

**Date:** 1/7/2008 & 1/8/2008  
**Agent:** S. Hemenway  
**Claimant:** Patricia B. Smyth  
**WR#** 85-15688  
**Mailing Address:** 1436 Bryden Ave. Lewiston, ID 83501  
**Phone #:** 9208 0 798-1674  
**Attorney Representing:** Albert P. Barker (Barker Rosholt & Simpson LLP)  
**Attorney Address:** 1010 W Jefferson, Suite 102, PO BOX 2139 Boise, ID 83701  
**Attorney Phone/Email:** (208) 336-0700; FAX (208) 344-6034; Email: brs@idahowaters.com  
**Location of POD:** see spread sheet attached  
**System Description:** livestock drink from undeveloped springs (w/85-15496 springs are developed, piped to troughs pictures submitted indicated some developed, piped to troughs, and overflow going to ditches) w/85-15688, undeveloped springs run free in open ditches throughout POU.  
**Measuring Device:** N/A for small *de minimus* stockwater  
**Field Exam:** <0.20 cfs, no field exam required. (pictures in legal file show claimed PODs/POU)  
**Nonirrigation Uses:** stockwater 80 head cattle  
**Other Uses:** NONE  
**Other WRs Used:** 85-15496 (6/16/2007 split per partition action into 85-15692/Smyth and 85-15691/Lillehaug)  
**Supplemental Water:** NONE  
**Basis of Claim:** Beneficial Use  
**Purpose:** stockwater 1/1 - 12/31  
**Priority Date:** 12/31/1918 (based on 85-15496 partial decree which had same priority date)  
**Evidence of Priority:** M. Louise and Warren E. Braucher filed Notice of Claim in the SRBA, Civil No. 39576, 11/18/2004, claiming a priority of 12/31/1918. Partial Decree Filed 8/18/2005.  
 Photos of developed and undeveloped springs, trough, pasture area, ditches; maps; partial decree for 85-15496

#### **NOTES:**

**9/22/2006 Amended Claim submitted by Smyth for 85-15496**, corrected legal descriptions for POU and added PODs which were not originally claimed.

**\*10/30/2006 letter** from Patricia Smyth stating NESE L17 is owned by Kinser, (correct lot is L18) and stated finding additional PODs/POU that were not included on 1st claim (85-15496), that needed to be added (after public meeting held in Riggins 9/6/2006 Michael surveyed and documented property and found additional PODs/POU--see map--that had not already been claimed----Subcase 85-15496 order to modify)

**\*11/29/2006 Order** stating that POU/POD in L17(NESE) should not be included because said real property is owned by someone else.

**\*12/1/2006 email** in file from Ken Knoblock, indicates that he contacted the

**NOTES (continued):**

county assessors office, and L17 is owned by Kinser, and L18 is owned by Lillehaug. (This was a clerical error)

**Quitclaim Deeds in the file** were "interest in undivided lots."

**12/20/2006** letter in file from Merrily Munther, Attny for Lillehaug, gives background info on property: Ellna Lunders passed away and left property to 3 granddaughters, each split off 1/4 interest and given to a 4th granddaughter (subject to a life estate of Ellna's daughter Louise Braucher, who passed away 12/28/2005). Two granddaughters conveyed interest in land: Darlene Lillehaug and Patricia Smyth, who went through litigation to have the property apportioned between them.

**Case No. CV-2006-000007, RESOLVED 4/18/2007**, by Judge John Bradbury (Order Partitioning Real Property). In the order, it states Smyth's and Lillehaug's property.

Smyth got house and land (domestic/stockwater); Lillehaug got land (stockwater)

**1/30/2007 Supplemental Director's Report:** Dept. found L17 erroneously claimed and was amended to Lot 18, but Dept did not agree that the additional PODs sought were erroneously excluded due to a clerical error.

**4/25/2007 letter by Albert Barker/attny** for Lillehaug, stating they do not wish additional PODs/POU.

**6/29/2007** Albert Barker/attny. Sent an Amended Notice of claim to WR#85-15688 (claims additional POD on Smyth's property lots 21 & 20, and deletes Lillehaug as a claimant; duplicate PODs/POUs that were claimed on 85-15692 were deleted.

Darlene Lillehaug was removed from this WR.

**12/17/2007** Patricia Smyth and Darlene Lillehaug filed a Motion to File Late Notice of Claim 85-15688.

**8/2/2007 Split of WR & Change of ownership completed**(85-15496 split into 85-15691 & 85-15692)

**85-15496 System:** developed springs piped to house and troughs. There are 2 POD in L5

**No pictures** were in the files showing POU for L4, L12 or L13, but 1:4881 scale on the 2004 NAIP map indicates location of POD in L21 with ditches that traverse down and across L12, L13, and on to L4.

**POD:** 2004 NAIP, and Topo map indicate springs tributary to N. Fork Willow Ck.

**DIFFICULTY FINDING CORRECT LOTS ON ARCVIEW:** L4 shows up on ArcView as L3, unless you make an individual shapefile where it is located, go to QQ info, and then it shows as L4. The same is true with L20 being included in L19, and L12 as L11.

**Recommendation:**

**C18 partial decree is subject to such general provisions...Sec.42-1412(6) Idaho Code.**

**N11WR is not a determination of historical beneficial use.**

**N13 Not exceed 13,000 gpd**

**X02, 80 HEAD CATTLE, 0.03 CFS, PER TABLE 1 REC. DIV. RATES EXH15A FOR 51-100 HEAD**

Overlapping PODs and POUs for multiple de minimus domestic and/or stockwater rights with the same elements cannot be recommended by the Department in the SRBA. Idaho Code 42-111 and 42-1401A (disallow POU L5, L18, L19, since included in 85-15692) .

| POD                                                                                                                                                                                                    | 85-15496 | 85-15692 Smyth | 85-15691Lillehaug | 85-15688 Smyth | Smyth | Lillehaug Property |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|----------------|-------------------|----------------|-------|--------------------|
| Spring/trib. To N. Fork Willow Ck. L5(SENENW) Sec.2 T32N R2W                                                                                                                                           | X        | X              |                   |                | X     |                    |
| Spring/trib. To N. Fork Willow Ck. L19(NWSE) Sec.2 T32N R02W                                                                                                                                           | X        | X              |                   |                | X     |                    |
| Spring/trib. To N. Fork Willow Ck. L26(SESE) Sec.2 T32N R2W                                                                                                                                            | X        |                | X                 |                |       | X                  |
| Spring/trib. To N. Fork Willow Ck. NWNE Sec. 11 T32N R2W                                                                                                                                               | X        |                | X                 |                |       | X                  |
| Spring/trib. To N. Fork Willow Ck. L5(SENENW) Sec.2 T32N R2W                                                                                                                                           | X        | X              |                   |                | X     |                    |
| Spring/trib. To N. Fork Willow Ck. L18(NESE) Sec.2 T32N R2W                                                                                                                                            |          | X              |                   |                | X     |                    |
| Spring/trib. To N. Fork Willow Ck. L21(SENW) Sec.2 T32N R2W                                                                                                                                            |          |                |                   | X              | X     |                    |
| Spring/trib N. Fork Willow Ck. L20(NWSE) Sec.2 T32N R2W                                                                                                                                                |          |                |                   | X              | X     |                    |
|                                                                                                                                                                                                        |          |                |                   |                |       |                    |
| POU                                                                                                                                                                                                    | 85-15496 | 85-15692 Smyth | 85-15691Lillehaug | 85-15688 Smyth |       |                    |
| Domestic L5(NENW) Sec.2 T32N R2W                                                                                                                                                                       | X        | X              |                   |                | X     |                    |
| Stockwater L5(NENW) Sec.2 T32N R2W                                                                                                                                                                     | X        | X              |                   | X              | X     |                    |
| Stockwater L17(NESE) Sec.2 T32N R2W                                                                                                                                                                    | X        | *****          | *****             | *****          |       |                    |
| Stockwater L19(NWSE) Sec. 2 T32N R2W                                                                                                                                                                   | X        | X              |                   | X              | X     |                    |
| Stockwater L26(SESE) Sec.2 T32N R2W                                                                                                                                                                    | X        |                | X                 |                |       | X                  |
| Stockwater NWNE Sec.11 T32N R2W                                                                                                                                                                        | X        |                | X                 |                |       | X                  |
| Stockwater L18(NESE) Sec.2 T32N R2W                                                                                                                                                                    |          | X              |                   | X              | X     |                    |
| Stockwater L4(NWNE) Sec.2 T32N R2W                                                                                                                                                                     |          |                |                   | X              | X     |                    |
| Stockwater L12(SENW) Sec.2 T32N R2W                                                                                                                                                                    |          |                |                   | X              | X     |                    |
| Stockwater L13(SWNE) Sec.2 T32N R2W                                                                                                                                                                    |          |                |                   | X              | X     |                    |
| Stockwater L20(NWSE) Sec.2 T32N R2W                                                                                                                                                                    |          |                |                   | X              | X     |                    |
| Stockwater L21(NESW) Sec.2 T32N R2W                                                                                                                                                                    |          |                |                   | X              | X     |                    |
|                                                                                                                                                                                                        |          |                |                   |                |       |                    |
| There are 2 PODs in L5, and 2 PODs in L18 (see survey map by Mr.Smyth)                                                                                                                                 |          |                |                   |                |       |                    |
|                                                                                                                                                                                                        |          |                |                   |                |       |                    |
| *****11/29/2006 Order stating that POU/POD in L17(NESE) should not be included because said real property is owned by someone else.                                                                    |          |                |                   |                |       |                    |
| (should have read L18(NESE), which is their property)                                                                                                                                                  |          |                |                   |                |       |                    |
| Overlapping PODs and POUs for multiple <i>de minimus</i> domestic and/or stockwater rights with the same elements cannot be recommended by the Department in the SRBA, Idaho Code 42-111 and 42-1401A. |          |                |                   |                |       |                    |
| FOR 85-15688, DISALLOWED: POU CLAIMED IN L5,L19, AND L18, SINCE IT WAS ALREADY CLAIMED IN 85-15692.                                                                                                    |          |                |                   |                |       |                    |
|                                                                                                                                                                                                        |          |                |                   |                |       |                    |
| 4/18/2007 Judge John Bradbury, Order Partitioning Real Property.                                                                                                                                       |          |                |                   |                |       |                    |



# Idaho Department of Water Resources

SRBA Recommendation:

**85-15688**

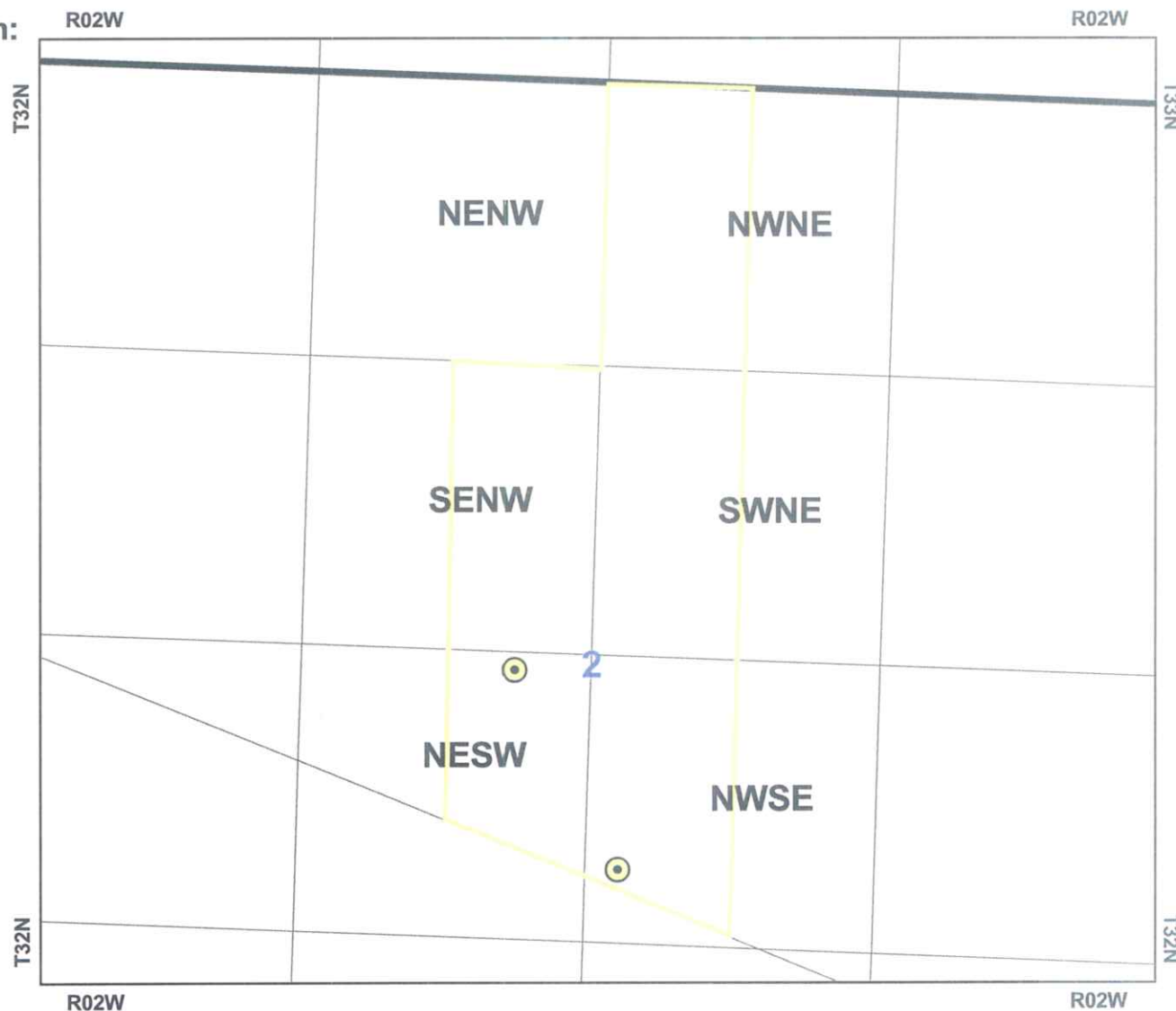
(Stockwater)

## Legend

- Point of Diversion
- Place of Use
- Townships
- PLS Sections
- Quarter Quarters



Lewis County  
IDWR Basin 85



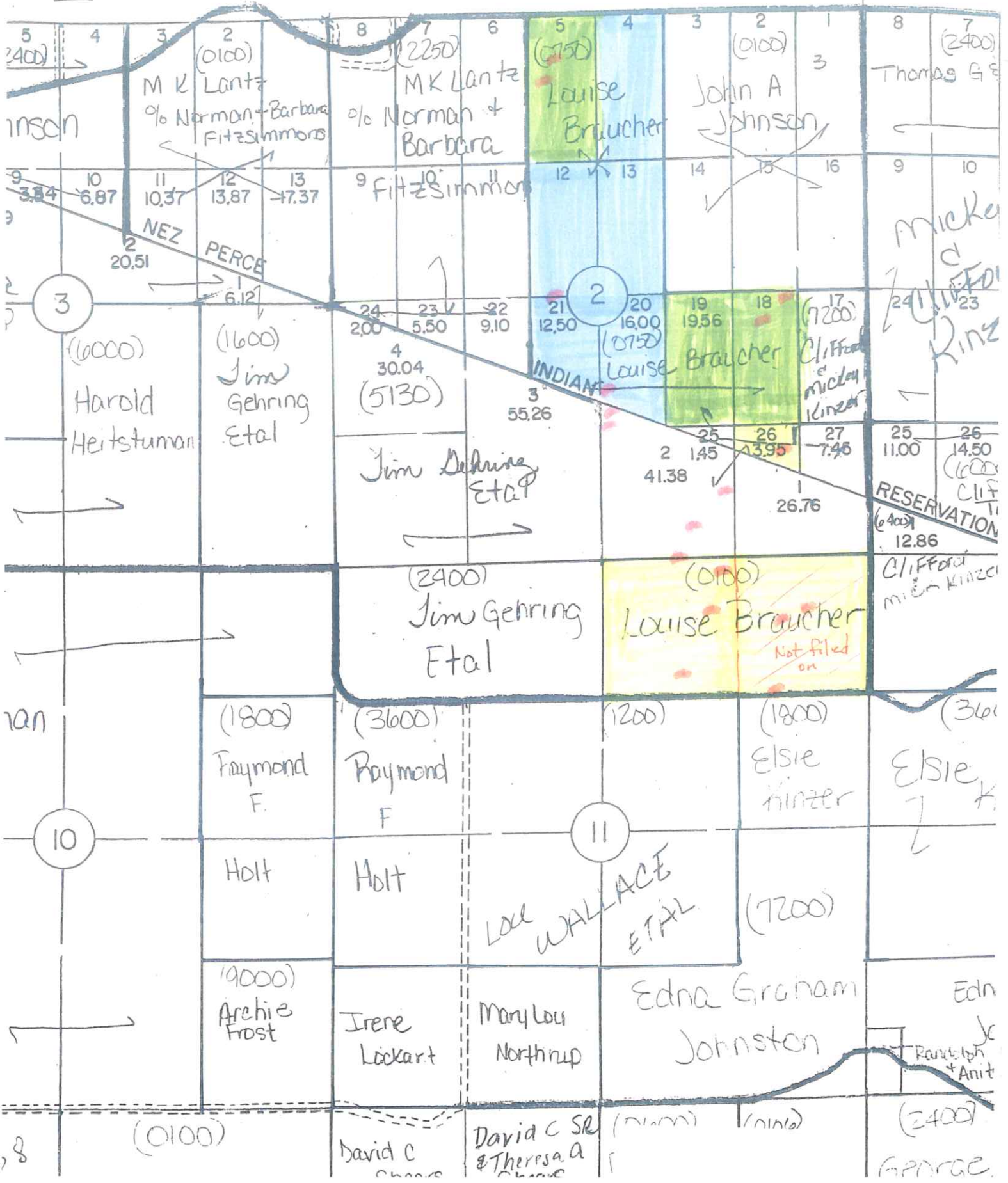
0 0.3 0.6 Miles

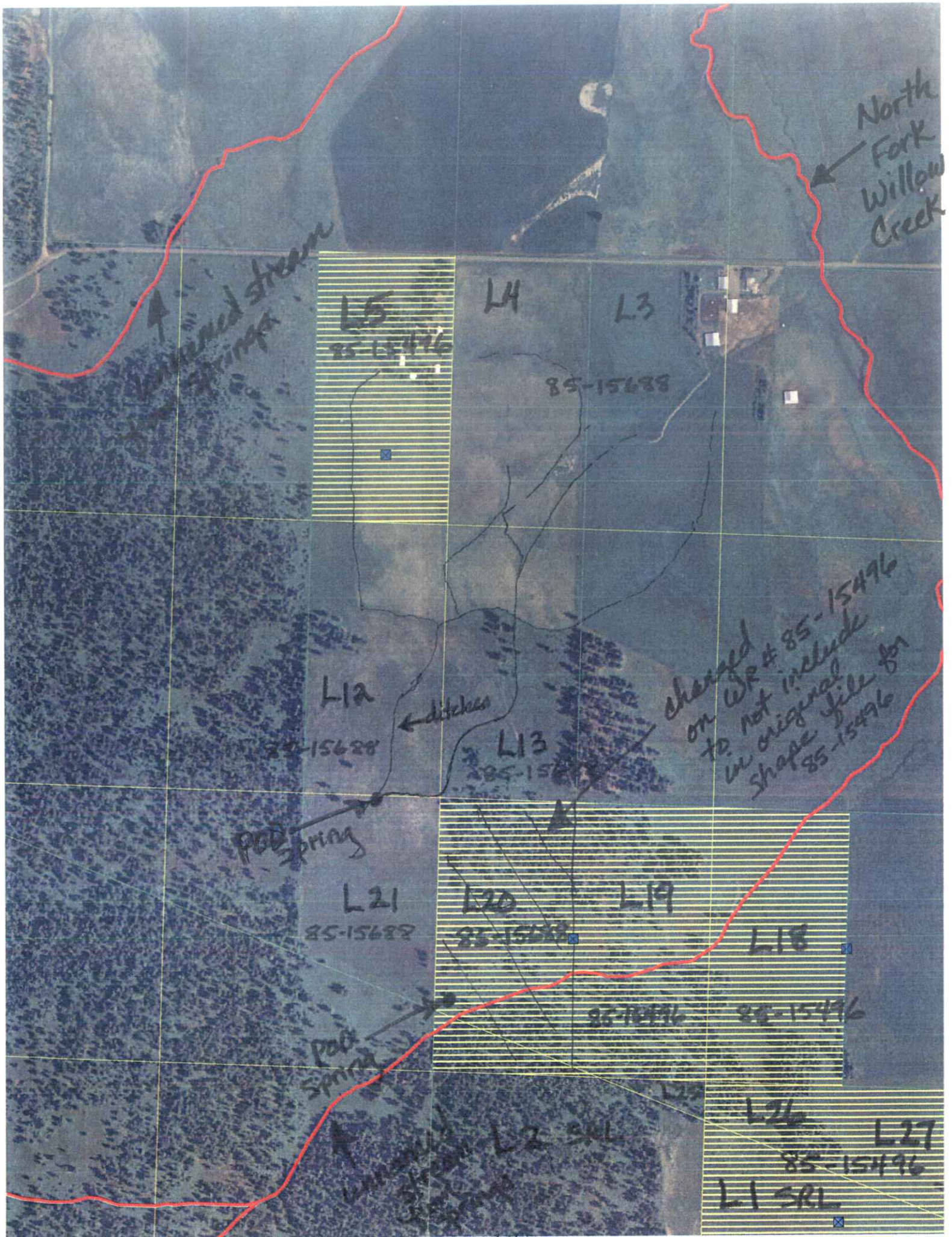
Prepared by S. Hemenway  
On Wednesday, January 9, 2008  
1987/88 Aerial Photography

Survey Map  
indicating POD  
drawn by Mr. Smyth

POD's

POU claimed:  
 85-15692  
 85-15691  
 85-15688





North Fork Willow Creek

↑  
Lined stream  
Spring

L5  
85-15496

L4

L3

85-15688

L12

85-15688

← ditchless

L13

85-15688

changed  
on WR # 85-15496  
to not include  
in original file for  
shape 85-15496

POB Spring

L21

85-15688

L20

85-15688

L19

L18

85-15496

85-15496

POB Spring

L2 SRL

L26

L27

85-15496

L1 SRL

L25

Ranch Headquarters

N

# BRAUCHER PROPERTY Homeplace Tract

Property Line

Unit Bdry

Road System

Class II Stream

Section Corner

Spring

Residence

B

A

• ADDITIONAL WATER SOURCE LOCATIONS  
CIVIL CASE # 39576  
ID. # 85-15496 AMENDED  
T32N R2W

2

1

11

12