



Department of Energy

Bonneville Power Administration
P.O. Box 3621
Portland, Oregon 97208-3621

FREEDOM OF INFORMATION ACT/PRIVACY PROGRAM

March 2, 2020

In reply refer to: FOIA #BPA-2020-00360-F

Frances Barnett and Don Barnett

(b) (6)

Dear Ms. Barnett and Mr. Barnett,

This communication is the Bonneville Power Administration's (BPA) final response to your records request made under the Freedom of Information Act, 5 U.S.C. § 552 (FOIA). Your records request was received on January 7, 2020 and formally acknowledged on January 9, 2020.

Request

"The EOSH POD (Headgate) Point of Diversion is located at 2N32000001200 (property owned by (b) (6) UMABIRCH LLC) wood pipe section runs across 2N32000001200 and 2N31130000400 (property owned by (b) (6) UMABIRCH LLC) wood pipe section runs under the UPRR where it then connects to an open ditch located at 2N31130000401 (b) (6)

Our Record Request is for Figure 7 [which is the] December 8, 1919 map showing the EOSH POD at the Umatilla River and the conveyance of water via a wooden pipe and then open ditch (On file in Abstract of Permit No. 12001 at OWRD Pendleton Office).

We are [also] requesting the following documentation [or information regarding] this EOSH POD (From Headgate through wood pipe from point of diversion to open ditch):

1. When was the [Eastern Oregon State Hospital Point of Diversion] EOSH POD and diversion ditch last used or monitored for water usage?
2. Records showing last usage date and monitoring records.
3. Who owns the EOSH POD (Headgate)?
4. Was this EOSH POD abandoned [,] and if so when and by whom?
5. Who has the responsibility for maintenance of this EOSH POD, wooden pipe structure, and open ditch site at point of entry at 2N3110000400?
6. If EOSH POD was abandoned [,] who has the responsibility to maintain even if not being used [,] and [has the] point of diversion changed location?"

Response

BPA conducted electronic searches of records in Real Property Field Services and Environment, Fish & Wildlife. The agency located 71 pages of records responsive to your request. BPA is:

- Releasing 13 pages in full.
- Withholding 17 pages in full under 5 U.S.C. § 552(b)(3) (Exemption 3).
- Releasing two pages containing redactions applied under Exemption 3.
- Withholding 38 pages in full under 5 U.S.C. § 552(b)(4) (Exemption 4).
- Releasing three pages containing redactions applied under Exemption 4.

Exemptions

The FOIA generally requires the release of all responsive government records upon request. However, the FOIA permits withholding certain limited information that falls under one or more of nine statutory exemptions (5 U.S.C. §§ 552(b)(1-9)).

Exemption 3

Exemption 3 permits withholding of material under the non-disclosure provisions of other federal statutes. A statute may qualify for Exemption 3 if it “requires that the matters be withheld” or “establishes particular criteria for withholding” (5 U.S.C. § 552(b)(3)). In this case, the Archaeological Resources Protection Act (16 U.S.C. § 470hh) permits withholding of the nature and location of archaeological resources. The responsive records contain sensitive cultural resource information, the release of which would risk harm to historic properties of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Therefore, we are withholding the information under Exemption 3 and the Archaeological Resources Protection Act.

Exemption 4

Exemption 4 permits withholding information from an outside entity, where the information is customarily kept private and where BPA made no express indication that the agency would disclose the records. In this case, certain information contained in the responsive records related to resources of the CTUIR was redacted under Exemption 4 of the FOIA.

Additional Information

None of records identified in the report regarding the EOSH POD are in the possession of the CTUIR. All information regarding the EOSH POD is publically available at the Oregon Water Resources Department (OWRD) office in Pendleton or on the OWRD website at: <https://www.oregon.gov/owrd/Pages/index.aspx>, specifically their water-rights mapping tool at <https://apps.wrd.state.or.us/apps/gis/wr/Default.aspx>.

Fee

There are no FOIA fees applicable to your request for BPA records.

Certification

Your FOIA request BPA-2020-00360-F is now closed with all available agency records provided. Pursuant to 10 C.F.R. § 1004.7(b)(2), I am the individual responsible for the exemption determinations and records release described above.

Appeal

The adequacy of the search may be appealed within 90 calendar days from your receipt of this letter pursuant to 10 C.F.R. § 1004.8. Appeals should be addressed to:

Director, Office of Hearings and Appeals
HG-1, L'Enfant Plaza
U.S. Department of Energy
1000 Independence Avenue, S.W.
Washington, D.C. 20585-1615

The written appeal, including the envelope, must clearly indicate that a FOIA appeal is being made. You may also submit your appeal by e-mail to OHA.filings@hq.doe.gov, including the phrase "Freedom of Information Appeal" in the subject line. (The Office of Hearings and Appeals prefers to receive appeals by email.) The appeal must contain all the elements required by 10 C.F.R. § 1004.8, including a copy of the determination letter. Thereafter, judicial review will be available to you in the Federal District Court either (1) in the district where you reside, (2) where you have your principal place of business, (3) where DOE's records are situated, or (4) in the District of Columbia.

You may contact me at the address on this letter header for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows:

Office of Government Information Services
National Archives and Records Administration
8601 Adelphi Road-OGIS
College Park, Maryland 20740-6001
E-mail: ogis@nara.gov
Phone: 202-741-5770
Toll-free: 1-877-684-6448
Fax: 202-741-5769

Questions about this communication may be directed to BPA FOIA Public Liaison Jason Taylor at jetaylor@bpa.gov or at 503.230.3537.

Sincerely,

A handwritten signature in black ink, appearing to read "Candice D. Palen". The signature is fluid and cursive, with the first name being the most prominent.

Candice D. Palen, Freedom of Information/Privacy Act Officer

[Responsive agency records accompany this communication.](#)

History of Water Conveyance Relevant to the Project Area

A review of Oregon Water Resources Department (OWRD) water right records indicates that there are three entries for a point of diversion (POD) on the Umatilla River in the northwest ¼ of the northwest ¼ of Section 18, Township 2 North, Range 32 East, WM, likely at the location of the project area dam. The water rights from this POD were allocated to George C. Sloan (certificate 80490 with water right transfer T6588); Eastern Oregon State Hospital (EOSH; application S30649; permit S24144; certificate 80492 with water right transfer T6589); and Johns and Smith Beamer (application S39630; permit S29330; certificate 41258 with water right transfer T6590).

George C. Sloan's 2003 water right certificate confirms his right to use the water right with a priority date of 1892 for domestic irrigation and stock use, based on Sloan's December 1919 certificate 2619. The certificate acknowledges that the water is being diverted from the Umatilla River, but does not provide a specific POD. This water right was later transferred to Warren and Vivian Taylor (who owned land downstream at the mouth of Birch Creek—see below) and their transfer of water right documents state that the Sloan POD is 630 feet south and 730 feet west from the northeast corner of Section 13, Township 2 North, Range 31 East, WM. On a current aerial image, this measures to a point southwest of Wyss Dam, south of the Umatilla River in the rock bluffs. The OWRD Watermaster stated that an abbreviation used in the George Sloan documents indicates that by the late 1950s, the canal was no longer in existence (Personal Communication Greg Silbernagel May 22, 2018).

EOSH's permit allowed the institution to divert water from both Birch Creek and the Umatilla River. The POD along the Umatilla River was 960 feet (S54°00'E) from the northwest corner of Section 18, Township 2 North, Range 32 East, WM. Using ArcGIS and an aerial image, Wyss Dam is approximately 958 feet southeast from the northwest corner of Section 18, Township 2 North, Range 32 East, WM. The diversion is described in the application for permit as 70 feet length on top and 70 feet length on bottom. The "character of construction" is described as a concrete intake and concrete wing with the height of the water controlled by flashboards. The headgate is a sheet steel shear gate set in the concrete intake wall. If

water was to be pumped, the pump was described as centrifugal. The canal system was 3 feet wide on top, 2 ½ feet wide at the bottom, with 2 feet of water in the line at the headgate, and a fall of 1 foot over 1,000 feet. The pipe was 1300 feet in length, 22 inches in diameter for the length of the line, had a capacity of 6.33 second feet, and is 12 feet lower in elevation where it was utilized to the southwest for irrigation under this permit. The permit indicates that the priority date is April 5, 1956.

The 1964 Johns and Smith Beamer permit states that the POD is 625 feet south and 660 feet east of the northwest corner of Section 18. This places the POD about 150 feet southwest of Wyss Dam in the rock bluffs south of the Umatilla River. The Umatilla River POD is a movable pipeline, 2640 feet in length and consists of 4-inch pipe. The elevation difference from the POD to the place of irrigation is 100 feet of even grade. Also on file is the 1974 Johns and Smith Beamer certificate of water right which has a slightly different POD description: 630 feet south and 730 feet east from the northwest corner of Section 18, Township 2 North, Range 32 East, WM.

The above three water rights were transferred to Warren and Vivian Taylor in the late 1990s and mid-2000s. Between 1998 and 2005, Warren and Vivian Taylor submitted amended applications to transfer T-6588, T-6589, and T-6590 water rights indicating that the “Old Point of Diversion on the Umatilla River and Delivery Ditch were destroyed by flood. The change will make a more efficient operation.” Figure 6 in their applications is a map certified by Water Right Examiner David Krumbain for the State of Oregon on November 19, 1987 which shows an existing and proposed PODs at the Umatilla River, and a dashed line which appears to represent a current or former water conveyance ditch from the POD.

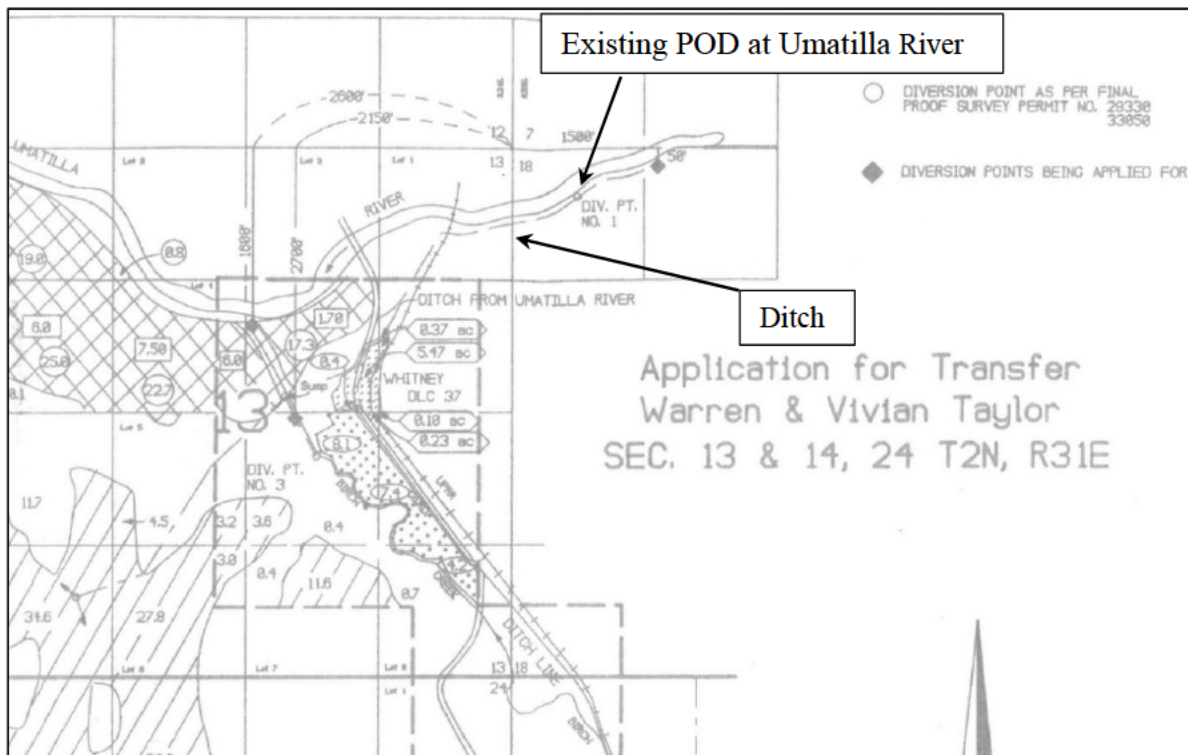


Figure 6. Map in Warren and Vivian Taylor’s Application for Water Rights Transfer showing the former POD in Section 18 (Wyss Dam) and the former associated water conveyance system as a dashed line labeled “Ditch From Umatilla River” (On file in map file drawers at OWRD Pendleton Office).

OWRD Pendleton Office files also contain EOSH's Abstract of Permit Number 12001, application 16177, certificate 11564 to irrigate lands from a POD located in the northwest $\frac{1}{4}$ of the northwest $\frac{1}{4}$ of Section 18, Township 2 North, Range 32 East, specifically, 564 feet south and 777 feet east from the northeast corner of Section 13, Township 2 North, Range 31 East. This places us in the vicinity of Wyss Dam, just slightly farther south than mapped today. This application has a priority date of October 25, 1935. The amount of water measured at the POD was 2.49 cfs, with EOSH only receiving a small portion of this. The December 8, 1919 engineering map on file with this permit shows a wood pipe (labeled 22 wood pipe cap. 6.33 second feet) beginning at the POD and extending southwesterly for about one-quarter mile to where the pipe crosses the Reith to Pilot Rock railroad. From west of the tracks, the water is conveyed in an open ditch to a field east of Birch Creek and south of the Umatilla River (Figure 7).

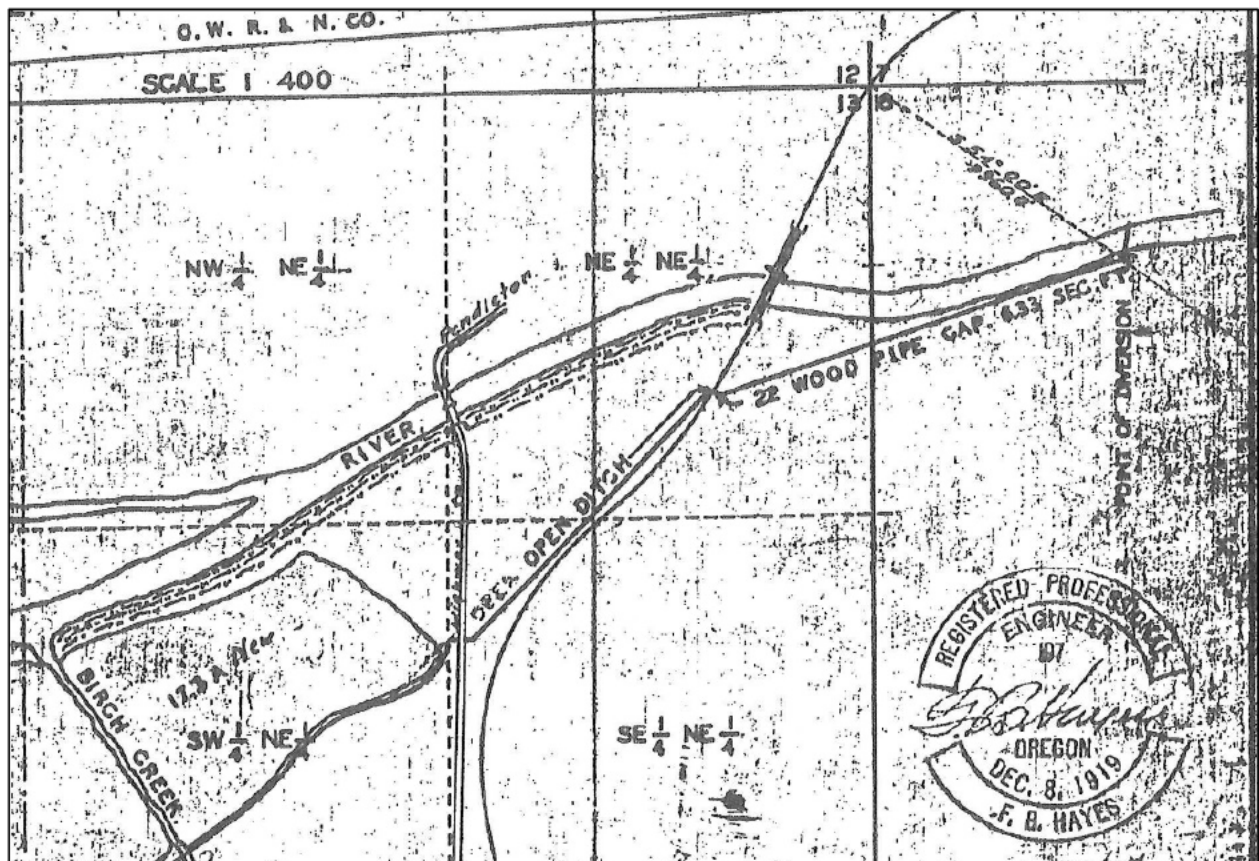


Figure 7. December 8, 1919 map showing the EOSH POD at the Umatilla River and the conveyance of water via a wooden pipe and then open ditch (On file in Abstract of Permit No. 12001 at OWRD Pendleton Office).

In 1910, the OWRD adjudicated water rights on the Umatilla River and its tributaries. John H. Lewis, State Engineer, created maps showing points of diversion and ditches (on file at the OWRD Pendleton Office; Figures 8-9). No POD or water conveyance system is shown in the location of the project area in Section 18.

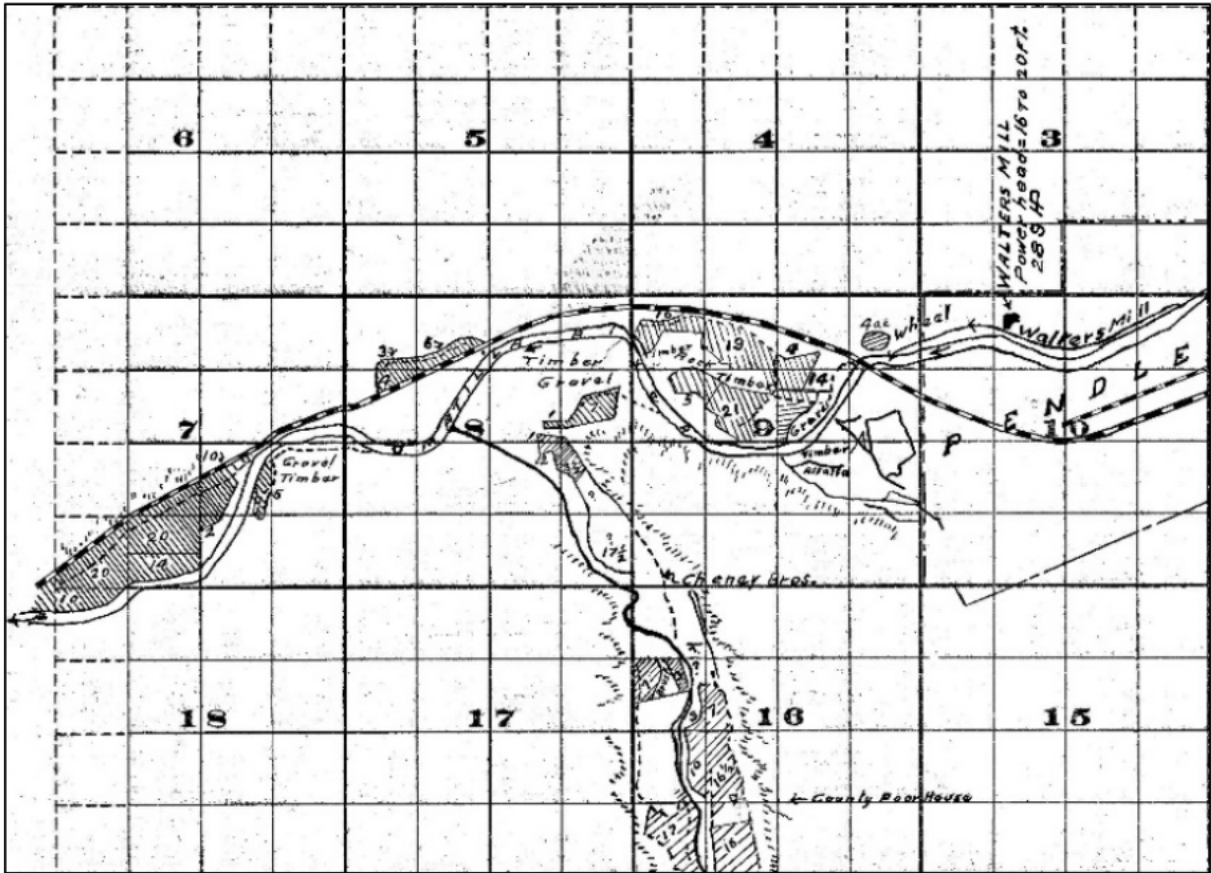
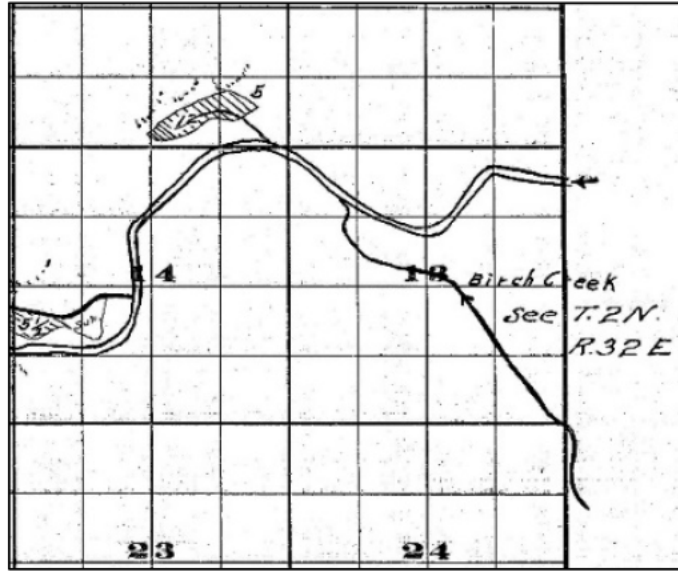


Figure 8. May 9, 1910 maps by John H. Lewis, State Engineer. Top map (Township 2 North, Range 31 East, WM) does not show lands being irrigated southwest of the project area (in Section 13) via a POD located in the project area. Bottom map (Township 2 North, Range 32 East, WM) shows that land is being irrigated north of the Umatilla River in the project area but does not show a POD in the location of the Wyss Dam in Sections 7 or 18, or water conveyance on the south side of the river in Section 18 (on file in the map drawer at the OWRD Pendleton Office).

The historic documentation therefore indicates that there was a priority water right at or near the location of dam location as early as 1892 for George C. Sloan. In 1919, water was being diverted from a POD into a wooden pipe for approximately one-quarter mile and then into an open ditch. In 1956, the POD on the Umatilla River was described as 70 feet across, with concrete wing walls. The POD headgate at that time was a sheet steel shear gate set in a concrete intake wall, with the water level controlled by flashboards. By the late 1950s the canal was no longer in existence (Personal Communication Greg Silbernagel May 22, 2018). By the 1964 Johns and Smith Beamer permit, the pipe to be used was movable, suggesting a ditch was not utilized.

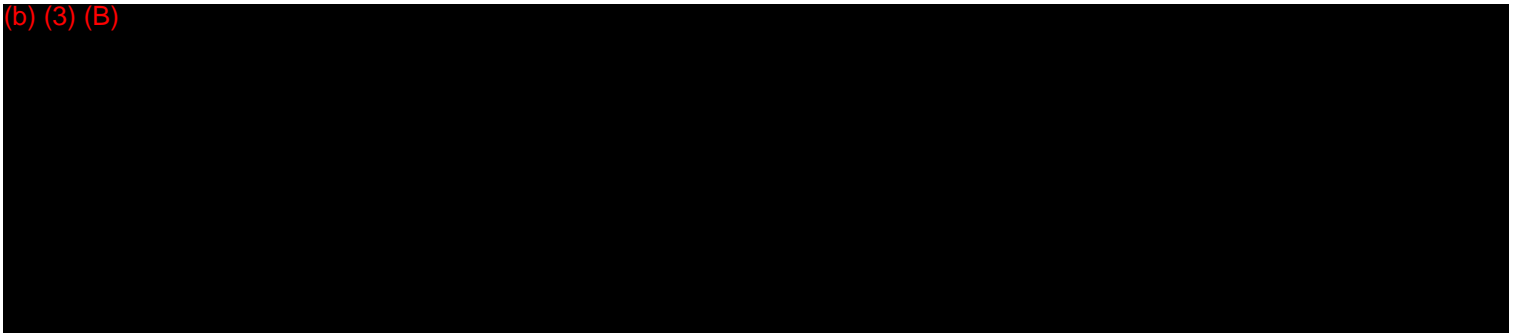
(b) (4)



(b) (4)



(b) (3) (B)



Wyss Dam

The concrete diversion dam is approximately 150 feet across with a 1½ foot drop (Photographs 8-11). This measurement is based on aerial imagery and the project plan map (Figure 13). The headgate grate measured approximately 3 feet high and 7 feet wide (Photograph 12). Due to the thick vegetation and erosion, no evidence of a ditch on the south side of the river was observed. The concrete wing walls on both sides of the river are approximately 1 foot wide and approximately 3 feet above the bank. The dam and associated features (wing walls and headgate) were recorded (see Appendix).


Research could not clearly prove that Wyss Dam is over 50 years old (see pages 18-22). Water rights records reviewed show three entries for a point of diversion (POD) on the Umatilla River in the northwest ¼ of the northwest ¼ of Section 18, Township 2 North, Range 32 East, WM. The Sloan certificate has a priority right of 1892 for a POD 630 feet south and 730 feet west from the northeast corner of Section 13, Township 2 North, Range 31 East, WM. This is just 60 feet southwest of Wyss Dam and therefore may be the project area POD. The Sloan documents indicates that by the late 1950s, the canal from this POD was no longer in existence (Personal Communication Greg Silbernagel May 22, 2018).

The EOSH's water right with a priority date of April 5, 1956 diverted water from a POD along the Umatilla River was 960 feet (S54°00'E) from the northwest corner of Section 18, Township 2 North, Range 32 East, WM. This is at Wyss Dam. The EOSH diversion is described as 70 feet length on top and 70 feet length on bottom, with a concrete intake and concrete wing walls, and 1,300 feet of pipe.

The 1964 Johns and Smith Beamer permit states that the POD is 625 feet south and 660 feet east of the northwest corner of Section 18, Township 2 North, Range 32 East, WM. This places the POD about 150 feet southwest of Wyss Dam in the rock bluffs south of the Umatilla River. The POD is a movable pipeline, 2,640 feet in length and consists of 4-inch pipe.

The 1956 certificate is the earliest description found for a dam at this location. This 1956 dam may or may not be the same concrete dam currently located at this location, as the current span is closer to 150 feet, instead of the 70 feet described. It could have been a later dam constructed in this location. Additionally, between 1998 and 2005, Warren and Vivian Taylor submitted amended applications to transfer three water rights from this location and the applications indicated that "Old Point of Diversion on the Umatilla River and Delivery Ditch" were destroyed by a flood.

(b) (3) (B)



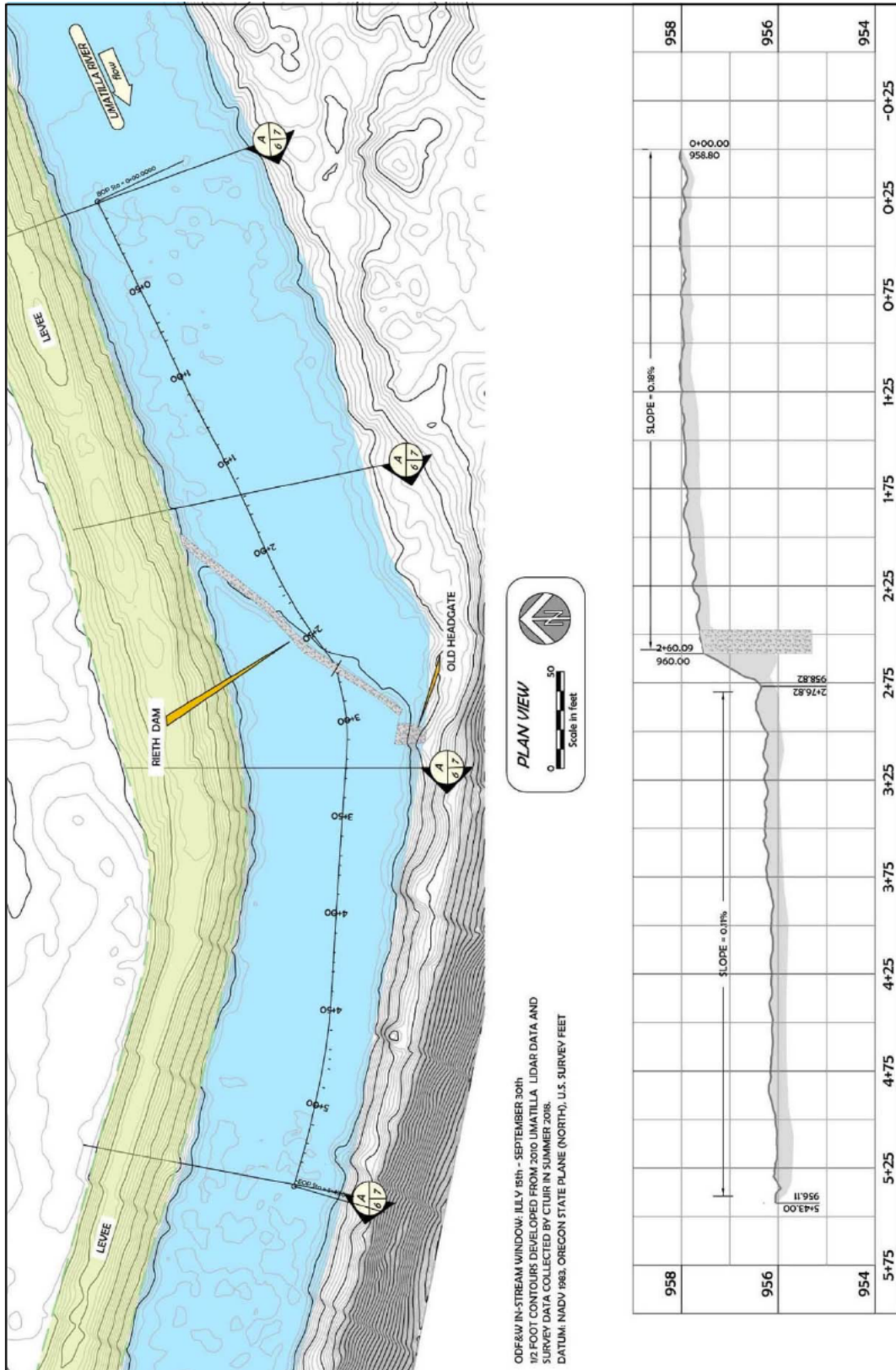


Figure 13. Dam removal site plan and profile compiled by the CTUIR Fisheries Program and BPA, February 2019. Note the location of the Wyss Dam and Pendleton Levee 2c.

Appendix

OREGON SHPO CLEARANCE FORM

Do not use this form for ODOT or Federal Highway projects or to record archaeological sites

This form is for: **federal** cultural resource reviews (Section 106); **state** cultural resource reviews (ORS 358.653)

SECTION 1: PROPERTY INFORMATION

SHPO Case Number:

Resource Name: Wyss Dam

Street Address: NW ¼ of the NW ¼ of Section 18, Township 2 North, Range 32 East, WM; South of the end of Wyss Lane

City: Reith

County: Umatilla

Agency Project # CTUIR Fisheries #408-018

Project Name: Wyss Dam Removal

If there is not a street address, include the Township, Range, and Section, cross streets, or other address description

Owner: Private (Whitney) Local Gov State Gov Federal Gov Other: _____

Are there one or more buildings or structures? YES NO – If no, skip to Section 2 and append photo(s)

Is the property listed in the National Register of Historic Places? YES – Individually YES – In a district NO

Original Construction date: unknown Check box if date is estimated

Siding Type(s) and Material(s): concrete

Window Type(s) and Material(s): n/a

Has the property been physically altered? No Alterations Few Alterations Major / Many Alterations

SECTION 2: APPLICANT DETERMINATION OF ELIGIBILITY - Check the appropriate box

The purpose of this review is to avoid impacts to properties that are "eligible" (historic) or already listed in the National Register of Historic Places. Fully establishing historic significance can be very costly and time consuming. Therefore initial evaluations are based on age (50 years or greater) and integrity (historic appearance), which are the minimum qualifications for listing in the National Register. Additional documentation may be needed further in the process, but typically initial evaluations allow the review process to proceed expeditiously.

The property is considered **Eligible** at this time because it is already listed in the National Register **or**

- is at least 50 years old **and** retains its historic integrity (minimal alterations to key features)
- has potential significance (architectural or historical)

The property is considered **Not Eligible** at this time because it:

- is less than 50 years old **or** is 50 years or older but there have been major alterations to key features
- is known to have no significance, based on National Register-level documentation and evaluation

SECTION 3: APPLICANT DETERMINATION OF EFFECT - Check the appropriate box

The project has **NO EFFECT** on a property that is eligible or already listed in the National Register, either because there is no eligible property involved or the eligible property will not be impacted physically or visually.

The project will have a minor impact on a property that is eligible or already listed in the National Register, and therefore there is **NO ADVERSE EFFECT**. Minor impacts include replacement of some, but not all, siding, doors, or windows, etc.

The project will have a major impact on a property that is eligible or already listed in the National Register, therefore there is an **ADVERSE EFFECT**. Major impacts include full or partial demolition, complete residing, full window replacement, etc.

STATE HISTORIC PRESERVATION OFFICE COMMENTS – Official use only

Eligibility: Concur with the eligibility determination above.
 Do not concur with the eligibility determination above.

Effect: Concur with the effect determination above.
 Do not concur with the effect determination above.

RECEIVED STAMP

Signed: _____ Date: _____

RLS	
ILS	

CONTACT INFORMATION STAMP

Comments:

OREGON SHPO CLEARANCE FORM

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SECTION 4: PREVIOUS ALTERATIONS TO THE BUILDING OR STRUCTURE

Only complete this section for buildings that are 50 years old or older. Describe any alterations that have already occurred to the building, such as material replacement, including siding, windows, and doors; any additions, including garages; and any removal or addition of architectural details, such as brackets, columns, and trim. Provide estimated dates for the work. Attach additional pages as necessary.

It is not clear when Wyss Dam was constructed. Documents on file at Oregon Water Resources Department indicate that Eastern Oregon State Hospital's permit (EOSH; application S30649; permit S24144; certificate 80492 with water right transfer T6589) allowed EOSH to divert water from the Umatilla River at point of diversion (POD) 960 feet (S54°00'E) from the northwest corner of Section 18, Township 2 North Range 32 East, WM. The POD at Wyss Dam is approximately 958 feet southeast from the northwest corner of Section 18, Township 2 North, Range 32 East, WM. In EOSH's permit application, the diversion is described as 70 feet length on top and 70 feet length on bottom. The "character of construction" is described as a concrete intake and concrete wing with the height of the water controlled by flashboards. The headgate is a sheet steel shear gate set in the concrete intake wall. If water was to be pumped, the pump was described as centrifugal. The canal system was 3 feet wide on top, 2 ½ feet wide at the bottom, with 2 feet of water in the line at the headgate, and a fall of 1 foot over 1000 feet. The pipe was 1300 feet in length, 22 inches in diameter for the length of the line, had a capacity of 6.33 second feet, and is 12 feet lower in elevation where it the water was utilized to the southwest for irrigation under this permit. The permit indicates that the priority date is April 5, 1956.

The current concrete diversion dam is approximately 150 feet across based on aerial imagery and the project plan map, with a headgate which measures 3 feet high and 7 feet wide. No evidence of pipe or a canal was observed. The concrete wing walls on both sides of the river are approximately 1 foot wide and approximately 3 feet above the bank. The dam measurements are far greater in size than the 1956 measurements, and therefore may have been upgraded and altered since 1956.

SECTION 5: PROJECT DESCRIPTION

Describe what work is proposed, including what materials will be used and how they will be installed. Specifically identify what historic materials will be retained, restored, replaced, or covered. Include drawings, photos, cut sheets (product descriptions), additional sheets, and other materials as necessary. For vacant lots, please describe the intended use.

Wyss Dam a small private dam on the Umatilla River, near the town of Rieth, just upstream from the mouth of Birch Creek. The CTUIR Fisheries Program and the BPA are working with the private landowner to remove the dam in order to improve passage for summer steelhead, spring and fall chinook, Coho, Pacific lamprey, and all resident fish species. The dam will be cut at the wing walls and the instream portion of the dam will be removed. The wing walls and headgate will remain. The headgate is located at 354,447.2 meters east and 5,057,811.6 meters north (UTM NAD 83).

SECTION 6: FUNDING SOURCE

ARRA FCC FERC HUD ODOE USDARD USFS
 Other: **BPA**

SECTION 7: AGENCY CONTACT INFORMATION

Name of Organization Submitting the Project: CTUIR/BPA

Project Contact Name and Title: Carey L. Miller, THPO/Senior Archaeologist

Street Address, City, Zip: 46411 Timine Way, Pendleton, Oregon 97801

Phone: (541)429-7234 Email: careymiller@ctuir.org

Date of Submission: April 25, 2019

SECTION 8: ATTACHMENTS

REQUIRED	<input checked="" type="checkbox"/> 3 – 4, color, 4 x 5 photographs of the subject property, digital or print. One photo is sufficient for vacant property
AS NEEDED <i>Contact SHPO staff with questions</i>	<input checked="" type="checkbox"/> Project area map, for projects including more than one tax lot
	<input checked="" type="checkbox"/> Additional drawings, reports, or other relevant materials
	<input checked="" type="checkbox"/> Continuation sheet for sections 4 or 5, or additional context to determine National Register Eligibility.

SHPO Mailing Address: Review and Compliance, Oregon SHPO, 725 Summer St. NE, Suite C, Salem, OR 97301
 Documents meeting all aspects of the digital submission policy may be submitted by email to ORSHPO.Clearance@oregon.gov

OREGON SHPO CLEARANCE FORM INSTRUCTIONS

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CONTINUATION SHEET

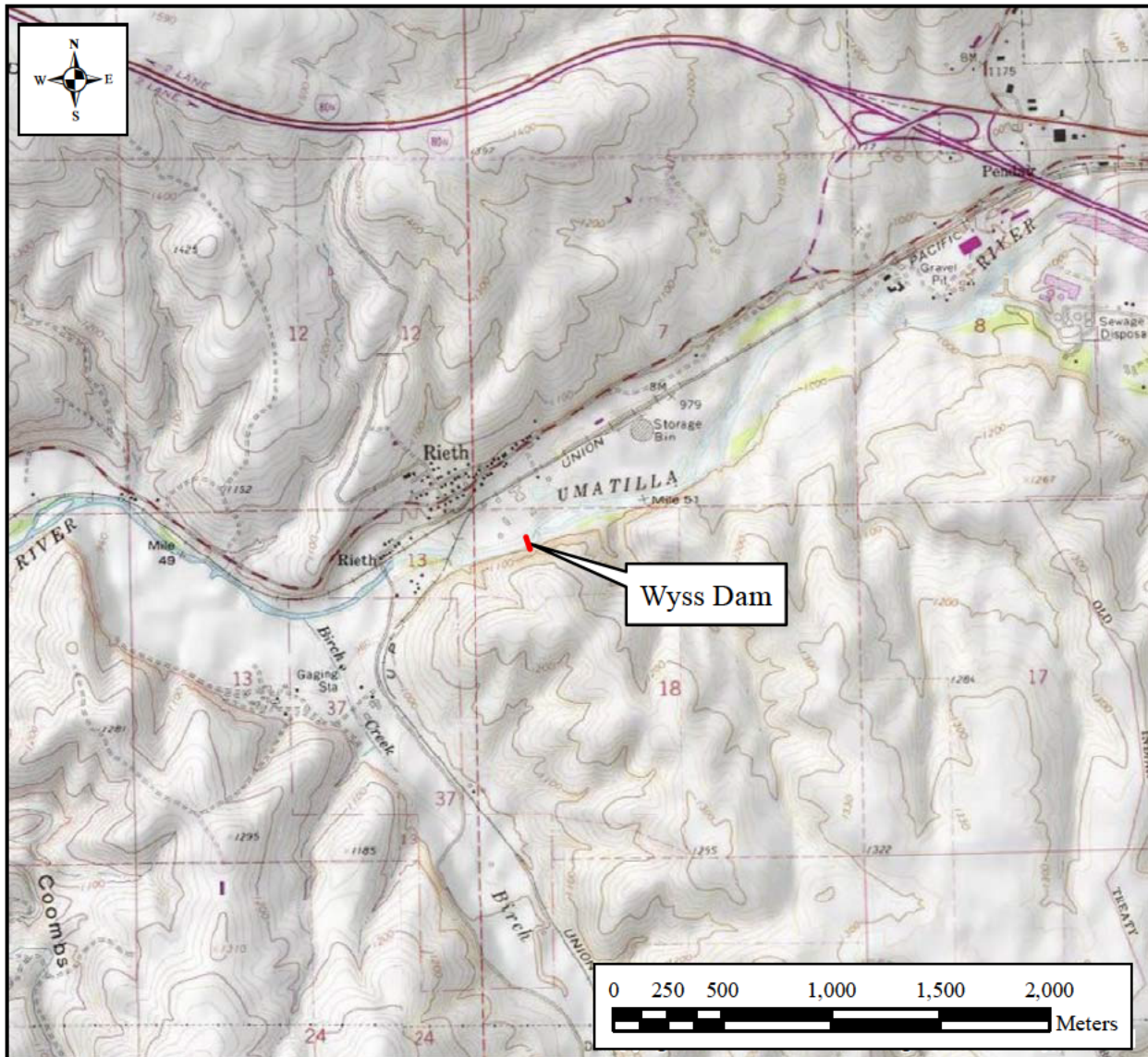


Figure 1. Location of the Wyss Dam on the Pendleton 7.5 minute USGS quadrangle.

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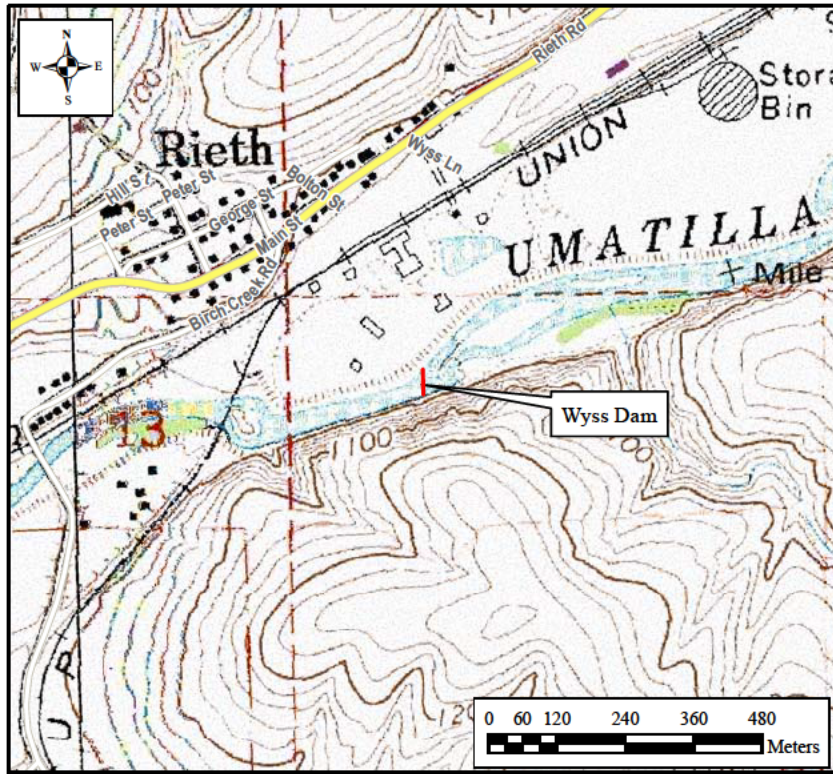


Figure 2. Larger scale of the Wyss Dam on the Pendleton 7.5 minute USGS quadrangle.

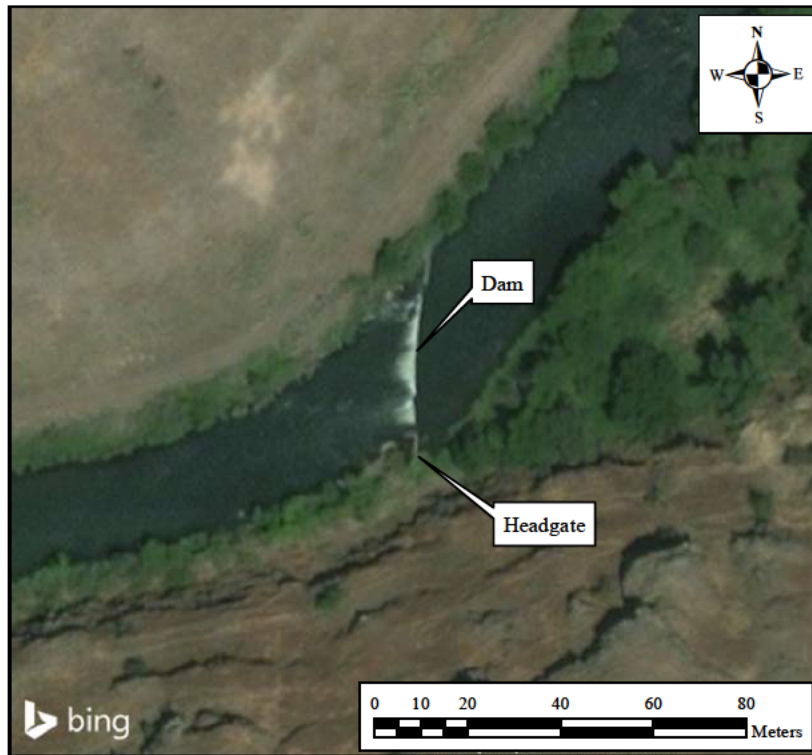


Figure 3. Bing aerial imagery of Wyss Dam and headgate on the south side of the Umatilla River.

OREGON SHPO CLEARANCE FORM INSTRUCTIONS

Do not use this form for ODOT, Federal Highway projects or to record archaeological sites

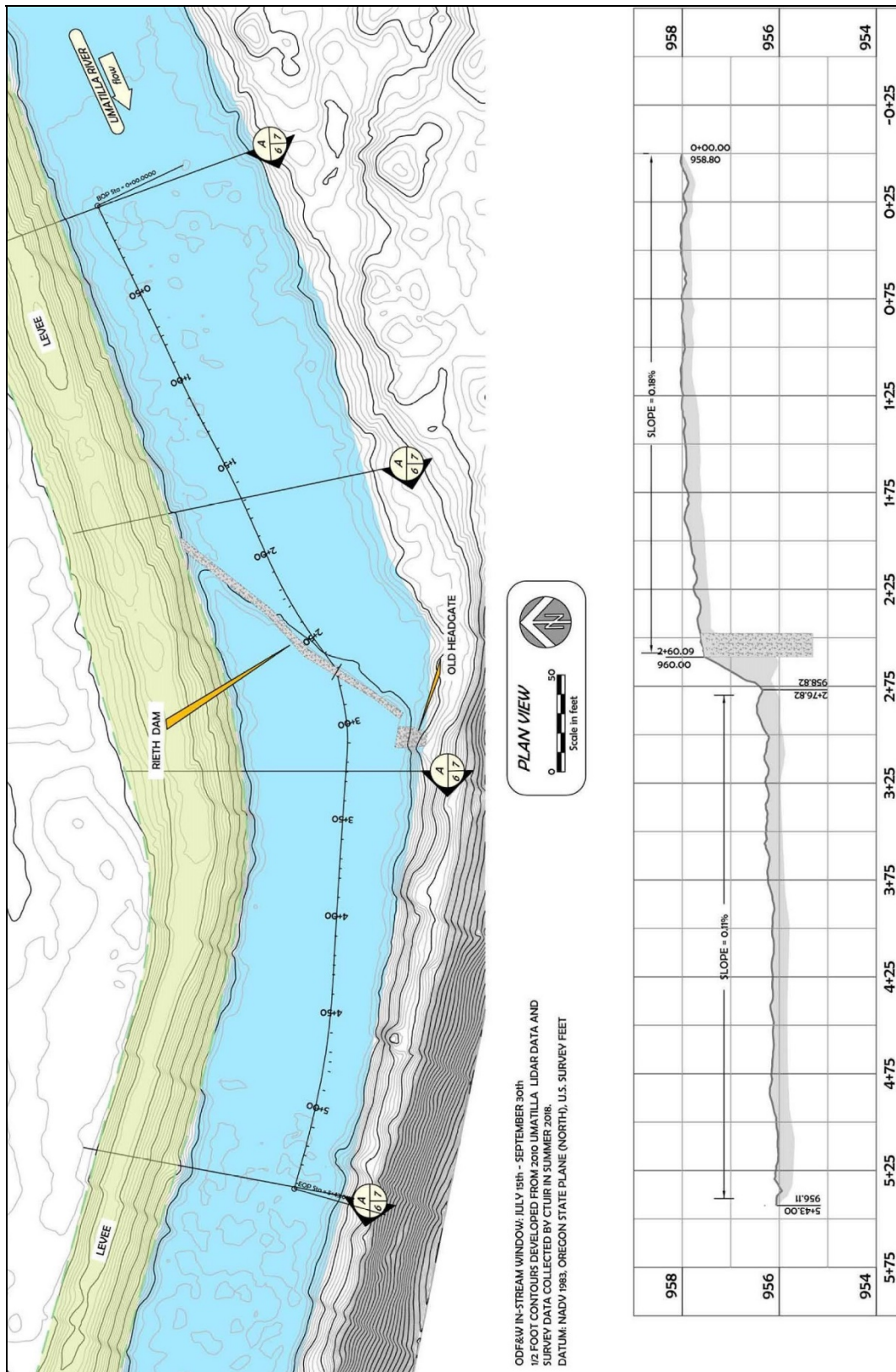


Figure 4. Wyss Dam (labeled Reith Dam) removal site plan compiled by the CTUIR Fisheries Program and BPA, February 2019 showing the dam and headgate.

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Photograph 1. Overview of the dam at 112° from the north side of the Umatilla River (18-106:27). 9/7/2018.



Photograph 2. View of Wyss Dam from the north bank. Image provided by the CTUIR Fisheries Program.

OREGON SHPO CLEARANCE FORM INSTRUCTIONS

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Photograph 3. View at 341° of the dam from the south side of the Umatilla River (18-128:1). 12/12/2018.



Photograph 4. View at 157° of the south side of the dam showing concrete wing wall and the location of the former diversion (full of green vegetation; 18-106:29). 9/7/2018.

OREGON SHPO CLEARANCE FORM INSTRUCTIONS

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Photograph 5. Close-up looking west of the grate in the headgate and the concrete wing wall in the right frame (18-128:4). 12/12/2018.



Photograph 6. Image of dam at low water provided by the Fisheries Program, no date.

Associated Report

Miller, Carey L.

2019 *A Cultural Resource Survey for the Proposed Removal of the Wyss Dam on the Umatilla River above the Mouth of Birch Creek, Umatilla County, Oregon.* Submitted to the CTUIR Fisheries and BPA. Confederated Tribes of the Umatilla Indian Reservation, Mission, Oregon.

