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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

IN RE THE GENERAL ADJUDICATION
OF ALL RIGHTS TO USE WATER IN THE
GILA RIVER SYSTEM AND SOURCE

CONTESTED CASE NO. W1-11-3312

ORDER REGARDING *De Minimis* Claims and
CLAIM FOR IRRIGATION USE

CONTESTED CASE NAME: *In re Brighthawk LLC*
HSR INVOLVED: San Pedro River Watershed Hydrographic Survey Report
DESCRIPTIVE SUMMARY: Proposed water abstracts prepared for *de minimis* water uses reported in Watershed File Reports (WFR) 115-04-009 and 115-04-ADB-001 and a scheduling conference set for adjudication of irrigation claim.
NUMBER OF PAGES: 16
DATE OF FILING: May 18, 2018

On April 3, 2018, Brighthawk LLC timely filed a proposed form of stipulation providing for the withdrawal of objections to three potential water rights claimed by Brighthawk, LLC. It also submitted a proposed abstract for the water rights and two maps identifying the points of diversion and places of use. No party signed the proposed stipulation or filed an objection to the stipulation or the proposed abstracts. Counsel for Brighthawk, LLC represented that Salt River

1 Project Agricultural Improvement and Power District and Salt River Valley Water User's
2 Association, BHP Copper, Inc., ASARCO LLC and the Yavapai-Apache Nation agreed to the
3 terms of the stipulation.

4
5 ***De Minimis Claims***

6 This case involves *de minimis* claims for water rights analyzed by Watershed File
7 Report nos. 115-04-009 and 115-04-ADB-001 included in the final hydrographic survey
8 report for the San Pedro Watershed ("San Pedro HSR") filed on November 20, 1991. In 1994,
9 the Special Master issued a Memorandum Decision, Findings of Fact, and Conclusions of
10 Law for Group 1 Cases involving Stockwatering, Stockponds, and Domestic Uses, dated
11 November 14, 1994, amended February 23, 1995, approved and modified September 27, 2002
12 ("Decision"). The Decision established the procedures for adjudicating *de minimis* water
13 rights for claims in the San Pedro Watershed.
14

15
16 The form of proposed abstract submitted by Brighthawk, LLC included water rights for
17 stock watering and domestic uses. Proposed water right abstracts, which are attached as
18 Appendix A, have been separately prepared for these *de minimis* water rights analyzed by
19 watershed file nos. 115-04-009 and 115-04-ADB-001.
20

21 **IT IS ORDERED** that ADWR shall review the legal descriptions of the points of
22 diversion and places of use in the attached abstracts and confirm the GPS coordinates for the
23 well listed as a point of diversion in the watershed file report. No adjustment will be made to
24 the legal descriptions to account for the boundaries of the watershed file report. A report
25 shall be filed by ADWR by June 8, 2018.
26

27 Once the proposed water right abstracts for the *de minimis* water uses have been
28 reviewed by ADWR, "the litigants will be provided an opportunity to suggest the correction

1 of mistakes in the proposed abstracts.” Decision, p. 47. Subsequently, these abstracts will be
2 included in a catalog of proposed water rights where they will be subject to very limited set of
3 objections and ultimately in a final decree.
4

5 **Irrigation Claim**

6 Also included in the proposed abstract filed by Brighthawk LLC is a water right for
7 irrigation use for 46.2 acre feet annually to be applied to 6.6 acres of land. Brighthawk, LLC
8 attached two maps to the proposed abstract showing the location of the land in the NE1/4 and
9 NW1/4 of the NE1/4 of Sec. 34 T6S R17E and labelling the points of diversion with GPS
10 coordinates.
11

12 Under Applicable Filings and Decrees, WFR 115-04-ADB-001 lists with respect to this
13 land Statement of Claim 36-59854, Statements of Claimant 39-2673 and 39-14112. The
14 Statement of Claim originally claimed 220 acre feet of water to be used on NE Sec. 34 T6S
15 R17E for irrigation, stock watering and domestic use diverted from Aravaipa Creek and a
16 well. It listed May 16, 1912 as the priority date based on the date that Manuel Zapata
17 received a patent for the land. A copy of the patent is attached to the claim. According to the
18 watershed file report, ADWR determined that the maximum observed amount of water used
19 for irrigation was 46.2 acre-feet on 6.6 acres of land supplied by diversions from Aravaipa
20 Creek and a well. It further found that the irrigated land was located in the N1/2 NE Sec. 34
21 T6S R17E.
22

23
24 Brighthawk, LLC filed an amended Statement of Claim and an amended Statement of
25 Claimant 39-2673 that are consistent with the watershed file report in that they report 46.2
26 acre-feet of water for irrigation on 6.6 acres of contiguous land located in the NE NE Sec. 34
27 T6S R17E and in the NW NE Sec. 34 T6S R17E. It also, consistently with watershed file
28

1 report, claims a point of diversion from Aravaipa Creek in the NE NE NE Sec. 34 T6S R17E
2 and from a well (55-224407) in NW NE NE Sec. 34 T6S R17E.

3 Brighthawk LLC amended its statement of claimant to claim an additional well in NE
4 NE NE Sec. 34 T6S R17E with a well registration of 55-908389. Based on the public records
5 maintained by ADWR, this well was constructed in 2008 solely for domestic purposes as
6 outlined in A.R.S. §45-454. (Drilling Card, exp. 1/21/2009) It also amended the priority date
7 to December 31, 1905, based on an attached Final Affidavit of Manuel Zapata dated
8 December 14, 1911, that stated that Mr. Zapata had established residency on land including
9 N1/2 NE Sec. 34 T6S R17E in December 1905.
10

11 In its motion, Brighthawk LLC requests the court to approve the unsigned Stipulation
12 attached to its Motion. Pursuant to A.R.S. §45-256, litigants are entitled to a fair and
13 reasonable opportunity to present evidence in support of or in opposition to WFR 115-04-AB-
14 001 with respect to PWR 115-04-AB-001-IR001. Accordingly, the court cannot take the
15 action requested by Brighthawk, LLC, but will set this case for hearing to give the litigants a
16 forum to prove their objections to PWR 115-04-AB-001-IR001.
17

18 Accordingly,

19 **IT IS FURTHER ORDERED** that Litigants who desire to withdraw their objections to
20 PWR 115-04-AB-001-IR001 shall file a formal withdrawal on or by **July 11, 2018**. If
21 objections are withdrawn, then the draft abstract attached as Appendix B will be approved and
22 added to the catalog. If all litigants do not withdraw their objections, then pursuant to
23 §8.03[1], Rules for Proceedings before the Special Master, a scheduling conference shall be
24 held to identify issues, schedule deadlines for filing disclosure statements and submitting
25 prehearing motions and set a trial date. No party shall conduct any discovery prior to the
26 Scheduling Conference. The Scheduling Conference shall be held **Wednesday, July 18,**
27
28

1 2018, at 11:30 p.m. in the Superior Court of Arizona, 201 West Jefferson Street, Courtroom
2 301, Central Court Building, Phoenix, AZ 85003-2202.

3
4 Instructions for telephonic appearance:
5 Dial: 602-506-9695 (local)
6 1-855-506-9695 (toll free long distance)
7 Dial Participant Pass Code 357264#

8
9 
10 SUSAN WARD HARRIS
11 Special Master
12
13

14 On May 18, 2018 the original of the foregoing was
15 delivered to the Clerk of the Maricopa County Superior
16 Court for filing and distributing a copy to all persons listed
17 on the Court-approved mailing list for this contested case.
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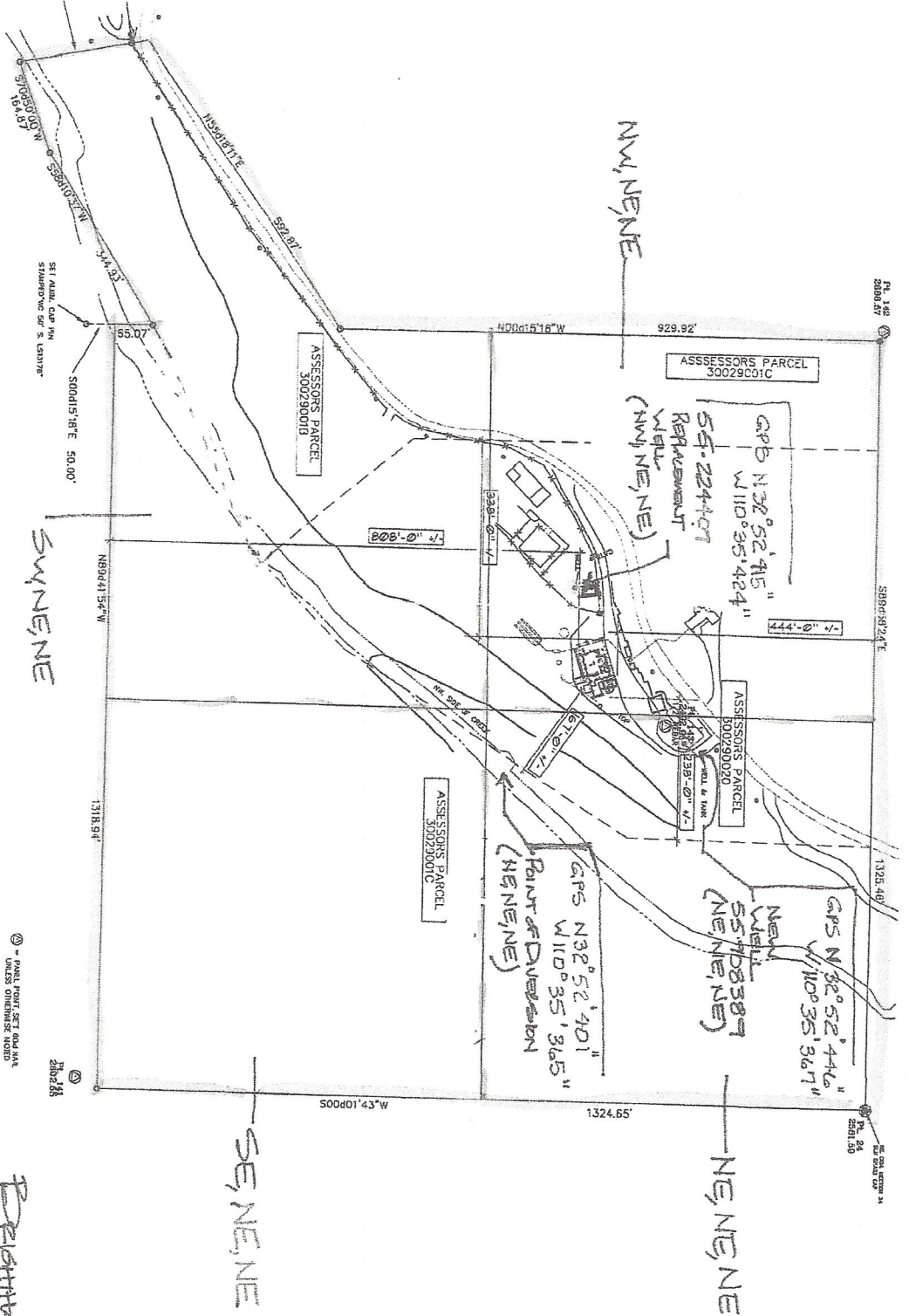
APPENDIX A

Abstract of Water Right San Pedro Watershed

| | |
|--|---|
| 1. Proposed Water Right No.: | 115-04-009-SW001 |
| 2. Owner of Water Right: | Brighthawk, LLC, an Arizona limited liability company |
| 3. Landowner: | Brighthawk, LLC, an Arizona limited liability company |
| 4. Statement of Claimant No.(s): | 39-2671 |
| 5. Statement of Claimant Name(s): | Brighthawk, LLC, an Arizona limited liability company |
| 6. Lessee or Permittee: | None |
| 7. Basis of Right: | 36-59854 55-224407 |
| 8. Beneficial Use: | Stock watering |
| 9. Priority Date: | 12/31/1905 |
| 10. Quantity: | Reasonable Use |
| 11. Place of Use: | NE NE 34 T6S R17E NW NE 34 T6S R17E |
| 12. Point of Diversion: | NE NE NE 34 T6S R17E NW NE NE 34 T6S R17E |
| 13. Source of Water: | Aravaipa Creek |
| 14. Coordinates for Well: | N 32° 52' 415" W 110° 35' 424" |

See attached maps.

TOPOGRAPHICAL SURVEY IN THE NE 1/4
SECTION 34, TOWNSHIP 6 SOUTH, RANGE 17 EAST
PINAL COUNTY, ARIZONA



w/GPS ADDED
2.20.18

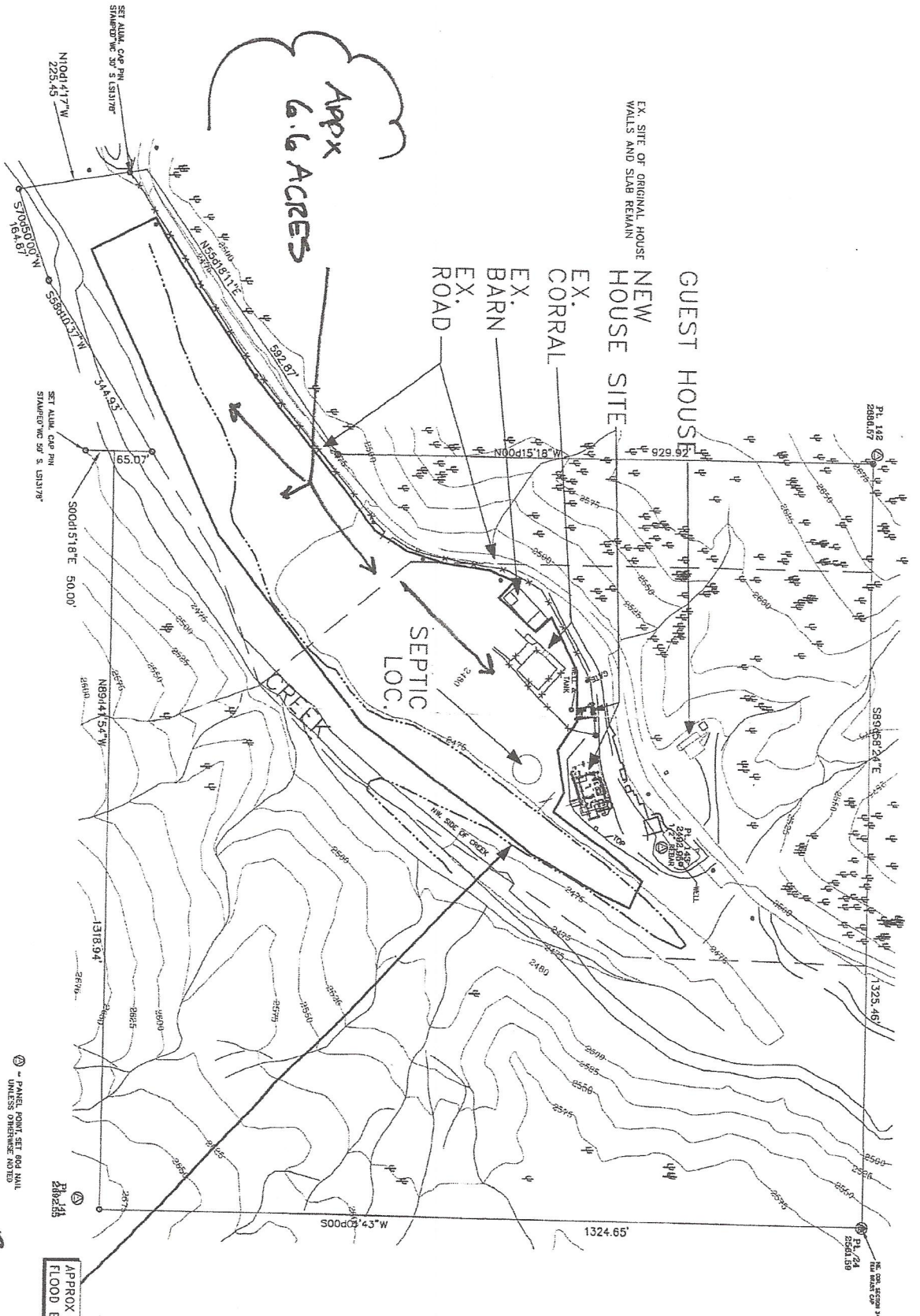
10-10-17

RIGHTY-WAY

SE, NE, NE

NE, NE, NE

NW, NE, NE



APPROX (AND) SECTION
FLOOD ELEV. 247.3'

Panel Point, Set Rod Nail
Unless Otherwise Noted

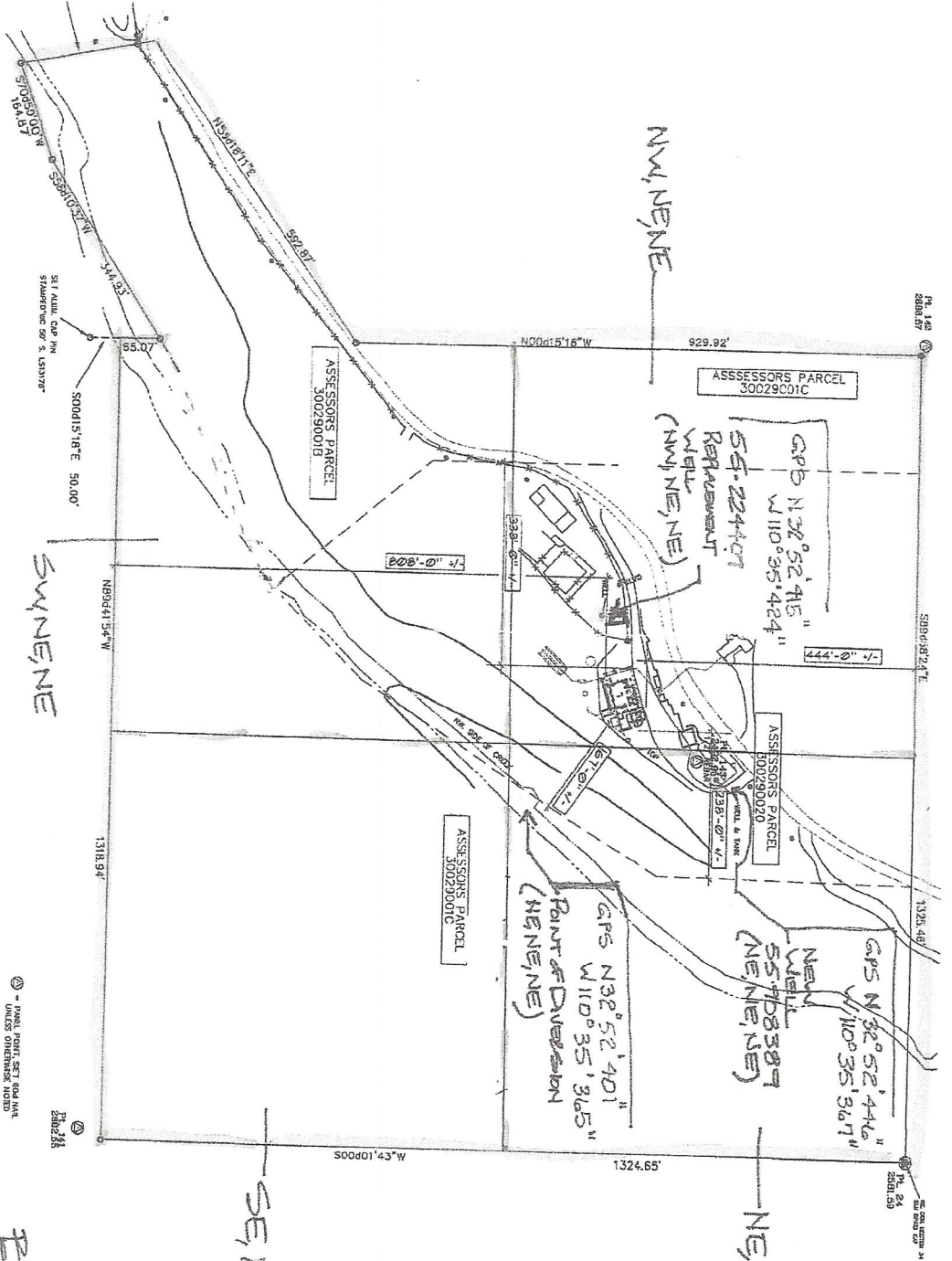
BRIGHTHAWK

**Abstract of Water Right
San Pedro Watershed**

| | |
|--|---|
| 1. Proposed Water Right No.: | 115-04-ADB-001-DM001 |
| 2. Owner of Water Right: | Brighthawk, LLC, an Arizona limited liability company |
| 3. Landowner: | Brighthawk, LLC, an Arizona limited liability company |
| 4. Statement of Claimant No.(s): | 39-14112 |
| 5. Statement of Claimant Name(s): | Brighthawk, LLC, an Arizona limited liability company Tom Wagner Betty Wagner |
| 6. Lessee or Permittee: | None |
| 7. Basis of Right: | 36-59854 55-224407 |
| 8. Beneficial Use: | Domestic Use |
| 9. Priority Date: | 12/31/1905 |
| 10. Quantity: | One (1) acre-foot annually |
| 11. Place of Use: | NE NE 34 T6S R17E NW NE 34 T6S R17E |
| 12. Point of Diversion: | NE NE NE 34 T6S R17E NW NE NE 34 T6S R17E |
| 13. Source of Water: | Aravaipa Creek |
| 14. Coordinates for Well: | N 32° 52' 415" W 110° 35' 424" |

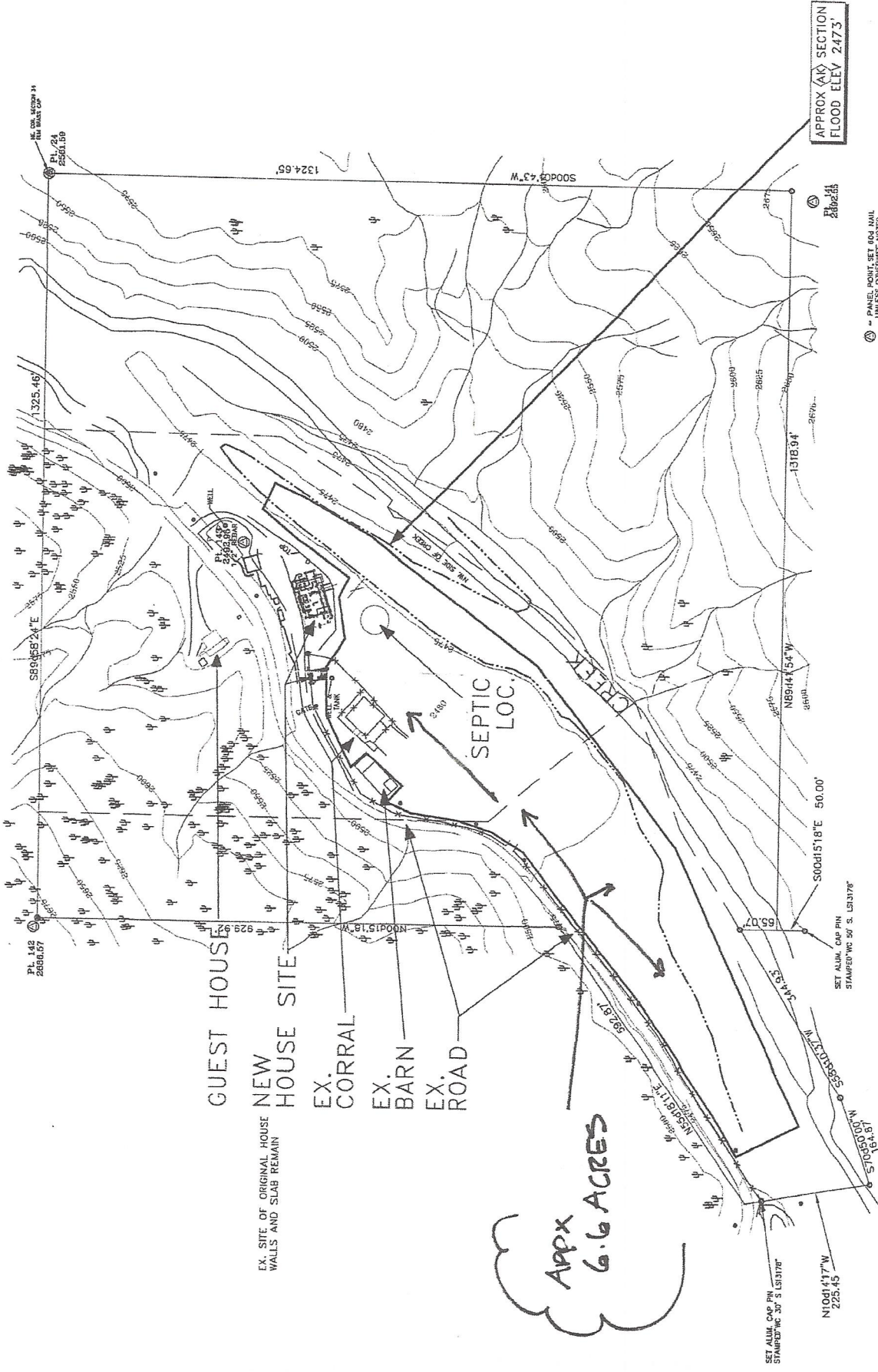
See attached maps.

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TOPOGRAPHICAL SURVEY IN THE NE 1/4
SECTION 34, TOWNSHIP 6 SOUTH, RANGE 17 EAST
PINAL COUNTY, ARIZONA



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w/GPS ADDED
2-20-18

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FLOOD ELEV 2473'

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GUEST HOUSE
NEW HOUSE SITE
EX. CORRAL
EX. BARN
EX. ROAD

EX. SITE OF ORIGINAL HOUSE
WALLS AND SLAB REMAIN

SEPTIC LOC.

CREEK

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SET ALUM. CAP PIN
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APPENDIX B

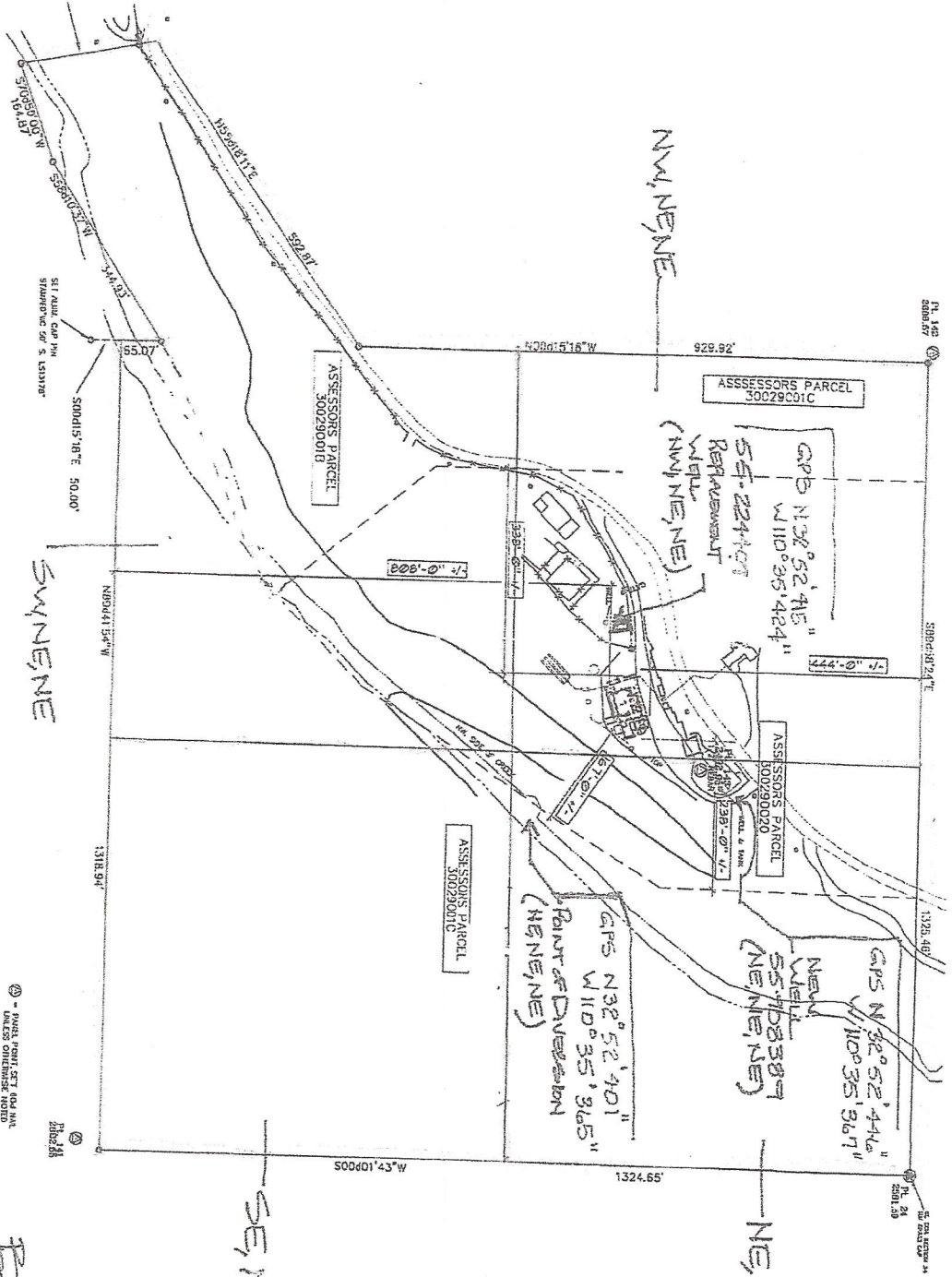
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San Pedro Watershed**

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| 3. Landowner: | Brighthawk, LLC, an Arizona limited liability company |
| 4. Statement of Claimant No.(s): | 39-2673 |
| 5. Statement of Claimant Name(s): | Brighthawk, LLC, an Arizona limited liability company Tom Wagner Betty Wagner |
| 6. Lessee or Permittee: | None |
| 7. Basis of Right: | 36-59854 55-224407 |
| 8. Beneficial Use: | Irrigation Use |
| 9. Priority Date: | 12/31/1905 |
| 10. Quantity: | 46.2 acre-feet annually for use on 6.6 acres |
| 11. Place of Use: | NE NE 34 T6S R17E NW NE 34 T6S R17E |
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PINAL COUNTY, ARIZONA

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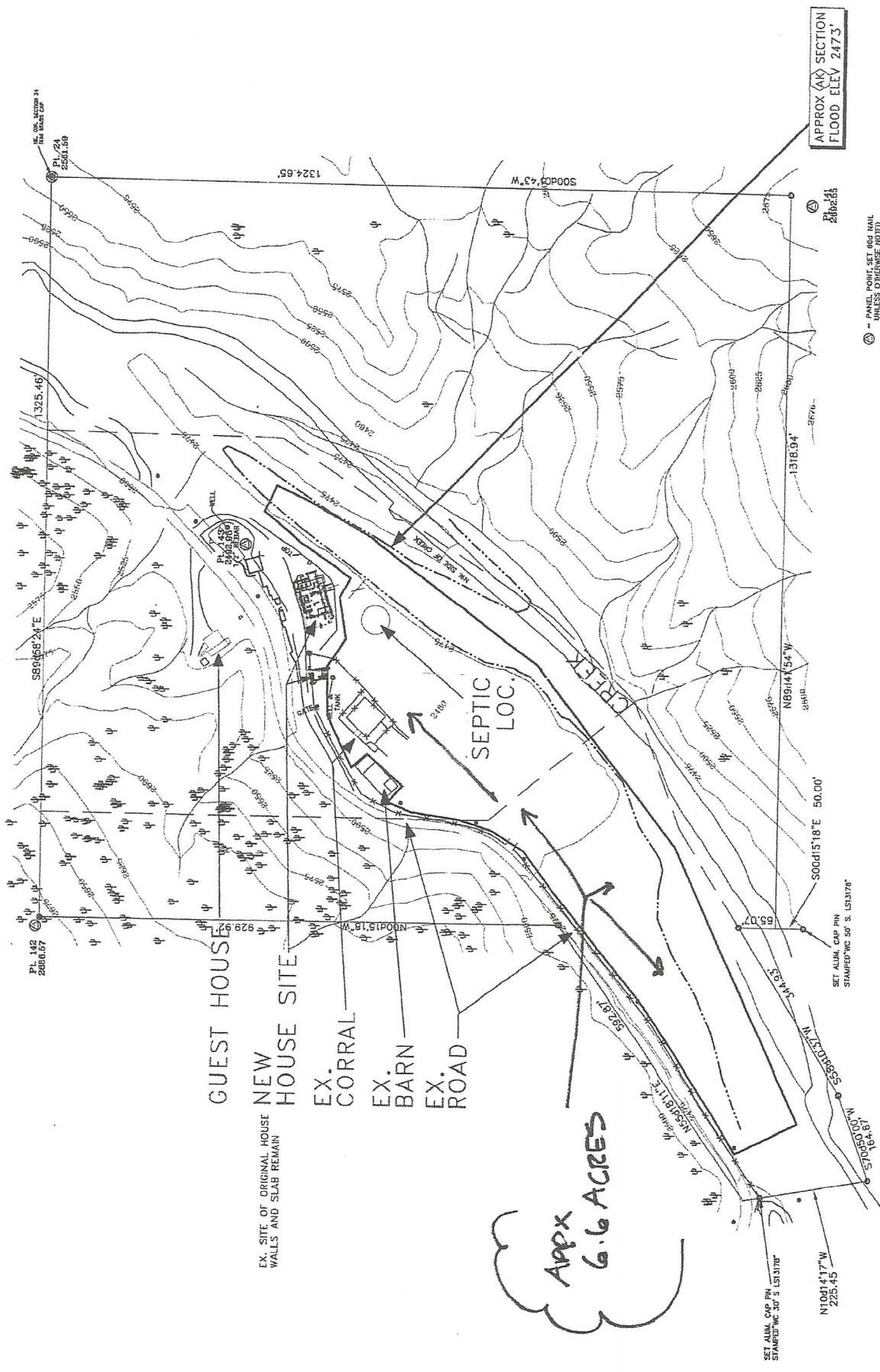
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10-10-17
w/GPS ADDED
2-20-18

SE, NE, NE

NE, NE, NE



APPROX (AK) SECTION
FLOOD ELEV 247.3'

⊙ - PANEL POINT, SET 603 NAIL
UNLESS OTHERWISE NOTED

BRIGHTHAWK