



**DEPARTMENT OF THE ARMY**  
U.S. ARMY CORPS OF ENGINEERS, SACRAMENTO DISTRICT  
1325 J STREET  
SACRAMENTO CA 95814-2922

CESPK-RDI-U

1 July 2025

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Pre-2015 Regulatory Regime Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023),<sup>1</sup> [SPK-2020-00810-IN]

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup> For the purposes of this AJD, we have relied on section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the Clean Water Act (CWA) implementing regulations published by the Department of the Army in 1986 and amended in 1993 (references 2.a. and 2.b. respectively), the 2008 *Rapanos-Carabell* guidance (reference 2.c.), and other applicable guidance, relevant case law and longstanding practice, (collectively the pre-2015 regulatory regime), and the *Sackett* decision (reference 2.d.) in evaluating jurisdiction.

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. The features addressed in this AJD were evaluated consistent with the definition of “waters of the United States” found in the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. This AJD did not rely on the 2023 “Revised Definition of ‘Waters of the United States,’” as amended on 8 September 2023 (Amended 2023 Rule) because, as of the date of this decision, the Amended 2023 Rule is not applicable in Utah due to litigation.

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<sup>1</sup> While the Supreme Court's decision in *Sackett* had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

<sup>2</sup> 33 CFR 331.2.

<sup>3</sup> Regulatory Guidance Letter 05-02.

<sup>4</sup> USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

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## 1. SUMMARY OF CONCLUSIONS.

a. Provide a list of each individual feature within the review area and the jurisdictional status of each one (i.e., identify whether each feature is/is not a water of the United States and/or a navigable water of the United States).

- (1) Carbon Canal (1,335 linear feet (LF)), jurisdictional Clean Water Action Section 404
- (2) Price Canal (178 LF), jurisdictional Clean Water Action Section 404
- (3) Price River (572 LF), jurisdictional Clean Water Action Section 404
- (4) Open Water 1 (0.09 acre), non-jurisdictional Clean Water Action Section 404
- (5) Consumers Wash (8,580 linear feet (LF)), non-jurisdictional Clean Water Action Section 404
- (6) Hardscrabble Creek (52 linear feet (LF)), non-jurisdictional Clean Water Action Section 404
- (7) Open Water 2 (0.08 acre), non-jurisdictional Clean Water Action Section 404
- (8) Diversion Area (0.05 acre), non-jurisdictional Clean Water Action Section 404
- (9) WOTUS 1 (10,552 LF), non-jurisdictional Clean Water Action Section 404
- (10) WOTUS 2 (1,212 LF), non-jurisdictional Clean Water Action Section 404
- (11) WOTUS 3 (1,112 LF), non-jurisdictional Clean Water Action Section 404
- (12) WOTUS 4 (9,103 LF), non-jurisdictional Clean Water Action Section 404
- (13) WOTUS 5 (5,776 LF), non-jurisdictional Clean Water Action Section 404
- (14) WOTUS 6 (3,056 LF), non-jurisdictional Clean Water Action Section 404
- (15) WOTUS 7 (5,862 LF), non-jurisdictional Clean Water Action Section 404
- (16) WOTUS 8 (36 LF), jurisdictional Clean Water Action Section 404
- (17) WOTUS 9 (845 LF), non-jurisdictional Clean Water Action Section 404
- (18) WOTUS 10 (1,703 LF), non-jurisdictional Clean Water Action Section 404

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(19) WOTUS 11 (1,260 LF), non-jurisdictional Clean Water Action Section 404

(20) WOTUS 12 (197 LF), non-jurisdictional Clean Water Action Section 404

(21) WOTUS 13 (680 LF), non-jurisdictional Clean Water Action Section 404

(22) WOTUS 14 (1,397 LF), non-jurisdictional Clean Water Action Section 404

(23) Price Canal (178 LF), jurisdictional Clean Water Action Section 404

(24) Price River (572 LF), jurisdictional Clean Water Action Section 404

## 2. REFERENCES.

a. Final Rule for Regulatory Programs of the Corps of Engineers, 51 FR 41206 (November 13, 1986).

b. Clean Water Act Regulatory Programs, 58 FR 45008 (August 25, 1993).

c. U.S. EPA & U.S. Army Corps of Engineers, Clean Water Act Jurisdiction Following the U.S. Supreme Court's Decision in *Rapanos v. United States & Carabell v. United States* (December 2, 2008)

d. *Sackett v. EPA*, 598 U.S. \_\_\_, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. The approximately 1,005 acre review area is located west of Spring Glen and Carbonville, approximate center coordinates; Latitude 39.64956°, Longitude -110.87648°, Carbon County, Utah (AJD MFR Enclosure 1). The review area is within the Price River Watershed, which is mainly an undeveloped desert plateau, except for the section that parallels SR-191 and the Carbon County Club Golf Course. The area receives 7.97 inches of precipitation on average and is dominated by greasewood (*Sarcobatus vermiculatus*), sagebrush (*Artemisia tridentata*), and cheatgrass (*Bromus inermis*).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), INTERSTATE WATER, OR THE TERRITORIAL SEAS TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW that the Price River is tributary to is the Green River. The Price River and Green River confluence is approximately 53 aerial miles from the approximate center of the review area

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, INTERSTATE WATER, OR THE TERRITORIAL SEAS. The subject waters except for Pond 2 are all tributaries of the Price River which flows generally southeast and

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connects with the Green River, the nearest TNW, approximately 80 river miles southeast.

6. SECTION 10 JURISDICTIONAL WATERS<sup>5</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>6</sup> N/A.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the pre-2015 regulatory regime and consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the pre-2015 regulatory regime. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

- a. TNWs (a)(1): N/A.
- b. Interstate Waters (a)(2): N/A.
- c. Other Waters (a)(3): N/A.
- d. Impoundments (a)(4): N/A.
- e. Tributaries (a)(5):
  - Price River (572 LF/0.72 acre) is a perennial river (a)(5) tributary that flows into the Green River the nearest TNW, approximately 80 river miles southeast. The entire stretch of the Price River is perennial.

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<sup>5</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>6</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.



- Carbon Canal (1,335 LF/0.54 acre) is diverted off the Price River within the review area and flows south. It is evident that the canal is a relatively permanent water (RPW) (a)(5) tributary due to inundation identified throughout the canal on multiple aerial photographs throughout a number of years and during different seasons. Carbon Canal eventually connects back with the Price River east of the city of Elmo.
- Price Canal (178 LF/0.03 acre) is diverted from the Price River within the Carbon Country Club Golf Course. This canal is classified as a RPW (a)(5) tributary due to inundation being identified within the canal on multiple aerials from different years and through different seasons. This canal flows back into the Price River south of Price.
- Open Water 1 (0.09 acre) is a manmade pond/tributary that was created as part of the golf course. The pond/tributary was constructed in uplands but meets the (a)(5) category since the pond/tributary receives water through a culvert from the Price River and empties into the Price River just south of the section of pond within the review area.
- WOTUS 8 (36 LF/0.005 acre) is diverted from the Price River and is classified as a RPW (a)(5) tributary due to inundation being identified within the canal on multiple aerials from different years and through different seasons. This canal flows back into the Price River approximately 500 feet east of the delineated RPW.

f. The territorial seas (a)(6): N/A.

g. Adjacent wetlands (a)(7): N/A.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified as “generally non-jurisdictional” in the preamble to the 1986 regulations (referred to as “preamble waters”).<sup>7</sup> Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA as a preamble water.

- Open Water 2 (0.08 acre) is a man-made pond created in dryland to provide stock watering for cattle in an arid region. This pond is classified as a “(b)(5)

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<sup>7</sup> 51 FR 41217, November 13, 1986.

artificial lakes or ponds created by excavating or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing” water under the 1986 regulations, which are not “waters of the United States”. Also, this pond is not associated with a potential (a)(5) tributary.

b. Describe aquatic resources and features within the review area identified as “generally not jurisdictional” in the *Rapanos* guidance. Include size of the aquatic resource or feature within the review area and describe how it was determined to be non-jurisdictional under the CWA based on the criteria listed in the guidance. N/A.

c. Describe aquatic resources and features identified within the review area as waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA. Include the size of the waste treatment system within the review area and describe how it was determined to be a waste treatment system. N/A.

d. Describe aquatic resources and features within the review area determined to be prior converted cropland in accordance with the 1993 regulations (reference 2.b.). Include the size of the aquatic resource or feature within the review area and describe how it was determined to be prior converted cropland. N/A.

e. Describe aquatic resources (i.e. lakes and ponds) within the review area, which do not have a nexus to interstate or foreign commerce, and prior to the January 2001 Supreme Court decision in “*SWANCC*,” would have been jurisdictional based solely on the “Migratory Bird Rule.” Include the size of the aquatic resource or feature, and how it was determined to be an “isolated water” in accordance with *SWANCC*.

f. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the pre-2015 regulatory regime consistent with the Supreme Court’s decision in *Sackett* (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).

- Consumers Wash (1,335 LF/0.54 acre), Hardscrabble Creek (52 LF/0.09 acre), WOTUS 1 (10,552 LF/2.11 acre), WOTUS 2 (1,212 LF/0.1 acre), WOTUS 3 (1,112 LF/0.13 acre), WOTUS 4 (9,103 LF/1.62 acre), WOTUS 5 (5,776 LF/0.63 acre), WOTUS 6 (3,056 LF/0.2 acre), WOTUS 7 (5,862 LF/0.97 acre), WOTUS 9 (845 LF/0.03 acre), WOTUS 10 (1,703 LF/0.1 acre), WOTUS 11 (1,260 LF/0.06 acre), WOTUS 12 (197 LF/0.01 acre), WOTUS 13 (680 LF/0.02 acre), and WOTUS 14 (1,397 LF/0.07 acre) are all ephemeral non-relatively permanent waters. All of these channels connect with the Price River, nearest RPW. However, these channels only flow in response to precipitation and only for a short period of time. This is evident because of the arid upland vegetation

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dominating the banks and vertical banks due to short duration high flows and highly erosive arid desert soils. Also, the drainage basin for these channels is relatively small and does not receive snowfall that accumulates over time and would create an intermittent flow regime. Therefore, the 51,423 LF/7.61 acres of ephemeral non-RPW channels are not (a)(5) tributaries jurisdictional under Section 404 of the Clean Water Act.

9 DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.

a. Aquatic Resources Delineation Report for Price River Watershed, Carbon County, Utah, prepared by [REDACTED], updated April 2024.

b. Google Earth 7.3.3.7692. (2015 August, 2019 August, 2022 June, and 2023 May). Between approximately; Latitude 37.672986, Longitude -114.133572° and Latitude 39.65161, Longitude -110.87894; eye alt 19,200 ft. Retrieved 26 June 2025.

10. OTHER SUPPORTING INFORMATION. N/A.

11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.

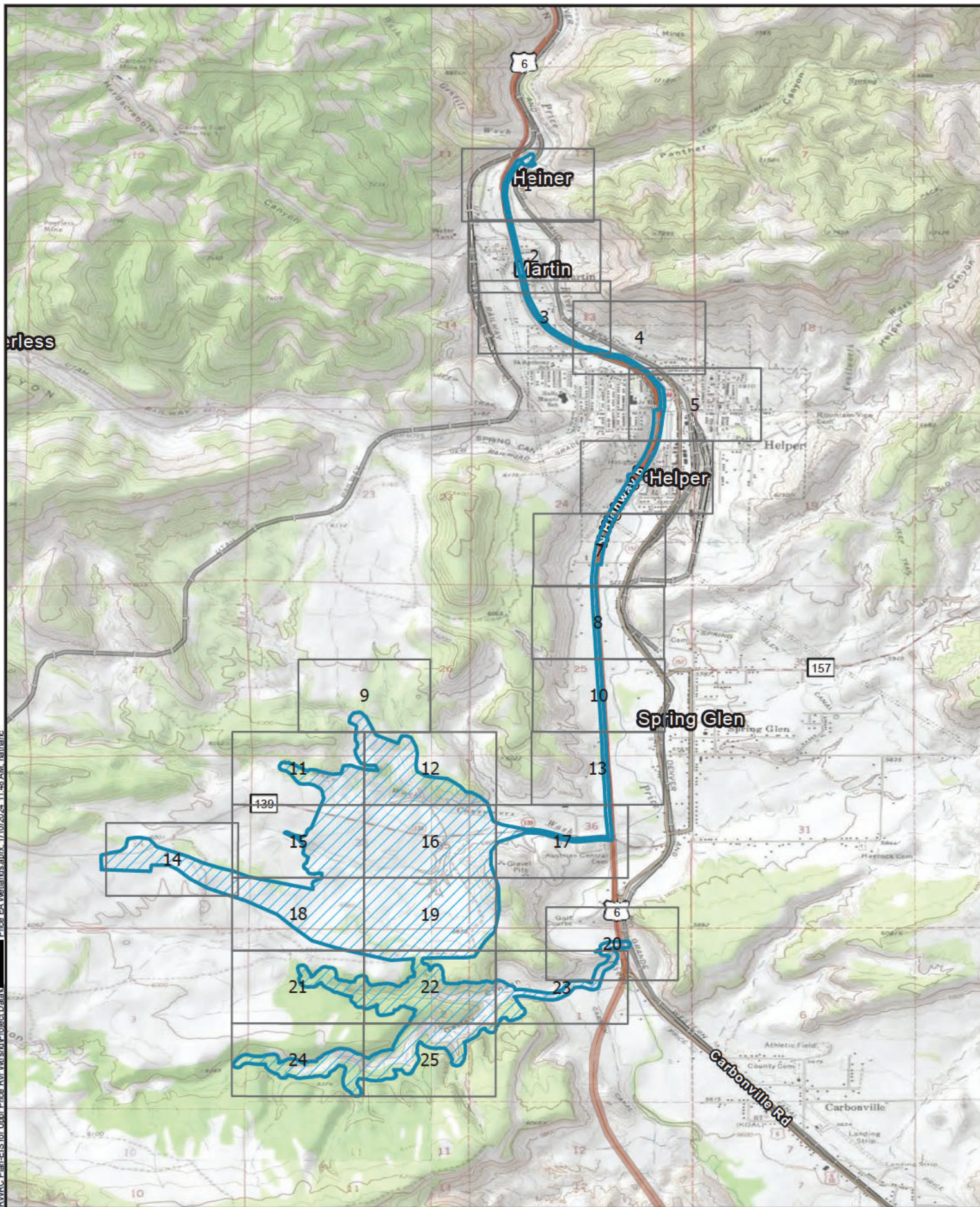
2 Encls

Enclosure 1- Vicinity Map

Enclosure 2- Aquatic Resources  
Delineation Maps (Maps 1-25)



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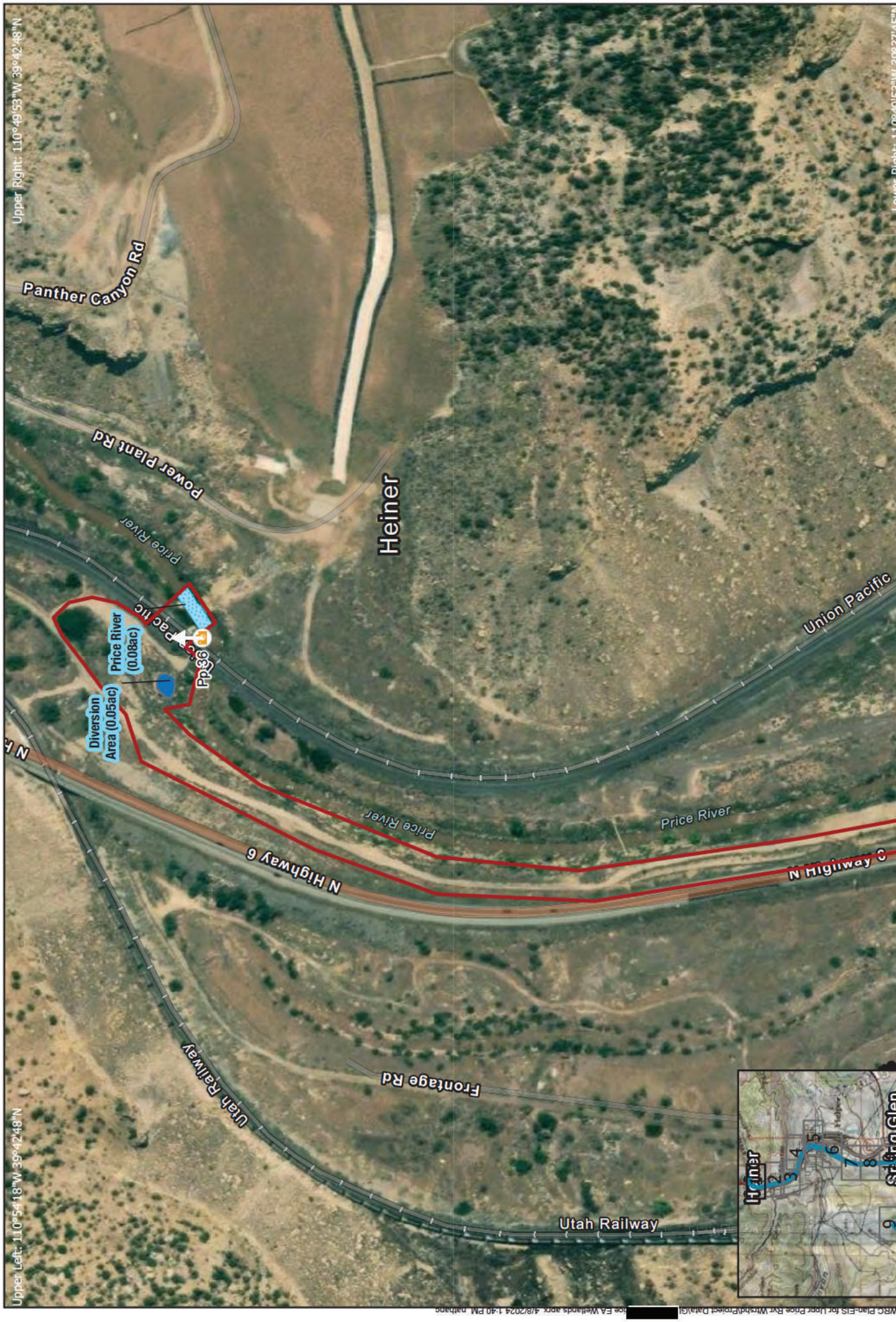
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 Study Area

**Price River Watershed  
Project Location Map**

ENCLOSURE 1





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Upper Right: 110°49'53"W 39°42'48"N

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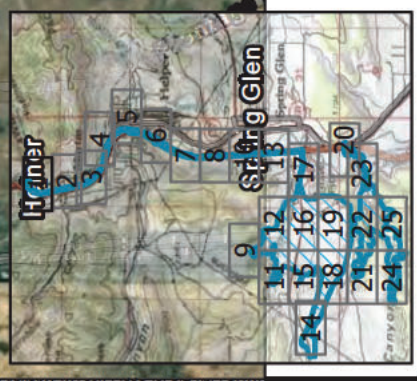
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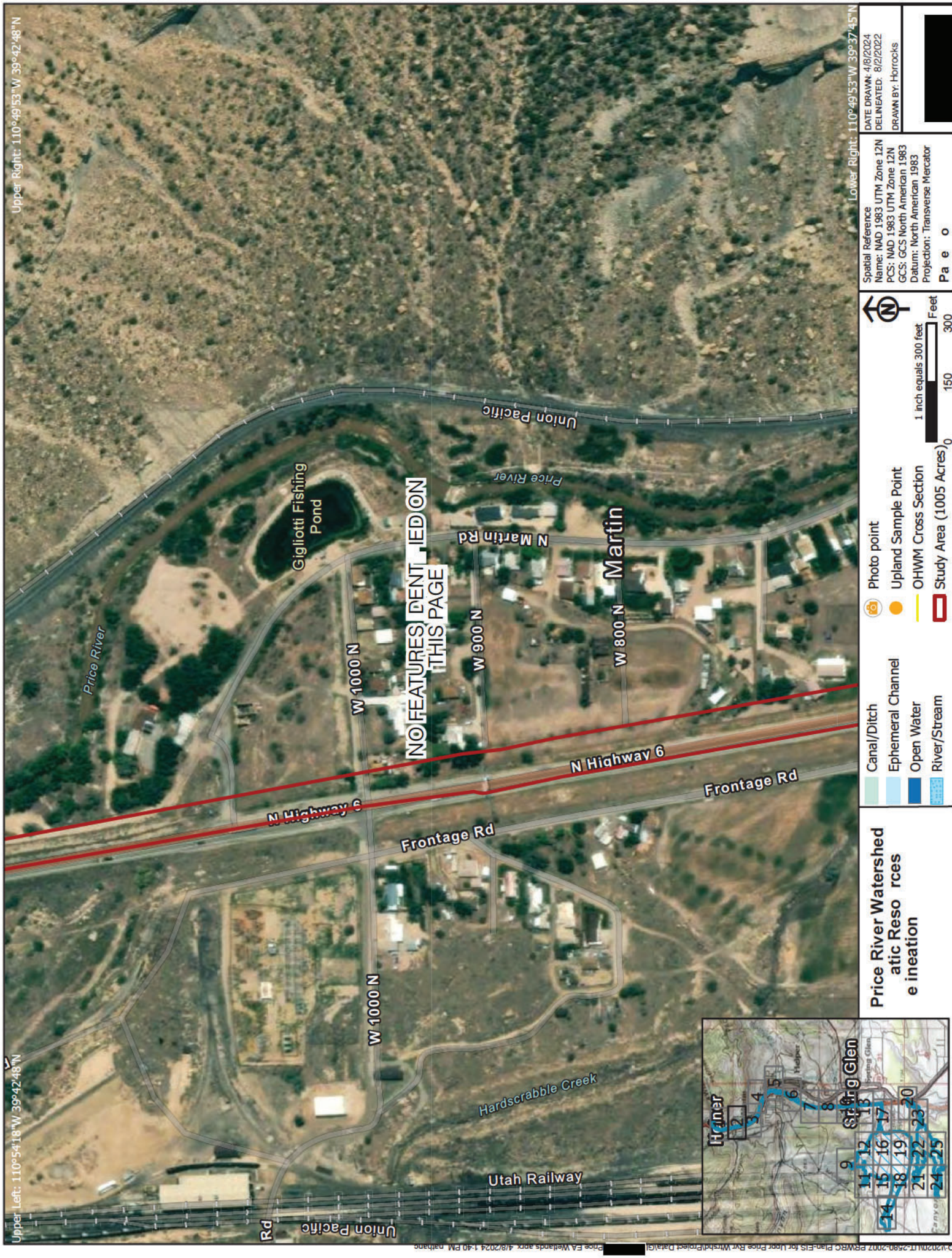
Photo point  
 Upland Sample Point  
 OHWM Cross Section  
 Study Area (1005 Acres)

Canal/Ditch  
 Ephemeral Channel  
 Open Water  
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1 inch equals 300 feet  
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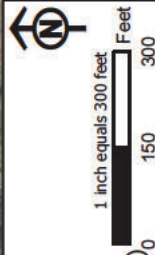
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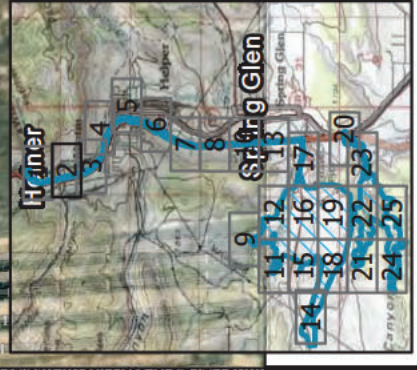
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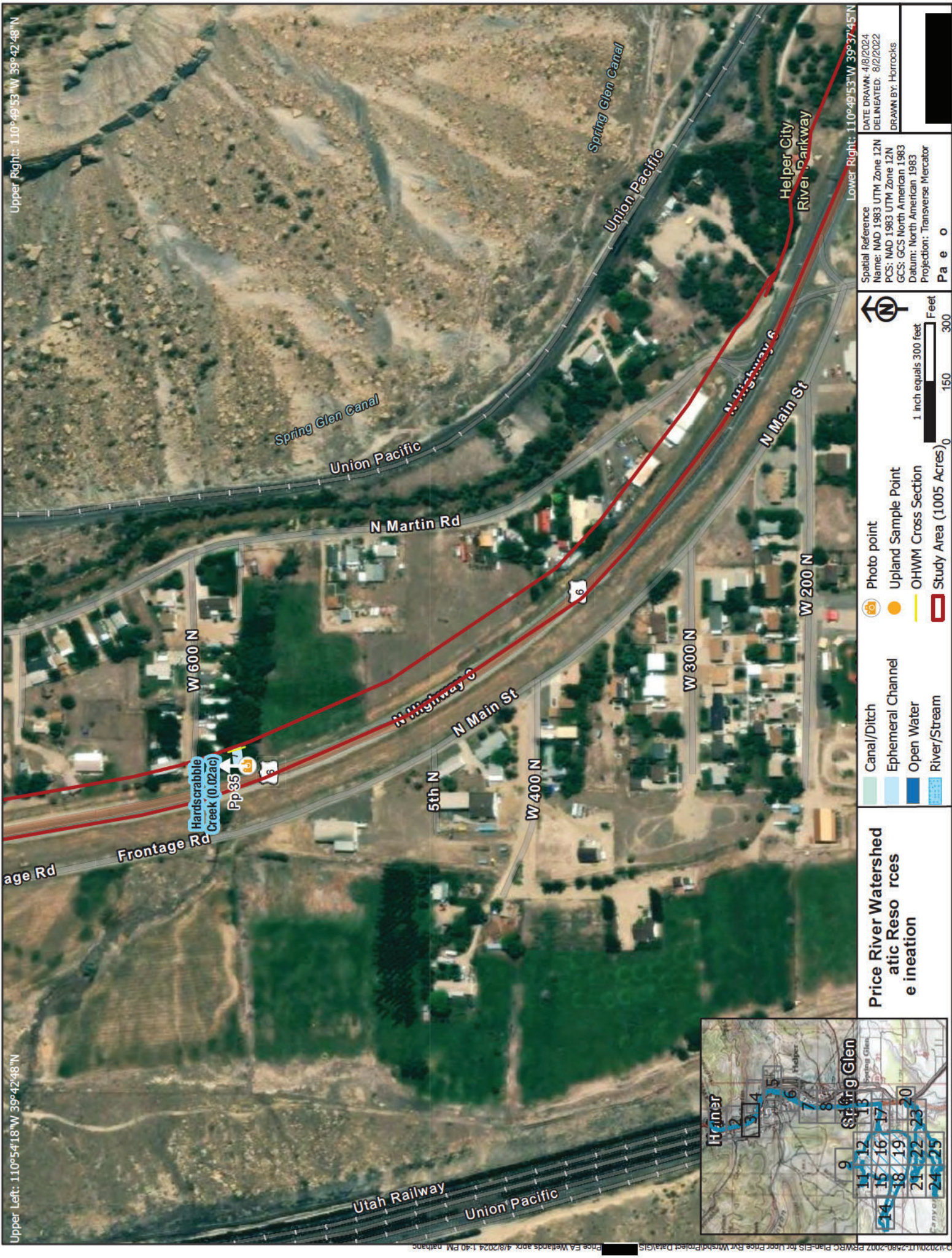
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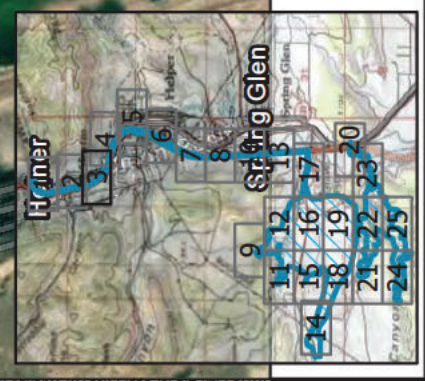
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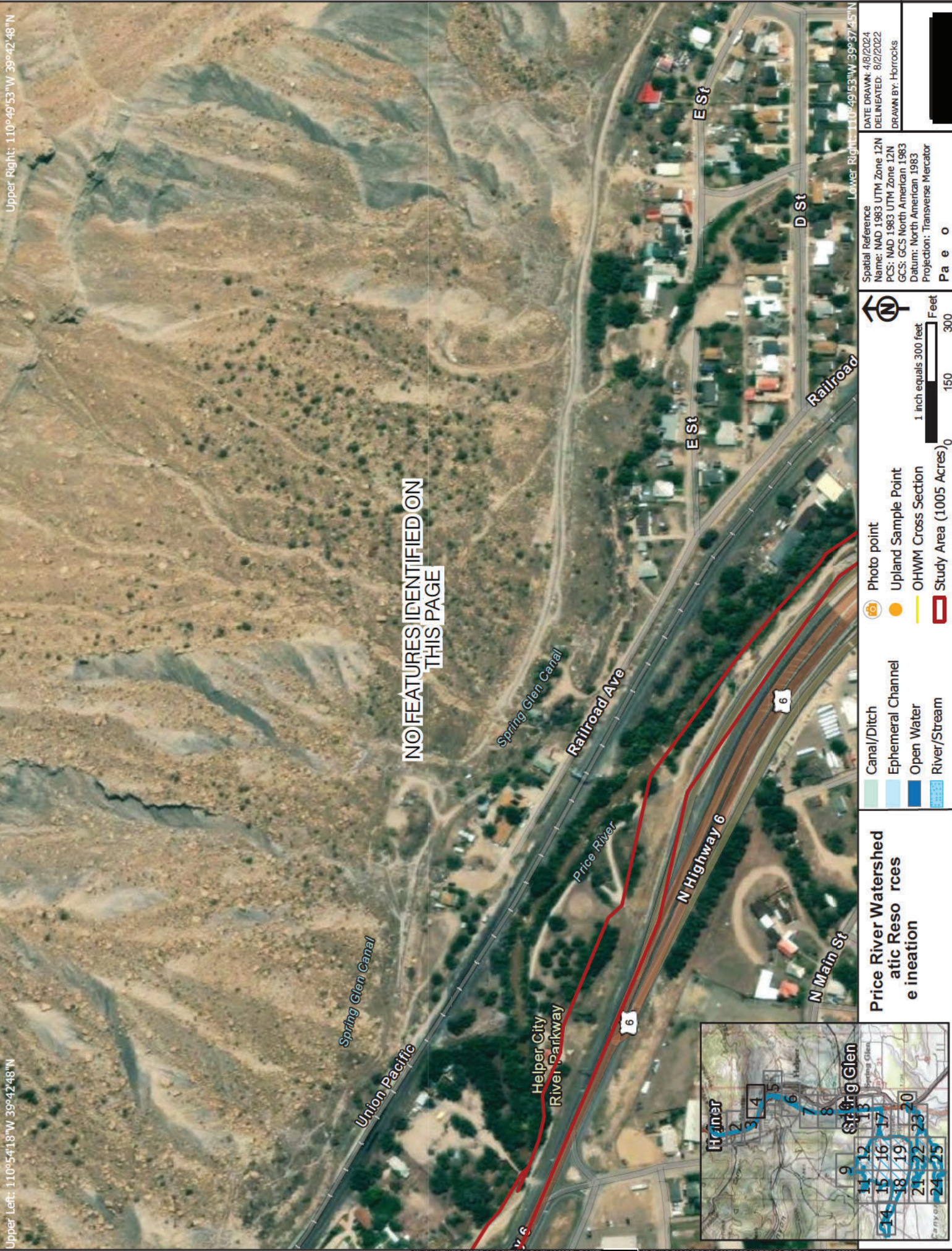




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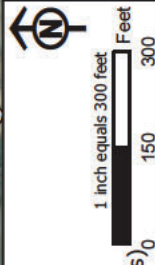
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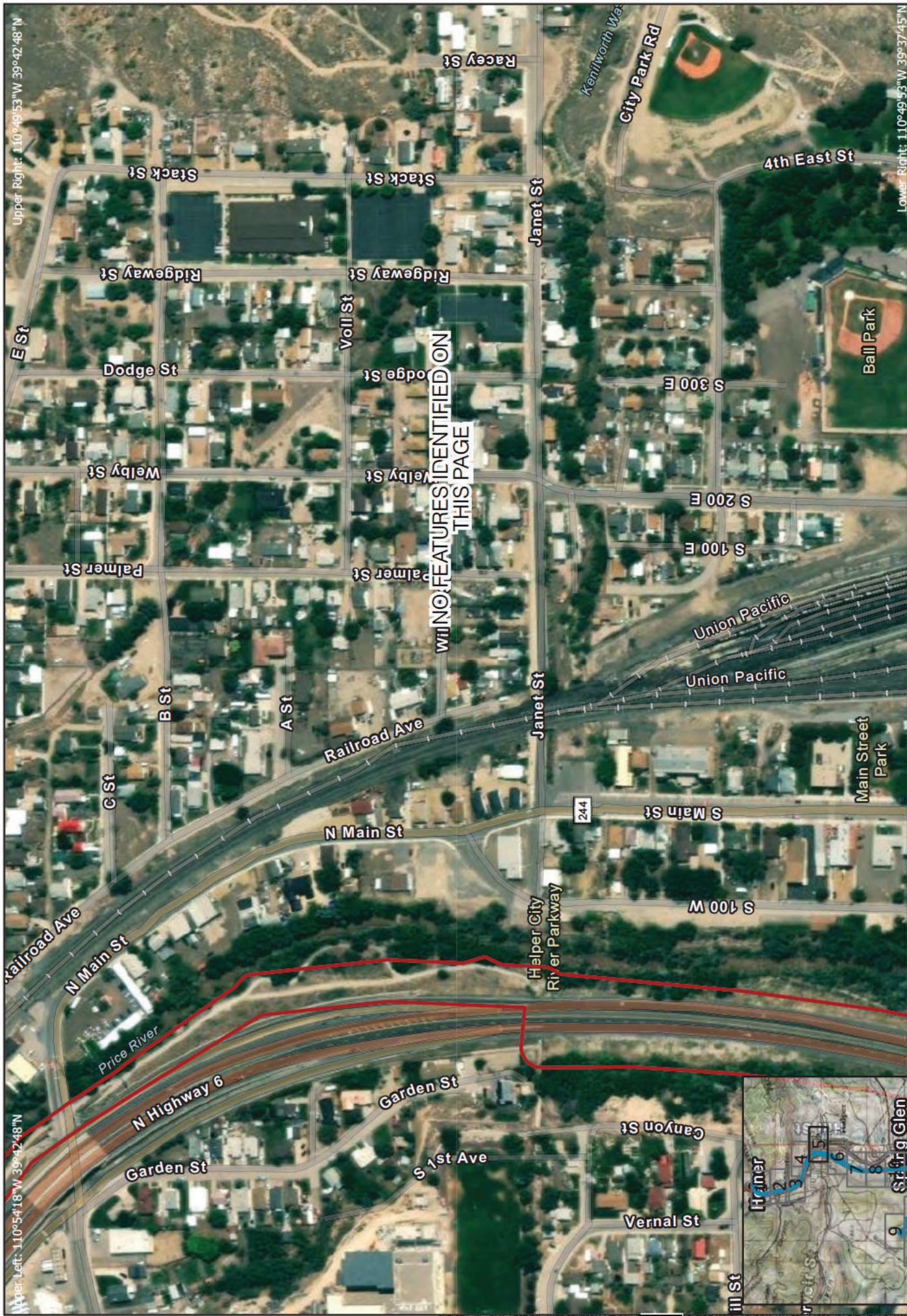
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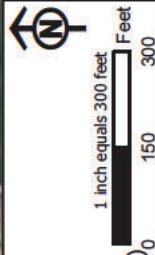
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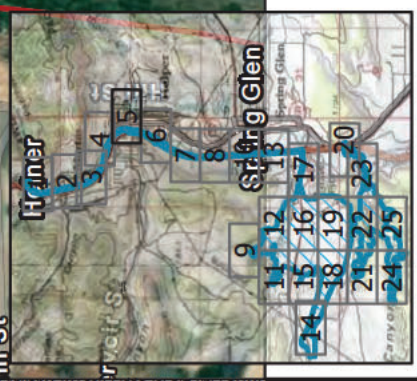
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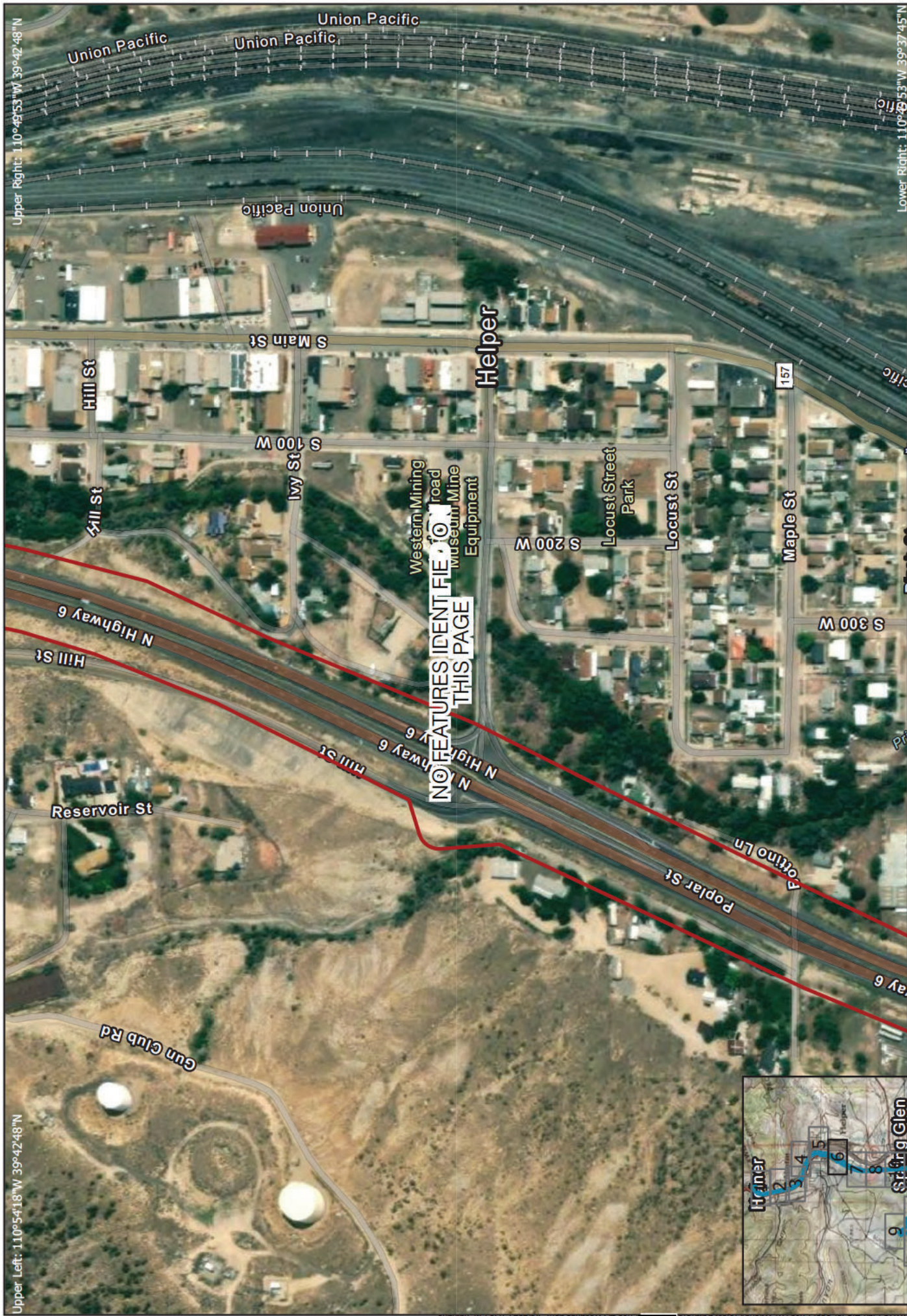
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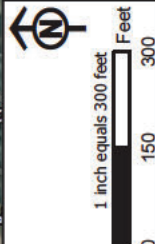
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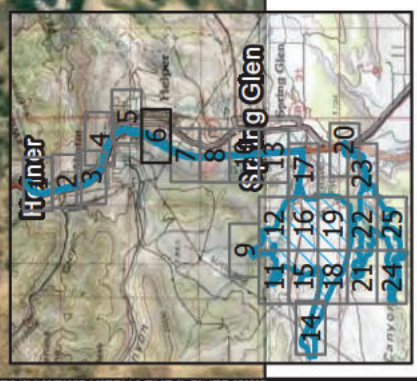
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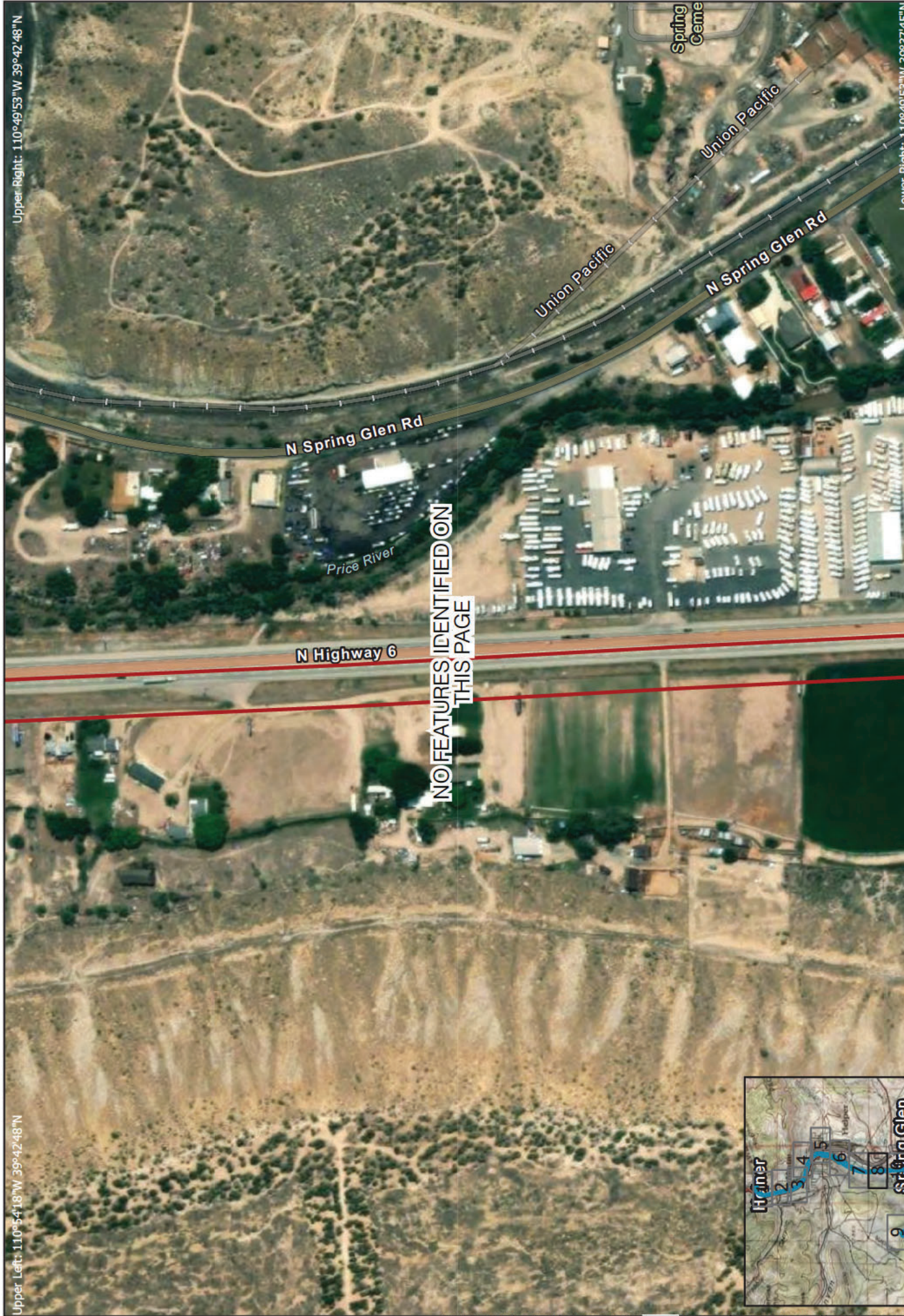




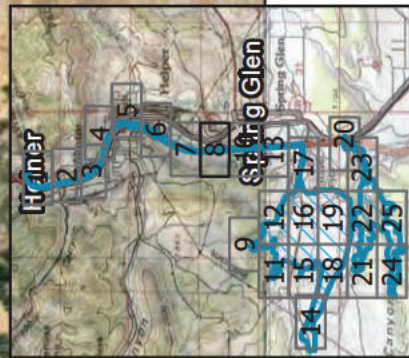


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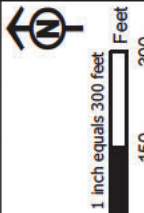
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Canal/Ditch  
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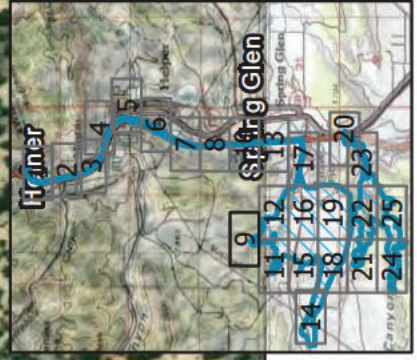
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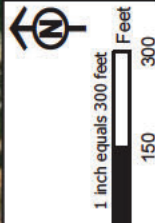
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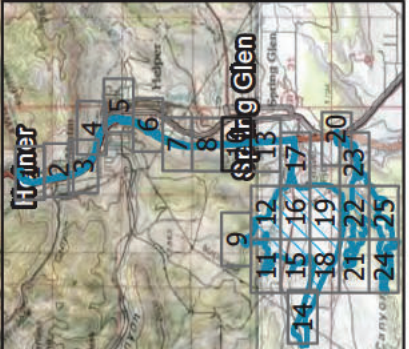
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1 inch equals 300 feet  
0 150 300 Feet

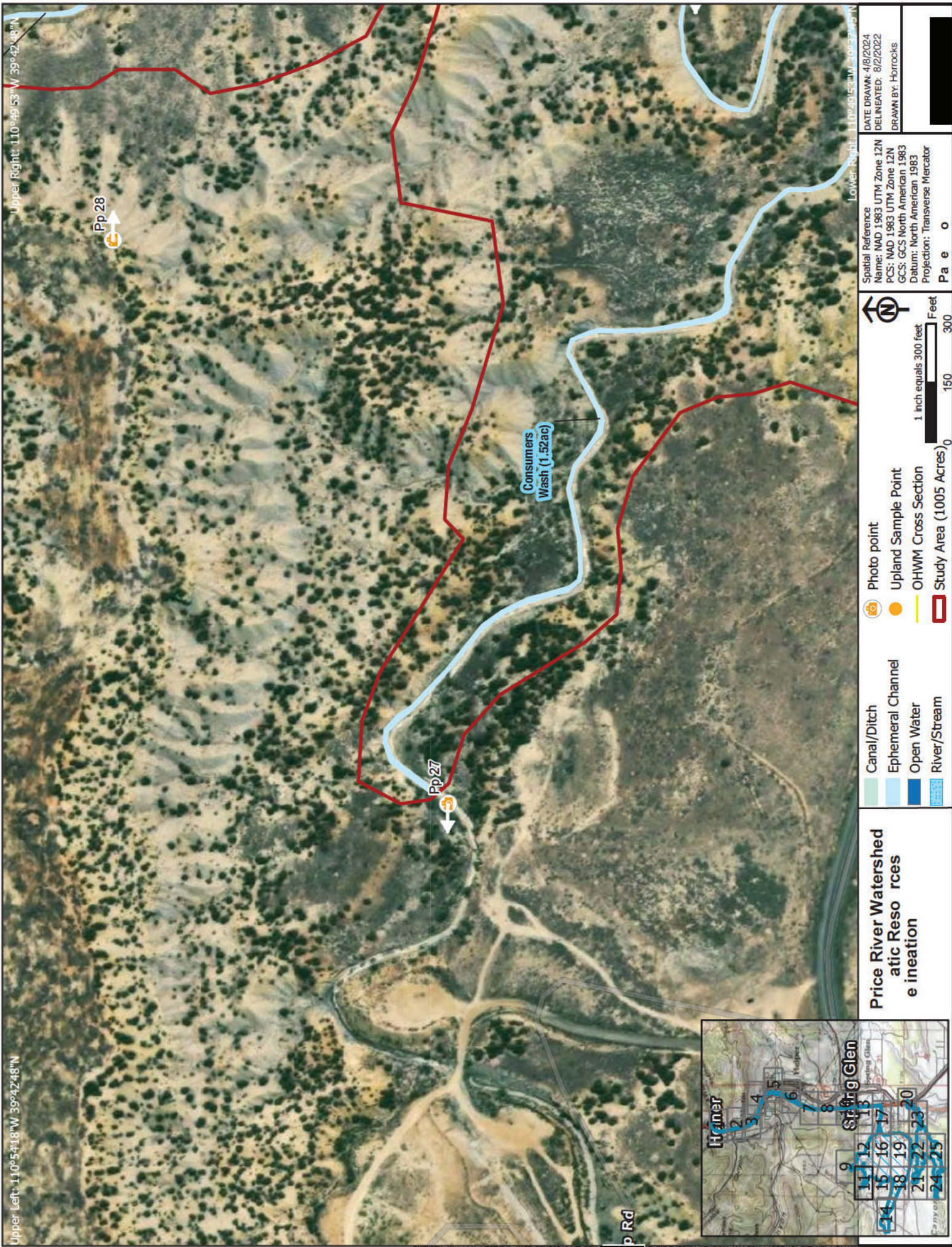
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PCS: NAD 1983 UTM Zone 12N  
GCS: GCS North American 1983  
Datum: North American 1983  
Projection: Transverse Mercator

DATE DRAWN: 4/8/2024  
DELINEATED: 8/2/2022  
DRAWN BY: Horrocks

Lower Right: 110°49'53"W 39°42'45"N

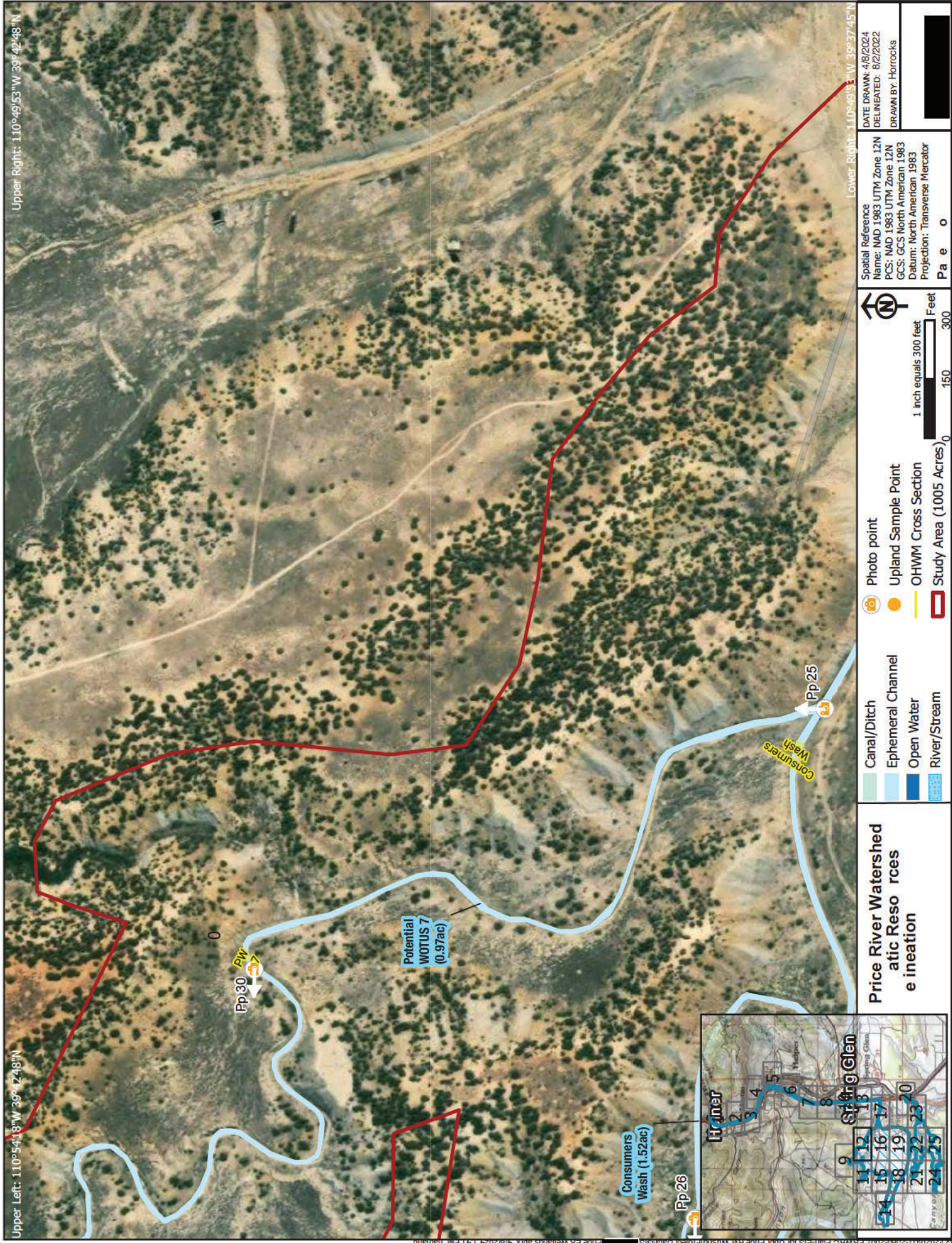
Page 0











Upper Right: 110°49'53"W 39°42'48"N



Lower Right: 116°49'15" W 39°37'45" N	Spatial Reference Name: NAD 1983 UTM Zone 12N PCS: NAD 1983 UTM Zone 12N GCS: GCS North American 1983 Datum: North American 1983 Projection: Transverse Mercator <b>P a e o</b>	DATE DRAWN: 4/8/2024 DELINEATED: 8/2/2022 DRAWN BY: Horrocks
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 Photo point  
 Upland Sample Point  
 OHWM Cross Section  
 Study Area (1005 Acres)

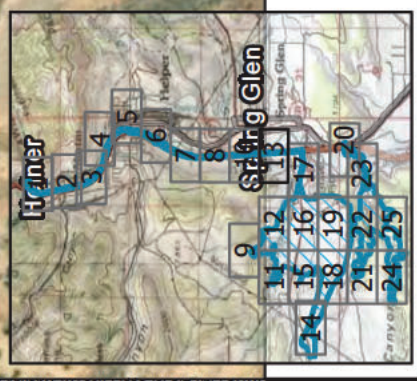
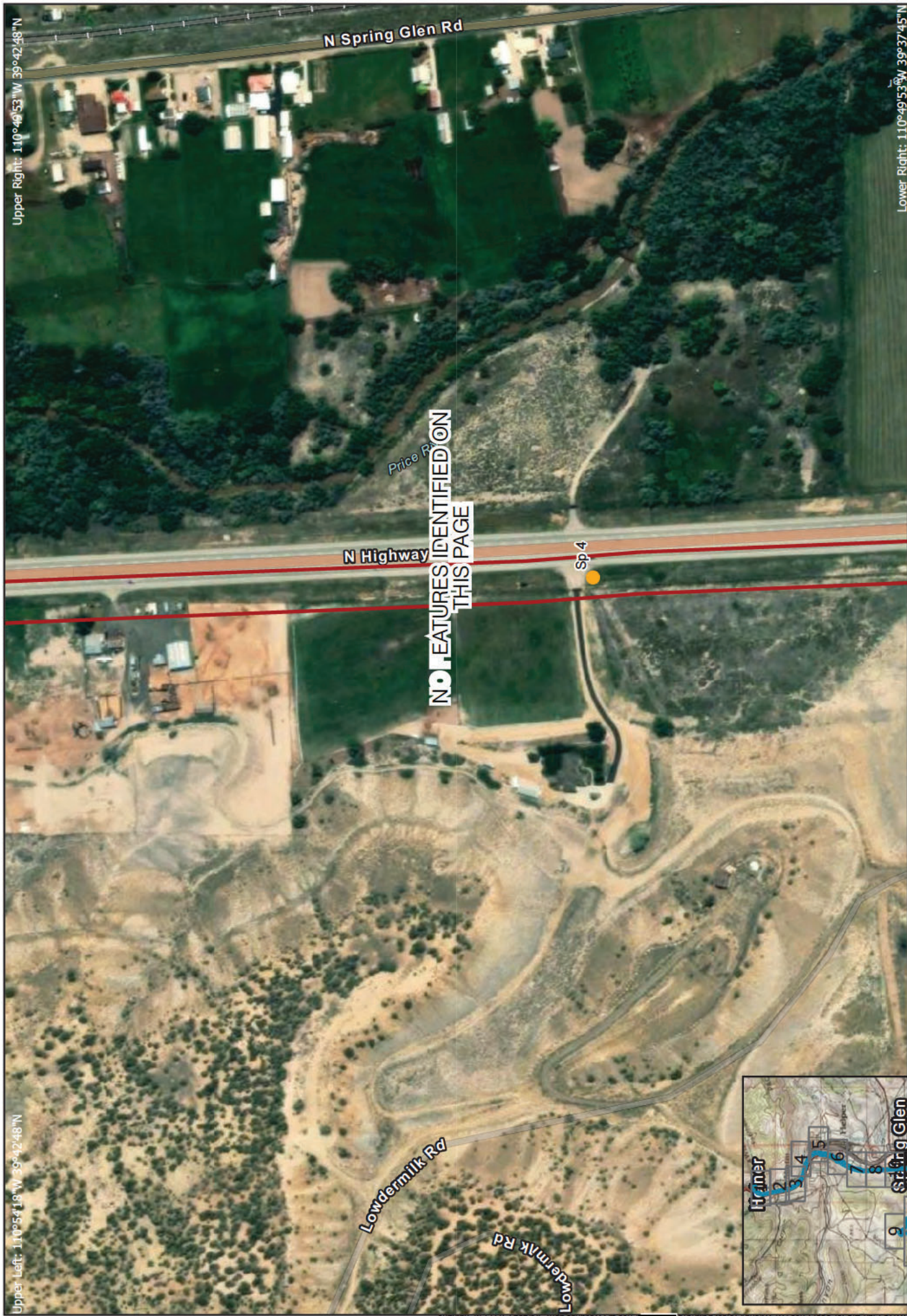
Canal/Ditch  
Ephemeral Channel  
Open Water  
River/Stream

## Price River Watershed atic Resources e ination



Upper Left: 110°55'18"W 39°42'48"N

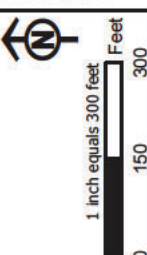
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Price River Watershed  
atic Reso rces  
e ineation

- Canal/Ditch
- Ephemeral Channel
- Open Water
- River/Stream

- Photo point
- Upland Sample Point
- OHWM Cross Section
- Study Area (1005 Acres)



Spatial Reference  
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Datum: North American 1983  
Projection: Transverse Mercator

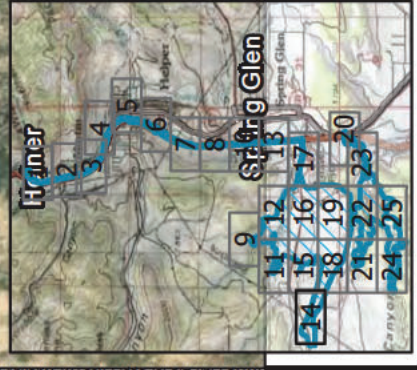
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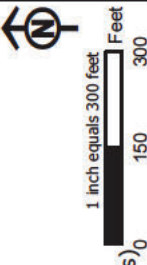
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**Price River Watershed  
atic Reso rces  
e ineation**

- Canal/Ditch
- Ephemeral Channel
- Open Water
- River/Stream

- Photo point
- Upland Sample Point
- OHWM Cross Section
- Study Area (1005 Acres)



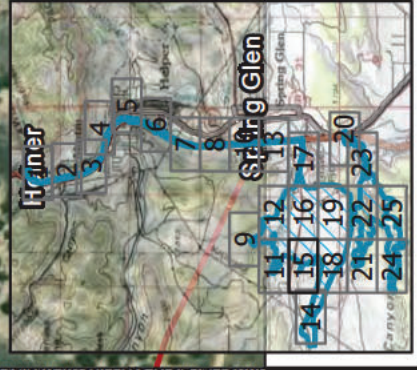
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**DELINEATED:** 8/2/2022  
**DRAWN BY:** Horrocks



Upper Left: 139°54'18"W 39°42'48"N

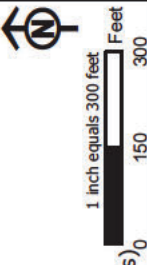
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### Price River Watershed atic Reso rces e ineation

- Canal/Ditch
- Ephemeral Channel
- Open Water
- River/Stream

- Photo point
- Upland Sample Point
- OHWM Cross Section
- Study Area (1005 Acres)



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DRAWN BY: Horrocks

Lower Right: 110°49'53"W 39°37'45"N







Upper Right: 110°49'53"W 39°42'48"N

Upper Left: 110°54'18"W 39°42'48"N

N Highway 6

N Highway 6

Elberts Rd

powdermilk Rd

Elberts Rd

Consumers Wash

Consumers Wash  
(0.007 ac)

Consumers Wash

Consumers Rd

Central  
Slovenian  
Cemetery

Slovenian Cemetery Rd

NO FEATURES IDENTIFIED ON  
THIS PAGE

Consumers Rd

Lower Right: 110°49'53"W 39°37'45"N

Spatial Reference  
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Projection: Transverse Mercator

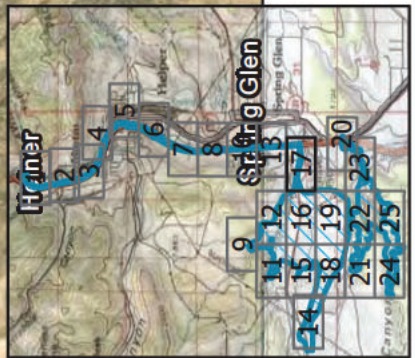


1 inch equals 300 feet  
0 150 300 Feet

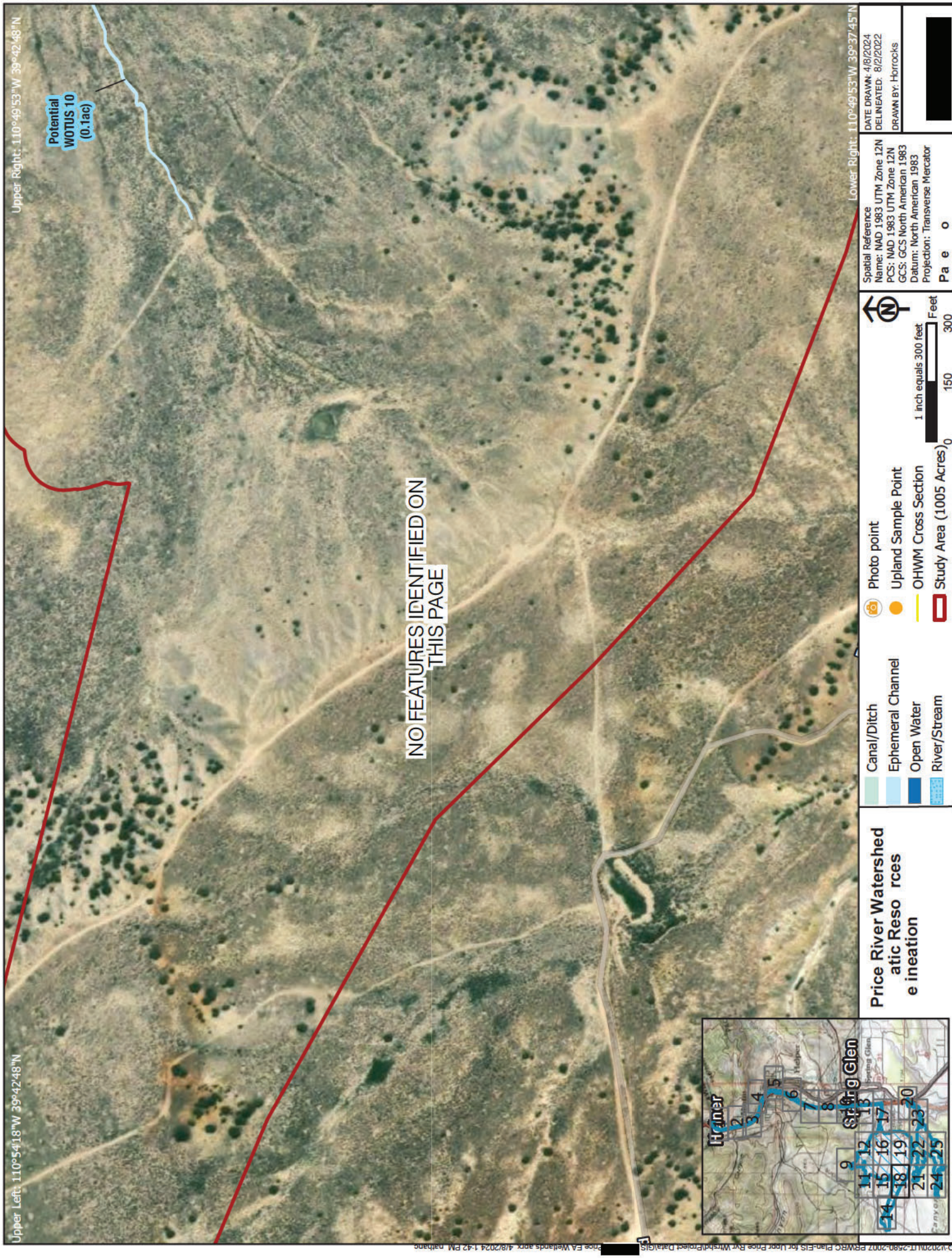
- Photo point
- Upland Sample Point
- OHWM Cross Section
- Study Area (1005 Acres)

- Canal/Ditch
- Ephemeral Channel
- Open Water
- River/Stream

Price River Watershed  
atic Reso rces  
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**Price River Watershed  
atic Reso rces  
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Canal/Ditch  
Ephemeral Channel  
Open Water  
River/Stream

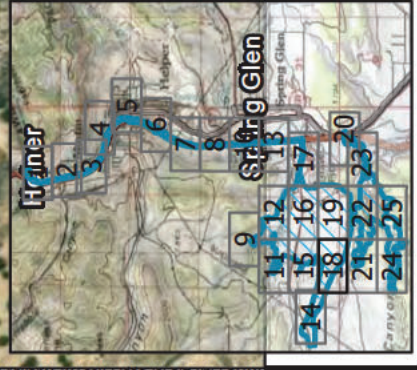
Photo point  
Upland Sample Point  
OHWM Cross Section  
Study Area (1005 Acres)

**Scale:**  
1 inch equals 300 feet  
0 150 300 Feet

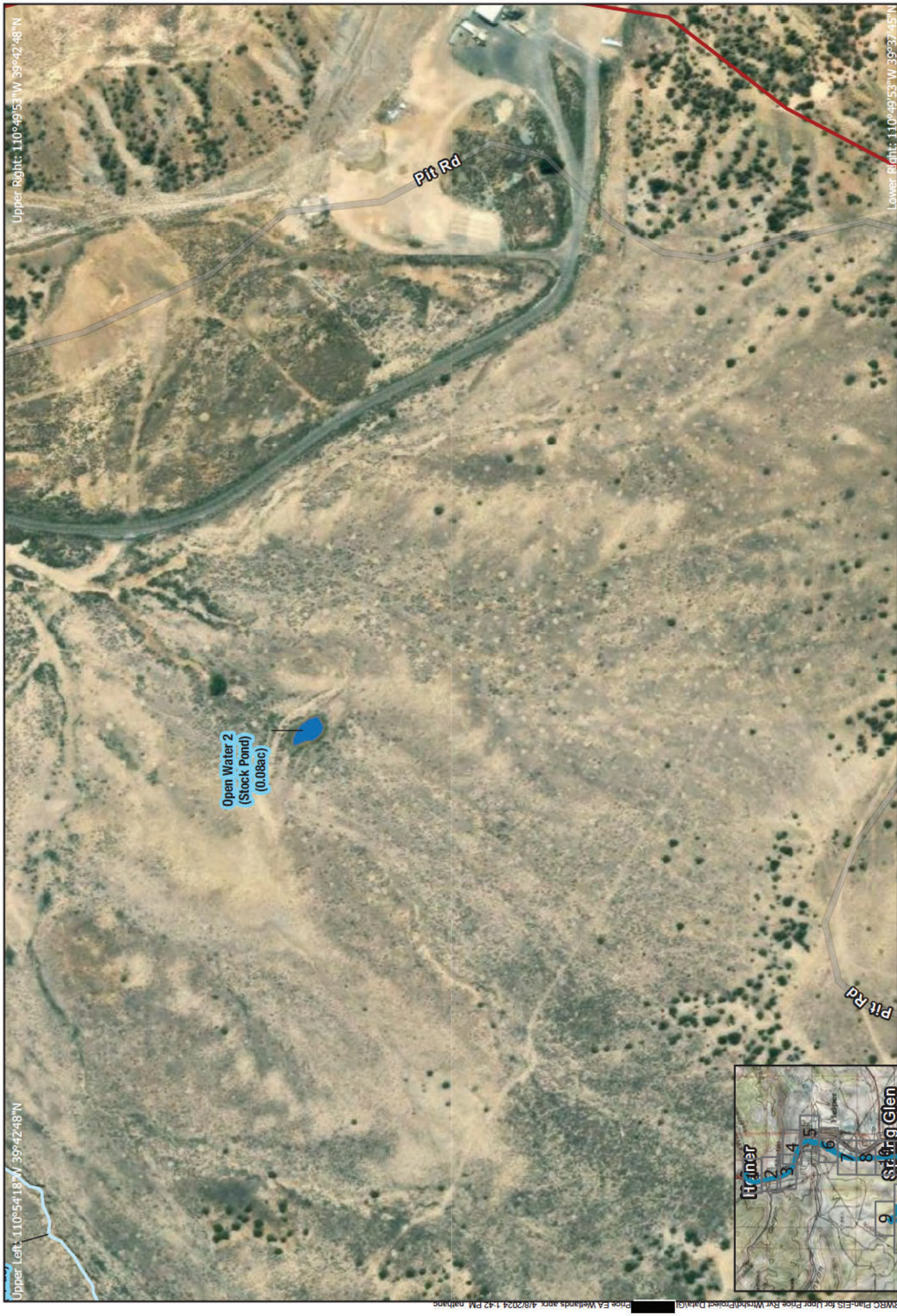
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DATE DRAWN: 4/8/2024  
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DRAWN BY: Horrocks

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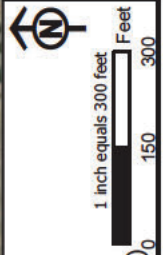
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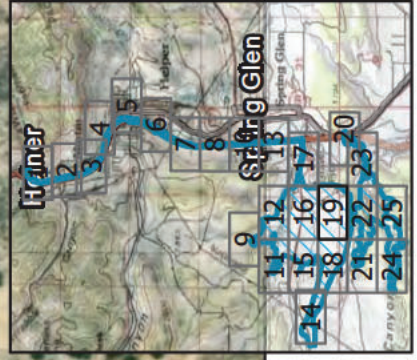
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- Photo point
- Upland Sample Point
- OHWM Cross Section
- Study Area (1005 Acres)

- Canal/Ditch
- Ephemeral Channel
- Open Water
- River/Stream

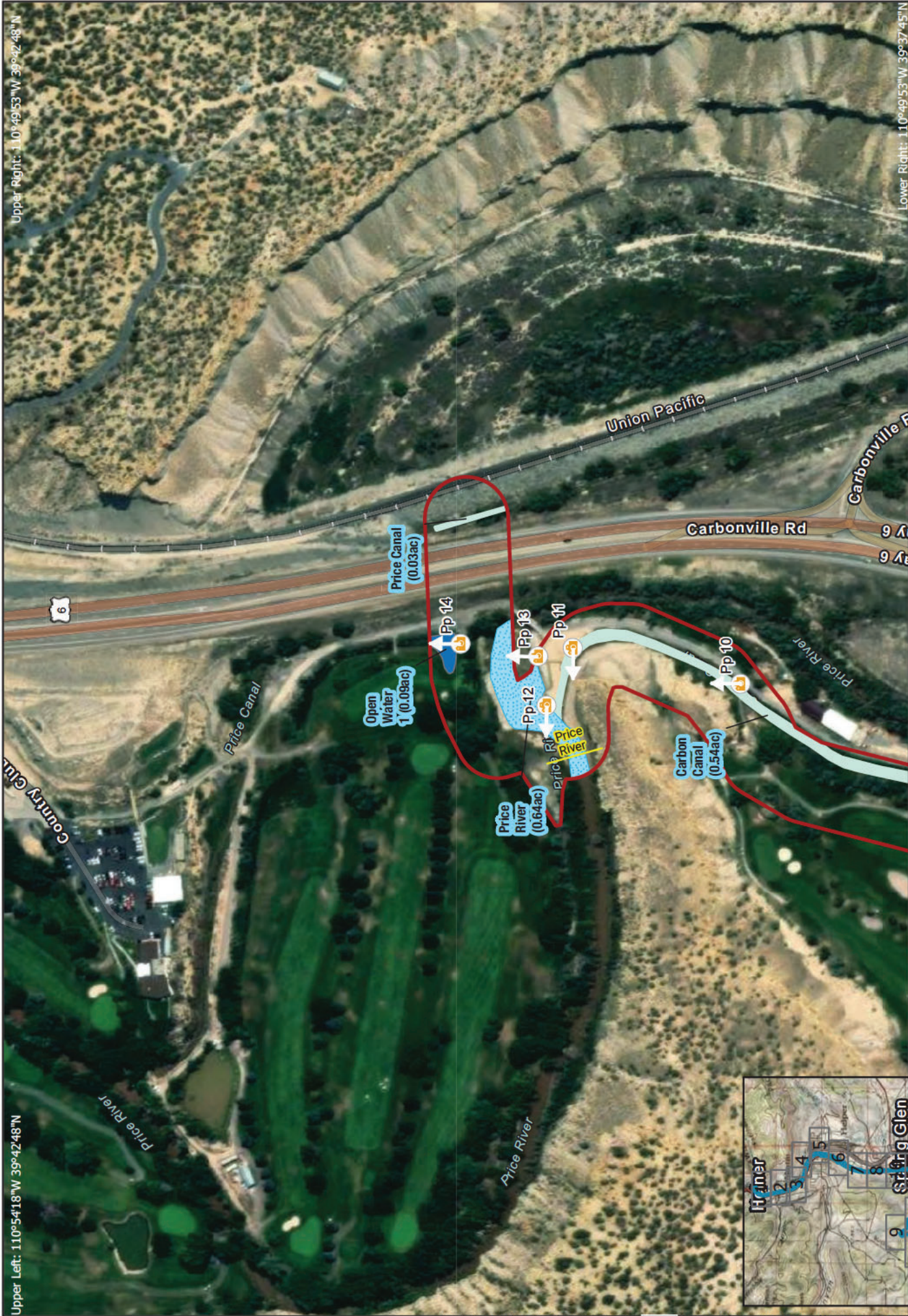
Price River Watershed  
atic Reso rces  
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Upper Left: 110°54'18"W 39°42'48"N

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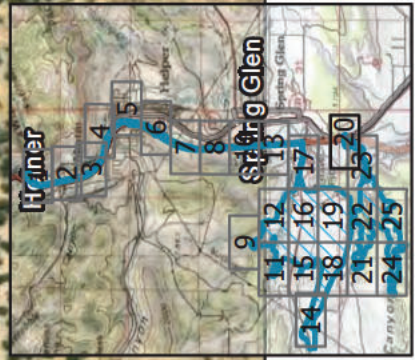
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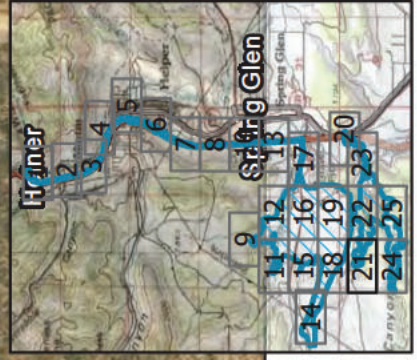






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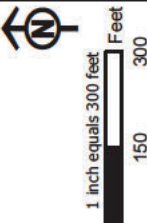
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Price River Watershed  
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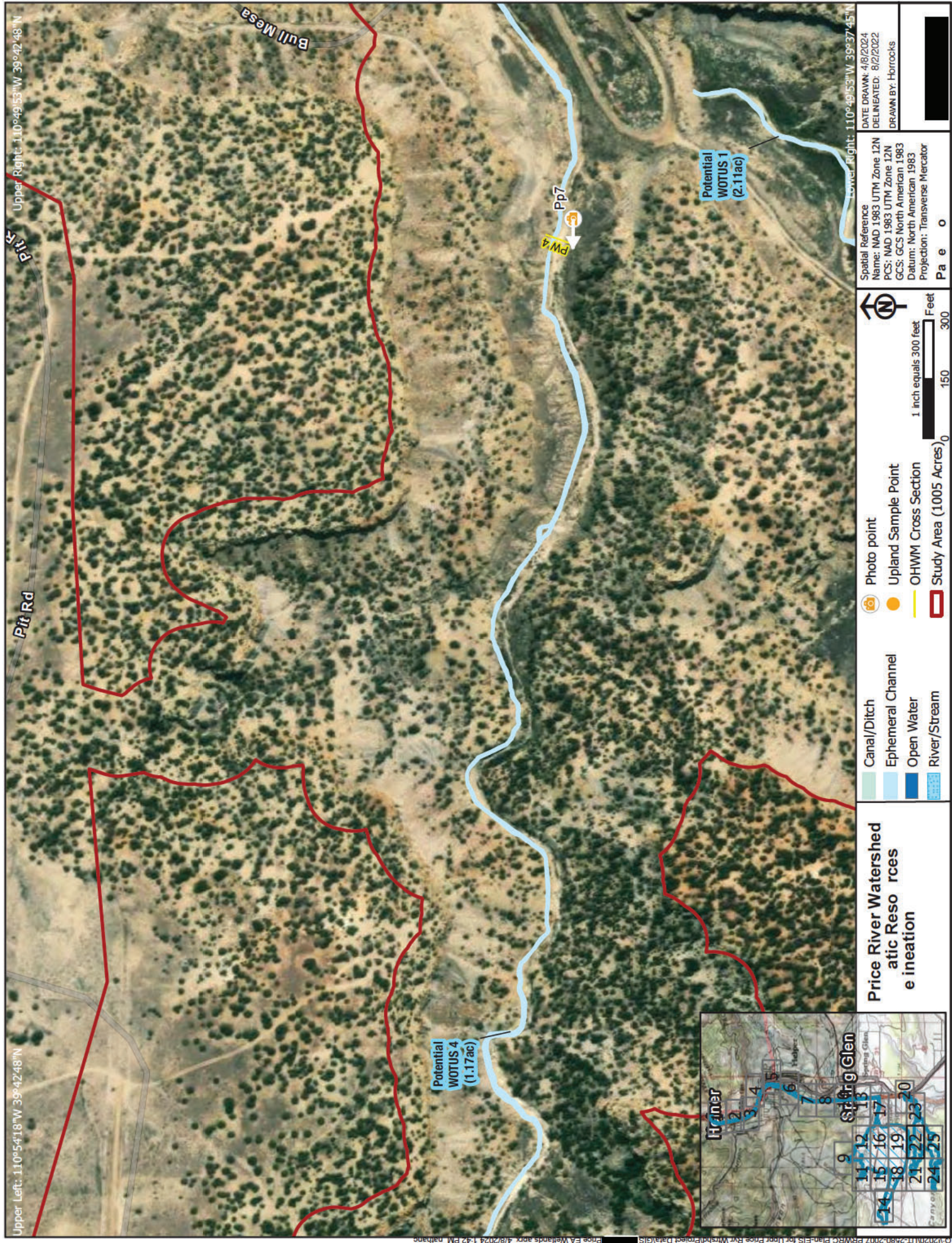


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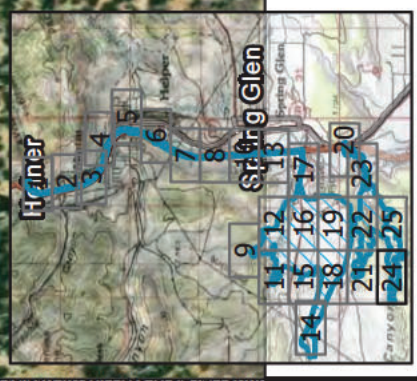
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1 inch equals 300 feet  
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Canal/Ditch  
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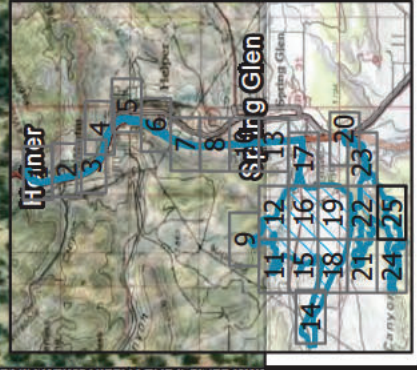






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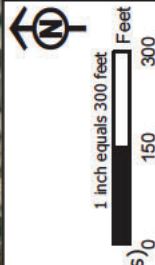
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