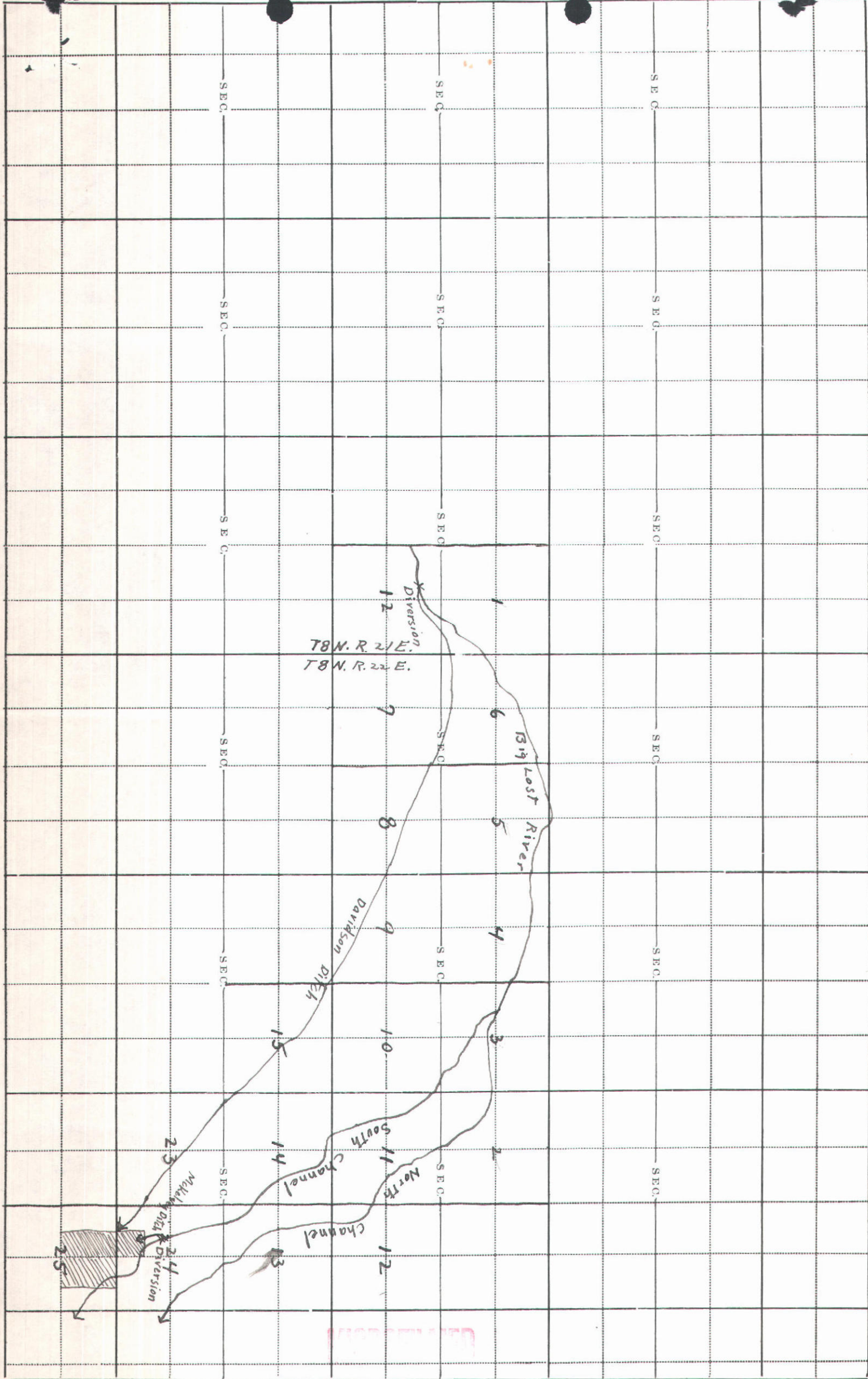




34-0561

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE

In the Matter of the Application)
for Change of Point of Diversion)
of Decreed Water Right, Charles)
McKelvey, Applicant.)

ORDER

WHEREAS, Pursuant to Section 5563, Compiled Statutes, CHARLES McKELVEY, the owner of a water right decreed in the case of The Utah Construction Company, plaintiff, versus John F. Abbott, et al., defendants, in the District Court of the United States, in and for the District of Idaho, Eastern Division, as follows:

"Right No. 363"

Charles McKelvey

To be diverted from Big Lost River through the Davidson Ditch having its point of diversion in the Northwest quarter of Sec. 12, Township 8 North, Range 21 East, B.M., for the irrigation of the following described land, to-wit:

0561 - (a) 1902 - April 1 0.8 c.f.s.

0562 - 1887 - April 1 0.8 c. f. s.

0563 - 1884 - June 1 0.8 c. f. s.

The West half of the Northeast quarter, Northeast quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 25 and the Southeast quarter of the Southwest quarter of Section 24, all in Township 8 North, Range 22 East, B. M., and

0564 - (b) 1882 - November 1 1.2 c.f.s.

0565 - 1884 - June 1 0.4 c.f.s.

To be diverted from Big Lost River through a private ditch having its point of diversion in the Southwest quarter of Section 24, Township 8 North, Range 22 East, B.M., for the irrigation of the land last above described."

has filed notice of intention to change the point of diversion as described in said decree, all as particularly set out in a part of the said petition, as follows:

"That he intends to change the point of diversion, as described in said decree, to the following described Point:

To divert all of his decreed rights consisting of 1.2 sec. ft. Nov. 1, 1882; 1.2 sec. ft. June 1, 1884; 0.8 sec. ft. April 1, 1887 and 0.8 sec. ft. Apr. 1, 1902, either thru the Davidson Ditch diverting in the NE¹/₄ Sec. 12, T. 8 N., R. 21 E., or thru the McKelvey ditch, diverting in the NE¹/₄ Sec. 24, T. 8 N., R. 22 E., from Big Lost River, or in part thru either ditch as desired from time to time."

and for his reasons in desiring the said change makes the following statement:

"That such change will be made for the following reasons, to-wit: By combining his rights in this manner he can irrigate more efficiently, with substantial savings of ditch losses that occur when the water is divided. He further states that he has actually used the water for many years under the proposed plan of changing diversions, and that he has owned ditch rights in each ditch for these years covering the full amount of his rights."

and,

WHEREAS, After due consideration of the said affidavit and petition, it appears that the said change in point of diversion is in the interest of the highest and most beneficial use of the water described in the said decree:

NOW, THEREFORE, Approval is hereby given to said affidavit of notice of intention to change point of diversion, and the watermaster in charge of distribution of the waters of Big Lost River in accordance with the priorities and decree governing, may recognize this approval as authority to make the change as set forth in said affidavit and petition;

IT IS FURTHER ORDERED, That a copy of this approval be attached to the said affidavit of Charles McKelvey, which is regularly on file in the office of the Department of Reclamation, at the Capitol.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Department of Reclamation to be hereto attached, at Boise, Idaho, this 5th day of February, 1930.


Commissioner of Reclamation.

STATE OF IDAHO,

County of Custer }

ss

Charles McKelvey

being first duly sworn, upon his

oath deposes and says:

That he is the owner of a decreed water right appurtenant to the following described land to-wit:

SE 1/4 Sec. 24 and W 1/4 NE 1/4 : E 1/4 NW 1/4 Sec. 25 T. 8 N., R. 22 E., 3.M.

as evidenced by the decree dated March 15, 1923 day of

in the cause entitled Utah Construction Co. Plaintiff,

vs John F. Abbott et al Defendant, brought

in the District Court of the United States Judicial District of the State of Idaho, or,

Copy of decree attached hereto

That he is the owner and holder of Permit to appropriate the Public Waters of the State of Idaho

No _____

That he intends to change the point of diversion, as described in said decree or permit, to the follow-

To divert all of his decreed rights consisting of 1.2 sec.ft. Nov. 1, 1882
ing described point 1.2 sec.ft. June 1, 1884, 0.8 sec.ft. Apr. 1, 1887 and 0.8 sec.ft. Apr. 1, 1902
either thru the Davilson Ditch diverting in the NE 1/4 NW 1/4 Sec. 12, T. 8 N., R. 21 E. or thru the
McKelvey ditch diverting in the NE 1/4 SW 1/4 Sec. 24, T. 8 N., R. 22 E. from Big Lost River, or
in part thru either ditch as desired from time to time.

That such change will be made for the following reasons, to-wit: By combining his rights in
this manner he can irrigate more efficiently, with substantial savings of ditch losses
that occur when the water is divided. He further states that he has actually used
the water for many years under the proposed plan of changing diversions, and that he
has owned ditch rights in each ditch for these years covering the full amount of his
rights.

That no one will be injured by such change and that deponent will make such change at his own risk.

And further deponent saith not.

Charles McKelvey

Subscribed and sworn to before me this 30 th day of January, 1930

Lynn Randall

Notary Public.

My commission expires July 11, 1932

(Over)

STATE ENGINEER'S OFFICE

*Regulations as to Change of
Point of Diversion.*

Section 3247 of the Revised Codes provides that a person entitled to the use of water, may change the place of diversion if others are not injured by such change. The Board of Irrigation has adopted the following regulations as to procedure under said section.

The person desiring to change point of diversion must file with the State Engineer an affidavit describing his water right, setting forth his intent to change point of diversion and the reasons for such change, together with an averment that no one will be injured thereby and that deponent will make such change at his own risk.

The point to which it is desired to change the place of diversion must be described as follows:

When the amount claimed does not exceed 25 cubic feet per second and point of diversion will be on surveyed land, locate same by giving the legal description of the 40 acre tract in which it will be situated. If upon unsurveyed land, give approximate distance to mouth of stream from which water is claimed or to the mouth of some creek flowing into said stream. Where there is more than one point of diversion, describe each separately and specify the amount claimed from each.

Where the water claimed exceeds 25 cubic feet per second, locate the point to which it is desired to change the place of diversion as follows:

If upon or near surveyed land, tie point of diversion by course and distance to section or quarter section corner. If said point will be more than two miles from the corner of a public survey, the tie may be made to the mouth of the stream from which the water is claimed or to the mouth of some creek flowing into said stream.

The affidavit must be accompanied by maps in duplicate, showing the following details:

1. If for irrigation and domestic use:
 - (a) Name of applicant.
 - (b) Section, town and range numbers, where public survey has been made.
 - (c) Source or sources of supply.
 - (d) Point or points of diversion.
 - (e) Route of ditch or ditches, including laterals delivering water within one mile of each 160 acre tract of the land to be irrigated.
 - (f) Lands to be irrigated to be shown by cross-hatching, outlining, or coloring.
2. If for other than irrigation and domestic purposes:
 - (a) Name of applicant.
 - (b) Section, town and range numbers, where public survey has been made.
 - (c) Source or sources of supply.
 - (d) Point or points of diversion.
 - (e) Route of ditch or ditches.
 - (f) Point or points of use.
 - (g) Point or points of return to stream after use.

If application is for more than 25 cubic feet per second, the maps must be prepared from actual survey and must be certified to by the engineer in charge of survey, in the following form:

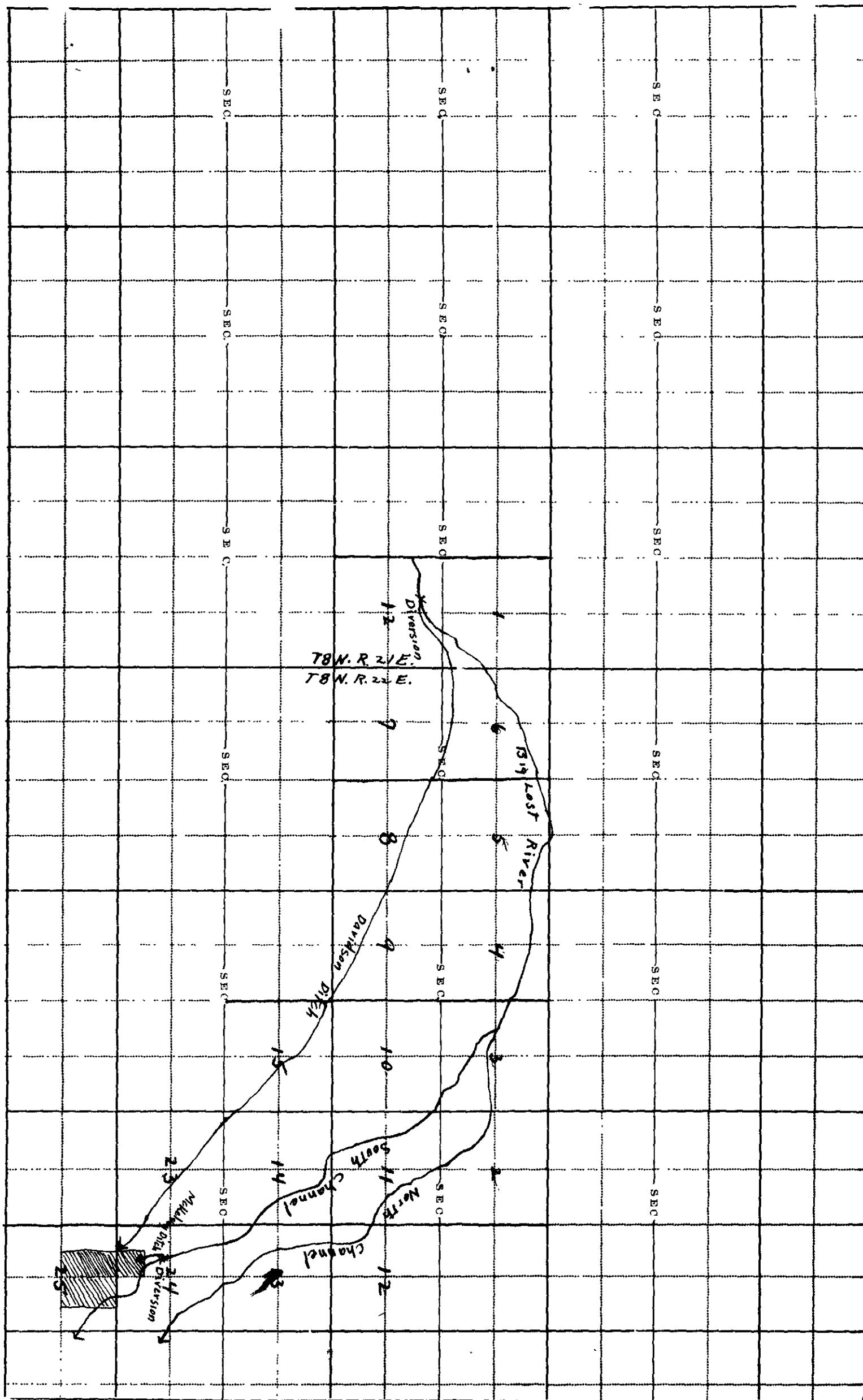
I hereby certify that this map was prepared from an actual survey made by me 191..., and correctly shows position of points indicated thereon.

.....
Engineer.

P. O.

Date.....191.....

(Over)



DECREET IN THE UNITED STATES DISTRICT COURT IN AND FOR THE DISTRICT OF
IDAHO. EASTERN DIVISION.

The Utah Construction Company, a corporation, Plaintiff,-

vs

John F. Abbott et al, defendants

Right No. 363

Charles McKelvey

(a) 1902- April 1 0.8 c.f.s.

1887 - April 1 0.8 c.f.s.

1884 - June 1 0.8 c.f.s.

To be diverted from Big Lost River through the Davidson Ditch having its point of diversion in the Northwest quarter of Sec. 12, Township 8 North, Range 21 East, B.M. for the irrigation of the following described land, to-wit;

The West half of the Northeast quarter, Northeast quarter of the Northwest quarter and the Southeast quarter of the Northwest quarter of Section 25 and the Southeast quarter of the Southwest quarter of Section 24, all in Township 8 North, Range 22 East, B.M., and

(b) 1882 - November 1 1.2 c.f.s.

1884 - June 1 0.4 c.f.s.

To be diverted from Big Lost River through a private ditch having its point of diversion in the Southwest quarter of Section 24, Township 8 North, Range 22 East, B.M., for the irrigation of the land last above described.

(Signed) E.S. Farrington
Judge pro tempore March 15, 1923

Mackay, Idaho, Jan. 30, 1930

I hereby certify that the foregoing is a correct copy of the water right awarded to the above described lands in the above entitled cause.

Lynn Randall
Commissioner U.S. District Court.

LYNN CRANDALL

CIVIL ENGINEER
MEMBER AM SOC C E

MACKAY, IDAHO

Jan. 30, 1930.

Mr. Geo. N. Carter,
Commissioner of Reclamation,
Boise, Idaho

Dear Mr. Carter,-

I am enclosing herewith application of Chas. McKelvey for a change in point of diversion. For many years prior to my arrival in the valley Mr. McKelvey has had the practice of transferring his rights back and forth between these ditches without objection from users, and I have allowed him to continue to do so. As I understand the matter the land that he owns was originally entered in two parcels with separate rights in different ditches. He intended to have his right fixed in the decree to permit him to do this, but during the rush of making it up, his attorney overlooked the matter, and I have been following the past practice in allowing him to thus transfer his rights from one ditch to the other, as it would be practically impossible for him to adequately irrigate his place under any other scheme.

Owing to my contemplated departure from the valley, he is somewhat concerned that this practice might not be permitted by my successor, and he is accordingly making this request to be permitted to change his point of diversion.

As I understand the legal aspects of the case, your permission to him to make this change is not binding upon anyone who might feel aggrieved by his action, and at any future time anyone who might conceive any objection to this transfer could bring an action to have it set aside.

If you act favorably upon the matter will you please send me a certificate, or endorsed copy of the application or decree for you have so that I can leave a copy here in my records.

Very truly yours,

Lynn Crandall

RECEIVED
JAN 31 1930