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Page 438

IDAHO DEPARTMENT OF WATER RESOURCES
Adjudication Claim Report 75-4358

Department of Water Resources
Adjudication Bureau

WATER RIGHT NUMBER: 75-4358

<u>Owner Type</u>	<u>Name and Address</u>
Current Owner	ANNIE PROKSCH 618 S SAINT CHARLES ST SALMON, ID 83467-6100
Current Owner	ALBERT PROKSCH 618 S SAINT CHARLES ST SALMON, ID 83467-6100

Priority Date: 05/04/1917
Basis: Statutory Claim
Status: Active

<u>Source</u>	<u>Tributary</u>
NORTH FORK SALMON RIVER	SALMON RIVER

<u>Beneficial Use</u>	<u>From</u> <u>To</u>	<u>Diversion Rate</u>	<u>Annual Volume</u>
IRRIGATION	4/01 to 11/01	0.800 CFS	
	<u>Total Diversion:</u>	0.800 CFS	

Location of Point(s) of Diversion
NORTH FORK SALMON RIVER NE1/4NE1/4 Sec. 35, Twp 26N, Rge 21E, B.M.
LEMHI County

Place of Use
IRRIGATION Within LEMHI County
T26N R21E S36 NWNW 10.0 T26N R21E S36 SWNW 5.0
T26N R21E S36 SENW 5.0
Total Acres: 20

Conditions of Approval:

Remarks:

July 26, 2005

Joseph A. Proksch
823 Union Ave.
Salmon, Idaho 83467
Phone 208-756-2252

Idaho Department of Water Resources,

Subject: Evidence of Priority and beneficial use

WATER RIGHT NUMBER: 75-4358

Dear Sir or Madam:

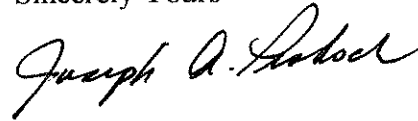
I am enclosing some information that I feel will help to establish a priority date of beneficial use of water for #75-4358. Please review the exhibits for supporting facts:

- Exhibit #1 Metsker Map – Show Sec., Township, and Range of Property
- Exhibit #2 Map of HES 98 – Showing portion owned by Proksch family
- 2-28-1952 Exhibit #3 Affidavit – Joseph A. Proksch, irrigated since 2-28-1952
- 8-10-1-37 Exhibit #4 Abstract – sheet #30 – Kern to Holgate date 8-10-1937
referencing the sale from Sarrazin to Kern of 11-21-1921 excepting and
reserving from the deed 10 inches of water, and giving ditch rights. This
would suggest ditches and water rights existed in 1921. Also sheet 31
mentions the care of equipment, machinery, and livestock according the
customs and practices of the time.
- 1918 Exhibit #5 Real Property Assessment Rolls 1918 – Robert Demont
recorded the property in May 1918 and it became taxable and was
assessed. The Lemhi County assessment rolls show 15 irrigated acres and
43 acres of grazing land.
- 1917 Exhibit #6 Patent page 481 – The land was patent in 1917. I have
enclosed as Exhibit #7 the Homestead Act of May 20, 1862 which says
you can make application and pay a fee of \$10.00 which permits you to
enter the quantity of land specified. Provided, however no patent shall be
given until applicant lives on the land for FIVE years and
CULTIVATION is evident. The applicant has TWO years after the Five
year expiration to apply for patenting. This could mean occupancy could
be SEVEN years before patenting takes place. Our County only receives

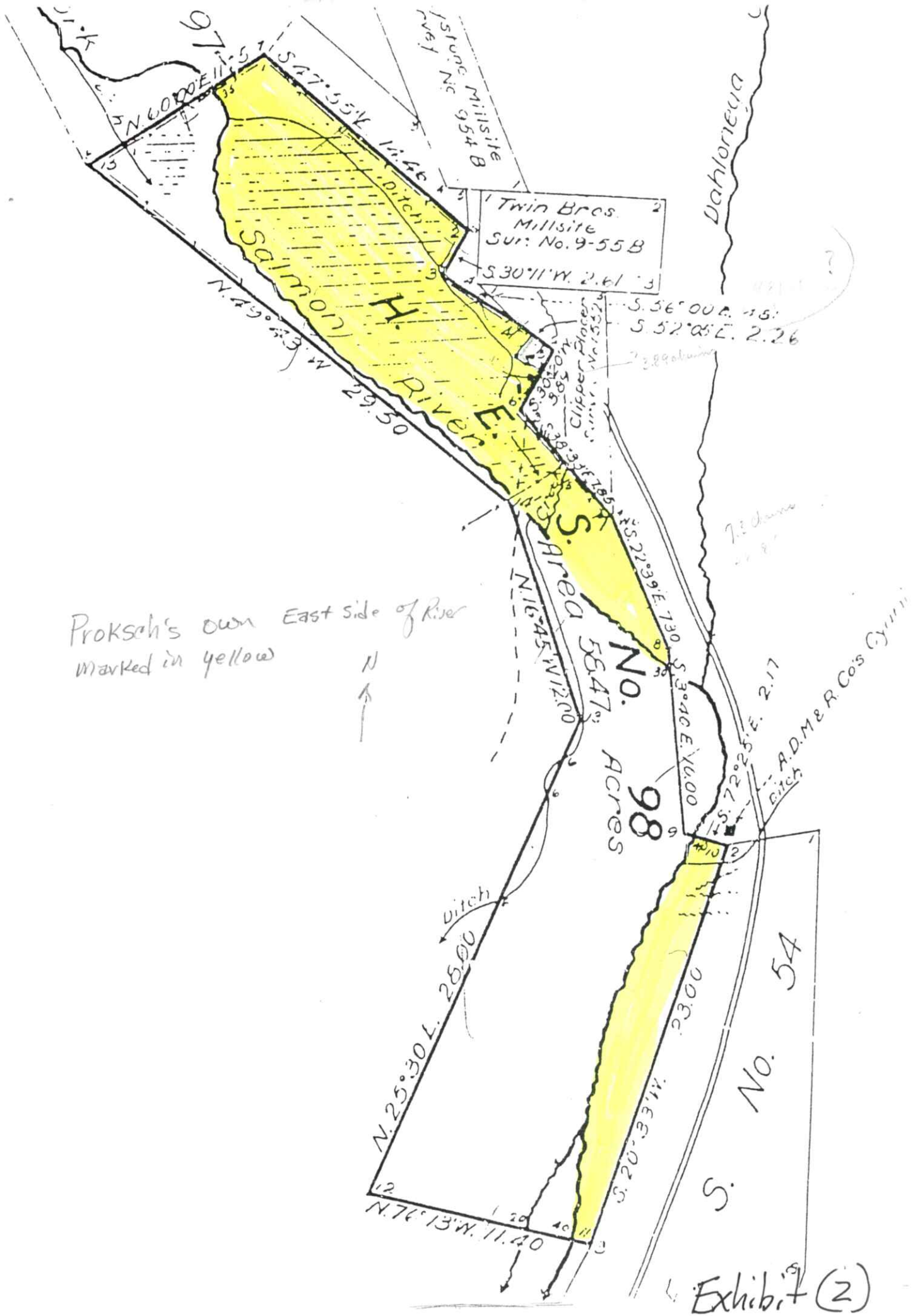
about 9 inches of moisture a year and that's not enough to grow crops,
without irrigating.

I believe that beneficial use of water, would set the priority date between the years 1910
and 1917.

Sincerely Yours

A handwritten signature in cursive script, reading "Joseph A. Proksch". The signature is written in dark ink and is positioned above the printed name.

Joseph A. Proksch



Proksch's own East side of River
marked in yellow



July 26, 2005

Joseph A. Proksch
823 Union Ave.
Salmon, Idaho 83467
Phone 208-756-2252

Idaho Department of Water Resources,

Subject: Evidence of Priority for beneficial use

WATER RIGHT NUMBER: 75-4358

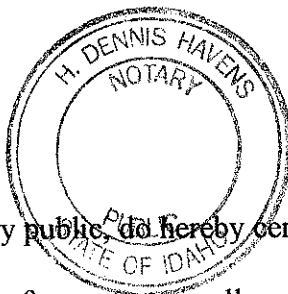
AFFIDAVIT:

Albert and Annie Proksch purchased the property irrigated under water right #75-4358 on February 28, 1952 from J M Stone. I, Joseph A. Proksch, as a boy remember irrigating the land from existing ditches, putting up hay, and pasturing cows on the property. My parents are deceased, and the children are the heirs and have continued to irrigate the land from February 28, 1952 to the present.

Be it known that the undersigned, being duly sworn, deposes and says that the matters and facts described in the above statement are true to the best of the affiant's knowledge.


Joseph A. Proksch

State of Idaho)
County of Lemhi) ss.



I, H. Dennis Havens, a notary public, do hereby certify that on this 26th day of July, of 2005, before me personally appeared JOSEPH A. PROKSCH, known to me to be the person (s) whose name is subscribed to the within instrument, and acknowledged to me that he (they) executed the same.


H. Dennis Havens
Notary Public for Idaho
Residing at Salmon, Lemhi Co, Id.

My Commission expires Nov. 28, 2006

Exhibit (3)

CONTINUATION OF ABSTRACT OF TITLE
TO THE LANDS DESCRIBED IN THE CAPTION HERETO
LEMHI TITLE AND ABSTRACT COMPANY
SALMON, IDAHO

SHEET NO. 30

ABSTRACT NO.

ELISE KERN, a widow

~~GRANTORS~~
Party of 1st Part

and ~~#9~~

J.D. HOLGATE

GRANTEES

Character of Instrument Agreement

Date of Instrument August 10th 1937

Date of Acknowledgment August 10th 1937

Date of ~~Record~~ Filed in Probate November 20, 1940

Book _____ of _____ Page _____

Records of Lemhi County, State of Idaho

Consideration

Before Whom Acknowledged

Enoch W. Whitcomb
Notary Public for Idaho
Residing at Salmon, Idaho.

Is official seal attached? Yes

U. S. official stamps attached and cancelled

Granting words: Below

Covenants: Regular.

DESCRIPTION: Lands in Lemhi County, State of Idaho:

WITNESSETH:

That the party of the first part, for and in consideration of the covenants and agreements on the part and behalf of the party of the second part, herein, after contained, agrees to sell and convey unto the second party and the second party agrees to buy, subject to the terms and conditions herein, all of that certain real estate situated in Lemhi County, Idaho, known as H.E. S. No. 98, embracing a portion of the unsurveyed public domain, particularly described in that certain deed dated November 11th 1921 between Margaret Sarrazin and C.S. Sarrazin, her husband, parties of the first part and George Kern, party of the second part, and recorded in the office of the County Recorder of Lemhi County, Idaho, in Book X of Deeds at page 622 thereof on November 12th 1921, reference to which record is hereby made for a further description, excepting and reserving from said premises the right to the use of 10 inches or 1/5 cubic feet per second of time of water and a like interest in and to the ditch conveying the same for use upon the Clipper Placer Mining Claim and the right of and to the pipe line crossing said premises to the Clipper Placer Claim and an easement for a right of way thereof.

TOGETHER WITH CERTAIN PERSONAL PROPERTY.

For the sum of \$1400.00 payable as follows, to wit:-

Exhibit (4)

\$25.00 on or before August 1, 1940 , and a like amount or or before the 1st day of each and every succeeding calendar month thereafter until the full purchase price is paid, with interest on all deferred payments at the rate of 6% per annum, payable annually.

The party of the second part is to have immediate possession of said premises and property is to occupy in all respects till said real estate in a good and farmerlike manner; is not to commit waste or suffer any to be done; is to keep the fences, ditches and buildings appurtenant to said premises in a good repair, reasonable use and wear thereof and damages by the elements excepted; is to keep the said tools, machinery, implements and equipment in a good state of repair, reasonable wear and use thereof excepted is to properly care for, feed, breed and run said livestock according to the custom and practice in the neighborhood and to care for the increase thereof in a like manner; is not to sublet or sublease said premises or any part thereof and is not to assign this lease without the written consent of the first party in writing first had and obtained.

The first party agrees that upon payment of the purchase price and the faithful performance of all of the covenants by the second party, she will make, execute, acknowledge and deliver to the second party, a good and sufficient deed and bill of sale for conveying title to the real and personal property to the said second party, free and clear of all incumbrances suffered or permitted by her.

It is mutually understood and agreed as follows, to wit:-

That in the event said premises and property are subleased then all of the rentals are to be paid to the first party as provided by the said sublease and the same are to be in lieu of the \$25.00 per month payments provided for herein, and such rentals are to apply upon the following items in the following order: Taxes, interest, principal, and if the said rentals on the sublease do not complete full payment of the installments during the period of said sublease, then the balance is to be paid as a part of the original purchase price. That in the event of an assignment of this agreement by the second party, the first party is to be paid money equivalent to all of the \$25.00 per month payments and interest so that this agreement will be put in good standing on the date of this sale as if each and every of the \$25.00 installments and interest had been paid at the time and in the manner as first hereinabove provided.

That the second party is to pay all taxes that are assessed and shall be hereafter assessed upon said premises and property during the full term and life of this agreement.

In case the said party of the second part shall want to sell any of said livestock because of age, or the increase thereof, or for any other reason, he shall be permitted to do so after first securing the consent of said party of the first part, conditioned that the said party of the second part shall substitute other stock of equivalent value to the stock so sold to be held as security under the terms of this agreement.

Exhibit (4)

Township

Range

Real property Assessment Rolls
Lemhi County 3rd Floor

1918

SYMS-YORK CO., PRINTERS & BINDERS, BOISE 45980

CLASSIFICATION OF LANDS AND IMPRO

No. of Assessment List	No. of Tax- payer's Receipt	NAME AND ADDRESS OF OWNER, REPUTED OWNER OR UNKNOWN OWNER	SUBDIVISION OR TAX NUMBER	Section	Township N	Range E	IRRIGATED LAND	GRAZING LAND	WASTE LAND	Mi. I						
A	Value	A	Value	A	Value	A	Value	A	Value	A						
1	1669-121	Buster William D. Gibbonsville, Ida. Hull Gilbert	H. E. 010692		25	20	7	105	13	52	10	10				
2	1343-404	Northfork, Ida. Hull C. M.	Tax #222		33	25	21	25	562	25	300	40	40			
3	1407-433	Northfork, Ida. Summerland Park A. Winterowd F. B. F. E. #55	Tax #219, 220					25	562	27	324	25	25			
4	1738-104	Northfork, Ida. Dean Leslie V.	Tax #256					20	450	10	122	8	8			
5	1389-251	Northfork, Ida. Eldridge Elizabeth	Tax # H.E. 0654 A & B	28 29 33				15	338	30	360	42	42			
6	1397-594	Northfork, Ida. Dean G. F.	Tax #250 Bonanza Placer					30	750	34	384	10	10			
7	1383	Northfork, Ida. Carl Frederick W.	Surv. #1498					30	750	19	228	10	10			
8	1385-160	Northfork, Ida. Ballinger Z. W.	H.E. 010870 F.E. #69	I 2 11				15	338	56	448	25	25			
9	1384-416	Northfork, Ida. Pemble J.D.	Tax #257					7	175	48	416	22	22			
10	1735-754	Northfork, Ida. Lantermann E.F.	Tax #226 F.E. #58					15	25	21	95	2375	30	360	33	33
11	1690-532	Northfork, Ida. Taylor J. L.	Tax #251 H.E. 06518					25	625	27	324	30	30			
12	1388-480	Gibbonsville, Ida. Demont Robert	Tax #252 H.E. 08691					15	300	70	280					
13	1859-237	Gibbonsville, Ida. Dunton Willard	Tax # H.E. 06589					Irrigated	15	300	43	172	Grazing			
14	1858	Gibbonsville, Ida. Achord J. B.	Tax # H.E. 06588					26	21	15	300	73	73			
15	1386	Gibbonsville, Ida.	Tax #258					10	26	21	35	350	Exhibit (5)			

CONTINUATION OF ABSTRACT OF TITLE
TO THE LANDS DESCRIBED IN THE CAPTION HERETO
LEMHI TITLE AND ABSTRACT COMPANY
SALMON, IDAHO

Sheet No. 1

Abstract No. 5-87-1

United States

Grantors

To

Robert Demont

Grantees

Character of Instrument Patent

Date of Instrument May 4th, 1917,

Date of Record May 15th, 1918,

Book Y of Deeds

Page 481

Records of Lemhi County, State of Idaho

Consideration

Are signatures sealed?

Names of Witnesses

Date of Acknowledgment

Before Whom Acknowledged

Is wife separately examined in acknowledgment?

Is official seal attached?

U. S. Revenue Stamps attached and cancelled

Granting words:

Covenants:

Remarks:

DESCRIPTION: Lands in Lemhi County, State of Idaho:

N.E. Survey No. 98, embracing a portion of the unsurveyed Public Domain in Lemhi County, Idaho, more particularly described as follows: Beginning at Cor. No. 1, from which U.S. Mineral Monument No. 1, Eagleons Mining District bears N. 39° 2' E. 65.87 chains distant; thence S. 47° 55' E. 14.46 chains to Cor. No. 2; thence S. 30° 11' W. 2.61 chains to Cor. No. 3; thence S. 30° E. 4.61 chains to Cor. No. 4; thence S. 52° 5' E. 2.26 chains to Cor. No. 5; thence S. 30° 20' W. 3.89 chains to Cor. No. 6; thence S. 38° 33' E. 7.88 chains to Cor. No. 7; thence S. 22° 39' E. 7.3 chains to Cor. No. 8; thence S. 3° 40' E. 10 chains to Cor. No. 9; thence S. 72° 25' E. 2.17 chains to Cor. No. 10; thence S. 20° 35' W. 23 chains to Cor. No. 11; thence N. 76° 13' W. 11.4 chains to Cor. No. 12; thence N. 25° 30' E. 28 chains to Cor. No. 13; thence N. 16° 45' W. 12 chains to Cor. No. 14; thence N. 49° 43' W. 29.5 chains to Cor. 15; thence N. 60° E. 11.25 chains to Cor. No. 1, the place of beginning, containing 58.47 acres of land, according to the Official Plat of the Survey of the said land returned to the General Land Office by the Surveyor General.

Exhibit (6)

Repeal of inconsistent laws.

SEC. 20. *And be it further enacted*, That all acts and parts of acts heretofore passed, which are inconsistent with any of the provisions of this act, are, for the purposes of this act, hereby repealed, so far as the same are inconsistent herewith.

APPROVED, May 17, 1862.

May 20, 1862.

CHAP. LXXV. — *An Act to secure Homesteads to actual Settlers on the Public Domain.*

Certain persons may enter certain quantities of certain unappropriated public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which said person may have filed a preemption claim, or which may, at the time the application is made, be subject to preemption at one dollar and twenty-five cents, or less, per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided*, That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

Such persons to make affidavit.

SEC. 2. *And be it further enacted*, That the person applying for the benefit of this act shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the army or navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified: *Provided, however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry; or, if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death; shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided for by law: *And provided, further*, That in case of the death of both father and mother, leaving an infant child, or children, under twenty-one years of age, the right and fee shall enure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicile, sell

Certificates and patents, when to issue and upon what proof.

Affidavit.

Provision in case of death of applicant, &c.

said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States, on payment of the office fees and sum of money herein specified.

SEC. 3. *And be it further enacted*, That the register of the land office shall note all such applications on the tract books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded. Record of applications to be made.

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor. Such lands not to be subject to prior debts.

SEC. 5. *And be it further enacted*, That if, at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the government. When lands thus entered revert to government.

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing preemption rights: *And provided, further*, That all persons who may have filed their applications for a preemption right prior to the passage of this act, shall be entitled to all privileges of this act: *Provided, further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the army or navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years. Not over one quarter section can be thus acquired. Rules and regulations of Land Office. Fees of registers and receivers, when to be paid. Existing preemption rights not impaired.

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits, required or authorized by this act. Certain minors may have the privileges of this act. Punishment for false swearing under this act.

SEC. 8. *And be it further enacted*, That nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act, from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtaining a patent therefor from the government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting preemption rights. Applicant may have the land upon paying minimum price, &c., before the five years expire.

APPROVED, May 20, 1862.

VOL. XII. PUB. — 50

Exhibit (7)