

IN EQUITY NO. 102

DECEDE

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, William Adams, A. P. Adair, Esther L. Adair (successor in interest of A. P. Adair, Eugene A. Aern, Andreas Alkele (or A. Alken), Calvin S. Allen, Frank A. Allen, Gladys Allen, L. C. Allen, Richard Roe Allen, George L. Ambrose, Charles B. Anderson, Francis G. Anderson (or Francis C. Anderson, F. Gus Anderson (or F. C. Anderson or Gus Anderson), H. W. Anderson, Sylvia Anderson, James E. Anderson, Jas. Earl Anderson, J. L. Anderson, James A. Anderson, Josephine Anderson, J. Wesley Anderson, Jos. I. Anderson (or J. J. Anderson), M. A. Anderson, Niels R. Anderson, Peter C. Anderson (or P. C. Anderson), S. T. Anderson, W. W. Anderson, Louis Andresson (or Lewis Andresson), H. V. Angelo (or Wallace Angelo), Frank Anthony, Marie L. Anthony, Arco Transite Company, an unincorporated Association; Eleazer Asay, Ernest J. Asay, Ella M. Ashton, Margaretta S. Askeu, Anna Atha (or Annie Atha), Ivan J. Atwood, J. H. Augustine,

Mrs. Hannah Babcock (or Mrs. Albert Babcock, A. Rowley Babcock (or A. Babcock), William Babcock (now deceased), Jacob A. Baird, Bank of Wyaco, an Oregon Banking corporation; John L. Bardsley, Jessie Bardsley, Jerome E. Bartlett (or J. E. Bartlett), A. H. Bascom, E. W. Bascom, Beta Baskick, Harlow Bassett (or H. Bassett), Clara M. Bate, J. H. Bate (or Joseph M. Bate), Ralph Bates, E. J. Bates, Leslie Bates, Erin Beal (or Aron Beal) or J. Beal, Eldon E. Beck; J. Beck and John Doe (or John B. Beck) and Richard Bee (or R. B. Beck) as statutory trustees of Beck Land Livestock Company, a defunct Idaho Corporation; William Beck, Beck Land and Livestock Company, an Idaho corporation; A. W. Bell, Lee Bell, John C. Bell, J. L. Bell, George Bennett (or George Bennetts), James Bennetts, F. S. Bernarl, John Bernard (successor in part to New World Life Insurance Company); Gus Bertson, Agnes E. Best (or Agnes Best), Harold C. Best (or Harold Best), Alexander Beverland, Francis Beverland (successor in interest of James Beverland), George Beverland, Effie Beverland (or Mrs. George Beverland), James Beverland, as executor of the estate of Charles Beverland, deceased; James Beverland, Joana Beverland, Henry Bewe (or Harry Bewe), Peter Bidegain, Leta C. Billings, Elizabeth Bills, John L. Bills, Herman Bills, Ole Billia, Albert F. Bischoff (or A. F. Bischoff), Lewis A. Bitton (or John Doe Britton), Ida Bitton (or Zina Britton), B. Bjornson (or B. Bjornsen), Blackfoot City National Bank, an Idaho Banking corporation (successor in interest to Robert A. Johnson); Charles H. Black, Mary E. Black, Mills J. Bluth (successor in interest of J. H. Bluth), John L. Blosser (or John L. Blasser), Henry Blattner, Leta L. Bliss, William L. Bliss, Arthur L. Bodine, John J. Bodine, Oscar Bodine, William L. Bodine, Joseph A. Boillin, Rhoda Boling, Rachael Boone, Wm. A. Boone, David D. Boyack (or D. Boycock or David D. Boycock, Jr.), Sylvanus Boyack (or S. Boycock), Mary E. Boyd, Robert G. Boyd (successor in interest of Charles H. Hampton), J. W. Boyer, Elizabeth Bradshaw (now deceased), George Bradshaw, John Bradshaw, Pearl Bradshaw, William Bradshaw, William Bradshaw, as administrator of the estate of Elizabeth Bradshaw, deceased (substituted for Elizabeth Bradshaw deceased); Francis Braithwaite, R. F. Braithwaite (or Robert Braithwaite), William L. Braithwaite, H. C. Brake, William H. Brashear, H. C. Brangman, Charles Brown, Edna Brown, Edna E. Brown, as executrix of the estate of Martin L. Brown, deceased, substituted for

MICROFILMED

CHRISTINA HANSEN

1900-September 24 ✓

1.0 c. **34. 0305**

To be diverted from Big Lost River through the McLaughlin ditch having its point of diversion in the Southeast quarter of Section 12, Township 3 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

No. 187

LOUISE HARDY, (described in plaintiff's amended complaint as Louisa Hardy)

1885-May 1 ✓

0.01 c. **34. 0306**

The West half of the Southwest quarter of Section 17, Township 3 North, Range 27 East, B. M.

To be diverted from Big Lost River through the Arco canal having its point of diversion in the Northwest quarter of Section 26, Township 4 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

No. 188

BURTON B. HARGER
(Described in plaintiff's amended complaint as B. B. Harger)

1884-May 20 ✓

3.2 c. **34 0307**

To be diverted from Big Lost River through the West Side and Harger-Sullivan Ditches each having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The West half of the Southeast quarter and the East half of the Southwest quarter of Section 19, Township 4 North, Range 26 East B. M.

No. 189

ETNA A. HARGER
(Successor in part to B. B. Harger)

1884-May 20 ✓

0.8 Trans. 627
" 1618

0.8 c. **34 0308**

To be diverted from Big Lost River through the West side and Harger-Sullivan Ditches each having their points of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The Southwest quarter of the Northeast quarter of Section 19, Township 4 North, Range 26 East, B. M.

No. 190

FRANK E. HARGER

1884-May 20 ✓

2.4 c. **34 0309**

To be diverted from Big Lost River through the Harger-Sullivan ditch having its point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, B. M., for the irrigation of the following described land, to-wit:

The East half of the Southwest quarter of Section 8 and the Northeast quarter of the Northeast quarter of Section 17, all in Township 4 North, Range 26 East, B. M.

No. 191

Affidavit of Publication

I, G. W. Vincent, foreman of The Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of the notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof, for two consecutive weeks, commencing with the issue dated July 4, 1941, 1941 and ending with the issue dated July 11, 1941, 1941.

G. W. Vincent

Subscribed and sworn to before me this 26th

day of July, 1941.

Robert F. Miller
Notary Public,
Notary Public residing at Arco, Idaho

Residence: Arco, Idaho.

My commission expires July 16, 1944.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that John P. Fabrick, President of North American Mortgage Co. of Bozeman, Montana, has applied to the Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of Eight Tenths (.08) cubic feet per second, of the water of Big Lost River from the land upon which it is now used, i. e. SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, Twp. 4 N. R. 26 E. B. M. to the following described tract S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 22, Twp. 5 N. R. 26 E. B. M.

And that, on the 14th day of July, A. D. 1941, at 10 A. M. Room 10, State House, Boise, Idaho, in the office and before the Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

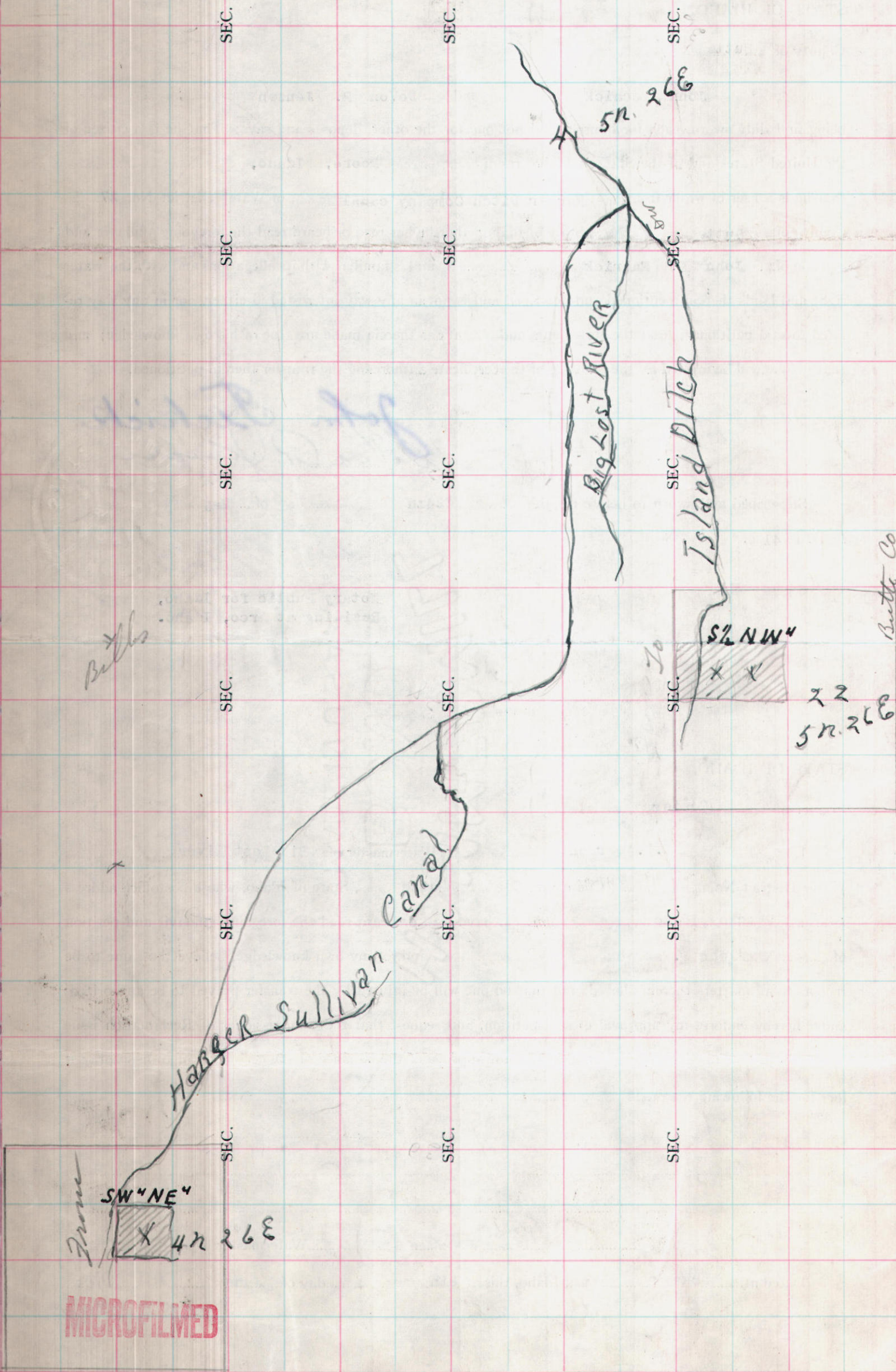
E. V. BERG,
Commissioner of Reclamation
(Jl 4-11-2t)

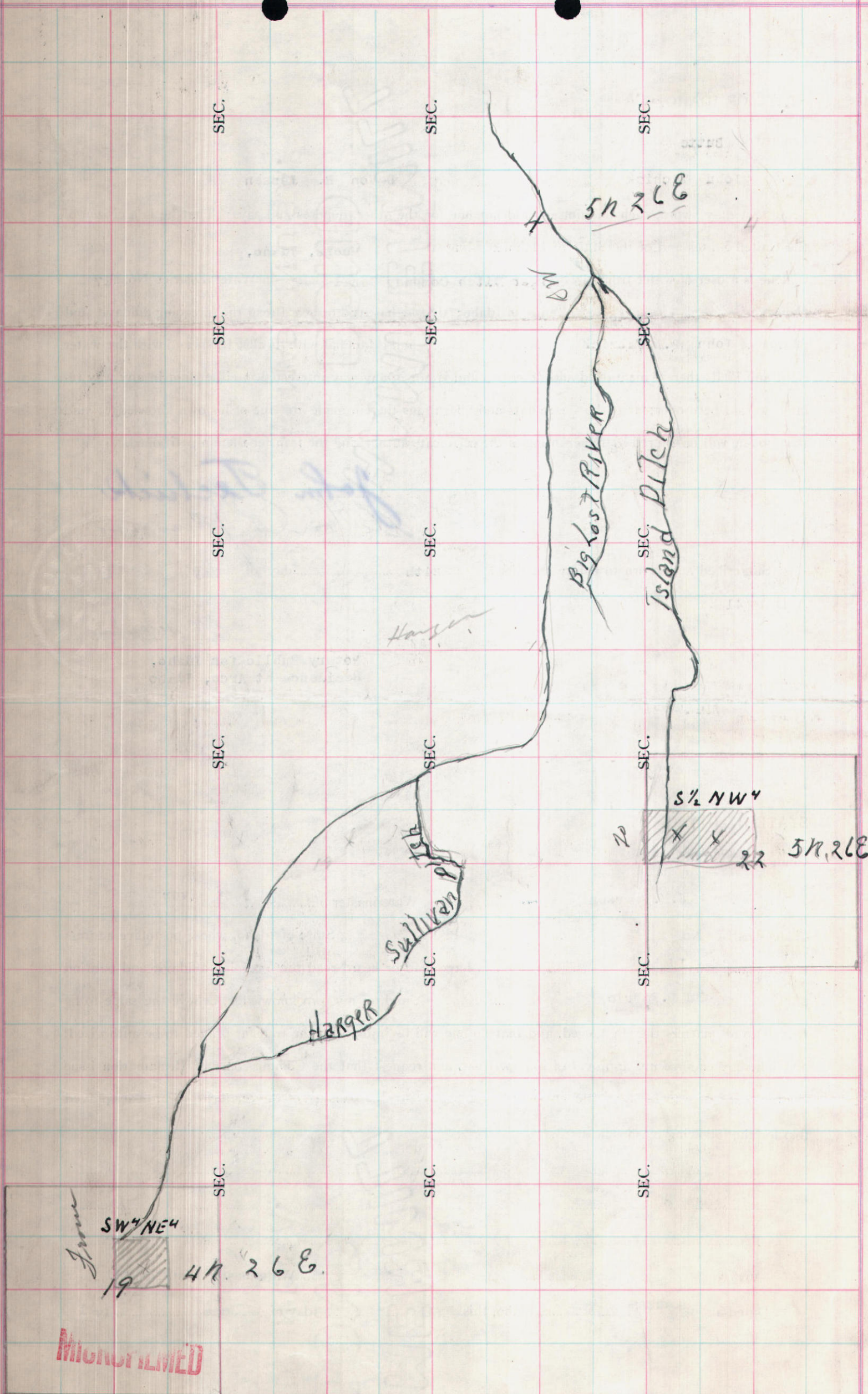
RECEIVED

JUL 29 1941

Department of Reclamation

MICROFILMED





TRANSFER NO.	NAME	AMOUNT C.F.S.	BALANCE C.F.S.	RIGHT NO.
	Harger, Emma A.	0.8		34-0308
627	Fabrick, John P.	0.8	0	34-0308A

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STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 627

THIS IS TO CERTIFY THAT JOHN P. FABRICK, President of the North American Company, of Bozeman, Montana, County of Gallatin, State of Montana is the owner of and using a certain water right described as .8 cubic feet per second, dated May 20, 1884, of the water of BIG LOST RIVER, County of Butte, decreed to Emma Harger by decree of Judge E. S. FARRINGTON, of the U. S. District Court, Sixth Judicial District, State of Idaho, in and for the County of Butte in the case of

UTAH CONSTRUCTION COMPANY

PLAINTIFF,

VS.

JOHN ABBOTT, ET AL.

DEFENDANTS

Dated, March 15, 1923.

being appurtenant to the SW¹/₄NE¹/₄, Section 19, Township 4 North, Range 26, E. B. M., situated, lying and being in Butte County, Idaho.

THAT THE SAID DECREE has been entered in the records of the Department of Reclamation of the State of Idaho, in Book 5 of Decrees at Page 104.

THAT NOW UPON THE APPLICATION of JOHN P. FABRICK, President of the North American Company, of Bozeman, Montana, for a Certificate of Transfer of Water Right, made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted, the right to the use of .8 cubic feet per second of the waters of BIG LOST RIVER upon the lands above described is HEREBY ABANDONED, and the lands to be irrigated under such right and to which the water right hereby confirmed shall be appurtenant, by this certificate, to avoid water shrinkage due to present long mileage of ditch delivery, are described as follows:

SW¹/₄NE¹/₄, Section 22, Township 5 North, Range 26 E. B. M.

situate, lying and being in the County of Butte, State of Idaho, and said water to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

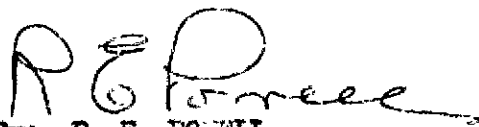
.8 cubic feet per second of the water of Big Lost River with date of priority of May 20, 1884.

THAT THE WATER RIGHT hereby transferred has been conducted to the first above described lands through the Harger Ditch Company canal from the Big Lost River, point of diversion in the SE¹/₄, Section 4, Township 5 North, Range 26 E. B. M., and will hereafter be diverted to the new place of use through the Island Ditch, having its point of diversion in the SW¹/₄, Section 4, Township 5 N., Range 26 E. B. M.

THAT THE RIGHT to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be affixed at Boise, Idaho this 1st day of August, 1941.

E. V. MORG
Commissioner of Reclamation


By: R. E. POWELL
Supervisor of Water Distribution

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the matter of the application
of:

JOHN P. FABRICK, President
North American Company
Bozeman, Montana

ORDER GRANTING TRANSFER

For a transfer of Water Right, in
Water District No. 27
County of Butte

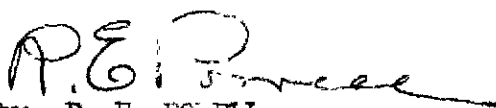
WHEREAS, On the 14th day of July, 1941, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of JOHN P. FABRICK, President of the North American Company, of Bozeman, Montana, for a Transfer of Water Right, came on regularly for hearing, pursuant to the published notice, in due and statutory form, and

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to more economical and greater beneficial use, and that no one will be injured thereby,

NOW, THEREFORE, IT IS HEREBY ORDERED that the said application be and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be hereunto affixed, at Boise, Idaho, this 1st day of August, 1941.

E. V. BERG
Commissioner of Reclamation


By: R. E. POWELL
Supervisor of Water Distribution

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
Certificate of Water Right
Transferred Right No. 627

THIS IS TO CERTIFY THAT JOHN P. FABRICK, President of the North American Company, of Bozeman, Montana, County of Gallatin, State of Montana is the owner of and using a certain water right described as .8 cubic feet per second, dated May 20, 1884, of the water of BIG LOST RIVER, County of Butte, decreed to Emma Harger by decree of Judge E. S. FAIRINGTON, of the U. S. District Court, Sixth Judicial District, State of Idaho, in and for the County of Butte in the case of

UTAH CONSTRUCTION COMPANY

PLAINTIFF,

vs.

JOHN FABRICK, TRUSTEES

DEFENDANTS

Dated, March 15, 1923.

being appurtenant to the SE¹/₄, Section 19, Township 4 North, Range 26, E. B. M., situated, lying and being in Butte County, Idaho.

THAT THE SAID DECREE has been entered in the records of the Department of Reclamation of the State of Idaho, in Book 5 of Decrees at Page 104.

THAT UPON THE APPLICATION of JOHN P. FABRICK, President of the North American Company, of Bozeman, Montana, for a Certificate of Transfer of Water Right, made before the Commissioner of Reclamation of the State of Idaho, and the said application having been granted, the right to the use of .8 cubic feet per second of the waters of BIG LOST RIVER upon the lands above described is HEREBY ABANDONED, and the lands to be irrigated under such right and to which the water right hereby confirmed shall be appurtenant, by this certificate, to avoid water shrinkage due to present long mileage of ditch delivery, are described as follows:

SW¹/₄, Section 22, Township 5 North, Range 26 E. B. M.

situate, lying and being in the County of Butte, State of Idaho, and said water to be limited at any time to an amount actually needed and beneficially used for such purposes, and shall not exceed the following amount, to-wit:

.8 cubic feet per second of the water of Big Lost River with date of priority of May 20, 1884.

THAT THE WATER RIGHT hereby transferred has been conducted to the first above described lands through the Harger Ditch Company canal from the Big Lost River, point of diversion in the SE¹/₄, Section 4, Township 5 North, Range 26 E. B. M., and will hereafter be diverted to the new place of use through the Island Ditch, having its point of diversion in the SW¹/₄, Section 4, Township 5 N., Range 26 E. B. M.

THAT THE RIGHT to the use of the water aforesaid, hereby confirmed, is restricted to the lands or place of use last above described as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be affixed at Boise, Idaho this 1st day of August, 1941.

E. V. BERG
Commissioner of Reclamation


By: R. E. POWELL
Supervisor of Water Distribution

STATE OF IDAHO
DEPARTMENT OF RECLAMATION

In the matter of the application
of:

JOHN P. FAHRICK, President
North American Company
Bozeman, Montana

ORDER GRANTING TRANSFER

For a transfer of Water Right, in
Water District No. 27
County of Butte

WHEREAS, On the 14th day of July, 1941, at the Department of Reclamation of the State of Idaho, at Boise, Idaho, this matter of an application of JOHN P. FAHRICK, President of the North American Company, of Bozeman, Montana, for a Transfer of Water Right, came on regularly for hearing, pursuant to the published notice, in due and statutory form, and

WHEREAS, No protest has been filed against the application, and the evidence filed by the applicant, with the application, shows that the water will be put to more economical and greater beneficial use, and that no one will be injured thereby,

NOW, THEREFORE, IT IS HEREBY ORDERED that the said application be and the same is HEREBY GRANTED, and that a Certificate of Transfer be issued the applicant herein, as provided by the laws of the State of Idaho.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the official seal of the Department of Reclamation of the State of Idaho, to be hereunto affixed, at Boise, Idaho, this 1st day of August, 1941.

E. V. BERG
Commissioner of Reclamation



By: R. E. TOHILL
Supervisor of Water Distribution

CHRISTINA HARTEN

1890-September 24

1.0 c. 34. 0305

To be diverted from the East River through the McLaughlin ditch to its point of diversion in the Southeast quarter of Section 15, Township 4 North, Range 26 East, P. M., for the irrigation of the following described land, to-wit:

The West half of the North quarter of Section 17, Township 4 North, Range 27 East, P. M.

No. 187

LOUISE HARDY, (described in plaintiff's amended complaint as Louisa Hardy)

1885-May 1

0.2 c. 34. 0306

To be diverted from the East River through the McLaughlin ditch to its point of diversion in the North east quarter of Section 16, Township 4 North, Range 26 East, P. M., for the irrigation of the following described land, to-wit:

1/2 acre in the North east quarter of the West West quarter of Section 15, Township 4 North, Range 26 East, P. M.

No. 188

BURTON B. HARGER
(Described in plaintiff's amended complaint as B. B. Harger)

1884-May 20

3.1 c. 34 0307

To be diverted from the East River through the West side and McLaughlin Ditches each having their point of diversion in the Southeast quarter of Section 15, Township 4 North, Range 26 East, P. M., for the irrigation of the following described land, to-wit:

The West half of the North east quarter and the East half of the West West quarter of Section 19, Township 4 North, Range 26 East, P. M.

No. 189

ETNA A. HARGER
(Successor in part to B. B. Harger)

1884-May 20

0.8 c. 34 0308

To be diverted from the East River through the West side and McLaughlin Ditches each having their point of diversion in the Southeast quarter of Section 4, Township 5 North, Range 26 East, P. M., for the irrigation of the following described land, to-wit:

The Southwest quarter of the Northwest quarter of Section 15, Township 4 North, Range 26 East, P. M.

No. 190

FRANK E. HARGER

1884-May 20

2.4 c. 34 0309

To be diverted from the East River through the Harger-McLaughlin ditch to its point of diversion in the North east quarter of Section 4, Township 5 North, Range 26 East, P. M., for the irrigation of the following described land, to-wit:

The East half of the North east quarter of Section 6 and the West half of the North east quarter of Section 7, Township 4 North, Range 26 East, P. M.

No. 191

*water transfer
#627*

August 1, 1941

Mr. John P. Fabrick, President
North American Company
Bozeman, Montana

Dear Mr. Fabrick:

We are enclosing herewith two copies of
Order Granting Transfer and Certificate of Water Right,
Transferred Right No. 627 for .8 cubic feet per second
of the water of Big Lost River.

Also enclosed is State of Idaho Receipt
No. 17906 in the amount of \$1.00, fee charged by this
Department for a Certificate of Water Right.

Trusting that this Certificate meets with
your approval, we are

Very truly yours,

E. V. BERG
Commissioner of Reclamation

By: R. E. POWELL
Supervisor of Water Distribution

REP:dbj
Encl.-3

Handwritten: Fabrick

July 22, 1941

Arco Advertiser
Arco, Idaho

Gentlemen:

Will you please furnish this Department with an affidavit of proof of publication in regard to the water transfer of John P. Fabrick, President, North American Mortgage Company, of Bozeman, Montana.

Publication was to have been made for two weeks prior to July 14, 1941.

Thanking you in advance for your cooperation in this matter, we are

Very truly yours,

E. V. HERG
Commissioner of Reclamation

By: R. E. Powell
Supervisor of Water Distribution

REP:dbj

July 22, 1941

Mr. John P. Fabrick, President
North American Mortgage Company
Bozeman, Montana

Dear Mr. Fabrick:

This is to advise you that this Department is to received one dollars (\$1.00), the fee charged for a transfer of water right before the transfer can be completed.

As soon as this Department receives the one dollar fee, your Certificate of Transfer Right will be issued.

Hoping to hear from you at an early date, we are

Very truly yours,

E. V. HERR
Commissioner of Reclamation

By: R. E. POWELL
Supervisor of Water Distribution

REP:
dbj

Re: Transfer of Water Transfer

Mr. J. P. Fabrick
Pres.-Mgr. North American Co.
Bozeman, Mont.

Dear Mr. Fabrick: SW_{1/4}, 19, 4th, 26 E. to
S_{1/2}NW_{1/4}, 22, 5th, 26 E.

We wish to acknowledge receipt of your letter of June 12th enclosing application to transfer .08 cubic feet per second of the waters of Big Lost River from the SENE, Sec. 19, Twp. 4 N., Rge. 26 E. to the SENE, Sec. 22, Twp. 5 N., Rge. 26 E., S. 1.

We have examined the agreement with the Big Lost River Irrigation Dist., received with the application, and hold that it is a part of the application--provided the certificate of transfer is granted it will be subject to agreement.

Application was received in correct form and notices have been sent to the Arco Advertiser for publication for two consecutive publications--charges to be paid by the applicant.

Very truly yours,
E. V. BERG.
Commissioner of Health and Education

BY: ROY W. THOMPSON
Deputy Coroner

RWT:ml.

STATE OF IDAHO
DEPARTMENT OF RECLAMATION
BOISE, IDAHO

Date **June 27, 1941**

Arco Advertiser
Arco, Idaho.

Dear Sir:

Enclosed you will find notice for publication once a week
for ~~four~~ ^{two} consecutive weeks prior to **July 14, 1941**, the date
set for ~~proof~~ ^{hearing}, the expense of the publication to be paid by the appli-
cant,

to whom you should furnish proof of publication on or prior to the date
set for ~~proof~~ ^{hearing}

Please acknowledge receipt of this notice and furnish this
office with a copy of the first publication.

Very truly yours,

E.V. Berg

Commissioner of Reclamation



Deputy Commissioner of Reclamation

Notice of Proposed Transfer of Water Right

Notice is hereby given that John P. Fabrick, President of North American Mortg. Co. of Bozeman Montana, has applied to the Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of Eight Tenths (.08) cubic feet per second, of the water of Big Lost River

from the land upon which it is now used, i. e. SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, Twp. 4.N. R. 26 E. B.M.

to the following described tract. S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 22, Twp. 5.N. R. 26.E. B.M.

And that, on the 14th, day of July, A. D. 1924, at 10 A.M. Room 107, State House, Boise Idaho, in the office and before the Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

E.V. Berg

Commissioner of Reclamation.

June 10, 1941

Mr. John P. Fabrick
Bozeman, Montana

Dear Mr. Fabrick:

In checking over the Application for Transfer of Water Right sent in to this Department by you, we note that the description of the land was not specifically marked on your application.

Therefore, we are returning herewith the original and duplicate copy of your application to be properly marked.

As soon as they are received by this Department, we will send your proposed transfer to the publishers for publication.

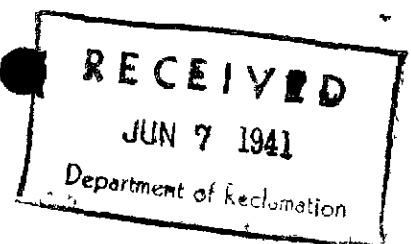
Thanking you for your cooperation in this matter, we are

Very truly yours,

E. V. BERG
Commissioner of Reclamation

EVB:dbj
Encl.

AGREEMENT



THIS AGREEMENT, made and entered into this 6th day of May, 1941, by and between Big Lost River Irrigation District, a duly organized Irrigation District of the Counties of Butte and Custer, State of Idaho, having its office and principal place of business at Lacey, Custer County, Idaho, the party of the first part, hereinafter called the District, and North American Company (successor in interest of North American Mortgage Company), of Bozeman, Montana, the party of the second part, WITNESSETH:

WHEREAS, the District is a duly organized Irrigation District of the State of Idaho, in the Counties of Butte and Custer of said State, and has its office and principal place of business at Lacey, Custer County, Idaho, and as such District is the owner and in the possession of all water rights out of Big Lost River and its tributaries, Butte and Custer Counties, Idaho, formerly owned by the Utah Construction Company, a corporation, and certain individual land owners on said company's Carey Act Project in Butte County, Idaho, said water rights having heretofore been purchased by said District from said Company from the proceeds of a bond issue in the sum of \$253,500.00 voted by the resident land owners of the District on May 18th, 1935; and

WHEREAS, pursuant to and in accordance with the Statutes of Idaho, in such case made and provided a Petition was filed in the District Court of the County of Custer, State of Idaho, on December 3rd, 1935, by the Board of Directors of said District, for examination approval and confirmation, among other things, of all proceedings taken by said District connected with the formulation of a plan of operations for said District, of all proceedings taken in connection with the assessment and apportionment of benefits, had and taken by said District by reason of the carrying out of such plan, the cost of which is represented by its first issue, first series bonds in the amount of \$253,500.00 issued for the purchase of irrigation works and water rights, and for the examination, approval and confirmation of all proceedings had and taken by said District connected with the authorization, issuance and sale of said bonds and of all matters in connection with or related to any of the above mentioned proceedings; and

WHEREAS, after due and legal hearing on said petition, a judgment and

decree was entered in said Court on January 4th, 1936, affirming each and all of the above mentioned proceedings and making an apportionment and distribution of benefits to and upon the lands within said District, which lands are more particularly described in said judgment and decree and in the books and records of the District and which includes the lands hereinbefore described; and that said judgment and decree apportioned the benefits properly assessable against said lands of the party of the second parties to tract acres, irrigable acres, acres approved for storage water benefits, amount of basic assessment, amount of storage water assessment, and the total amount of assessment as follows to-wit:-

Tract Acreage	Irrigable Acreage	Area approved for storage water benefits	Amount Basic Assessment	Amount Storage water assess.	Total Amount Assessment
40	36		190.00		190.00

WHEREAS, the total amount of the increased assessment and apportionment of benefits as fixed by said Court by its said judgment and decree of January 4, 1936, was made and decreed to be a prior and superior lien on said lands first described herein and water rights appurtenant thereto, to all mortgages and other liens against said lands and the improvements.

WHEREAS, bonds duly and regularly issued in the sum of \$10,000.00 by the District pursuant to legal authority hereunder, have heretofore been purchased and are now owned by Reconstruction Finance Corporation under the terms and conditions of certain agreement made and entered into between the District and Reconstruction Finance Corporation approved by said District on date of March 20, 1935, and

WHEREAS, the said North American Company is the owner and proprietor of the following described property:-

S. 21 of Section 19, Township 4 North, Range 2 East, T. 4.

said lands having appurtenant thereto a certain decreed water right of .8 c.f.s. or 40 inches, of the water of Big Lost River with date of priority of May 20, 1934, said water right having been decreed to said North American Company, as right # 190, by decree entered by Judge L. S. Farrington of date March 15, 1923, in the United States District Court of the District of Idaho, Eastern

Division, in the case of the Utah Construction Company, a corporation, as plaintiff, vs. John F. Abbott, et al, as defendants, in Equity No. 222.

WHEREAS, the parties of the second part desire to change the place of use of the decreed water right, to-wit, .8 c.f.s. or 40 inches with priority of May 20, 1884 from the lands above described to the following described lands owned by said North American Company, situate in the County of Butte, State of Idaho, to-wit:-

S¹/₄ Section 22, Township 5 N. Range 20 E. B. 1.

WHEREAS, said District has and holds a first and prior lien upon said lands first described herein for the payment of the said sum of 190.00 due thereon as an assessment and apportionment of benefits as aforesaid and it cannot legally agree to the change of place of use of all or any part of the decreed water rights unless the amount of said assessment and apportionment of benefits is first paid by the parties of the second part or shall become a first lien upon said lands to which said water rights are sought to be made appurtenant by this agreement, the maintaining of said first lien being required of said District by the said Reconstruction Finance Corporation under its said agreement with the latter; and

WHEREAS, it will be for the best interests of said District and the party of the second part that the change of place of use of said water right be made as hereinbefore set forth and that such change in place of use thereof will result in a better and more efficient use of said water right.

NOW, THEREFORE, this agreement, IT IS AGREED:-

I. It is agreed that the aforesaid decreed water right, to-wit:-

.8 c.f.s., or 40 inches with priority of May 20, 1884 appurtenant to said lands first described herein, may be transferred, or the place of use thereof change, by proper proceedings filed in the Department of Reclamation of the State of Idaho, from said lands first described herein to the following described:

S¹/₄ Section 22, Township 5 N. Range 20 E. B. 1.

such transfer or change of place of use to be made with the distinct understanding and it is specifically agreed, that the sum of \$190.00 consisting of the following assessments, to-wit:-

Basic assessment on the 20 acres of 1884 priority 190.00

the amount of said original assessment and apportionment of benefits, together with accrued interest, penalties, bond interest and collection charges, shall be a first lien in favor of said District on the said lands last above described to which said change in place of use of said water right shall be made, over and above any claim of the parties of the second part and of any and all claimants and mortgagees of said land, which amount the parties of the second part agree to pay to the District in full on the same terms and conditions as assessments and apportionment of benefits are paid by other land owners within said District under the aforesaid bond issue; and it is hereby specifically agreed that the District does not by this agreement waive, and it is hereby granted any and all legal rights provided by Title 42 of the statutes of Idaho for the levy, collection and enforcement of any and all assessments of every kind and character, including assessments for bond interest and sinking fund, hereafter levied by the District against the said lands to which said water rights are herein agreed to be transferred.

2. As a further consideration for said transfer or change of place of use, the parties of the second part specifically agree to pay any and all Irrigation District bond interest charges hereafter accruing against said lands last above described, when and as the same shall become due and under the same terms and conditions as required of other land owners in said District, and they also agree to pay all assessments and apportionment of benefits and bond interest charges due to date against said original lands so that there shall be no delinquent charges of any kind or character against said land at the time of the signing of this agreement.

3. It is further agreed that before this agreement shall be fully operative and the parties bound by the provisions thereof, all mortgagees and claimants against said lands, if any there be, shall consent in writing of such a character that the claims of said mortgagees and claimants shall be subject to and inferior to the claim of the said District on said lands to which said water rights shall be transferred in the aforesaid sum of \$190.00, together with accrued interest, penalties, bond interest and collection charges.

4. It is further agreed that the parties of the second part shall at its own expense file with the Department of Reclamation of the State of Idaho, an application for the change in place of use of said water rights and shall bear all expenses connected therewith, and this agreement shall be incorporated in and become a part of such application for transfer and should the same be approved by the Department of Reclamation and a certificate of transfer be issued by the said Department of Reclamation, it shall be issued subject to the terms and conditions of this agreement, and otherwise, and the District agrees to file written consent to such transfer with the Department of Reclamation, provided only that such transfer is made in accordance herewith.

5. It is further agreed that should it become legally necessary subsequent hereto in order to effectuate the change of place of use or transfer of the water rights herein described, and carry out the terms and conditions of this agreement, the party of the second part agrees to pay any and all the necessary expense thereof, including the expense of any legal action and the recording of this contract in the proper court.

6. It is further agreed that this agreement is made and entered into subject to the approval of the Reconstruction Finance Corporation.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals this 6 day of May 1941, at Meridian, Idaho, in triplicate, one copy as signed being retained by each of the parties hereto, one copy filed with the Department of Reclamation of the State of Idaho.

WITNESSED BY:

AR Balovich
Paul M. Taulsen

THE LOST RIVER RECLAMATION DISTRICT

By John P. Tabrick Charles Warren
President.
Party of the First Part.

NORTH AMERICAN COMPANY

John H. H. H.
John H. H. H.

By John P. Tabrick
President.
Party of the Second Part.

North American Company

BOZEMAN, MONTANA

August 2, 1917

J. P. FABRICK
PRESIDENT-MANAGER

S. M. COOK
SECRETARY

Mr. R. D. Powell
Supervisor of Water Distribution
Department of Reclamation
Helena, Idaho

Dear Sir:

5525-Margar, Bills

This is to acknowledge receipt of your letter of the 1st instant enclosing two copies of Order Granting Incentive and Certificate of Right of Right, The General Right No. 127 for .3 cubic feet per second of the water of Big Lost River.

We wish to thank you for your assistance in this matter and hope to remain,

Yours very truly,

S. M. Cook

S. M. COOK
Secretary

RECEIVED

5525-Margar

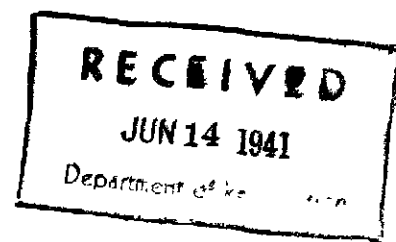
North American Company

BOZEMAN, MONTANA

June 12, 1941

J. P. FABRICK
PRESIDENT-MANAGER

S. M. COOK
SECRETARY



Mr. R. E. Powell
Supervisor of Water Distribution
Department of Reclamation
Boise, Idaho

Dear Mr. Powell:

EZ25-Harger

With your letter of the 10th instant you returned to us our Application, in duplicate, for the transfer of certain water from land in Section 19, 4 North, 26 East to land in Section 22, 5 North, 23 East in Butte County, Idaho.

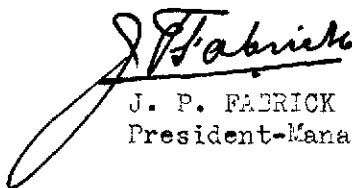
Your letter calls to our attention the fact that, "The land was not specifically marked on your application." The plat on the back of the Application, and I presume this is what you are referring to, was furnished by the office of the Big Lost River Irrigation District at Mackay because I was not positive as to the location of the river and the canals, which apparently had to be shown.

Your plat hardly allows space to draw a map including both Section 19, 4 North, 26 East and Section 22, of 5 North, 26 East and for that reason, I presume, Mr. Pearson found it necessary to reduce the scale and in doing so I realize that he has not been altogether successful. I do not know how I can correct the plat and, if such is definitely necessary, I hope that you will more clearly indicate exactly what is wanted.

I notice that on the margin of the Application the words "from" and "to" have been written. I am satisfied you have noticed that these two words have been placed in the wrong position and should be reversed.

If there is anything that I can or must do to complete this application and speed it along, I hope that your instructions as to what is required will be forwarded at your earliest convenience.

Yours very truly,


J. P. FABRICK
President-Manager

MAK 100

JPF:fmp
Enc.

North American Company

BOZEMAN, MONTANA

July 25, 1941

J. P. FABRICK
PRESIDENT-MANAGER

S. M. COOK
SECRETARY

Mr. R. E. Powell
Supervisor of Water Distribution
Department of Reclamation
Boise, Idaho

Dear Sir:

5325-Harger, Bills

We have your letter of the 23rd instant and in compliance with your request we hereby forward our check for \$1.00, fee charged for the transfer of water right.

We take it from your letter that Certificate of Transfer Right will now be promptly forwarded. Please sign and return the Receipt for the fee when you forward the Certificate and oblige,

Yours very truly,

S. M. Cook

S. M. COOK
Secretary

MICROFILMED

SMC:fmj
Enc.

DIRECT ALL COMMUNICATIONS TO THE COMPANY

Affidavit of Publication

I, G. W. Vincent, foreman of The Arco Advertiser, a weekly newspaper of general circulation, published weekly at Arco, Idaho, since March, 1909, do solemnly swear that a copy of the notice, as per clipping attached, was published weekly in the regular and entire issue of said newspaper, and not in any supplement thereof, for two consecutive weeks, commencing with the issue dated July 4, 1941, 1941 and ending with the issue dated July 11, 1941, 1941.

G. W. Vincent

Subscribed and sworn to before me this 26th

day of July, 1941.

Robert K. Miller

Notary Public.

Residence: Arco, Idaho.

My commission expires July 16, 1944.

NOTICE OF PROPOSED TRANSFER OF WATER RIGHT

Notice is hereby given that John P. Fabrick, President of North American Mortgage Co. of Bozeman, Montana, has applied to the Commissioner of Reclamation of the State of Idaho for a certificate authorizing him to transfer the use of Eight Tenths (08) cubic feet per second, of the water of Big Lost River from the land upon which it is now used, i. e. SW $\frac{1}{4}$ NE $\frac{1}{4}$ Section 19, Twp 4 N. R. 26 E. B. M. to the following described tract S $\frac{1}{2}$ NW $\frac{1}{4}$ Section 22, Twp 5 N. R. 26 E. B. M.,

And that, on the 14th day of July, A. D. 1941, at 10 A. M. Room 10, State House, Boise, Idaho, in the office and before the Commissioner of Reclamation, or his authorized agent, the opportunity will be given to any and all persons to appear and present for his consideration any reason or reasons why a certificate should not be issued authorizing such transfer.

E. V. BERG,
Commissioner of Reclamation
(Jl 4-11-2t)

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Department of Reclamation

39

Application for Transfer of Water Right

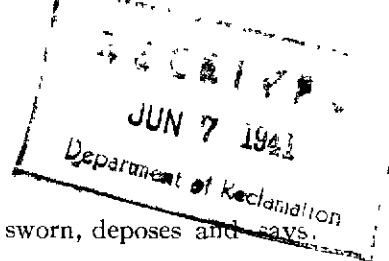
STATE OF ~~IDAHO~~ ^{MONTANA}

County of Gallatin

ss.

JOHN P. FABRICK

, being first duly sworn, deposes and says:



That his name is John P. Fabrick; that he is of lawful age, a citizen of the United States and of the State of ~~Idaho~~ ^{Montana}, and that his postoffice address is Bozeman, Montana,

That he is ~~the owner~~ ^{President of North American Company,} and using a certain water right, bearing date of priority of May 20, 1884, ~~xx~~

for 40 inches cubic feet per second of the waters of Big Lost River

County of Custer and Butte State of Idaho, decreed to Emma A. Harner

by decree of Judge, E.S. Farrington of the Judicial District of the State of

Idaho, in and for the County of , in the case of Utah Construction Company

vs. John Abbott et al, said decree bearing date of May 20 1884

(or obtained by virtue of License No. , issued by the State Engineer or the Commissioner of

Reclamation of the State of Idaho, dated , 19 , bearing date of priority

of , 19) for the purpose of irrigating the following described lands situate, lying

and being in water District No. 57 in the County of Butte and State of Idaho, to-wit:

southwest quarter of the northeast quarter (SW $\frac{1}{4}$ of NE $\frac{1}{4}$) of Section nineteen (19) in Township four (4) north of Range twenty-six (26) east of the Boise Meridian

and is the person (or representative of

the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i. e.

by succession in ownership

as per abstract of title of said water right hereto attached and made a part of this statement:

That said waters are now diverted from said stream in the South East Quarter of Section Four, Township Five North, Range Twenty-six East, B. M., and conducted to the above described lands through the Harger Ditch Company canal as per map herewith and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of 40 inches cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, lying and being in the County of Butte and State of Idaho, to-wit:

the south half of the northwest quarter (S $\frac{1}{2}$ of NW $\frac{1}{4}$) of Section twenty-two (22) in Township five (5) north of Range twenty-six (26) east of the Boise Meridian

That his reasons for desiring to make such transfer are as follows

to avoid water shrinkage due to present long mileage of ditch delivery

That he intends to divert and convey said ^{40⁰ inches} 40 inches second feet of water to the tract of land last above described in the following manner, to-wit:

by already established canal system

as set forth upon the map herewith; and that no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the Commissioner of Reclamation of the State of Idaho issue to him the proper certificate authorizing such transfer, in accordance with the provisions of Section 5582 of the Idaho Compiled Statutes.

Subscribed and sworn to before me this

15th

day of March

A. D. 19 41.

Notary Public for State of Montana.

Residing at Bozeman, Montana

Notary Public.

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS

From what stream is the water now diverted? Big Lost River

Where is the diversion point now located? See map

Through what ditch is it now conducted? Harger Ditch Co.

How much land is now irrigated by the water sought to be transferred? about 30 acres

Give the description: the east 30 acres in SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 19, in Township 4 North of Range 26 East of the M. P. M.

What is the total amount of water in inches, or second feet, dedicated to said land? 40 inches

What kind of crops are being raised? alfalfa and small grain

How much water per acre is now required to irrigate said land?

What will be the effect on the land now irrigated, if the use of water on it is discontinued?

Will be abandoned

Give location of new point of diversion, if change is to be made

Through what ditch will it be conducted after transfer? Island Ditch

How much water will be required per acre to irrigate the land to which this water is transferred?

Do you claim any other water right for the land from which you seek to abandon the use of this water?

No

If so, give amount, date and source

Is there now any other water right for the land to which you seek to make this transfer? If so, give amount, date and source 80 inches-priority June 1, 1895-Big Lost River

Signed

John P. Fabrick
for Applicant.

STATE OF IDAHO,

County of Butte

ss.

John Techick

and

DeVon R. Jensen

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at Moore, Idaho, that he is a user of water from the Harger Ditch Company canal, in Water District No 27 County of Butte, State of Idaho; that he has read or heard read the foregoing affidavit and petition of John P. Fabrick and is familiar with its allegations and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge; and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

John Techick
DeVon R. Jensen

Subscribed and sworn to before me this

24th

day of May

A. D. 1941

W. H. Hoyer

Notary Public for Idaho,
Residing at Arco, Idaho.

STATE OF IDAHO,

County of Custer

ss.

I, J.H. Pearson

, Watermaster of Big Lost River

Water District No. 27, County of Custer, Butte, State of Idaho, whose postoffice address is Mackay, Idaho, have read or heard read the foregoing affidavit and petition of John P. Fabrick, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the Commissioner of Reclamation issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons:

J.H. Pearson

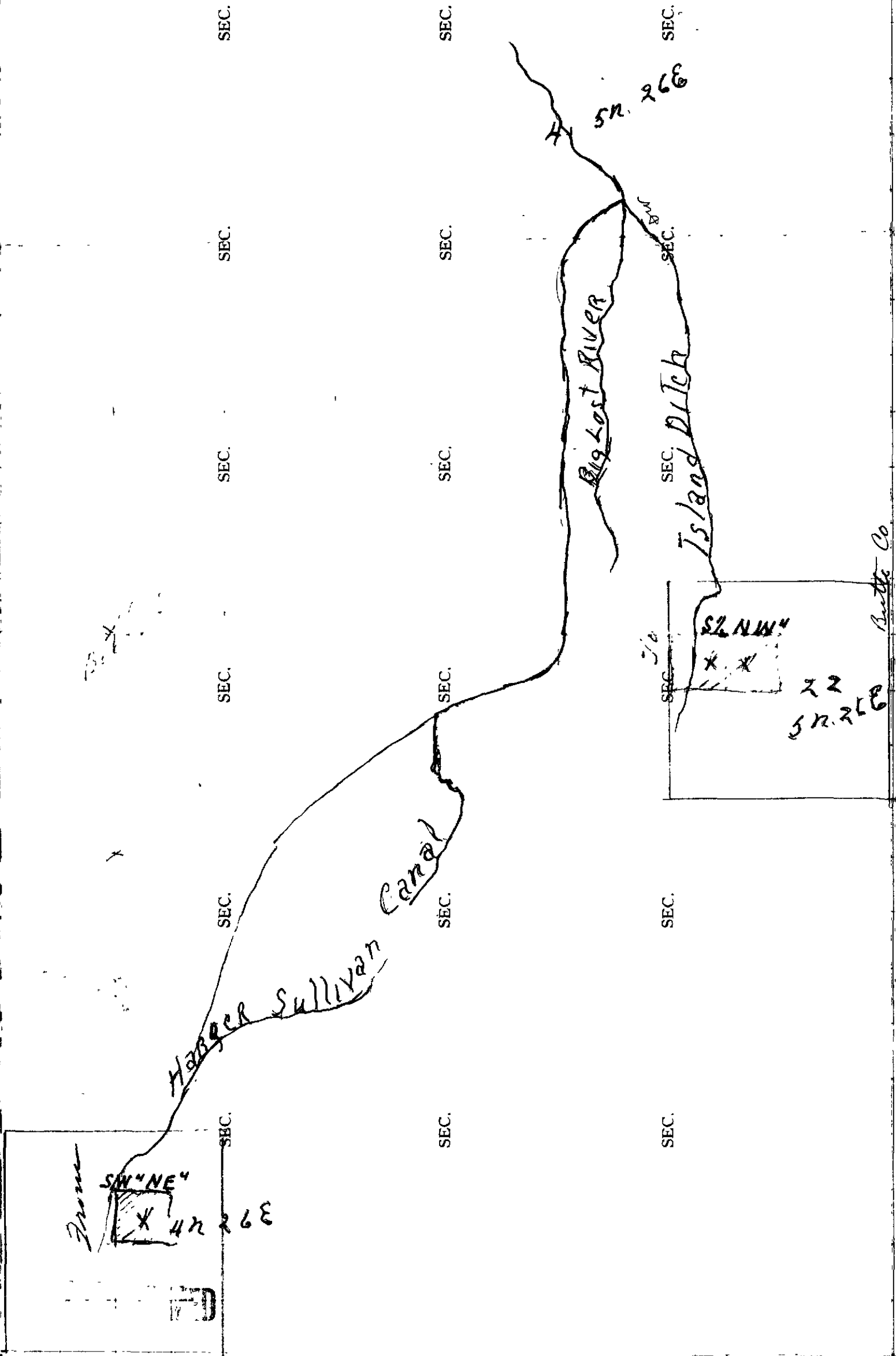
.. Watermaster Dist. No. 27

Dated at Mackay,

, Idaho, this 6th

day of June

, 1941



Application for Transfer of Water Right

MONTANA
STATE OF

County of Gallatin

SS.

RECEIVED

JUN 7 1941

Department of Reclamation

JOHN P. FABRICK

, being first duly sworn, deposes and says:

That his name is **John P. Fabrick**, that he is of lawful age, a citizen of the United States and of the State of **Montana**, and that his postoffice address is **Bozeman, Montana**,

That he is the owner and using a certain water right, bearing date of priority of May 20, 1884.

for **40 inches** cubic feet per second of the waters of **Big Lost River**

County of **Custer and Butte** State of Idaho, decreed to **Emma A. Harger**

by decree of Judge, **S.E. Farrington** of the Judicial District of the State of

Idaho, in and for the County of Custer and Butte, in the case of Utah Construction Company

vs. John Abbott ET AL, said decree bearing date of May 20 1984

(or obtained by virtue of License No. _____, issued by the State Engineer or the Commissioner of _____)

Reclamation of the State of Idaho, dated _____, 19____, bearing date of priority

of _____, 19____) for the purpose of irrigating the following described lands situate, lying

and being in water District No **27** in the County of **Butte** and State of Idaho, to-wit.

southwest quarter of the northeast quarter (S 4 of N 1) of section
nineteen (19) in Township four (4) north of range twenty-six (26)
east of the Boise Meridian.

and is the person (or representative of

the corporation) to whom such right so issued, or has become the owner thereof in the following manner, i. e.

by succession in ownership

as per abstract of title of said water right hereto attached and made a part of this statement:

That said waters are now diverted from said stream in the South East Quarter of Section ~~Four~~^{Four} of Section ~~Four~~^{Four}, Township ~~Five~~^{Five} North, Range ~~Twenty six~~^{Twenty six} East, B. M., and conducted to the above described lands through the ~~harger~~^{larger} Ditch Company canal as per map herewith and of this affidavit made a part;

That affiant and petitioner desires to abandon the use of **40 inches** cubic feet per second of said water upon the above described land, and to convey and use same upon the following tract, situate, ~~lying and being~~ lying and being in the County of **Butte** and State of Idaho, to-wit:

the south half of the northwest quarter (S $\frac{1}{2}$ of N $\frac{1}{4}$) of section twenty-two (22) in Township five (5) north of range twenty-six (26) east of the Boise Meridian

That his reasons for desiring to make such transfer are as follows:

to avoid water shrinkage due to present long mileage of ditch delivery

RECORDED

That he intends to divert and convey said **40 inches** second feet of water to the tract of land last above described in the following manner, to-wit:
by already established canal system

as set forth upon the map herewith; and that no one will be injured by such transfer.

WHEREFORE, Affiant and Petitioner prays that the Commissioner of Reclamation of the State of Idaho issue to him the proper certificate authorizing such transfer, in accordance with the provisions of Section 5582 of the Idaho Compiled Statutes.

Subscribed and sworn to before me this

A. D. 19 **41**.

John P. Fabrick
for Applicant.
15th day of **March**
E. F. Brinker
Notary Public for State of Montana
Residing at Bozeman, Montana
Commission Expires, December 11, 1943

APPLICANT WILL ANSWER THE FOLLOWING QUESTIONS

From what stream is the water now diverted? **Big Lost River**
Where is the diversion point now located? **See map**
Through what ditch is it now conducted? **Harger Ditch Co.**
How much land is now irrigated by the water sought to be transferred? **about 30 acres**
Give the description: **the east 30 acres in SW $\frac{1}{4}$ of NE $\frac{1}{4}$ of Section 19, in Township 4 North of Range 26 East of the M. P. M.**
What is the total amount of water in inches, or second feet, dedicated to said land? **40 inches**
What kind of crops are being raised? **alfalfa and small grain**
How much water per acre is now required to irrigate said land?
What will be the effect on the land now irrigated, if the use of water on it is discontinued?
Will be abandoned

Give location of new point of diversion, if change is to be made

Through what ditch will it be conducted after transfer? **Island Ditch**

How much water will be required per acre to irrigate the land to which this water is transferred?

Do you claim any other water right for the land from which you seek to abandon the use of this water?

No

If so, give amount, date and source

Is there now any other water right for the land to which you seek to make this transfer? If so, give amount, date and source **80 inches-priority June 1, 1895-Big Lost River**

Signed

John P. Fabrick
for Applicant.

STATE OF IDAHO,

County of **Butte**

} ss

John Techick

and **DeVon R. Jensen**

being first duly sworn, each for himself, and not one for the other, deposes and says: That he is a citizen of the United States and of the State of Idaho, residing at **Moore, Idaho,** that he is a user of water from the **Harger Ditch Company Canal**, in Water District No. **27** County of **Butte**, State of Idaho; that he has read or heard read the foregoing affidavit and petition of **John P. Fabrick** and is familiar with its allegations and with the water right and lands therein mentioned and described and is not in any way interested in either, nor in any way related to said petitioner; that the statements and allegations therein made are true of his own knowledge, and that no one will be injured by the granting of the certificate authorizing the transfer therein petitioned.

John Techick
DeVon R. Jensen

Subscribed and sworn to before me this

24th

day of **May**

A. D. 19 **41**

[Signature]
Notary Public for Idaho,
Residence at Arco, Idaho

STATE OF IDAHO,

County of **Custer**

} ss.

I, **J.H. Pearson**

, Watermaster of **Big Lost River**

Water District No **27**, County of _____, State of Idaho, whose postoffice address is **Mackay, Idaho**, have read or heard read the foregoing affidavit and petition of **John P. Fabrick**, and, of my own knowledge, believe the same to be true as to all matters therein alleged, and that no one will be injured by the transfer prayed to be authorized; and I hereby endorse my approval of said petition, and request that the Commissioner of Reclamation issue the certificate of transfer as petitioned; or (do not approve of the issuance of the certificate of transfer prayed for) for the following reasons:

J. H. Pearson

, Watermaster Dist. No. **27**

Dated at **Mackay**, Idaho, this **6th**

day of **June**, 19**41**

