

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

Frac. Township N^o 27 North Range N^o 56 East of the Principal Meridian Montana

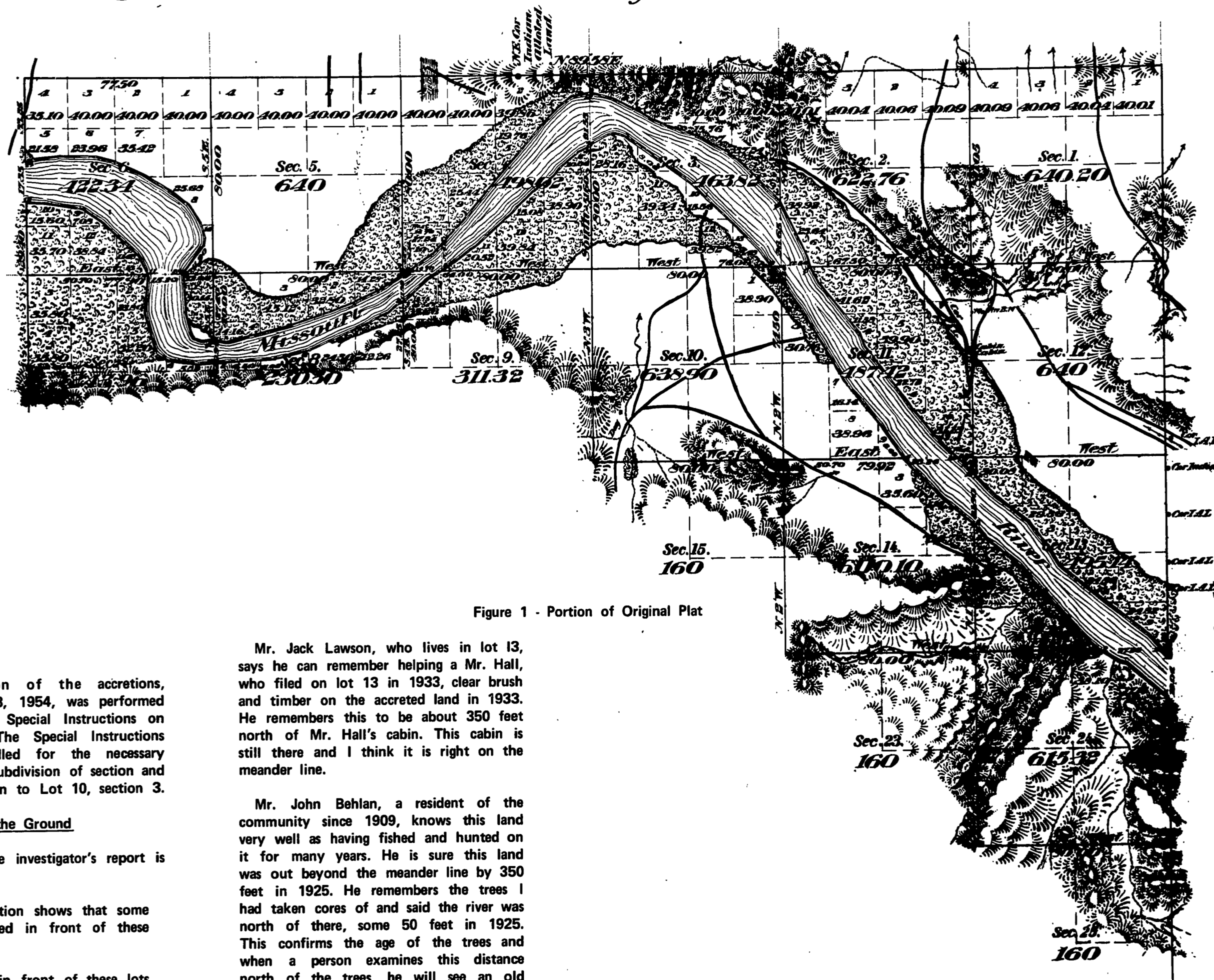
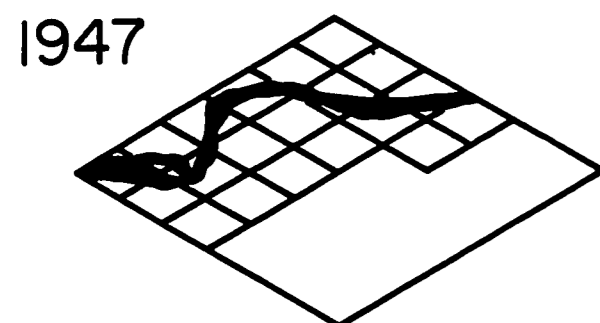
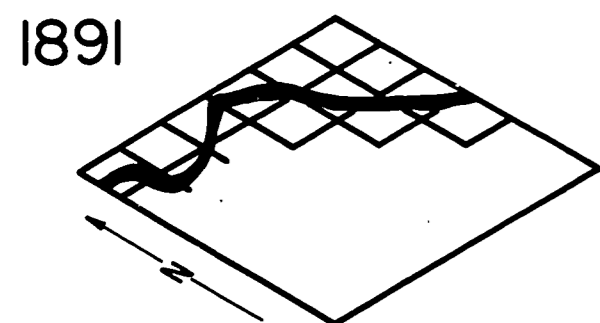


Figure 1 - Portion of Original Plat



Special Instructions

An investigation of the accretions, completed November 3, 1954, was performed prior to issuance of Special Instructions on November 5, 1954. The Special Instructions for Group 480 called for the necessary dependent resurveys, subdivision of section and survey of the accretion to Lot 10, section 3.

Conditions Found on the Ground

A portion of the investigator's report is quoted as follows:

"...The investigation shows that some accretion had formed in front of these lots by 1920.

About 300 feet in front of these lots are a number of trees of which borings were taken. These trees were of 27, 32 and 31 years of age. In front of Lot 6, section 3, there are many stumps which were cut in the last year. I counted four of these and the count was 26, 33, 34 and 40 years of age. There are some larger trees very near the old meander line. In fact I could not see much difference in the sizes of the trees on either side of the meander line. Where I presumed the old meander line was [the ground] is covered with a thick growth of trees and brush. Part of the accretion land has been cleaned and the land next to the water is still lower and is covered with a dense growth of willows. This, they say, is submerged during high water.

Mr. Jack Lawson, who lives in lot 13, says he can remember helping a Mr. Hall, who filed on lot 13 in 1933, clear brush and timber on the accreted land in 1933. He remembers this to be about 350 feet north of Mr. Hall's cabin. This cabin is still there and I think it is right on the meander line.

Mr. John Behlan, a resident of the community since 1909, knows this land very well as having fished and hunted on it for many years. He is sure this land was out beyond the meander line by 350 feet in 1925. He remembers the trees I had taken cores of and said the river was north of there, some 50 feet in 1925. This confirms the age of the trees and when a person examines this distance north of the trees, he will see an old river bank approximately five feet high, which shows the river may have been there for a number of years.

Mr. Jesse L. Hall of Culbertson, son of the Hall who homesteaded on Lot 13, stated the same as above. He remembers the river north of these same trees at the time his father moved there, for it was his job to dip water out of the river.

From the above evidence that I have gathered, we can come to the conclusions that the accretion formed onto these lots was by the slow process of reliction [addition] to the right bank of the river. Evidence gathered shows that by 1920 this accretion was out about 350 feet

from the meander line. The river apparently was at this point for quite a number of years, for the accretion beyond this point is rather new. There is no trees on this new accretion and from evidence gathered not over 15 years of age. The question arises as to whether it is considered a substantial amount of accretion. If it is not, the Government could not claim the land under the Madison vs. Basart [59 ID 415] decision. This would also naturally depend on when the lots bordering the accretion land were filed on, which dates I do not have at this time."

History of Surveys

1891 James M. and Rodney W. Page surveyed the north boundary and a portion of the subdivisional lines of T. 27 N., R. 56 E., Principal Meridian, Montana, as shown on the plat approved February 9, 1893. See figure 1.

1947 Andrew Nelson dependently resurveyed the north boundary and a portion of the subdivisional lines. His plat was accepted July 20, 1949. See figure 2.

Other surveys affecting the township were performed by A.W. Mahon, W.B. Kimmell and Ranney Y. Lyman but do not affect this portion of the survey.

Reasons for Request of this Survey

The Nelson plat shows an area of accretion to sections 3, 10 and 11, which was not surveyed in 1947.

An application in 1954 for homestead entry filed on Lot 10, section 3 precipitated this survey.

The field report on the entry confirmed the substantial accretion to Lot 10, as indicated on the 1947 survey. On October 26, 1954, the State Supervisor (Montana State Director) requested a survey of the accreted land attached to Lot 10.

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

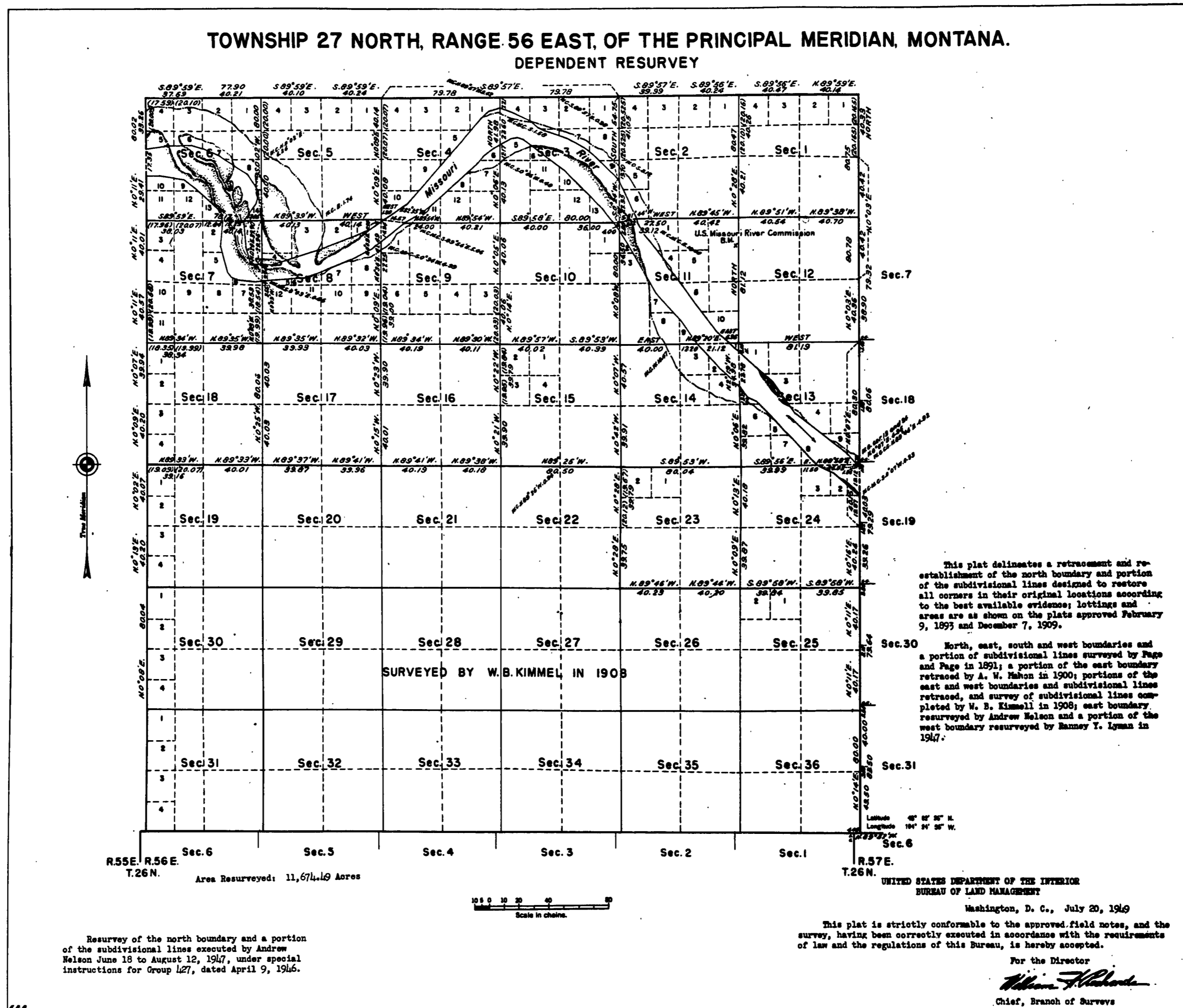


Figure 2 - Dependent Resurvey in 1947

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

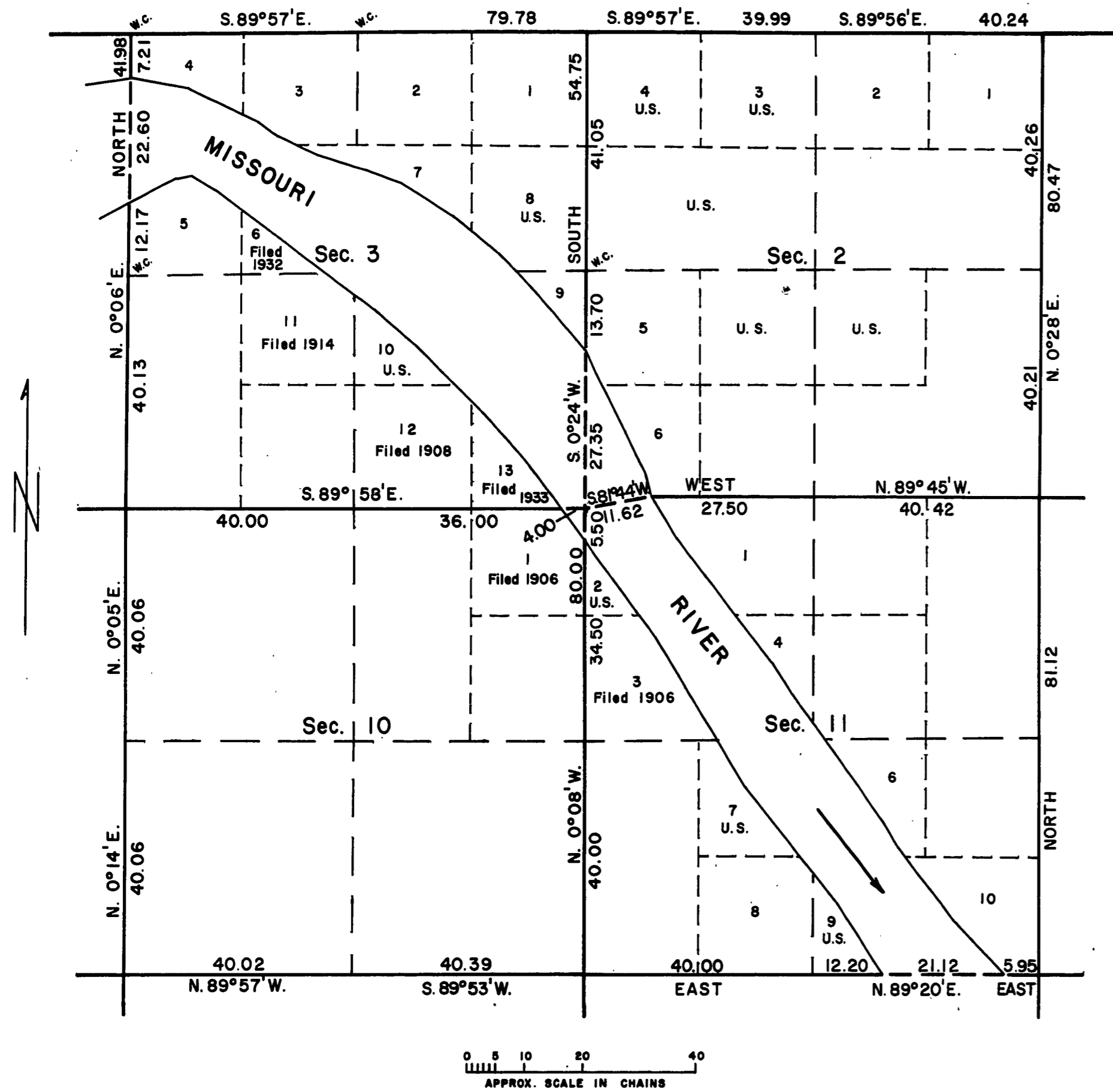


Figure 3 - Survey Records and Status

1891 RECORD MEANDERS

From M.C. Secs. 11 & 14, upstream

Right Bank	Left Bank
N. 35° W., 15.00	N. 45° W., 14.00
N. 39° W., 26.00	N. 39° W., 15.00
N. 30½° W., 30.00	N. 31° W., 5.00
N. 33½° W., 11.00	N. 37° W., 27.00
N. 34½° W., 7.89 to MC Secs. 10&11	N. 25° W., 5.00
N. 36° W., 6.80 to MC Secs. 3&10	N. 31° W., 8.27 to MC Secs. 2&11
N. 37° W., 9.30	N. 15° W., 3.70
N. 43½° W., 12.00	N. 27° W., 25.80 to MC Secs. 2 & 3
N. 45½° W., 17.00	N. 41¾° W., 15.00
N. 49½° W., 9.50	N. 43¾° W., 7.50
N. 54° W., 35.00	N. 51½° W., 9.00
N. 75½° W., 4.70	S. 80½° W., 2.50
S. 80½° W., 2.50	N. 61¾° W., 13.00
S. 64° W., 7.30	N. 70½° W., 6.20
S. 60¾° W., 1.55 to MC Secs. 3 & 4	N. 74½° W., 8.60
	N. 65° W., 7.40
	N. 51½° W., 4.70
	N. 64° W., 13.00
	N. 79° W., 10.37 to MC Secs. 3 & 4

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

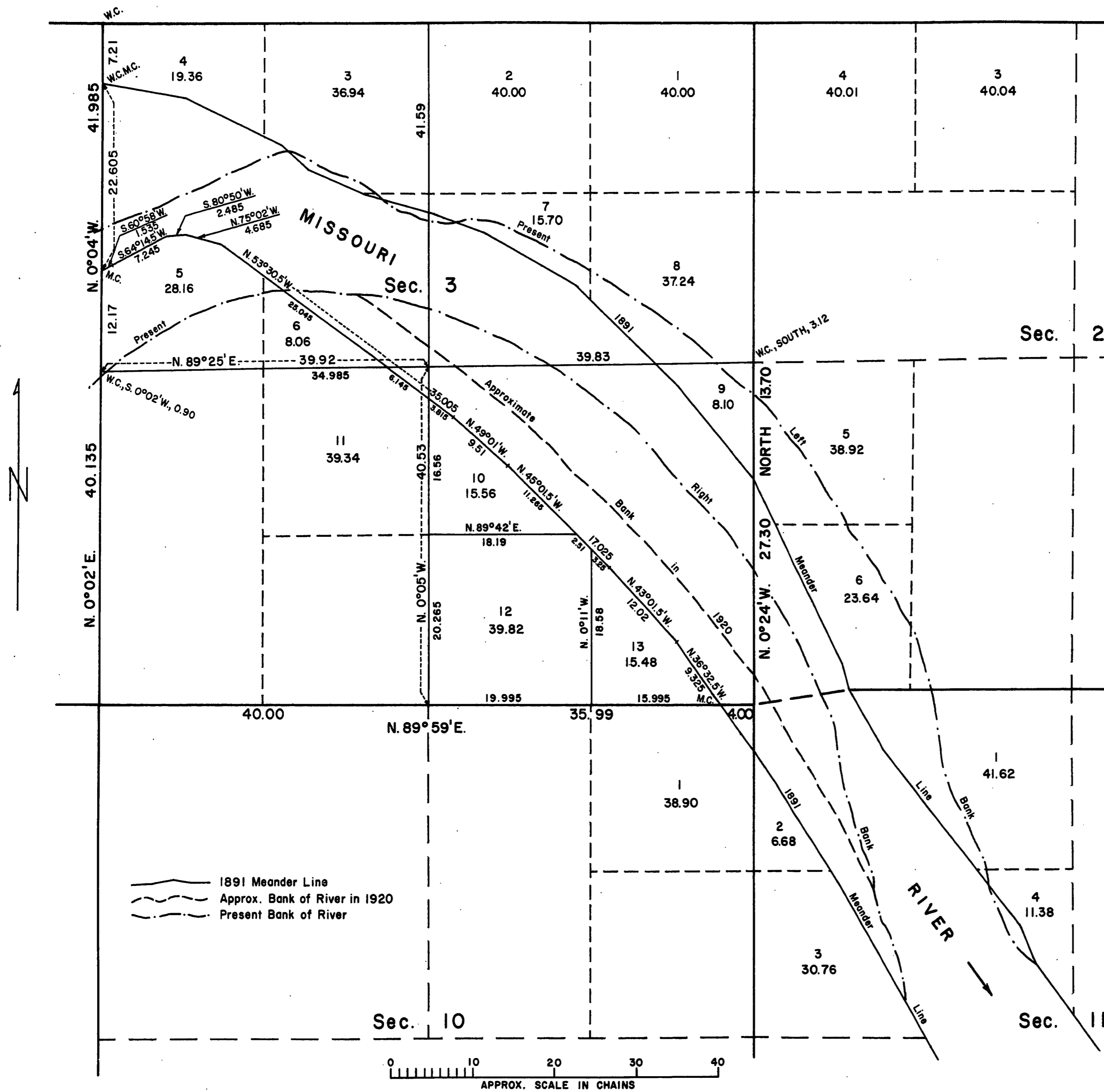


Figure 4 - Present Conditions and Resurvey Data

Figure 3 is a composite of the original and 1947 resurvey records, with land status added, on which any further survey work must be based. Eventually a portion of the boundaries of section 3 were resurveyed and the section subdivided to the extent shown in figure 4.

As part of this resurvey, the record meanders of the right bank, through section 3, were adjusted by the broken boundary method. The meanders of the present right bank were surveyed in accordance with section 3-119 of the Manual of Surveying Instructions, 1973. The witness ¼ section corner of sections 3 and 4, set in 1947, had been destroyed.

The line between Lots 10 and 12 of section 3 was run easterly on a mean bearing between the east-west centerline and the south boundary of the section. The line between Lots 12 and 13 was run on a mean bearing between the north-south centerline and a mean bearing of the south half of the east boundary. This procedure is in accordance with section 3-88 and 3-90 of the Manual of Surveying Instructions, 1973.

Figure 5 is a sketch indicating the original meander line, the present banks of the Missouri River and approximate position of the right bank in 1920, as indicated in the investigation report. The approximate area of accretion in 1920 is indicated in front of each original lot, except Lot 10. For example: Lot 6 was returned on the original plat as containing 8.06 acres. In 1920 approximately 4.4 acres of land had accreted to Lot 6.

The accretion to Lot 10, section 3 was surveyed according to the Special Instructions for Group 480.

A special meander corner was established at the intersection of the north-south centerline with the adjusted original meander line. Another special meander corner was established at the intersection of the line between Lots 10 and 12 with the adjusted original meander line. Angle points numbered 3 and 4, on the adjusted meander line, were permanently monumented, converting this portion to a fixed boundary. New meanders of the present right bank were surveyed.

Field surveys were made to locate the thread of the main channel of the river. Division-of-accretion lines were surveyed from the special meander corners, perpendicular to the thread of the main channel of the river, to the new meander line, where auxiliary meander corners were established. The entire accretion to Lot 10 was platted and designated Lot 14, the next higher number in section 3.

This survey was accepted on April 6, 1955. The plat is illustrated by figure 6.

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

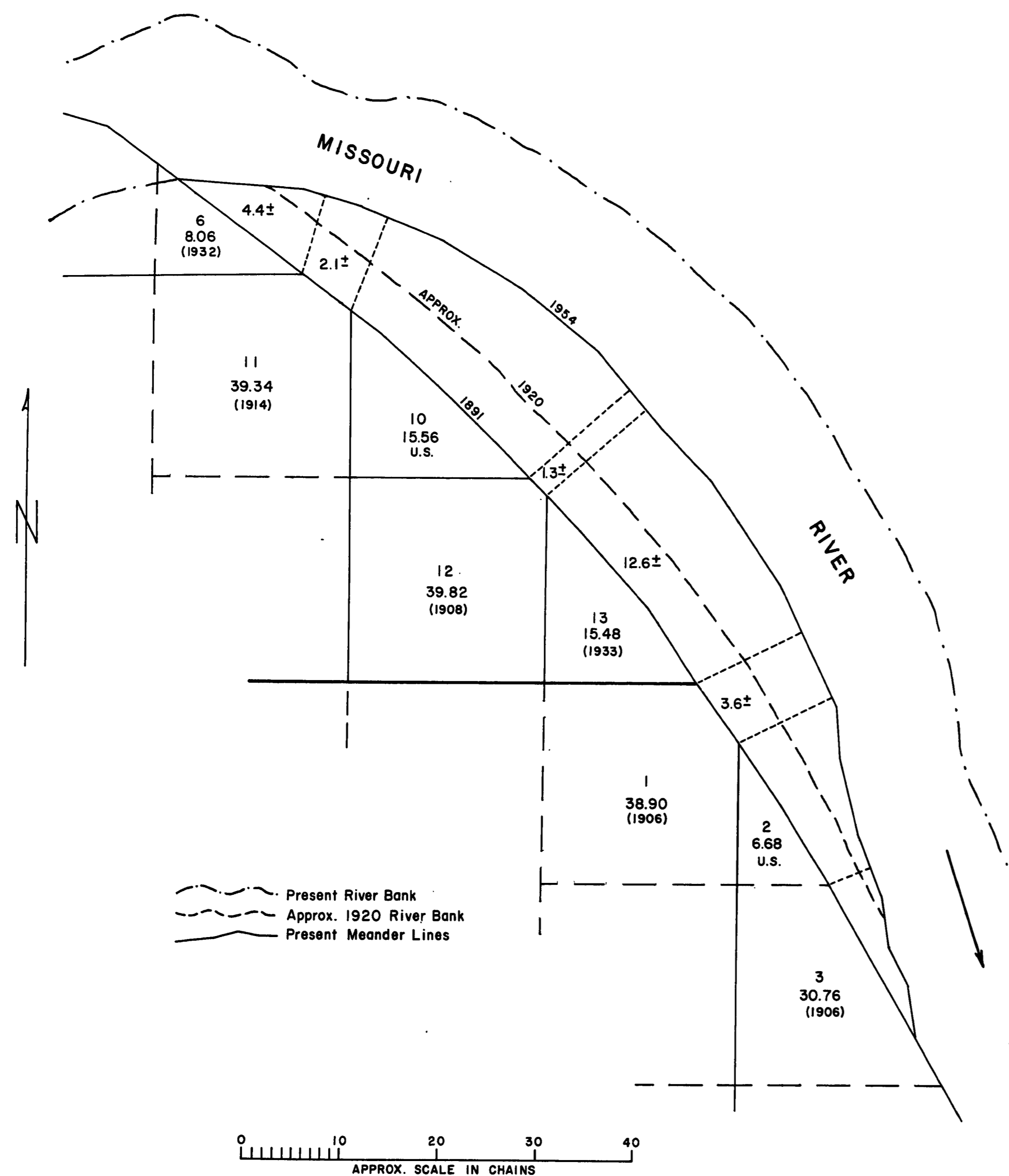


Figure 5 - Areas of Accretions

Preliminary Statement of the Problem

No serious problems were apparent in the restoration of corners of the original surveys. There were two problems which involved the accretions and which were to be solved.

The evidence shows that Page and Page properly meandered the Missouri River in 1891. The official resurvey made in 1947 revealed the approximate extent of accretion. The first problem is to fix the time and area of the accretions to Lot 10. The preliminary investigation indicated that 300 to 350 feet of accretion had built up by about 1920. The second problem concerns settling the question of what constitutes "SUBSTANTIAL" accretion. In the Madison vs. Basart decision, cited in the investigation report, more than a half mile of land had accreted prior to entry. That amount was quite clearly substantial.

There are no sharply drawn decisions which define the term "substantial accretion." It is, however, the duty of the Bureau to protect the public interest in the public lands. If substantial accretion has formed prior to entry, that accretion and all subsequent accretion has been held to be public lands subject to survey and disposal by the government. In the execution of these duties, someone must make the decision to either survey and claim the accretion, or decline to do so.

Regulations

This survey illustrates the application of the following sections of the Manual of Surveying Instructions, 1973:

3-88 to 3-92	Subdivision of fractional sections
3-115 to 3-120	Meander Lines
5-43	Broken boundary adjustments
5-36	Irregular boundary adjustments
7-62 to 7-70	Accretions

Amended Information

On August 3, 1956, the State Supervisor requested investigation and survey of the accretions to the adjacent lots in section 3 and in sections 2 and 11. Because this second investigation was adjacent to the 1954 survey and investigation, the additional information gathered confirmed the 1954 information on the accretions to Lot 10.

As a result of the new information, the Bureau decided to claim the accretion to Lots 6, 11, 12 and 13 of section 3 as public lands. The file on this survey indicates concern in some quarters about this procedure. Nevertheless, Special Instructions were issued on August 9, 1956, for the survey of the accretions to Lots 6, 11, 12 and 13 of section 3.

Final Statement of the Problem

The Special Instructions required survey of the accretions. The original boundaries of the lots had to be established and compared to

the present position of the river bank. Where adjacent ownership lines meet the original meanders, a line must be established to divide the ownership of the accretions. Any accretions to patented land which may be public lands must also be identified.

Solution

The field work, in effect, was a continuation of the 1954 survey concerning Lot 10 only. The area accreted to Lot 6 was designated Lot 16; the accretion to Lot 11 was designated Lot 15; accretions to Lot 12 was designated Lot 17. The area in front of Lot 13 extended into section 2 and was designated Tract 37. The division-of-accretion lines were all run normal to the thread of the main channel of the river. All angle points along the adjusted original meander line were monumented and numbered in sequence. A sketch of the completed field work is shown in figure 4 and figure 7.

The surveys under Group 489 were plated and transmitted to the Washington Office for review and acceptance.

Washington Office review of the returns prompted the memorandum from the Cadastral Engineering Staff officer (Chief, Division of Cadastral Surveys) shown in figure 8.

The survey was not rejected by the memorandum in figure 8 but more conclusive evidence was requested. No evidence was produced in 1957 and the new survey remains unapproved. The monuments have been removed from the ground.

NONSUBSTANTIAL MISSOURI RIVER ACCRETIONS

T. 27 N., R. 56 E., PRINCIPAL MERIDIAN, MONTANA

TOWNSHIP 27 NORTH, RANGE 56 EAST OF THE PRINCIPAL MERIDIAN, MONTANA
DEPENDENT RESURVEY and SURVEY of ACCRETION



United States Department of the Interior
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

July 31, 1958

COPY

Memorandum

To: Area Administrator, Area 3, Denver
From: Director
Subject: Status of land included in survey executed under Group 489 Montana

We have received your memorandum, 5.04b, of April 30 transmitting final returns of the survey of accretion areas fronting on and attaching to lots 6, 11, 12 and 13, sec. 3, T. 27 N., R. 56 E., Principal Meridian, Montana.

Before accretion areas attaching to and lying in front of privately owned lands can be considered public land of the United States it must be determined that they formed and were of substantial size at the date the privately owned lands were entered and patented. See *R. M. Stricker, et al, 50 L.D. 357, decided April 2, 1936* and *Witzmayer v. United States, 118 Fed. 2d, 808*.

According to our records lot 6 was entered 1-23-32; lot 11, 12-11-34; lot 12, 5-29-08; and lot 13, 10-12-33. Lot 6 was patented 10-1-36; lot 11, 11-25-18; lot 12, 9-26-08, and lot 13, 8-4-39. In the report dated November 3, 1956 of the investigation of the accretion area it is stated:

"From the above evidence that I have gathered, we can come to the conclusion that the accretion formed onto these lots was by the slow process of reliction to the right bank of the river. Evidence gathered shows that by 1920 this accretion was out about 350 feet from the meander line. The river apparently was at this point for quite a number of years, for the accretion beyond this point is rather new. There is no trace on this new accretion and from evidence gathered not over 15 years of age."

The investigation did not determine conditions prior to 1920. It is possible, since lot 11 was entered in 1934 and

lot 12 in 1908, that at those dates there was no area formed by accretion existing in front of the two lots. With respect to lot 6, entered in 1932 and lot 13 in 1933, it is apparent from the report that at those dates the accretion areas existing in front of the lots were narrow strips approximately 250 feet wide. This is based on the statement in the report that the accretion area at the date of the investigation in 1956 beyond the 350 foot line was "not over 15 years of age."

Based upon the many court decisions and decisions by the Department with respect to the ownership of accretion areas, this office does not believe that we can claim the present accretion area in front of lots 6, 11, 12 and 13 as public land. The accretion area in front of these lots, based upon the report of the investigation, does not appear to be of sufficient size and extent at the dates the lots were entered to warrant that action. In fact, as previously stated, no evidence has been submitted to show that there was any accretion in front of lots 11 and 12 at the dates those lots were entered.

It was proper to survey the accretion area in front of lot 10, sec. 3 as represented by plat accepted April 6, 1955 as lot 10 was at that date public land of the United States. It should also be realized that if the entire accretion area in sec. 3 is public land it would not be necessary to determine the boundaries of the particular areas attaching to each lot of the original survey.

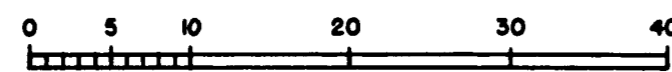
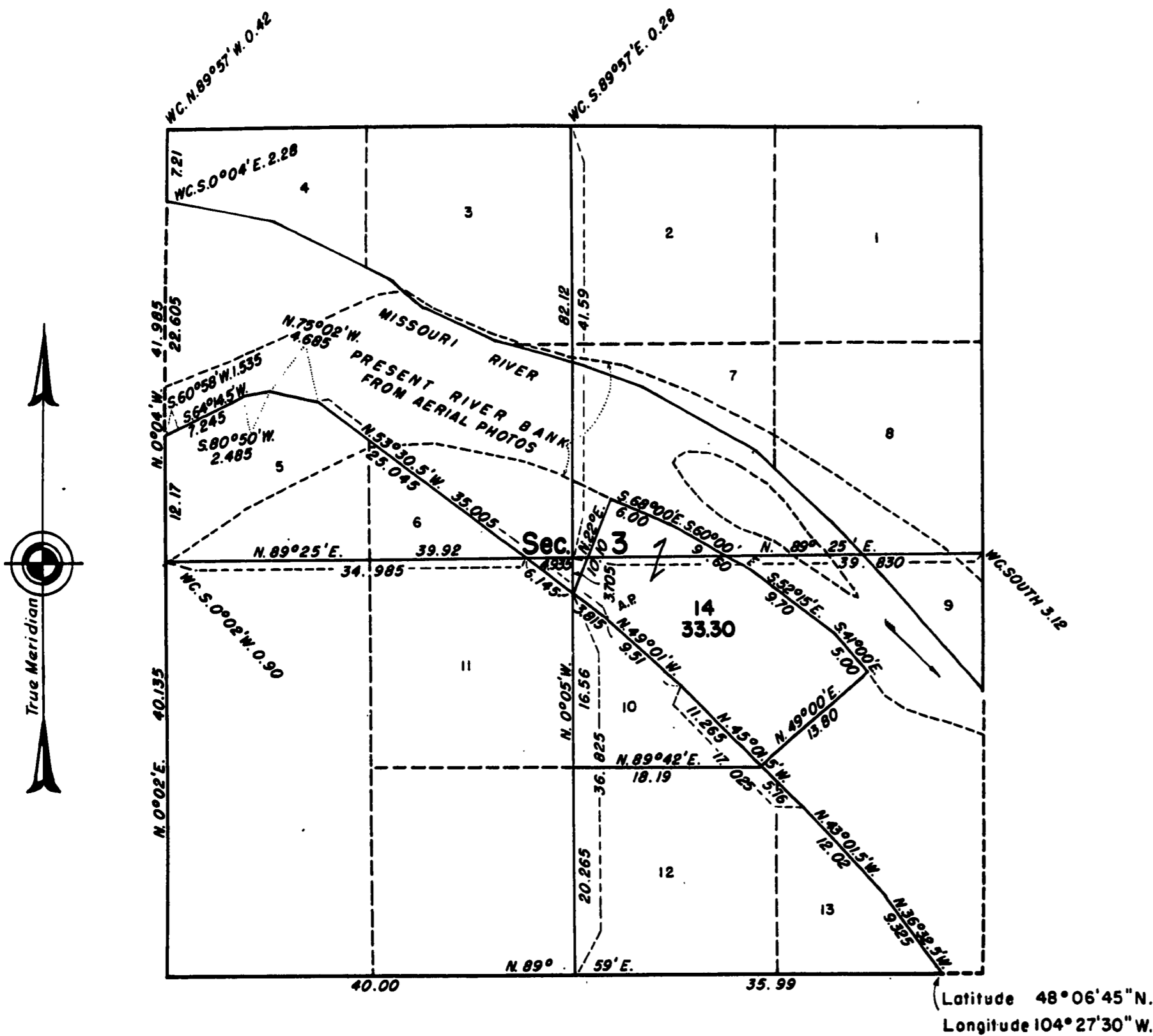
It is possible your office may have other facts with respect to the conditions on the ground than indicated by the report of the investigation as the basis for considering that the accretion areas are public lands belonging to the United States and subject to survey. It is requested that you submit a justification as to the reasons for considering the accretion areas as public land. Our records do not show that the owners of the lots had been advised that we are claiming the accretion areas attaching to those lots. Of course this should be done if it is decided to assert a claim to the accretion areas.

We will withhold action on the case awaiting your statement as the basis for claiming the land as public land subject to survey.

For the Director

(Signed) Earl G. Harrington
Cadastre Engineering Staff Officer

Figure 8 - Washington Office Memorandum



Scale in Chains
Area surveyed: 33.30 acres

Figure 6 - Accepted Accretion Survey

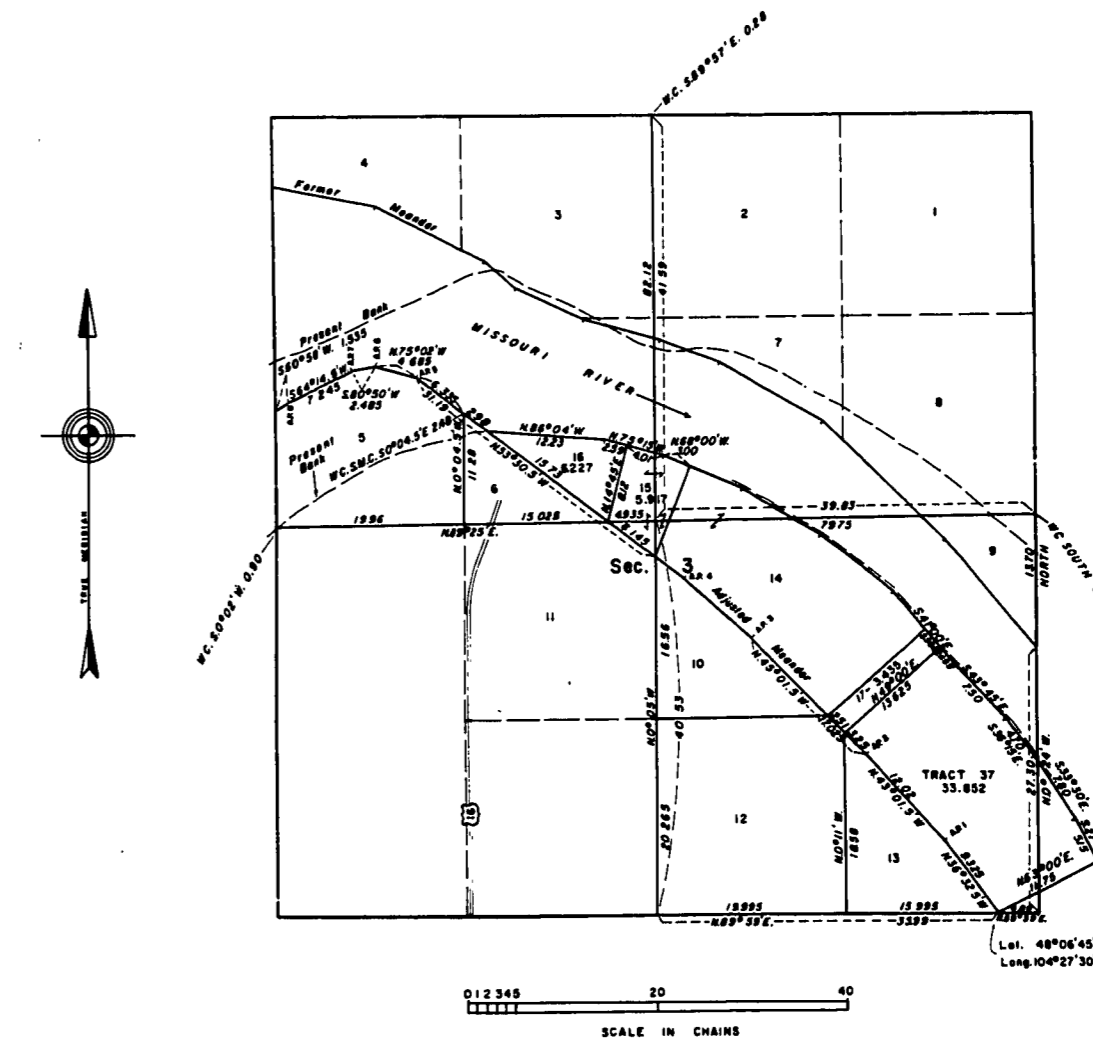


Figure 7 - Unapproved Survey of Accretions