of Water Rights, on page 92. together with all ditches in which said water is conveyed to the aforesaid lands, and also all other ditches and water rights, and all buildings and improvements situated thereon, or in any wise belonging or appertaining thereto, or to any part of said lands,

Also all the right, title, interest and claim, of the said party of the first part of, in and to the Southwest Quarter of Section Thirty Six, in Township Twenty. north of Range Twenty One, East of Boise Meridian, and all fences, ditches, water rights and improvements of every name, kind and nature situated thereon, belonging thereto, or used in connection therewith.

together with all the tenements, hereditaments and appurtenances thereunto belonging, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and also all the estate, right, title, interest property, possession, claim and demand whatsoever as well in law as in equity, of the said parties of the first part, of, in or to the said premises, and every part and parcel thereof.

TO HAVE AND TO HOLD, all and singular the said premises, with the appurtenances.

unto the said party of the second part, his heirs and assigns forever.

IN WITNESS WHEREOF, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of

J. C. Sinclair

Francis A. Macnab (SEAL)

Mary L. Macnab (SEAL)

STATE OF IDAHO, ss.
County of Lemhi

On this 7th day of December 1909, before me John C. Sinclair a Notary Public in and for said County, personally appeared Francis A. Macnab and Mary L. Macnab known to me to be the person whose name are subscribed to the within instrument, and acknowledged to me that they executed the same; and on this 7th day of December 1909, before me, the officer above described, personally appeared

~~known to me to be the person whose name is subscribed to the within instrument, described as a married woman, and upon an examination without the hearing of her husband, I made her acquainted with the contents of the instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.~~

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

Seal. John C. Sinclair
My Commission expires February 1st 1911 Notary Public in and for Lemhi County, Idaho.

STATE OF IDAHO, ss.
County of Lemhi

I hereby certify that this instrument was filed for record at request of Thomas J. Stroud at 46 minutes past 10 o'clock A.M., this 13th day of June A. D. 19011, in my office, and duly recorded in Book 0 of Deeds at page 350

[Signature]