

Swiftwater 2010 Instream Restoration Decision Documentation
Environmental Assessment
(EA # OR-103-08-09)
Swiftwater Field Office, Roseburg District

Decision:

It is my decision to authorize eleven instream restoration projects including the replacement of one stream crossing culvert, the removal of one culvert, and the placement of large wood or boulders in nine separate stream reaches within the boundaries of the Swiftwater Field Office, consistent with restoration projects proposed and analyzed in the Roseburg District Aquatic Restoration Environmental Assessment (EA) #OR-103-08-09. Seven of these projects are funded by Title II funding under the Secure Rural Schools Act and implemented by Bureau of Land Management (BLM) partners. Four of these projects will be implemented by the BLM. The Elk Creek Watershed Council will be responsible for project design, contract preparation, contract award, and construction for four of the large wood and boulder projects in Billy Creek, Cox Creek, Andrews Creek, and Elk Creek. The Douglas Soil and Water Conservation District will be responsible for project design, contract preparation, contract award, and construction on three of the large wood projects in Oak Creek, Bachelor Creek, and Pollock Creek. Project details are listed in Table 1. With the exception of the Lees Creek Large Wood project all logs and boulders will come from private parties, not from BLM lands. Fifteen trees from BLM lands will be sold to the Elk Creek Watershed Council for instream restoration use on private lands in Lees Creek. Design and work will be done consistent with the project design features (PDFs) outlined in the EA (pgs. 14-19).

Table 1. 2010 Restoration Projects.

Project Name	Project Location	Public or Private Land	Project Description
Lees Creek Large Wood	T. 22 S., R. 4 W., Sections 9 & 17	Public	Fell 50 suppressed and co-dominant trees (< 24" diameter) in a 9 acre riparian stand. Trees were selected to release larger dominant trees in the stand. The trees will then be placed in the stream with an excavator.
Lees Creek Culvert Removal	T. 22 S., R. 4 W., Section 9	Public	A barrier culvert will be removed and the road bed will be laid back with an excavator. Three boulder weirs will be built for grade control.
Surprise Creek Large Wood	T. 25 S., R. 1 W., Sections 7 & 18	Public	Approximately 7 logs will be placed with an excavator or self-loading log truck.
Cougar Creek Culvert Replacement	T. 25 S., R. 8 W., Section 15, SW ¼, SW ¼	Public	Replace a 56" failing culvert with a 78" new culvert. This project will be completed in 2011.
Billy Creek Large Wood	T. 23 S., R. 6 W., Section 12	Private	Approximately 75 logs will be placed with an excavator.
Cox Creek Large Wood	T. 22 S., R. 4 W., Sections 20 & 21	Private	Approximately 30 logs and 200 boulders will be placed with an excavator. Two small side channels

			will be reconnected.
Andrews Creek Large Wood	T. 23 S., R. 6 W., Section 10	Private	Approximately 100 logs will be placed with an excavator.
Elk Creek Boulder Weirs	T. 23 S., R. 4 W., Section 6	Private	Approximately 800 boulders will be placed with an excavator.
Bachelor Creek Large Wood	T. 23 S., R. 6 W., Sections 12, 13, & 24	Private	Approximately 150 logs will be placed with an excavator or rubber tired skidder.
Pollock Creek Large Wood	T. 24 S., R. 5 W., Sections 10, 15, 22, 27, 33, & 34	Private	Approximately 300 logs will be placed with an excavator or rubber tired skidder.
Oak Creek Large Wood and Bridge Crossing	T. 26 S., R. 4 W., Sections 19, 29, & 30	Private	Approximately 100 logs will be placed with an excavator or rubber tired skidder. A Pacific Bridge will be placed over the stream.

The projects are proposed to take place during the in-water work period (July 1 – September 15). All of the projects will involve some mechanical removal of noxious weeds, primarily Himalayan blackberry (*Rubus armeniacus*).

Survey and Manage Compliance

On December 17, 2009, the U.S. District Court for the Western District of Washington issued an order in *Conservation Northwest, et al. v. Rey, et al.*, No. 08-1067 (W.D. Wash.) (Coughenour, J.), granting Plaintiffs’ motion for partial summary judgment and finding a variety of NEPA violations in the BLM and USFS 2007 Record of Decision eliminating the Survey and Manage mitigation measure. Previously, in 2006, the District Court (Judge Pechman) had invalidated the agencies’ 2004 RODs eliminating Survey and Manage due to NEPA violations. Following the District Court’s 2006 ruling, parties to the litigation had entered into a stipulation exempting certain categories of activities from the Survey and Manage standard (hereinafter “Pechman exemptions”).

Seven out of the eleven instream restoration projects are located on privately owned lands. These projects are not subject to pre-disturbance surveys and/or management of known sites as directed in the 2001 Record of Decision and Standards and Guidelines for Amendments to the Survey and Manage, Protection Buffer, and other Mitigation Measures Standards and Guidelines (2001 ROD), because the 2001 “[d]ecision applies to administrative units of the USDA Forest Service and USDI Bureau of Land Management (BLM) (generally referred to as “the Agencies”) within the range of the northern spotted owl.

Four out of the eleven instream restoration projects are on BLM lands and are consistent with court orders relating to the Survey and Manage mitigation measure of the Northwest Forest Plan, as incorporated into the Roseburg District Resource Management Plan. Judge Pechman's Order from October 11, 2006 directs: "Defendants shall not authorize, allow, or permit to continue any logging or other ground-disturbing activities on projects to which the 2004 ROD applied unless such activities are in compliance with the 2001 ROD (as the 2001 ROD was amended or modified as of March 21, 2004), except that this order will not apply to:

- A. Thinning projects in stands younger than 80 years old;

- B. Replacing culverts on roads that are in use and part of the road system, and removing culverts if the road is temporary or to be decommissioned;
- C. Riparian and stream improvement projects where the riparian work is riparian planting, obtaining material for placing in-stream, and road or trail decommissioning; and where the stream improvement work is the placement large wood, channel and floodplain reconstruction, or removal of channel diversions; and
- D. The portions of project involving hazardous fuel treatments where prescribed fire is applied. Any portion of a hazardous fuel treatment project involving commercial logging will remain subject to the survey and management requirements except for thinning of stands younger than 80 years old under subparagraph a. of this paragraph.”

Following the Court’s December 17, 2009 ruling, the Pechman exemptions are still in place. Judge Coughenour deferred issuing a remedy in the December 17, 2009 order until further proceedings, and did not enjoin the BLM from proceeding with projects. Nevertheless, I have reviewed the 2010 Instream Restoration Projects in consideration of both the December 17, 2009 and October 11, 2006 orders. Because the 2010 Instream Restoration projects entail large wood and boulder instream projects and a project replacing a culvert that is in use and part of the road system, I have made the determination that these projects meet Exemptions B and C of the Pechman Exemptions (October 11, 2006 Order), and therefore may still proceed even if the District Court sets aside or otherwise enjoins use of the 2007 Survey and Manage Record of Decision since the Pechman exemptions will remain valid in such case.

Project design will be consistent with the project design features described in the EA (pgs 14-19). As noted in the EA, these PDFs come from a variety of sources. Culvert design and large wood and boulder placement projects incorporate requirements of the *Oregon Road/Stream Crossing Restoration Guide* (Oregon Department of Forestry 1999), the *Oregon Aquatic Habitat Restoration and Enhancement Guide* (The Oregon Plan, 1999), and the Aquatic Restoration Biological Opinions mentioned above. Installation will incorporate Best Management Practices from the *Roseburg District Record of Decision/Resource Management Plan* (ROD/RMP, Appendix D, pgs. 134-136) and project design features that include:

PDF’s that apply to all 11 projects:

- Pressure washing or steam cleaning of all excavation and earth-moving equipment prior to move-in on the project site, to minimize the risk of introducing soil from outside the project area that may be contaminated with noxious weed seed or plant propagules. Disturbed areas will be seeded and mulched or otherwise revegetated.
- Projects on private lands will notify BLM representatives before the project starts so that sensitive areas can be flagged and identified. Sensitive areas will be avoided to the greatest extent possible.
- Restriction of in-stream construction activities to the period between July 1 and September 15, during low summer stream flows.
- Diversion of any surface stream flow or pumping of water around the project site during construction activities and in-stream equipment operation minimized to the extent practicable.

- When using heavy equipment in or adjacent to stream channels during restoration activities develop and implement an approved spill containment plan that includes having a spill containment kit on-site and at previously identified containment locations.
- End haul of any resulting waste material to an authorized disposal site.
- At each restoration site, use one or more key logs that are 1.5 times the active channel width and at least 24” in diameter.
- Trees for removal will be marked. Any additional trees that must be removed for operational needs will be approved by the contract administrator and will avoid dominate conifers and instead, remove trees along the periphery of existing openings with the least complex canopy. Trees will be selected for removal using the following criteria:
 - Avoid removing the largest conifers in the stand
 - Select trees along the periphery of existing openings such as roads
 - Select trees with the least complex canopy
 - Suppressed or co-dominant trees were selected for removal to release larger conifers in the stand
 - Select trees 24 inches in diameter or less when possible.

The above projects will be completed using an excavator or rubber tired skidder. Endangered Species Act consultation for this project is covered programmatically under the Aquatic Restoration Biological Opinions issued by National Marine Fisheries Service (NMFS¹) and the U.S. Fish and Wildlife Service (USFWS²) in 2008.

Rationale for the Decision:

Replacement of stream crossings and the placement of large wood and boulders were analyzed under Alternative Two, the “Proposed Action”, of the Roseburg District Aquatic Restoration EA (pgs. 27-47). Removing and replacement of the existing stream crossing structures meets the stated objectives of reducing sediment in streams and restoring fish passage. The placement of large wood and boulders meet the state objectives of increasing stream complexity. Alternative One, the “No Action” alternative, will not meet the identified objectives, and the barriers to fish passage and simplified habitat described in the EA (pg. 24) will remain. I considered the following potential resource impacts in making my decision.

Soils

Where possible, stream entry points will occur in previously disturbed areas or existing entry points, such as: near roads and cattle crossings. Equipment access routes and yarding corridors will be designated to reduce soil displacement and compaction (EA pg. 15). Projects will take place during the soil dry season, to reduce the risk of compaction. Project design features will further reduce soils impacts by requiring the

¹ U. S. Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service - Northwest Region. 2008. Endangered Species Act - Section 7 Programmatic Consultation Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat Consultation (Fish Habitat Restoration Activities in Oregon and Washington, CY 2007-2012). NMFS Number 2008/03506.

² U. S. Department of Interior, U.S. Fish and Wildlife Service - Portland, Oregon. 2007. Biological Opinion and Letter of Concurrence USDA Forest Service, USDI Bureau of Land Management and the Coquille Indian Tribe for Programmatic Aquatic Habitat Restoration Activities in Oregon and Washington That Affect ESA-listed Fish, Wildlife, and Plant Species and their Critical Habitats. 8330.F0055(07).

application of seeding and mulching to revegetate any disturbed or compacted sites (EA pg. 15). The replacement and removal of culverts will be located almost entirely within the existing road prism, limiting potential impacts to soil productivity. As a result of project design features, sediment contributions to the adjacent streams from these surfaces will be confined to a first-season flush, and will not be measurable from background levels downstream.

Aquatics

The project will not result in undue environmental degradation, and is consistent with Aquatic Conservation Strategy objectives (1995 ROD/RMP, pg. 20-21 and EA pg. 61-65). It will aid in maintenance and restoration of in-stream flows, spatial and temporal connectivity in the watershed, natural sediment regimes, and aquatic habitat. It is consistent with the management objective “To preclude stream crossings from being a direct source of sediment to streams thus minimizing water quality degradation and provide unobstructed movement for aquatic fauna.” (1995 ROD/RMP, p. 134). It is also consistent with the management objective “To mitigate and minimize damage to riparian vegetation, streambanks, and stream channels.” (1995 ROD/RMP, p. 141).

The potential effects to Oregon Coast coho salmon and other fish species are associated with sediment mobilized during heavy equipment work in the stream channel. Potential sediment effects also affect critical habitat and Essential Fish Habitat for Oregon Coast coho salmon. With application of the requirements of the project design features described above and identified and adopted in the National Marine Fisheries Service Aquatic Restoration Biological Opinion, dated June 27, 2008, effects of the project will be localized and short term. In addition, temporarily elevated turbidity levels may cause short-term stress to fish, but will not cause long term stress that may decrease survival rates (EA pg. 33-34). These limited effects will “not have an adverse effect” on critical habitat or Essential Fish Habitat (EA pg. 52). Placement of large wood and boulders will add stream complexity and cover for juvenile and adult coho salmon, steelhead trout, cutthroat trout, and Pacific lamprey to 11.0 miles of degraded stream habitat. Replacement of the Cougar Creek crossing and removal of the Lees Creek culvert will restore access for steelhead trout and cutthroat trout to a total of 1.1 miles of habitat above the crossings.

Botany

The project areas are within the range of Kincaid’s lupine (*Lupinus sulphureus var. kincaidii*), a Federally-threatened species and hairy popcorn flower (*Plagiobothrys hirtus*) a federally endangered plant species. Surveys have been conducted for the federally listed species above. These species were not present on any of the sites. BLM sites were also surveyed for special status species, no special status species were found at the BLM sites.

Noxious Weeds are present on most of sites. While there were additional noxious weeds present at these sites the following weeds will be addressed here; Portuguese broom (*Cytisus striatus*), Himalayan blackberry (*Rubus armeniacus*), English hawthorn (*Crataegus monogyna*), Scotch broom (*Cytisus scoparius*). Himalayan blackberry, English hawthorn and Scotch broom, when present, have been or are being treated as part of the project plan.

Other Noxious Weed species, though they may be present, are not considered as much of a risk to riparian vegetation and will be managed with biocontrols,

Table 2. Weed Treatments for 2010 Restoration Projects.

Lees Creek Large Wood	Himalayan blackberry English hawthorn	Remove English hawthorn by cutting the trees and treating the stump with herbicide.
Cox Creek Large Wood	Portuguese broom Scotch broom Himalayan blackberry	Pressure wash or steam clean equipment when it leaves the project area to minimize the risk of moving Portuguese broom seed or propagules out of the project area.

Projects on BLM land will be monitored, evaluated, and treatment undertaken as directed in the Roseburg District’s Noxious Weed Program.

Wildlife

Northern Spotted Owl

The 2010 stream restoration projects will not affect northern spotted owls. The Surprise Creek project site will have seasonal restrictions (March 1 – July 15) applied, because the project occurs within unsurveyed suitable habitat. The remaining ten projects would not be seasonally restricted in 2010 for spotted owls, because 1) they do not occur within 0.25 miles of suitable habitat; 2) they occur within 0.25 miles of surveyed suitable habitat, but surveys have shown the stand to be unoccupied; 3) they occur within 0.25 miles of occupied suitable habitat, but surveys have confirmed the owls as not nesting during the 2010 nesting season; or 4) they occur more than 65 yards from an active spotted owl nest site. Table 3 details seasonal restrictions for spotted owls.

The Cougar Creek culvert replacement, if implemented in 2011, will be subject to seasonal restrictions (March 1 – July 15) unless spotted owl surveys in 2011 show 1) the site to be unoccupied by spotted owls; 2) the owls are confirmed not to be nesting; or 3) the owls are nesting more than 0.25 miles from the project site.

Three of the projects on BLM, and two projects on private, are within Designated Critical Habitat (Units OR13 and OR 8) for the northern spotted owl under the 2008 Rule (Fed. Register; Vol. 73 No. 157; Aug. 13, 2008; pgs. 47326-47374). Under the 1992 Rule designating Critical Habitat for the northern spotted owl (Fed. Register; Vol. 73 No. 157; Aug. 13, 2008; pgs. 47326-47374), four of the BLM sites and one of the private sites fall within Critical Habitat (Units OR23, OR25 and OR58) for the spotted owl. None of the restoration projects will remove or modify primary constituent elements of Critical Habitat therefore there will be no effect to Critical Habitat for the northern spotted owl.

Marbled Murrelet

Three of the restoration projects fall within the range of the marbled murrelet. Of these three, one occurs within Marbled Murrelet Inland Management Zone 1 (within 0-35 miles of the coast) and two projects occur within Marbled Murrelet Inland Management Zone 2 (between 35 -50 miles of the coast). The Cougar Creek culvert replacement project is located in unsurveyed suitable habitat in Zone 1. To minimize disruption to nesting murrelets at the Cougar Creek site, a seasonal restriction will be implemented from April 1 through August 5, and Daily Operating Restrictions (operations occur between two hours after sunrise and two hours before sunset) will be implemented from August 6 through September 15. No suitable habitat will be removed or modified. The Billy Creek and Andrews Creek sites are in Zone 2 and not within 0.25 miles of suitable habitat. Table 3 details seasonal restrictions for marbled murrelets.

One restoration site, Cougar Creek, is located within Critical Habitat Unit OR-04-e for the marbled murrelet and two sites, Billy Creek and Andrews Creek, are located within Critical Habitat Unit OR-04-f for the marbled murrelet (Fed. Register; Vol. 61 No. 102; May. 13, 1996; pgs. 26256-26230). However, the projects will not remove or modify primary constituent elements and therefore will not affect Critical Habitat for the marbled murrelet.

Bald Eagle

Three of the restoration projects are within suitable bald eagle habitat. The Cougar Creek and Surprise Creek sites are each approximately three miles from known eagle nest sites located on major rivers and streams but are not within 0.25 miles of any known site. The Lees Creek culvert replacement will occur within suitable eagle nesting habitat but there are no known nesting sites within the vicinity of the culvert. None of these projects will remove potential eagle nest trees and will occur late in the nesting season which will minimize the chance of disturbance to unknown nesting eagles in the area.

Table 3. Wildlife Seasonal Restrictions for 2010 Restoration Projects.

Project Name	Seasonal Restriction			Reason for Restriction
	Spotted Owl	Marbled Murrelet	Bald Eagle	
Surprise Creek	March 1 – July 15	None	None	Unsurveyed, suitable habitat
Cougar Creek	March 1 – July 15, 2011	<u>No operations</u> - April 1 – August 5; <u>DORs</u> : August 6 – September 15	None	NSO – within 0.25 miles of known nesting site. MAMU - Unsurveyed suitable habitat (Zone 1).

Cultural

The Cougar Creek, Andrews Creek and Billy Creek projects are exempt from normal survey under the 1998 Oregon Protocol, Appendices A (Survey Techniques for Densely Vegetated Areas of Western Oregon) and D³ (Coast Range Inventory Plan). The projects will occur in steep, narrow canyons which are considered low probability terrain based on previous inventories in the drainages (Appendix A). The projects are further exempted under Appendix D because they occur in the Coast Range. The projects will not impact any known National Register properties. The BLM has completed its Section 106 responsibilities for these three projects.

Cultural resource surveys that resulted in no findings of historic or cultural resources were conducted at seven of the projects. These include the two Lees Creek projects (CRS Nos. 47601 and SW0807), the Surprise Creek project (BLM Class II Inventory and CRS No. 17604), Cox Creek (CRS No. SW1002), Bachelor Creek (CRS No. SW1003), Pollack Creek (CREP survey) and Oak Creek (CRS No. SW0908). These projects will not impact any known National Register properties. BLM also has completed its Section 106 responsibilities for these seven projects.

The final project, the Elk Creek Boulder Weirs, was also inventoried (CRS No. SW1004), but resulted in the finding of an archaeological site. The site is located towards the northern end of the project where several weirs are proposed. Access to the weir locations will be by way of the stream bed. The stream bed will be accessed by an existing partially graveled road that is used to provide access for cattle

3 1998 Protocol for Managing Cultural Resources on Lands Administered by the Bureau of Land Management in Oregon. <http://www.blm.gov/or/resources/heritage/files/protocol.pdf>

watering. Use of this road will serve to mitigate any potential impacts to the archaeological site. The road route will be flagged to ensure that there are no ancillary impacts from truck and excavator traffic. This project will not impact any known National Register properties. BLM also has completed its Section 106 responsibilities for the Elk Creek project.

Public Involvement & Response to Comment:

No issues were identified by any local or tribal governments, State agencies, or other Federal agencies.

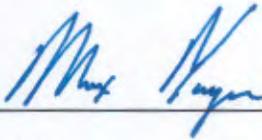
The EA and Draft Finding of No Significant Impact were made available for public review from August 4, 2009, through September 4, 2009. No comments were received. The Finding of No Significant Impact was published March 30, 2010. No comments were received.

Monitoring:

Monitoring will be done in accordance with the 1995 ROD/RMP, Appendix I (pgs. 84, & 195-198), with emphasis on assessing the effects of the restoration activities on the following resources: Water and Soils, and Fish Habitat.

Administrative Remedies:

Parties adversely affected by this decision may appeal under 43 CFR §4.410. Appeals of the decision must be filed with the authorized officer (Max Yager) within 30 days of publication of this notice in *The News Review*, Roseburg Oregon, on July 5, 2010.

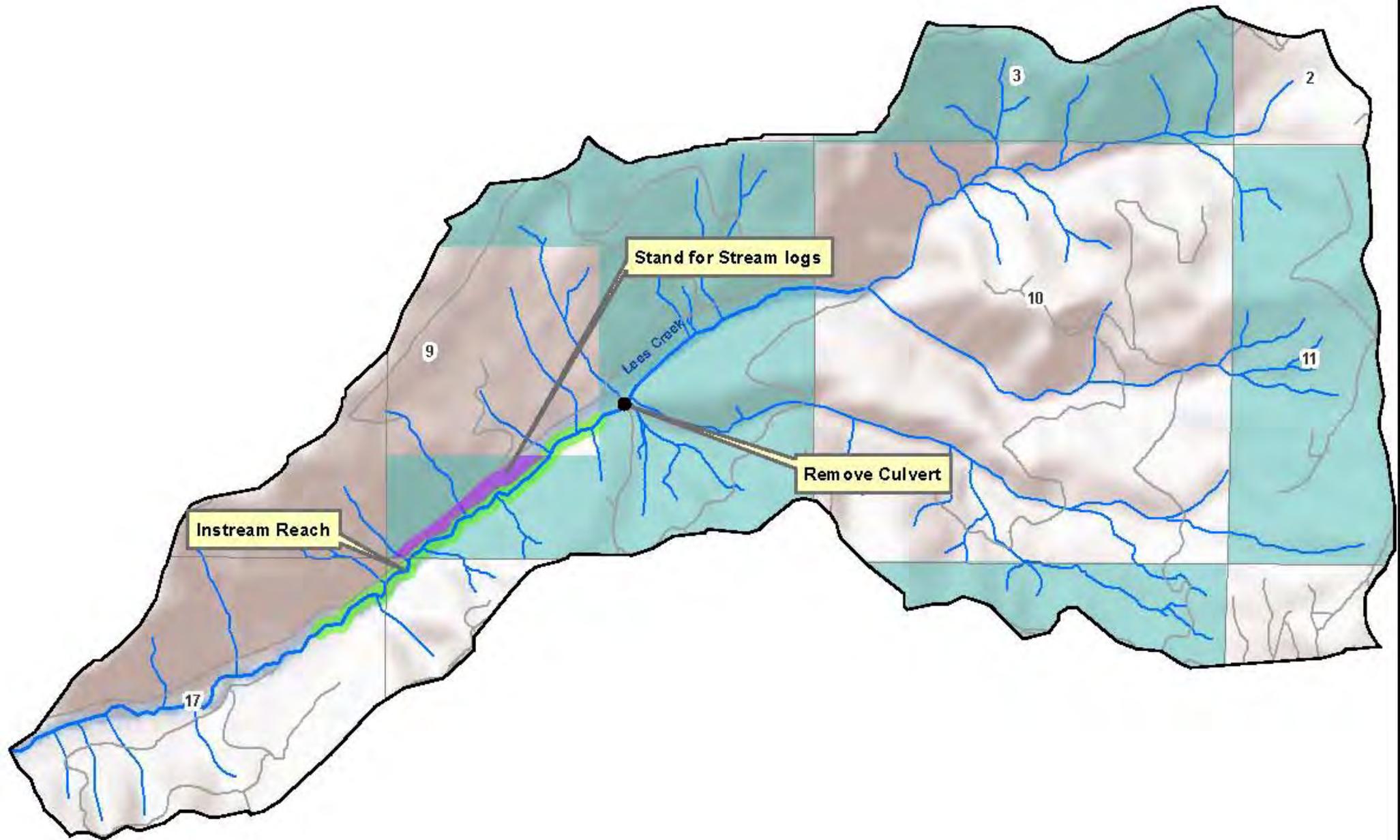


Max Yager
Swiftwater Field Manager
Roseburg District Bureau of Land Management

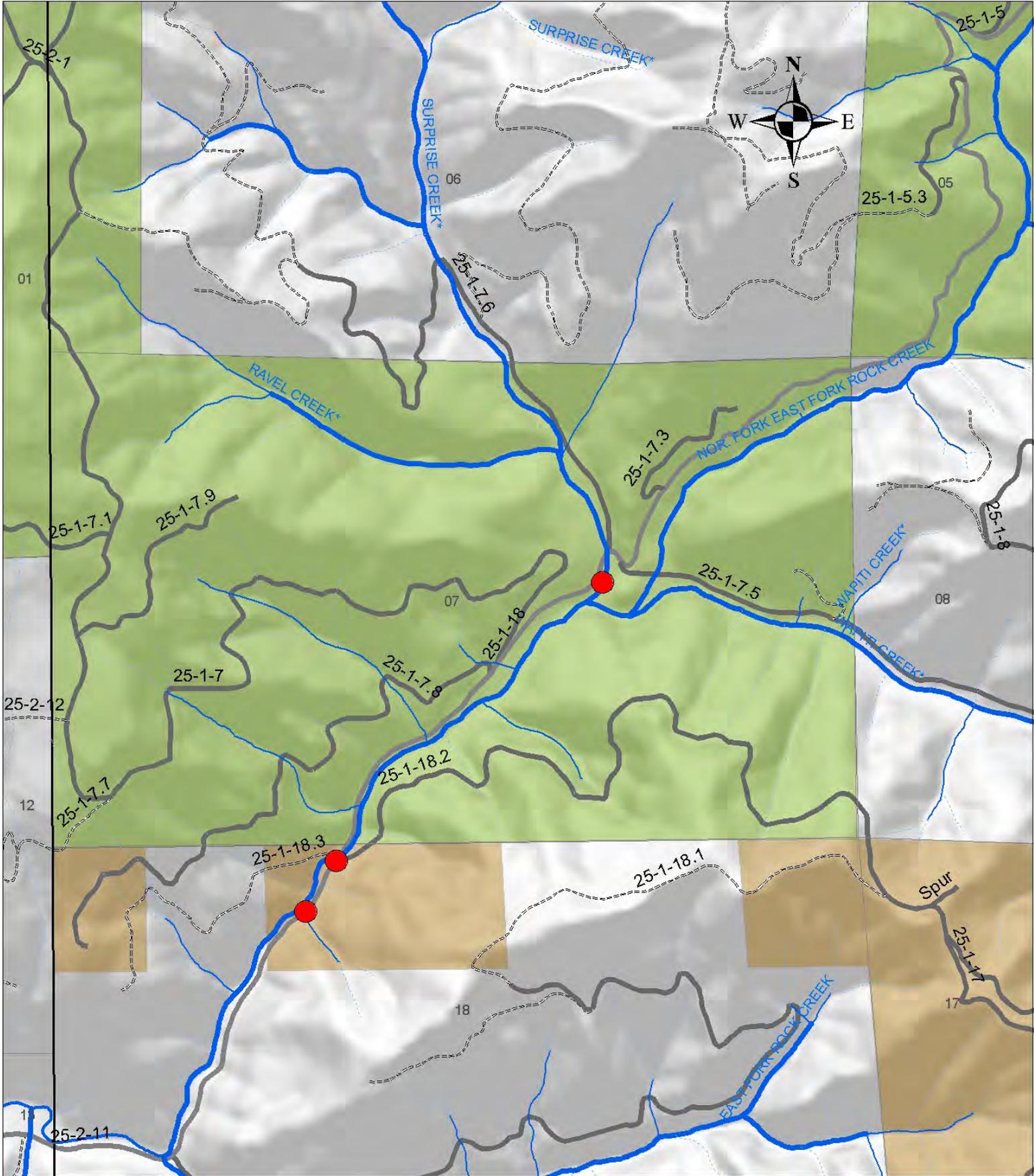
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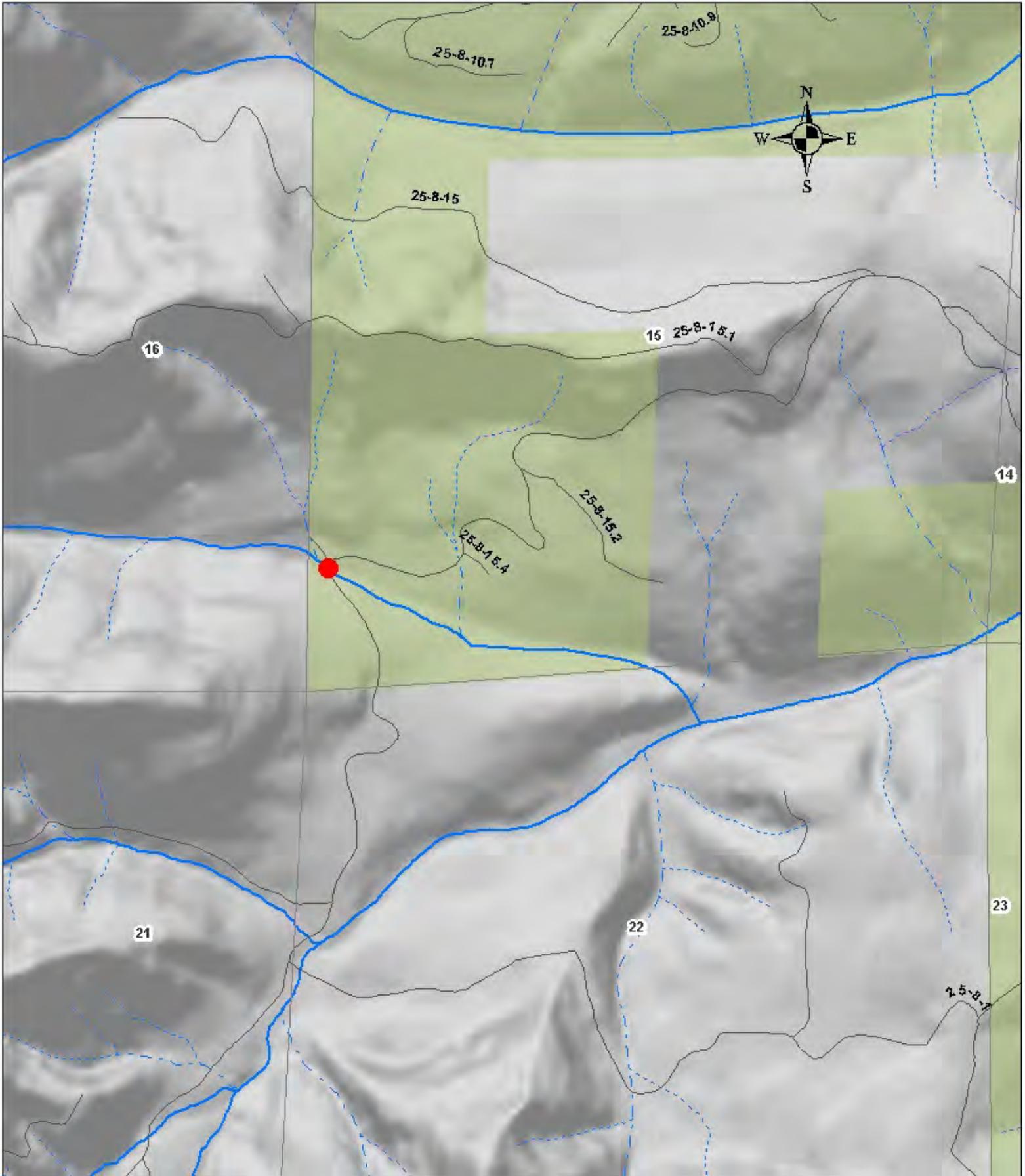
Lees Creek 2010 Planned Restoration



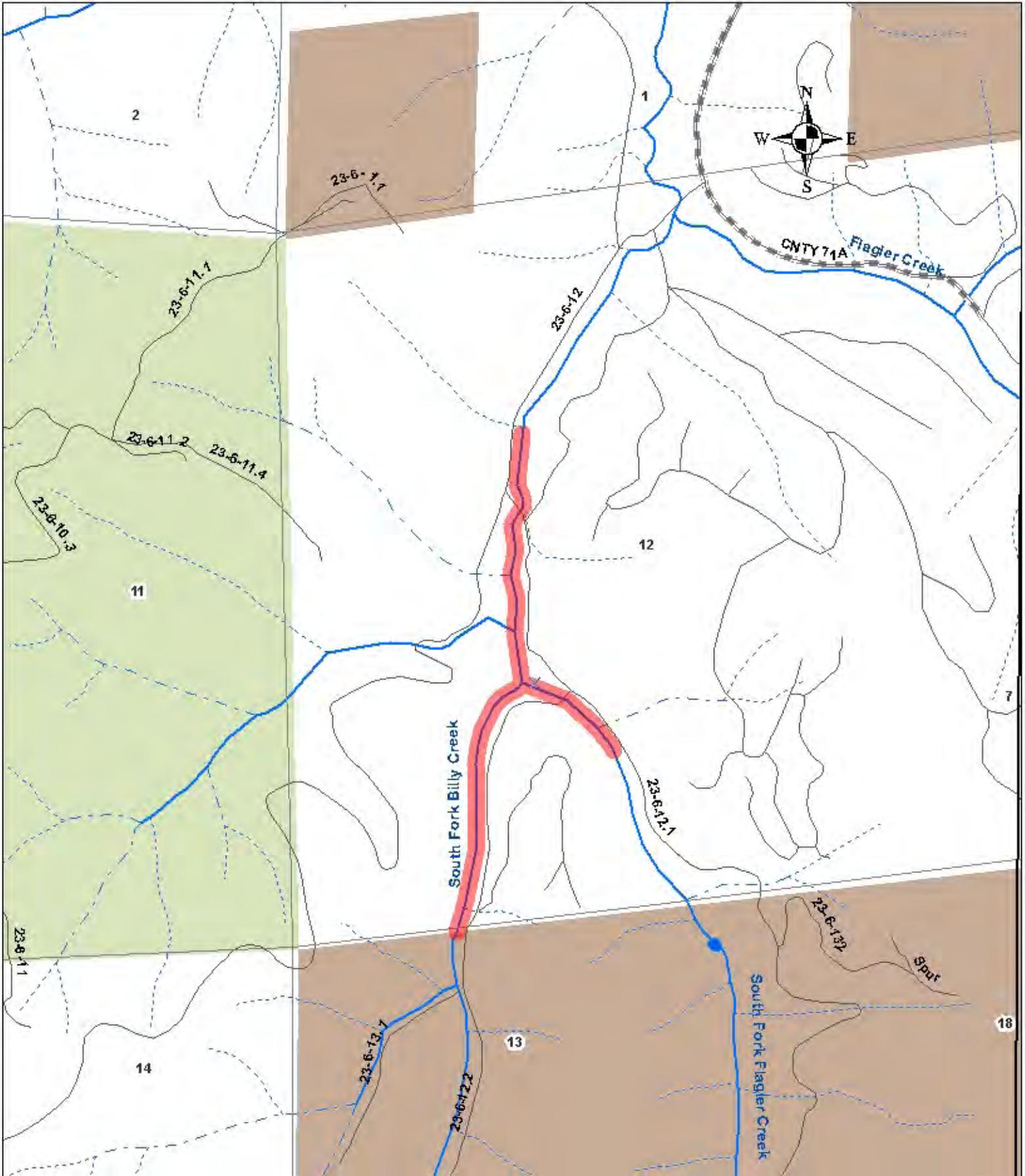
Suprise Creek Large Wood T21S, R1W, Sec 7



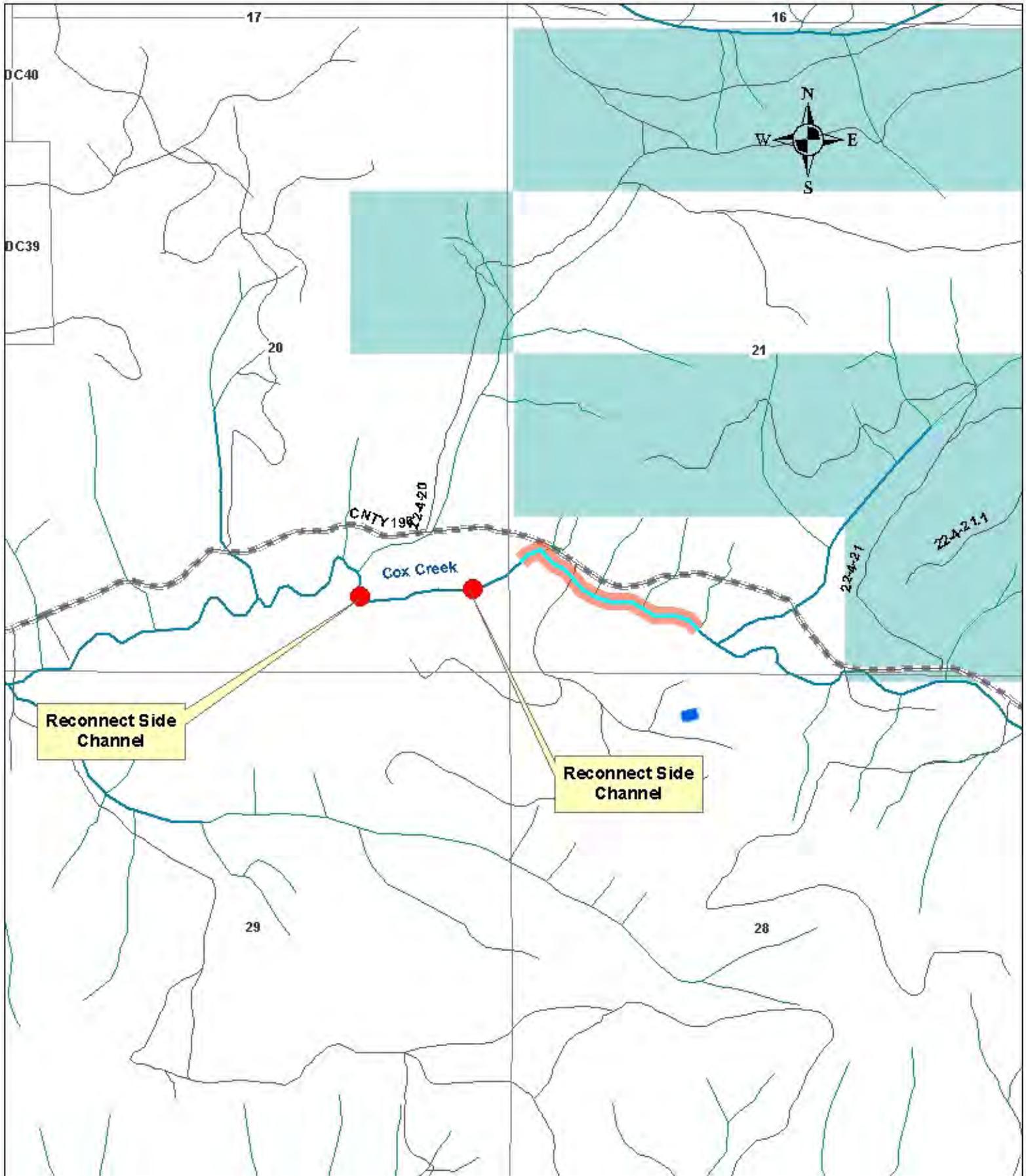
Cougar Creek Culvert Replacement
T25S, R8W, Sec 15



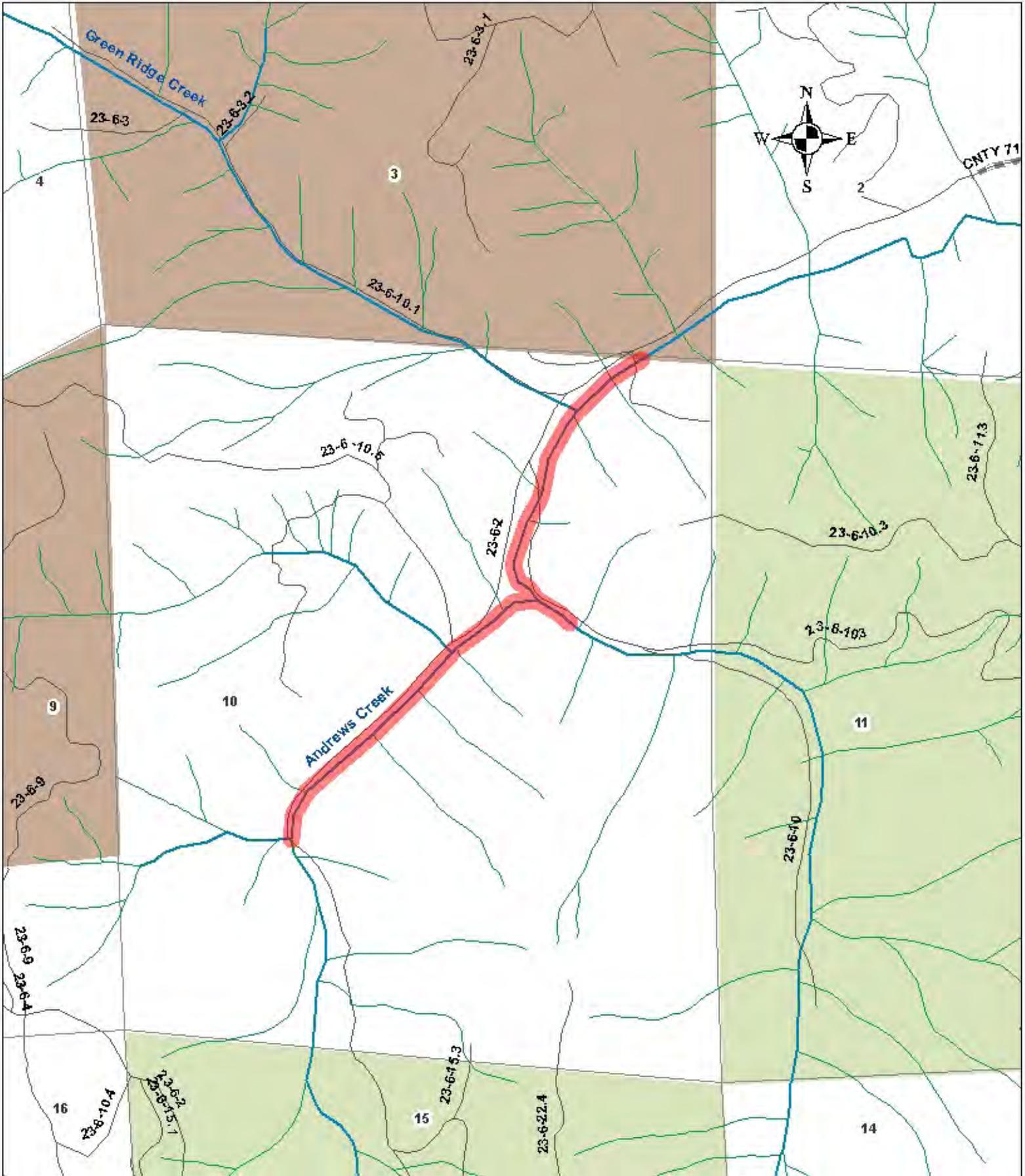
Billy Creek Large Wood
T23S, R6W, Sec 12



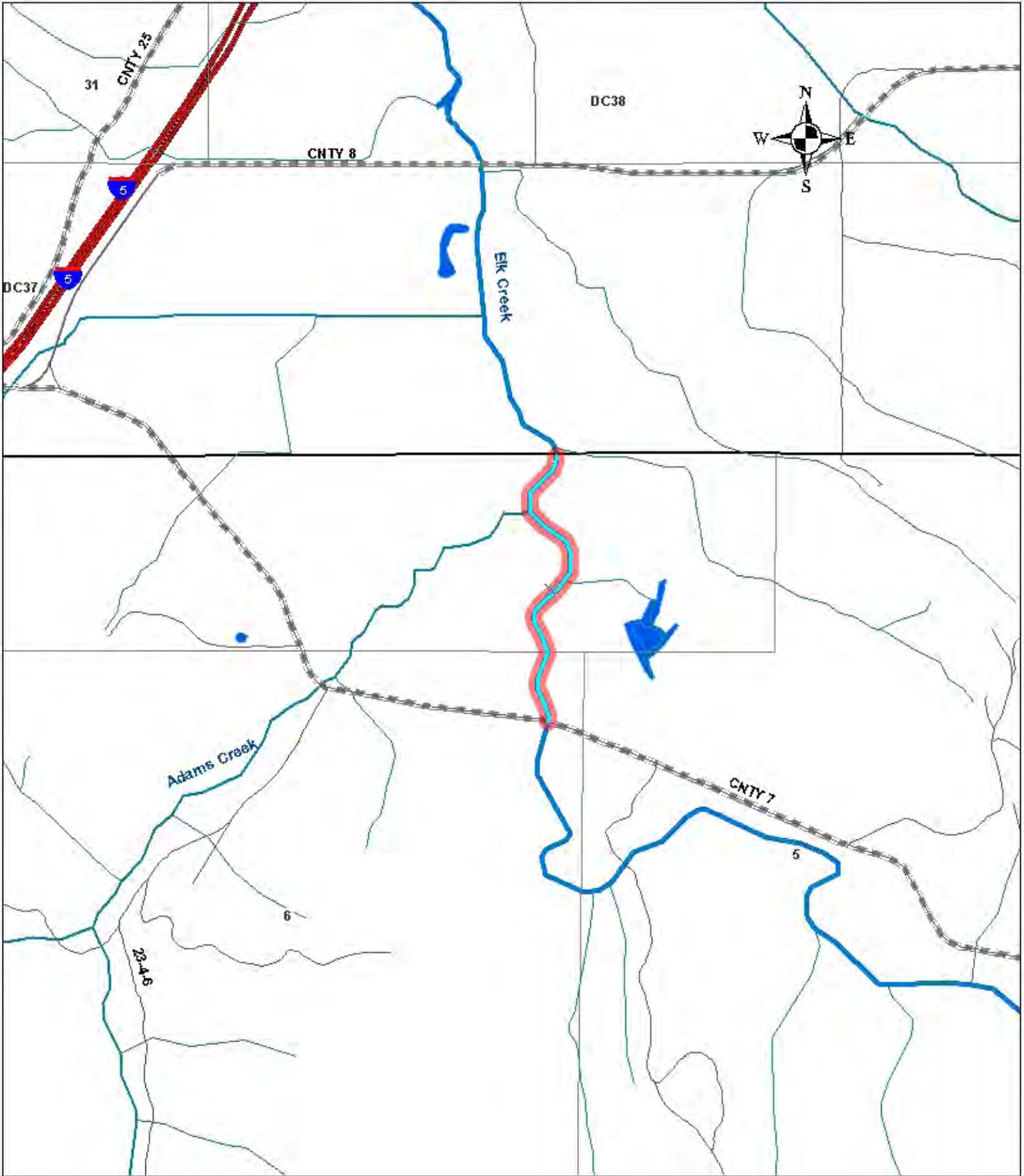
Cox Creek Large Wood and Boulders
T22S, R4W, Sec 20 & 21



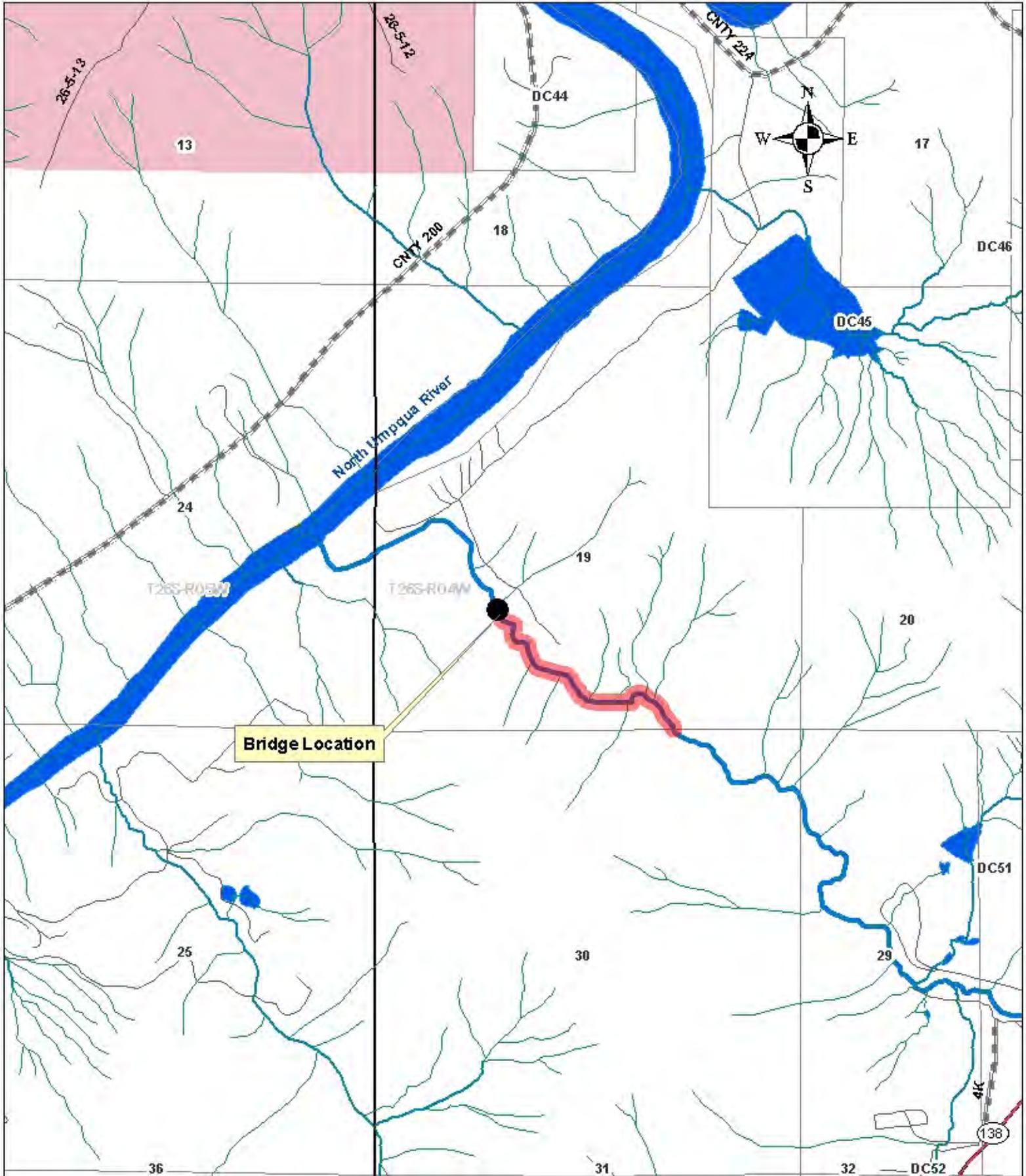
Andrews Creek Large Wood
T23S, R6W, Sec 10



Elk Creek Boulder Weirs
T23S, R4W, Sec 6



Oak Creek Large Wood and Bridge Crossing
T26S, R4W, Sec 19



Bachelor & Pollock Creek Large Wood Projects
T24S, R5W, Sec 10, 13, 15, 22, 27, 33, & 34

