



1 Order are asserted by one of the multiple parties to this proceeding and are less than all of the  
2 multiple claims of other major claimants and other parties. Numerous claims remain  
3 unadjudicated in the proceeding, and any appeal from this Conditional Final Order is unlikely to  
4 delay trial of unadjudicated matters. The claims that would be reviewed on any appeal from this  
5 Conditional Final Order are not likely to be rendered moot by the continuing proceedings before  
6 this Court. As a practical matter, an immediate appeal of this Conditional Final Order will likely  
7 prevent a waste of judicial resources and prevent a waste of resources for the parties to this case.  
8 Absent separate appeal of this Conditional Final Order, the parties and the Court will be involved  
9 in a single appeal of numerous, separate, discrete and diverse claims from separate hearings. A  
10 combined appeal of all such claims at the end of the adjudication will be unwieldy and  
11 unmanageable and result in substantial waste of judicial resources and the resources of the parties.  
12 The Court finds that United States would be prejudiced by any delay.

13 II. CONDITIONAL FINAL ORDER

14 Based on the foregoing, IT IS:

15 ORDERED, ADJUDGED and DECREED that the final decree shall set forth the following  
16 for the United States Department of Interior, Bureau of Reclamation, Court Claim No. 00276:

17 A. Thirteen water rights shall issue for the “Yakima Project Storage Reservoirs to the  
18 United States Department of the Interior, Bureau of Reclamation on behalf of itself and other  
19 entities to which it is required to supply water from storage” as follows:

- 20 1. Yakima River and watershed above Keechelus Dam. Water is stored in Keechelus  
21 Lake reservoir with a total active capacity of 166,846 acre-feet. The impounding  
22 structure is located within the NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 13, SE $\frac{1}{4}$  of Section 12, in T. 21  
23 N., R. 11 E.W.M., W $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 10, T. 21 N., R. 12 E.W.M.
- 24 2. Kachess River and watershed above Kachess Dam. Water is stored in Kachess Lake  
25 Reservoir with a total active capacity of 250,261 acre-feet. The impounding  
26 structure is located within the S $\frac{1}{2}$ SW $\frac{1}{4}$  of Section 34, T. 21 N., R. 13 E.W.M.
- 27 3. Yakima River and watershed above Cle Elum Dam. Water is stored in Lake Cle  
28 Elum reservoir with a total active capacity of 446,610 acre-feet. The impounding  
structure is located within SE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 3, the NE $\frac{1}{4}$  of Section 10, in T. 20  
N., R. 14 E.W.M.
4. Bumping River and watershed above Bumping Dam. Water is stored in Bumping  
Lake reservoir with a total active capacity of 38,768 acre-feet. The impounding

1 structure is located within the NW¼ of Section 23, the SW¼SW¼ of Section 14, in  
2 T. 16 N., R. 12 E.W.M.

3 5. Tieton River and watershed above Tieton Dam. Water is stored in Rimrock Lake  
4 reservoir with a total active capacity of 216,850 acre-feet. The impounding structure  
5 is located within the NE¼SW¼ and NW¼SE¼ of Section 31, T. 14 N., R. 14  
6 E.W.M.

7 6. Tieton River and watershed above Clear Lake Dam. Water is stored in Clear Lake  
8 reservoir with a total active capacity of 5,300 acre-feet. The impounding structure is  
9 located within the SW¼NE¼ of Section 12, T. 13 N., R. 12 E.W.M.

10 7. Yakima River watershed above Roza Diversion Dam. Water is stored behind the  
11 dam with a total active capacity of 472 acre-feet. The impounding structure is  
12 located within the NE¼NE¼ of Section 32 and the NW¼NE¼ of Section 33, in T.  
13 15 N., R. 19 E.W.M.

14 8. Tieton River and watershed above the Yakima-Tieton Diversion Dam. Water is  
15 stored behind the dam with a total active capacity of 2 acre-feet. The impounding  
16 structure is located within the NW¼SW¼ of Section 30, T. 14 N., R. 15 E.W.M.

17 9. Yakima River and watershed above Wapato Diversion Dam. Water is stored behind  
18 the dam with a total active capacity of 56 acre-feet. The impounding structure is  
19 within the NE¼, the SE¼ and the SW¼ of Section 17, T. 12 N., R. 19 E.W.M.

20 10. Yakima River and watershed above Sunnyside Diversion Dam. Water is stored  
21 behind the dam with a total active capacity of 60 acre-feet. The location of the  
22 impounding structure is within the NW¼SE¼ of Section 28, T. 12 N., R. 19  
23 E.W.M.

24 11. Yakima River and watershed above Prosser Diversion Dam. Water is stored behind  
25 the dam with a total active capacity of 408 acre-feet. The location of the  
26 impounding structure is within the N½NE¼ of Section 2, T. 8 N., R. 24 E.W.M.

27 12. Tieton River and the watershed above the Yakima-Tieton Irrigation District  
28 Diversion Dam and the North Fork of Cowiche Creek and watershed above French  
Canyon dam. Water is stored behind French Canyon Dam with a total active  
capacity of 1,265 acre-feet. The location of the impounding structure is on the North  
Fork Cowiche Creek within the SW¼SE¼ of Section 11, T. 14 N., R. 16 E.W.M.

The point of diversion from the Tieton River is within the NW¼SW¼ of Section

1 30, T. 14 N., R. 15 E.W.M.

2 13. Yakima River and watershed above Lake Easton Dam. Water is stored in Lake  
3 Easton with a total active capacity of 5,120 acre-feet. The impounding structure is  
4 located within the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 20 N., R. 13 E.W.M.

5 The place of use for all storage reservoirs is the Yakima Reclamation Project  
6 including the entire Yakima Basin. The purpose of use is Filling, detention, carryover,  
7 release and delivery of water to the United States Department of the Interior, Bureau of  
8 Reclamation and entities authorized to receive water from the Bureau of Reclamation. The  
9 period of use shall be October 1 through September 30.

10 These conditions shall be placed on each of the storage rights herein confirmed:

- 11 a. The priority date of May 10, 1905 is for the right to store water. It does not  
12 address the right to use water.
- 13 b. In any given water year, the United States may fill, release from and refill this  
14 reservoir to store and control available water without limitation by the static  
15 capacity above.
- 16 c. The United States may fill, release from and refill this reservoir for flood control  
17 purposes.

18 14. The United States claim to a May 10, 1905 storage right at the Wapatox Diversion  
19 Dam is DENIED. However, water may be pooled temporarily behind Wapatox Diversion  
20 Dam in order to enable the diversion into the Wapatox Ditch as an incidental aspect of the  
21 diversion right of the irrigation-based rights and it does not require an independent right to  
22 store Project water behind the dam. This is a common and historic practice throughout the  
23 basin.

24 B. The Court confirms three power generation rights to the United States Department  
25 of the Interior, Bureau of Reclamation:

26 1. A right with an April 4, 1899 priority date to divert 210 cubic feet per  
27 second from the Yakima River for power generation at the Chandler power plant from April  
28 1 through October 31. The following condition shall be included on the water right:

Reclamation will not release water from storage or divert water to the detriment of  
irrigation, municipal or industrial water rights with priority dates senior or equal  
to May 10, 1905 or migratory fish in order to generate electric power at Chandler  
hydroelectric plant.

2. A right with a May 10, 1905 priority date to divert 1,329 cubic feet per

1 second from the Yakima River for power generation at the Chandler power plant from  
2 April 1 through October 31 and 1,539 cubic feet per second from November 1 through  
3 March 31. The following condition shall be included on the water right:

4 Reclamation will not release water from storage or divert water to the detriment of  
5 co-equal priority irrigation, municipal or industrial water rights or migratory fish  
in order to generate electric power at Chandler hydroelectric plant.

6 The following applies to both Chandler rights. The point of diversion is at Prosser Dam  
7 and located approximately 1,350 feet west and 350 feet south from the northeast corner of  
8 Section 2, being within the E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ /W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T. 8  
9 N., R. 24 E.W.M. The GPS location is 119°35'29.46 W, 46°16'8.58 N. The place of use  
is the Chandler power plant located within the NE $\frac{1}{4}$  of Section 17, T. 9 N., R. 26 E.W.M.

10 3. A right with a May 10, 1905 priority date to divert 1,123 cubic feet per  
11 second from the Yakima River for power generation at the Roza power plant from  
12 January 1 through December 31. The point of diversion is located at the Roza diversion  
13 dam, located 950 feet S 3°30' west (975 feet south and 75 feet west) from the northeast  
14 corner of Section 32, being within the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 32, T. 15 N., R. 19 E.W.M.  
15 in Kittitas County. GPS is 120° 28' 40.16"W; 46° 37'5.45"N. The place of use is the  
16 Roza power plant with the NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 17, T. 13 N., R. 19 E.W.M. Two  
conditions shall be included in the water rights for the Roza plant:

17 Reclamation will not release water from storage or divert water to the detriment of  
18 co-equal priority irrigation, municipal or industrial water rights in order to  
19 generate electric power at Roza hydroelectric plant.

20 Within the over-all limit of 2,200 cubic feet per second on maximum combined  
21 diversion for irrigation and power use (power use under Certificate of  
22 Adjudication Water right No. \_\_\_\_\_) at the Roza canal headworks, diversions for  
23 Roza Division irrigation purposes shall be given preference. Subject to the  
foregoing qualification and to the availability of water and limitations on canal  
capacity, maximum diversions up to 1,123 cubic feet per second may be made for  
power purposes under Certificate of Adjudication Water Right No. \_\_\_\_\_.<sup>1</sup>

24 4. The following condition shall be included on all three of the water rights  
25 confirmed for power:

26 The source of water for this water right is the total water supply available, defined  
27 in the 1945 Consent Judgment as "that amount of water available in any year from

28 <sup>1</sup> The "blanks" will be filled in by Ecology upon assignment of Certificate of Water Right number.

1 natural flow of the Yakima River and its tributaries, from storage in the various  
2 Government reservoirs on the Yakima watershed and from other sources.”

3 C. The following seven rights are confirmed to the United States Department of the  
4 Interior, Bureau of Reclamation for the facilities known as the Reserved and Transferred Works:

5 1. A right to divert from Yakima River via Lake Easton 0.02 cubic feet per  
6 second and 2 acre-feet per year for irrigation of one acre from April 1 through October 31  
7 at Easton Dam residence. Both the place of use and point of diversion are located within  
8 the SE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 11, T. 20 N., R. 13 E.W.M. See USBR 228. GPS is  
9 121°11'17.15" W, 47°14'30.69" N.

10 2. A right to divert 0.01 cfs and 1.5 acre-feet per year from an unnamed  
11 spring for continuous domestic supply and industrial. The point of diversion is located  
12 within NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23, T. 16 N, R. 12 E.W.M. GPS location at 121°18'2.74"  
13 W, 46°52'29.35" N. The authorized place of use is within NE $\frac{1}{4}$ NW $\frac{1}{4}$  of Section 23, T.  
14 16 N, R. 12 E.W.M. at the Bumping Dam garage. See USBR 230.

15 3. A right to diverted 0.07 cfs and 7 acre-feet from the Tieton River for  
16 irrigation of 3½ acres at the Tieton Dam warehouse. Season of use is April 1 through  
17 September 30. The point of diversion is within the NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 14 N., R.  
18 14 E.W.M. GPS is 121°7'48.92" W, 46°39'22.28" N. The place of use is within the  
19 NW $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 31, T. 14 N., R. 14 E.W.M. See USBR 232.

20 4. A right to divert 0.032 cfs and 10 acre-feet per year from the Yakima  
21 River for irrigation of 2 acres and industrial from April 1 through October 31. The point  
22 of diversion is located 950 feet, S 3°30' west (approximately 975 feet south and 75 feet  
23 west) from the northeast corner of Section 32, T. 15 N., R. 19 E.W.M. in Kittitas County.  
24 GPS is 120°28'42.36" W, 46°36'55.40" N. The place of use is within the SW $\frac{1}{4}$ NE $\frac{1}{4}$  of  
25 Section 17, T. 13 N., R. 19 E.W.M. at the Upper Columbia Area Office/Yakima Field  
26 Office. See USBR 234.

27 5. A right to divert 0.01 cfs and 2½ acre-feet per year from the Yakima River  
28 for irrigation of 0.5 acre from April 1 through October 31. The point of diversion is  
1,350 feet south and 350 feet west from the northeast corner of Section 2, being with the  
E $\frac{1}{2}$ NE $\frac{1}{4}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$  and/or the W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$  of Section 2, T. 8 N., R. 24 E.W.M.  
GPS is 119°35'29.46" W, 46°16'8.58" N. The place of use is the Chandler Park within  
the NE $\frac{1}{4}$ SE $\frac{1}{4}$  of Section 17, T. 9 N., R. 26 E.W.M. See USBR 235.

1           6.       A right to divert 0.002 cfs and 0.66 acre-foot per year from the Yakima  
2 River for irrigation of 0.15 acre from April 1 through October 31. The point of diversion  
3 is located at the Sunnyside Dam headworks approximately 130 feet south and 1,500 feet  
4 west from the east quarter corner of Section 28, being within the NW¼SE¼ of Section  
5 28, T. 12 N., R. 19 E.W.M. The place of use at the Sunnyside Dam residence is within  
6 the NW¼SE¼ of Section 28, T. 12 N., R. 19 E.W.M. See USBR 237.

7           7.       A right to divert 0.04 cfs and 9.2 acre-feet per year from the Yakima River  
8 for irrigation of 1.84 acres at the Swauk Siphon residence from April 1 through October  
9 15. The point of diversion is located approximately 3,130 feet south 38° east (2,500 feet  
10 south and 1,800 feet east) from the northwest corner of Section 11, being within the  
11 SE¼NW¼ of Section 11, T. 20 N., R. 13 E.W.M. (KRD's diversion point). The place of  
12 use is located within the SW¼NW¼ of Section 20, T. 19 N., R. 17 E.W.M. See USBR  
13 236.

14           8.       For all the Reserved and Transferred Works rights herein confirmed, the  
15 priority date will be May 10, 1905. The following condition will be included on each  
16 water right:

17                 The source of water for this water right is the total water supply available, defined  
18 in the 1945 Consent Judgment as "that amount of water available in any year from  
19 the natural flow of the Yakima River and its tributaries, from storage in various  
20 Government reservoirs on the Yakima watershed and from other sources."

21           No right is confirmed for those facilities where water for fire suppression is used.  
22 The United States may rely on Court's *Stipulation RE: Water Use for Fire Suppression*,  
23 December 12, 1996, to cover this type of use.

24           D.       Four water rights are confirmed pursuant to Warren Act or other contracts as  
25 follows:

26           1.       The Court confirms a right to the United States, Department of the Interior  
27 Bureau of Reclamation on behalf of Casper Muoth or successors to divert water from  
28 Cowiche Creek in the amounts of 0.22 cfs and 10 acre-feet per year for irrigation of 2.5  
acres and incidental domestic uses. The point of diversion is approximately 1,170 feet  
north and 490 feet east from the west quarter corner of Section 16, being within the  
SW¼NW¼ of Section 16, T. 13 N., R. 18 E.W.M. Water may be used from April 1  
through October 31. The place of use is described as follows:

1 STATE ADD TO YAKIMA NO.2: LOT 8 EX THPT LY S OF FOL DESC LN  
2 BEG 1163.7 FT NOF W¼ COR, TH S 41°05'E 407.7 FT, THS 24°33'E 124  
3 FT, TH S 45°18'E 73.7 FT FT M/L TO E LN SD TR 8 & END OF SD LN  
4 EXBEG NW COR SW¼ NW¼, TH S 15.88 FT, THN 25°27'E 64.84 FT, TH N  
5 48°49'W 32.57' FT TH S 59.33 FT TO BEG. See USBR 240.

6 See also USBR 241(b).

7 2. A right is confirmed to the United States Department of the Interior, Bureau  
8 of Reclamation on behalf of Frank Payne to divert water from the Yakima River in the  
9 amounts of 0.40 cfs and 160 acre-feet per year for irrigation of 40 acres from May 1 through  
10 September 15. The point of diversion into the Fogerty ditch is 2,500 feet north and 1,610  
11 feet west of the southeast corner of Section 10, being within the NW¼SE¼ of Section 10,  
12 T. 17 N., R. 18 E.W.M. The place of use is within the SW¼NW¼ of Section 14, T. 17 N.,  
13 R. 18 E.W.M. See 246.

14 3. A right is confirmed to the United States Department of the Interior, Bureau  
15 of Reclamation on behalf of the United States Forest Service to divert water from the  
16 Naches River in the amounts of 0.1 cubic feet per second and 17.8 acre-feet per year for the  
17 irrigation of six acres and stock water. The point of diversion is located 2,500 feet north  
18 and 2,100 feet west from the southeast corner of Section 1, being within the NW¼SE¼ of  
19 Section 1, T. 16 N., R. 14 E.W.M. (Emerick Ditch). The place of use is within the SE¼ of  
20 Section 1, T. 16 N., R. 14 E.W.M. The season of use is July 1 through September 30.

21 4. A right is confirmed to the United States Department of the Interior, Bureau  
22 of Reclamation on behalf of the City of Cle Elum in the amounts of 3 cubic feet per second  
23 and 593 acre-feet per year for continuous municipal supply. However, Ecology shall issue a  
24 certificate of adjudicated water right only upon notification to the Court and Ecology that  
25 the unbuilt diversion structure has been constructed. The place of use is the City of Cle  
26 Elum, and the Laurel Hill Memorial Park Cemetery which is located within the NW¼SW¼  
27 of Section 27, T. 20 N., R. 15 E.W.M. DE-12 reflects the place of use—the service area is  
28 surrounded by a black dashed line. Diversion of water is authorized from the following  
points of diversion:

A. East bank of the Cle Elum River within the SW¼SW¼SE¼ of  
Section 30, T. 20 N., R. 15 E.W.M.

B. The Yakima River on the south bank from within the  
N½SE¼SW¼SE¼ and S½NE¼SW¼SW¼ of Section 27, T. 20 N., R. 15 E.W.M.



1 The following provision shall be placed on the water right:

2 The maximum quantity allowed under this May 10, 1905, water right and the City's  
3 water right dated June 30, 1896 shall be no more than 6 cfs and 1,693 acre-feet per  
4 year.

5 5. All rights confirmed will have a May 10, 1905 priority date.

6 6. The following provision shall be included in the above confirmed rights:

7 The source of water for this water right is the total water supply available, defined  
8 in the 1945 Consent Judgment as "that amount of water available in any year from  
9 the natural flow of the Yakima River and its tributaries, from storage in various  
10 Government reservoirs on the Yakima watershed and from other sources."

11 E. Trustee

12 With the exception of the United States' obligation to the Yakama Nation, for those  
13 water rights contained in a separate CFO that the United States holds as "trustee" for another  
14 party, the United States' role as "trustee" is defined by the terms of its contracts and Acts of  
15 Congress. Therefore, the duties of the United States as "trustee" do not impose on it any  
16 additional fiduciary duty or obligation other than the obligation to fulfill the contracts which they  
17 have drawn and issued pursuant to the Acts of Congress. See *Order RE: Warren Act Contract*  
18 *Issues*, September 18, 1996.

19 For all other water rights that the United States holds for a third party, the United States  
20 holds those water rights on behalf of the party in question.

21 DATED this 14<sup>th</sup> day of February, 2007.

22   
23 SIDNEY P. OTTEM,  
24 COURT COMMISSIONER

25 Attachments: A-USBR 228  
26 B-USBR 230  
27 C-USBR 232  
28 D-USBR 234  
E-USBR 235  
F-USBR 236  
G-USBR 237  
H-USBR 241(b)  
I-USBR 246

ATTACHMENT A - USBR 228

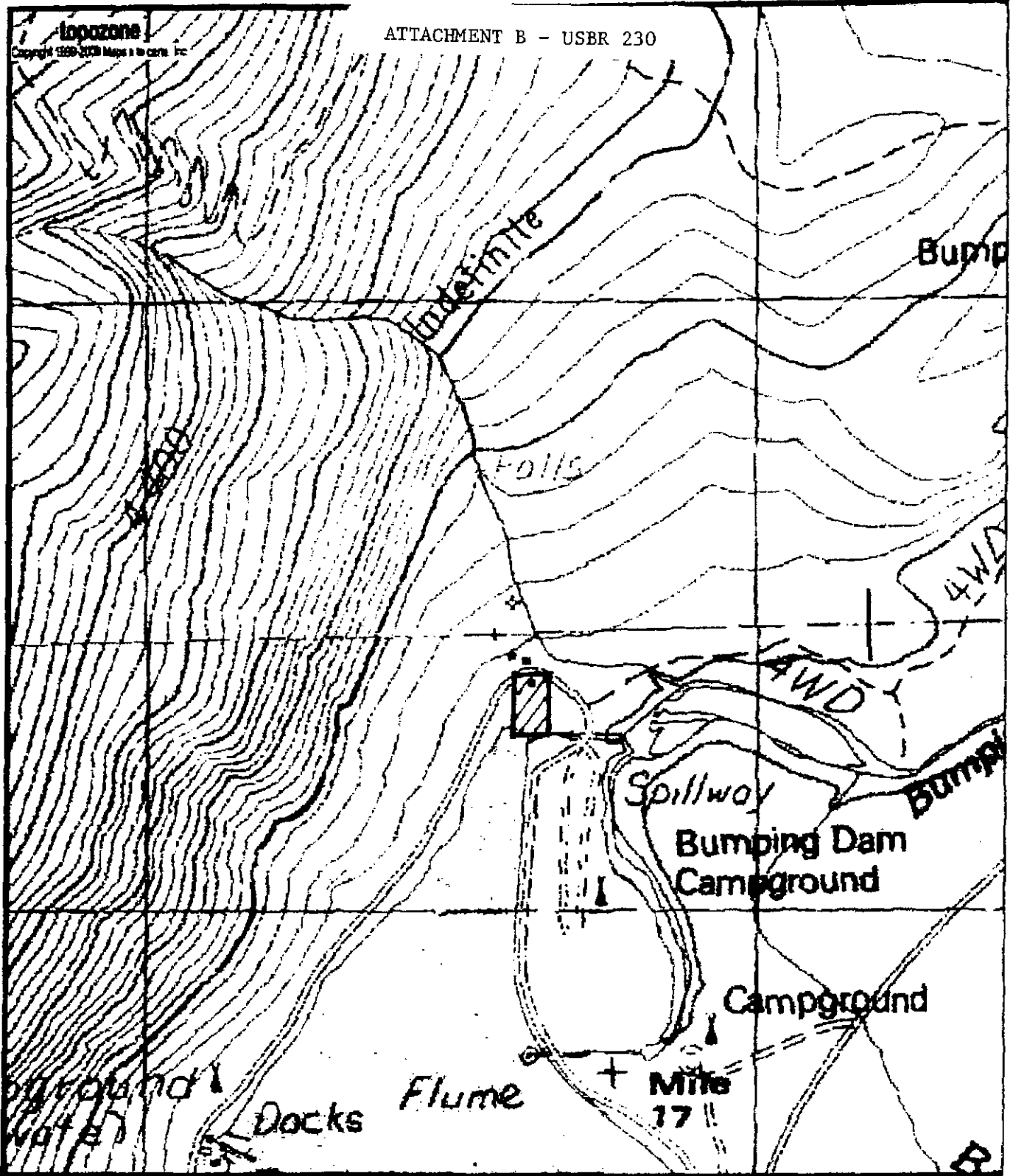
Easton Dam Residence

1.1 Acres (Approximate Designated Area)

S66°17'120"N R13E, 111M

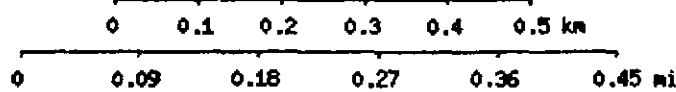


77-201464-6 DATE 3/15/2006  
WA Dept of Ecology VS AQUAVELLA, ET AL.  
RE \_\_\_\_\_ DI USBR 228  
DE USBR 228



ATTACHMENT B - USER 230

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Map center is UTM 10 629503E 5192715N (WGS84/NAD83)

Goose Prairie quadrangle

Projection is UTM Zone 10 NAD83 Datum

M=17.121

G=1.241

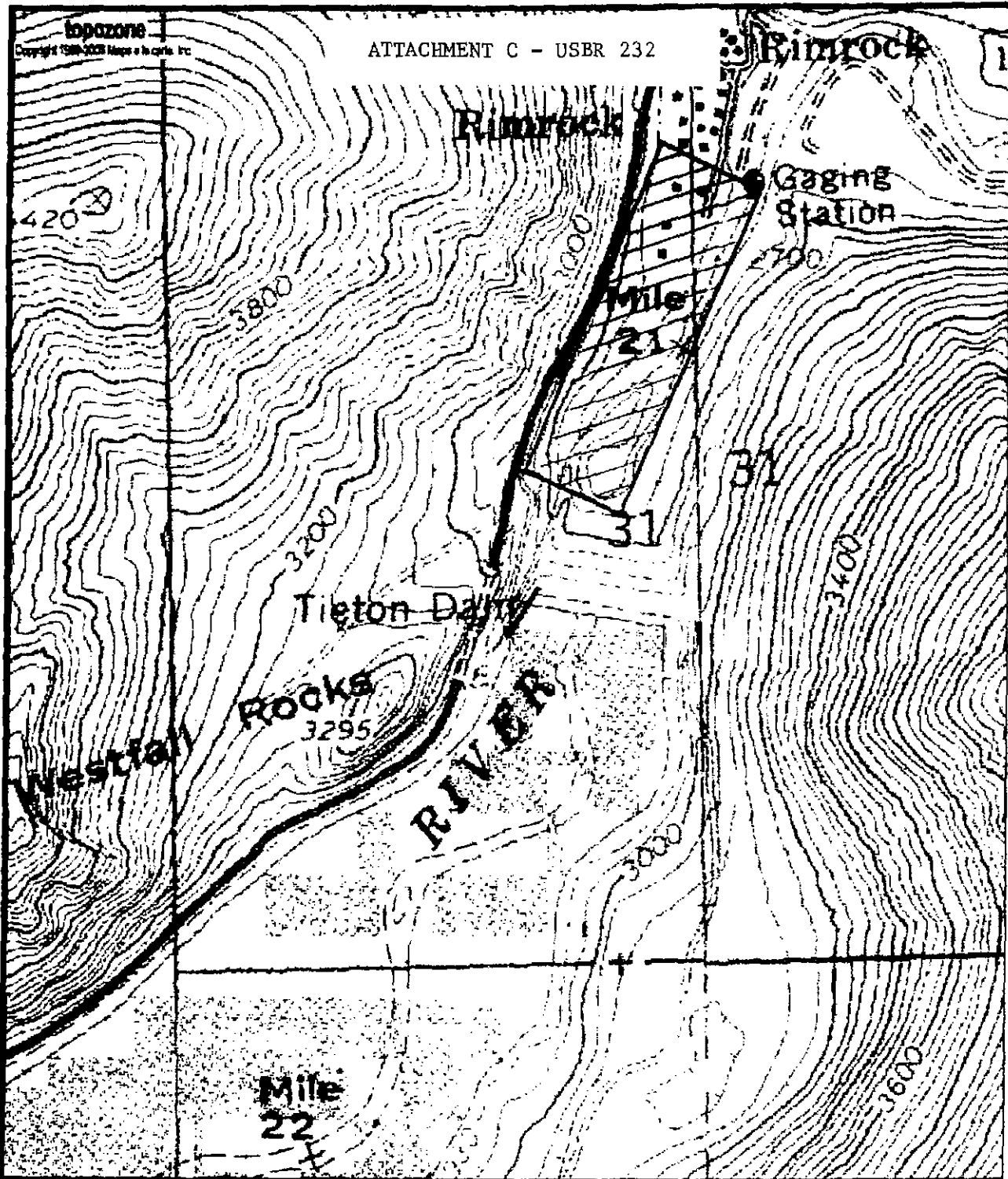
**LEGEND**



0.5 ACRES within the designated area. + indicates point of diversion

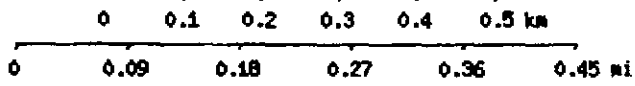
TIETON DAM WAREHOUSE

Sec 31 TIAN R14E WM



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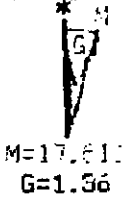
ATTACHMENT C - USBR 232

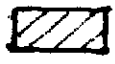


Map center is UTM 10 643058E 5168696N (WGS84/NAD83)

Rimrock Lake quadrangle

Projection is UTM Zone 10 NAD83 Datum



 3.5 ACRES within the designated area of point of diversion

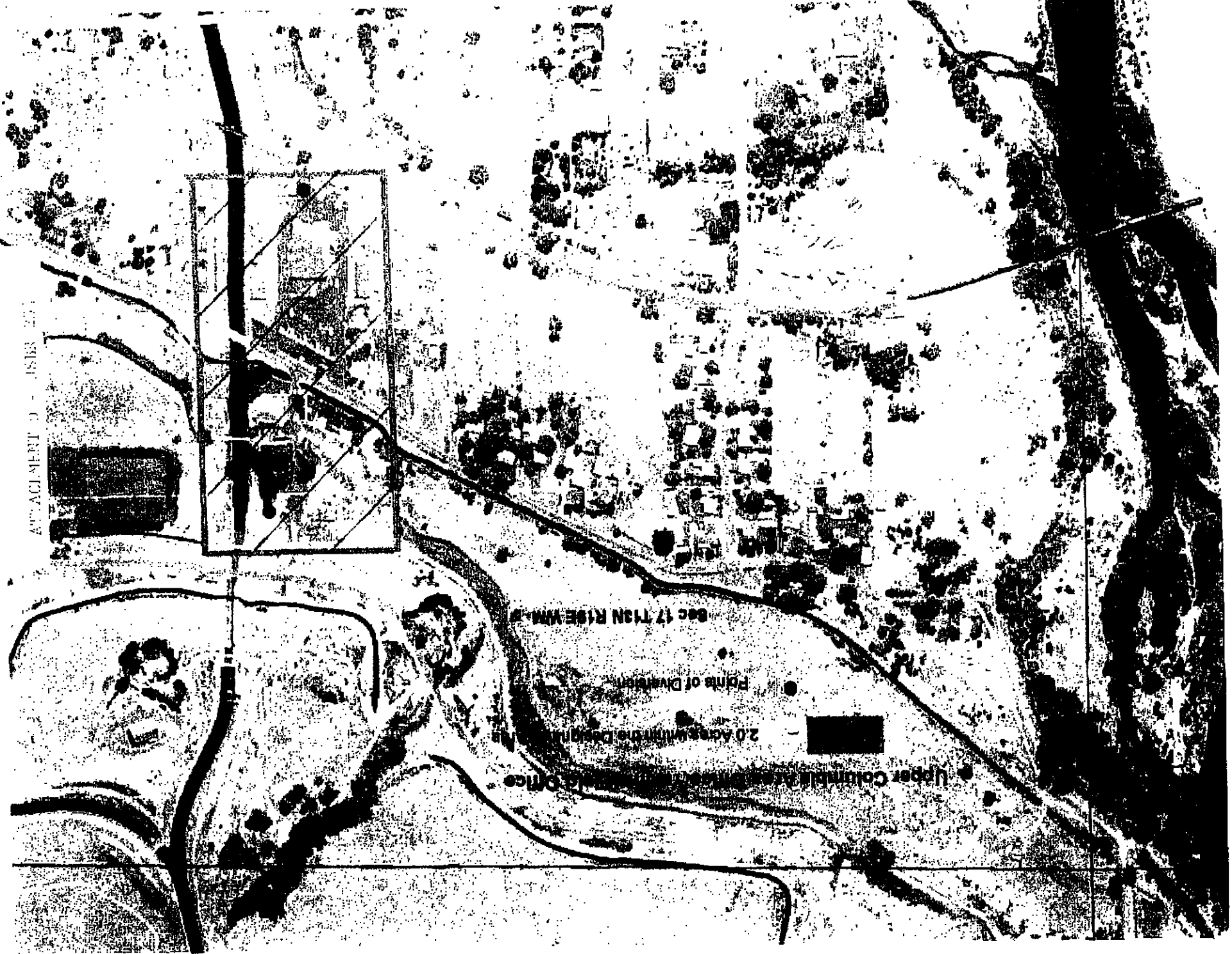
ATTACHMENT 3 - USBR 234

Upper Columbia River Basin, 1980s Office

2.0 Acres with the Designation

Points of Diversion

Sec 17 T13N R15E W11E



USBR 235

ATMOSPHERIC E - USSR 230



7-2-50  
3/10/50  
L 310033

Sec 20 R19N T17E W11



Swauk Siphon Residence

1.84 Acres within the Designated Area

DATE 3/15/2006  
USBR 236  
USBR 236

150000  
1:50,000  
U.S. GEOLOGICAL SURVEY  
WASHINGTON, D.C. 20541

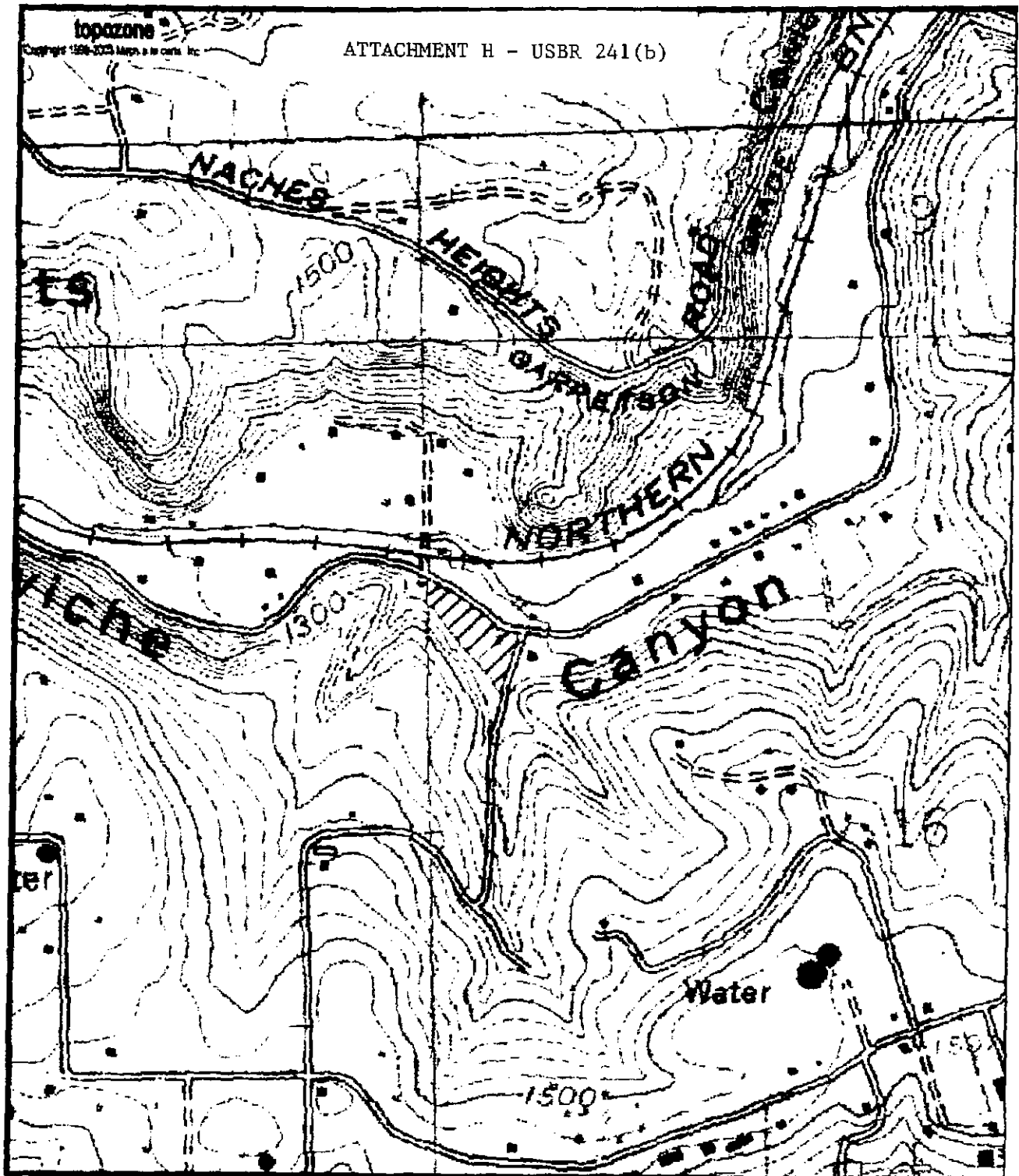


SEC 28 T12N R19E WM

0.18 Acres within the Designated Area

Sunnyvale Dam Residence





Map center is UTM 10 684385E 5165532N (WGS84/NAD83)

Yakima West quadrangle

Projection is UTM Zone 10 NAD83 Datum

✚ POINT OF DIVERSION



2.5 Acres within the designated area.

<http://www.topozone.com/print.asp?z=10&n=5165532.00018068&e=6843>

M=1:2,404

G=1.751

77-2-01484-5 DATE: 3/15/2006  
 WA Dept of Ecology VS ACQUAVELLA ET AL  
 PI \_\_\_\_\_ DI USBR 241(b)  
 PE \_\_\_\_\_ DE USBR 241(b)

Paym Warren Act Contract

40.0 Acres within the Designated Area

18E WM

77-0-01484-5 DATE 3/15/2006  
WA Dept of Ecology VS AGGAVELLA, ET AL  
PI \_\_\_\_\_ DI USBR 246  
UP \_\_\_\_\_ DEL USBR 246