

SECTION 1. INTRODUCTION AND BACKGROUND

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1.0 INTRODUCTION AND BACKGROUND

1.1 Incidental Take Permit Holder, Duration, Plan Area, Covered Activities, Covered Species, and Contact Information

- Permit Holder: Los Angeles Department of Water and Power
- Permit Duration: The duration of the permit is 10 years from the date of permit issuance. [Add the date when permit is issued]_____
- Plan Area: The HCP boundary includes non-urban City lands in Inyo and Mono Counties, California, from the Mono Basin south through the Owens Valley, and ending just south of Haiwee Reservoir. This area is approximately 251,000 acres in Inyo County and 63,000 acres in Mono County (Figures 1a through 1g).
- Covered Activities: Ongoing water gathering, water distribution, power production, and power transmission activities, and other land uses including habitat enhancements for Covered Species, livestock grazing, agriculture, recreation, fire and weed management, and road maintenance and closures. (See Section 4 for complete description)
- Covered Species:

Table 1-1. Covered Species and Conservation Status

COVERED SPECIES	LEGAL STATUS	
	FEDERAL	STATE
Fish		
Owens pupfish (<i>Cyprinodon radiosus</i>)	Endangered	Endangered/ Fully protected
Owens tui chub (<i>Siphateles bicolor snyderi</i>)	Endangered	Endangered
Owens/Long Valley speckled dace (<i>Rhinichthys osculus</i> ssp.)		Species of special concern
Birds		
¹ Bell's vireo (<i>Vireo bellii</i>)	¹ Endangered	¹ Endangered
² Willow flycatcher (<i>Empidonax trallii</i>)	² Endangered	² Endangered
Yellow-billed cuckoo (<i>Coccyzus americanus</i>)	Threatened	Endangered
Greater sage-grouse, bi-state population (<i>Centrocercus urophasianus</i>)	Proposed Threatened	Species of special concern

^{1, 2} The federal and California endangered status is for the subspecies least Bell's vireo (*V. b. pusillus*). The federal endangered status is for the subspecies southwestern willow flycatcher (*E. t. extimus*), but the State endangered status covers all subspecies of willow flycatchers).

- Applicant Contact: James Yannotta, LADWP Manager of Aqueduct, 300 Mandich, Bishop, CA 93514 (ph) 760.873.0228 (fax) 760.873.0266 Email: James.Yannotta@ladwp.com
- USFWS Contact: Field Supervisor, Reno Fish and Wildlife Office, 1340 Financial Blvd., Suite 234, Reno NV 89502-7147 (ph) 775.861.6300 (fax) 775.861.6301.

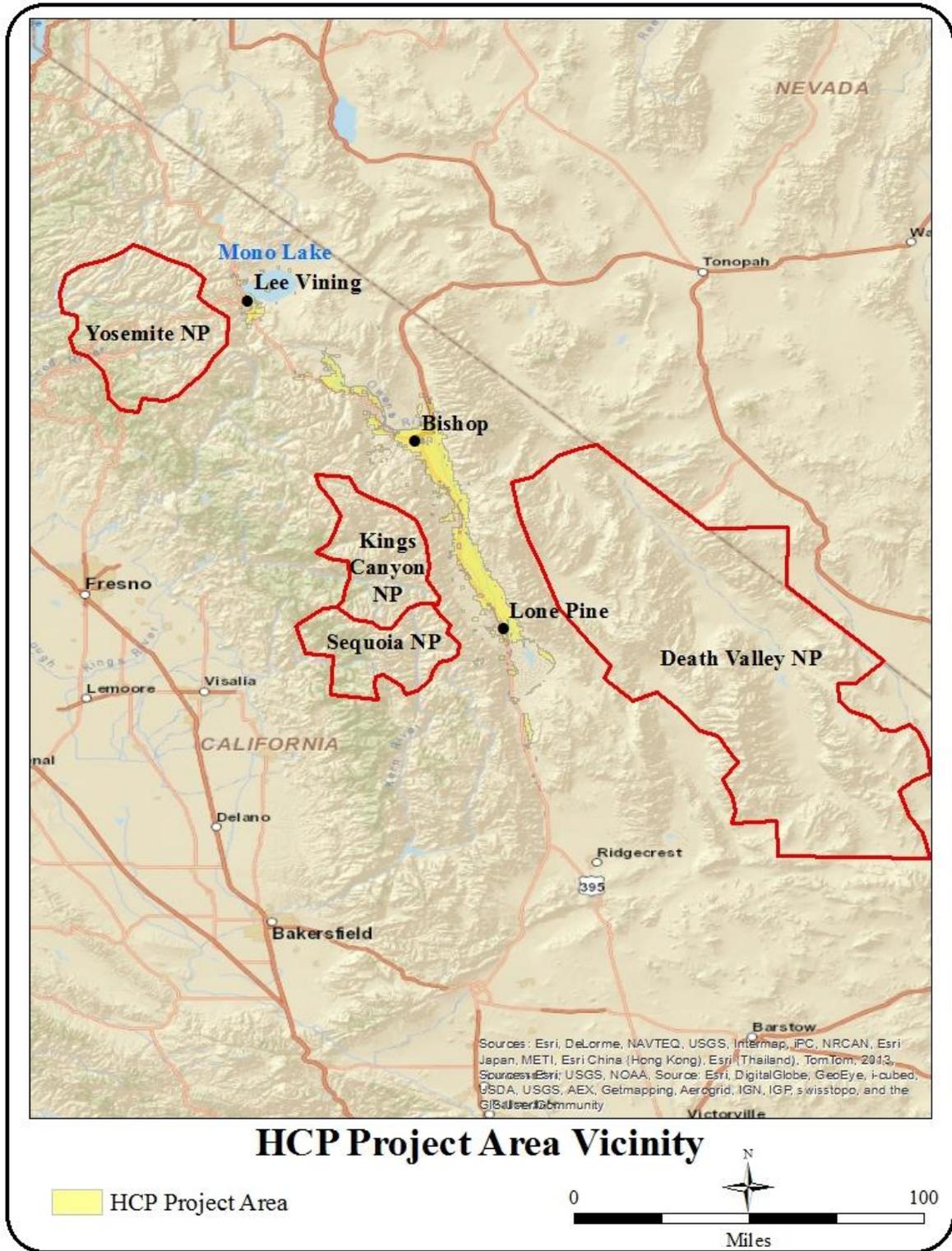


Figure 1-1. HCP Project Area Vicinity

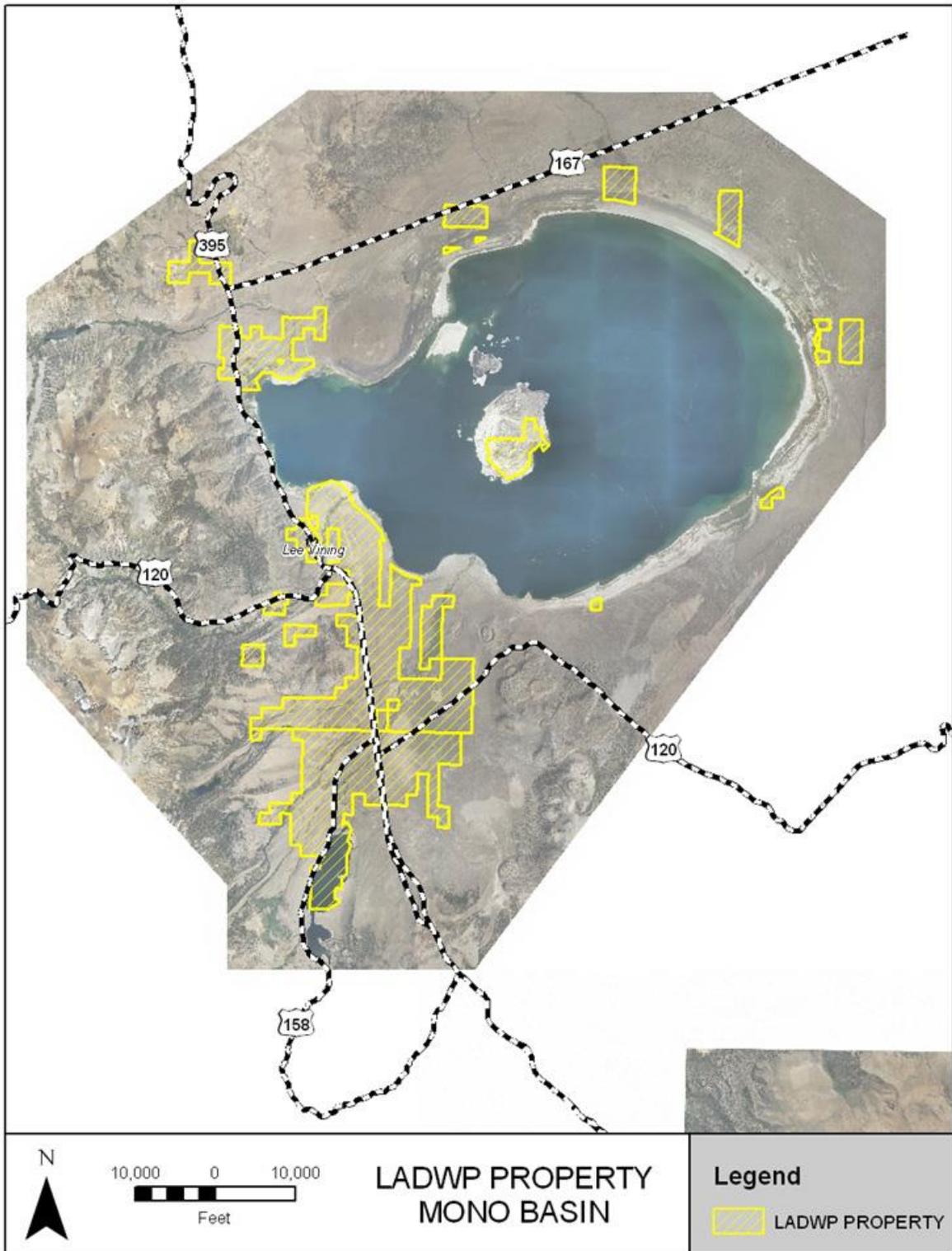


Figure 1-2. Mono Basin Area, Mono County, California

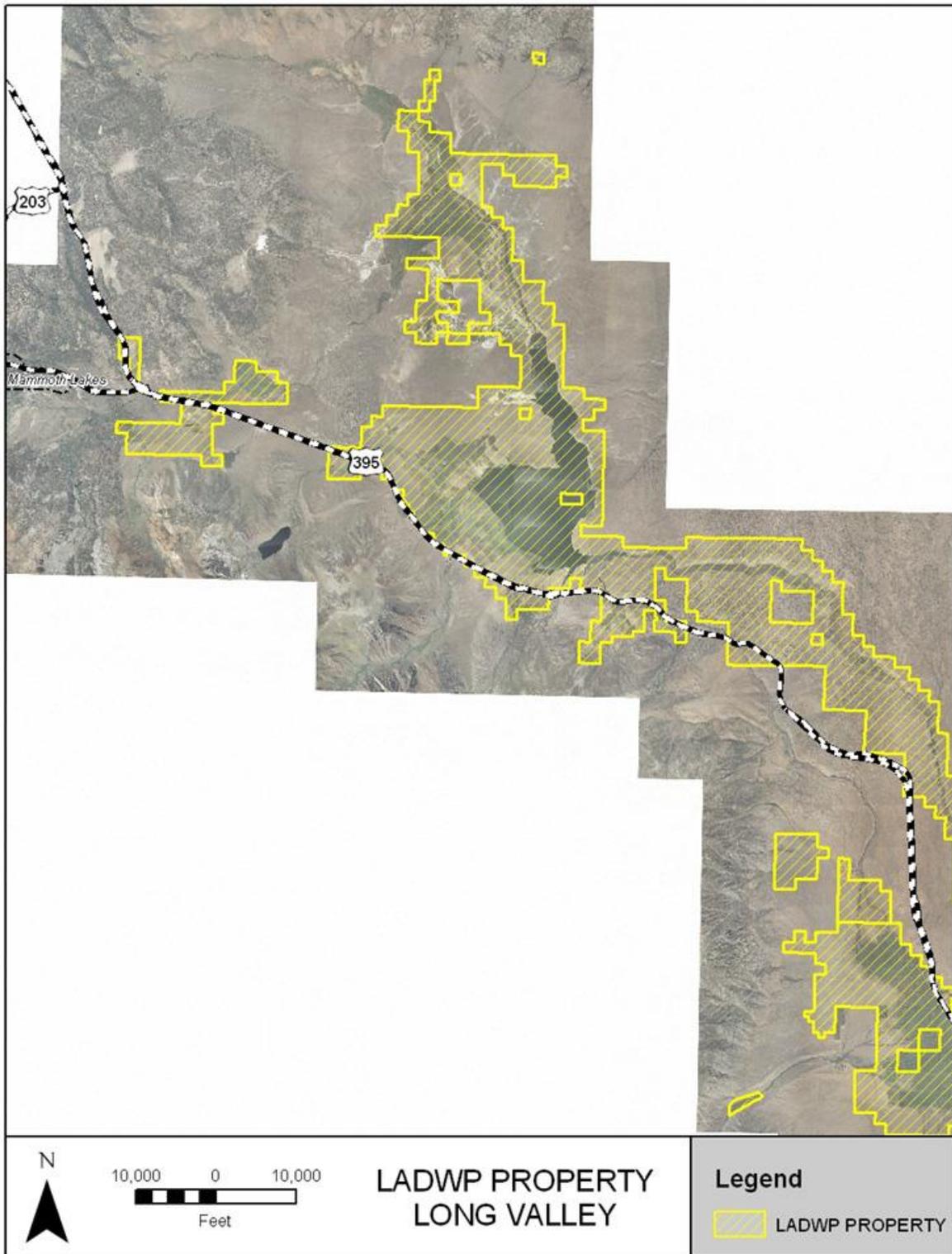


Figure 1-3. Long Valley Area, Mono County, California

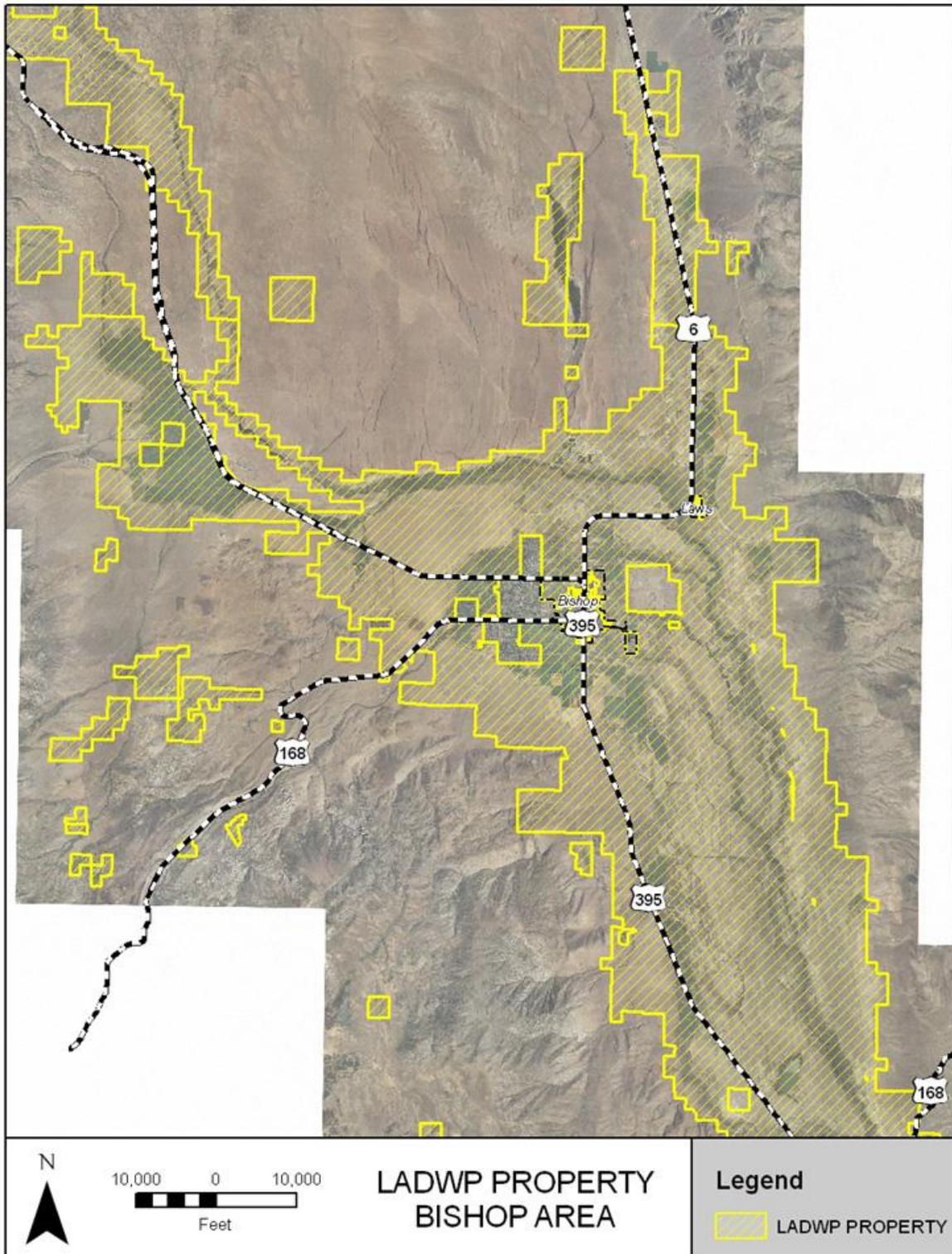


Figure 1-4. Bishop to Big Pine Area, Inyo and Mono Counties, California

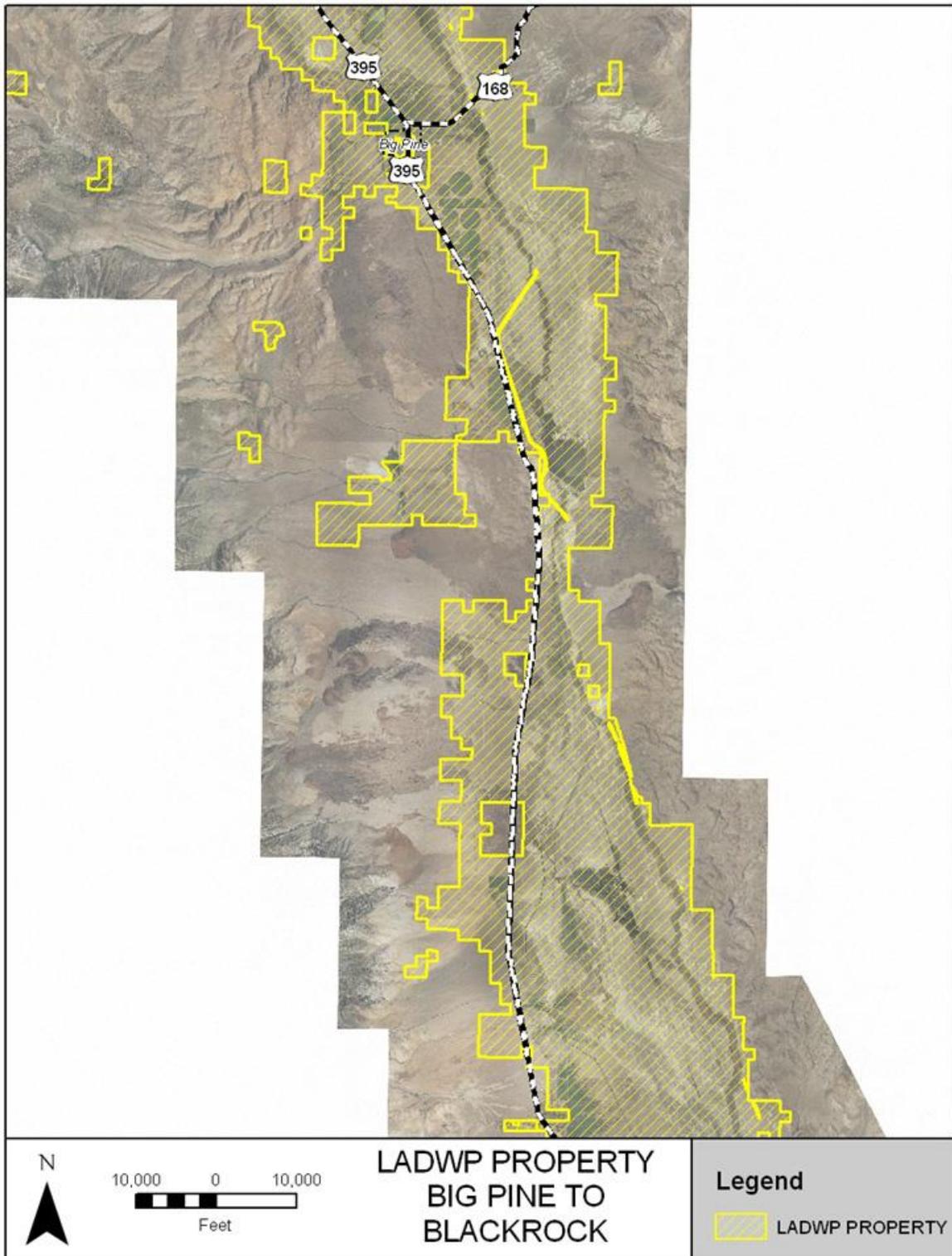


Figure 1-5. Big Pine to Blackrock Area, Inyo County, California

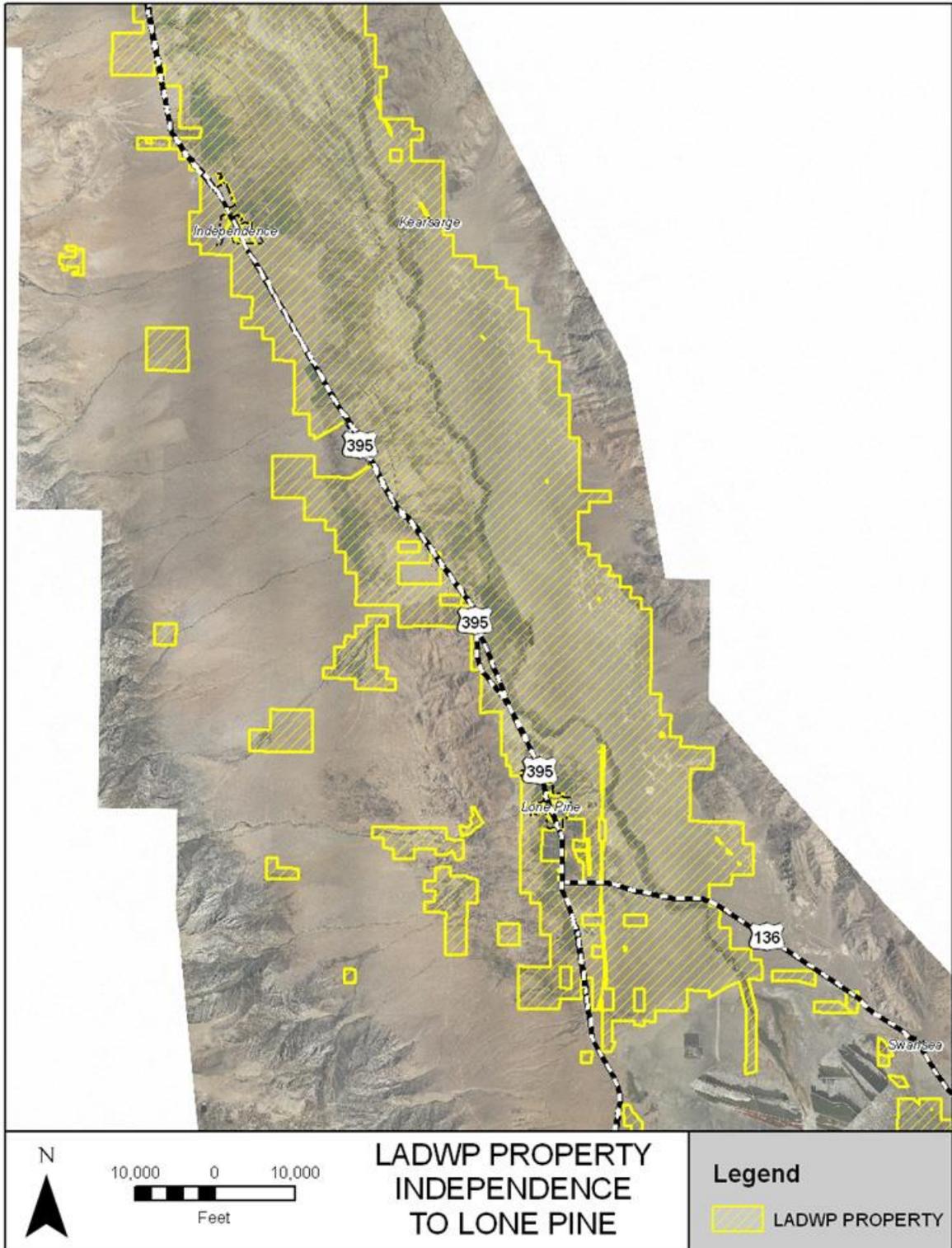


Figure 1-6. Independence to Lone Pine Area, Inyo County, California

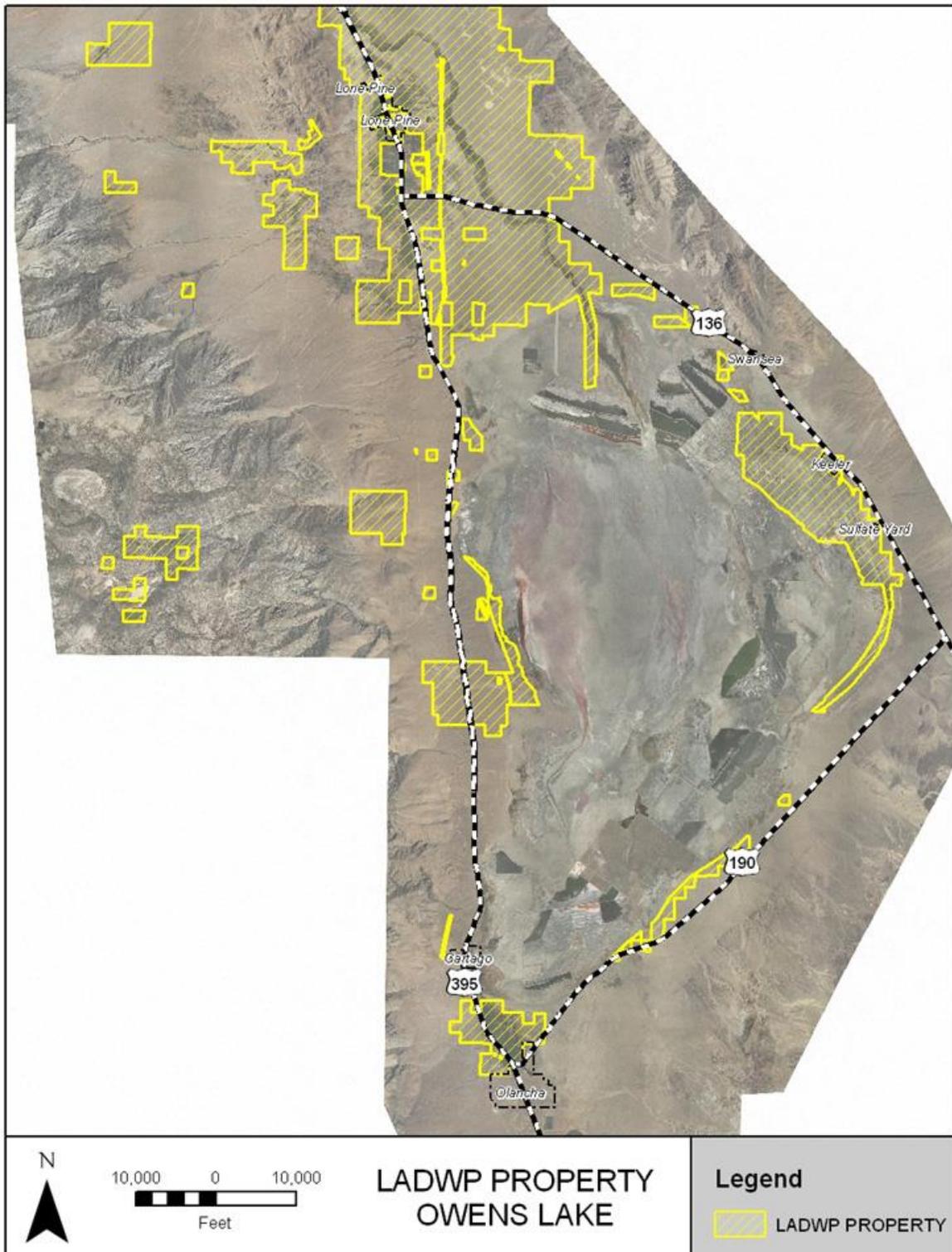


Figure 1-7. Owens Lake Area, Inyo County, California

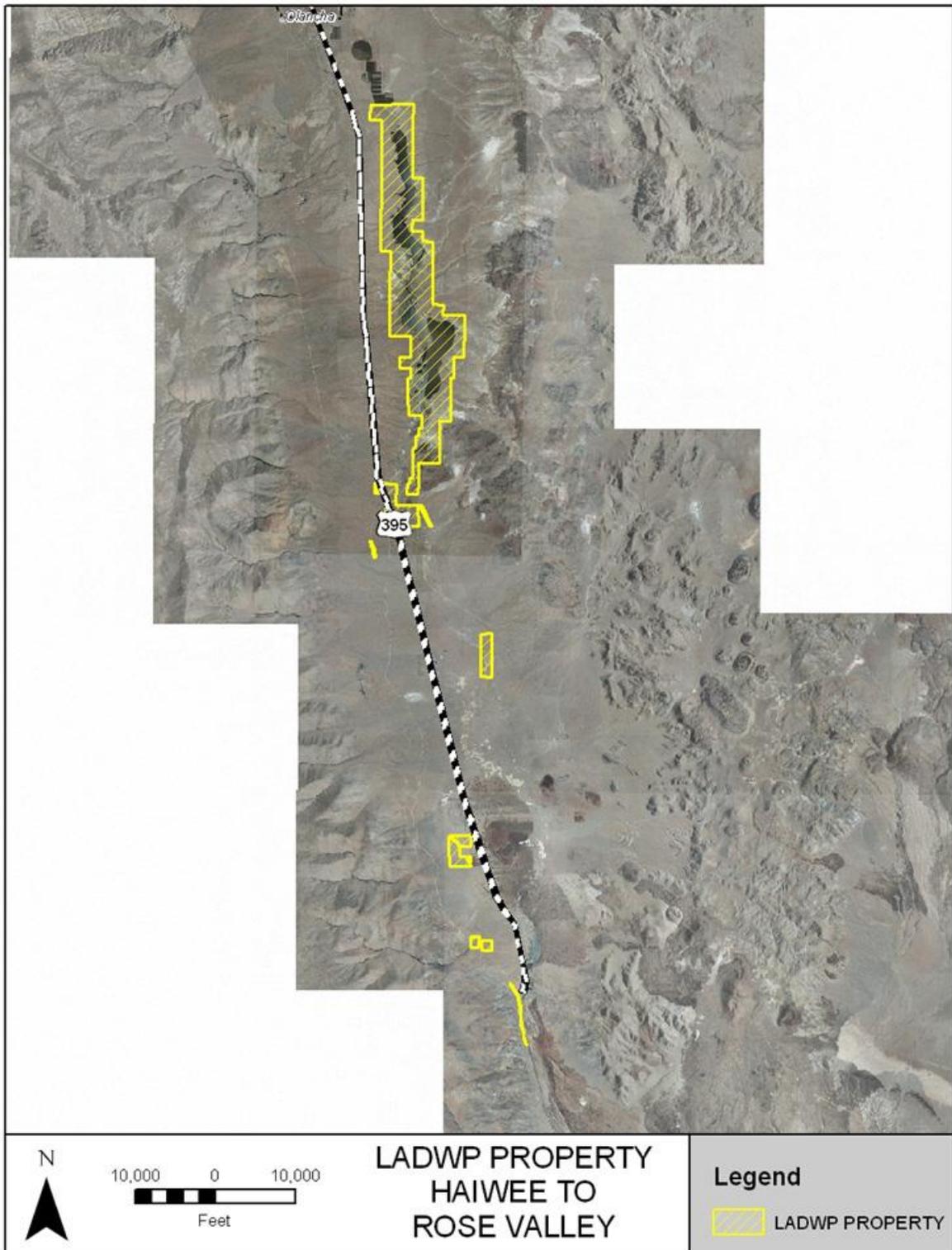


Figure 1-8. Haiwee Reservoir to Rose Valley, Inyo County, California

1.2 Overview and Background

LADWP is a large municipal utility established in 1902 to deliver reliable, safe water and electricity to the residents and businesses in the City. To accomplish this, LADWP manages approximately 314,000 acres of City land in Inyo and Mono Counties, California. These lands are managed for ongoing water gathering, water distribution, power production, and power transmission activities, and the continuation of other land uses such as livestock grazing, agriculture, recreation, fire and weed management, road maintenance and closures, and habitat enhancements for Covered Species (Table 1 and Section 1.3).

LADWP has developed a low-effect; habitat-based HCP to protect habitat for the seven species listed above, while allowing LADWP to continue its operations and maintenance activities. The goal of this low-effect HCP is to identify how LADWP operations and maintenance in the Plan Area can continue in a way that minimizes and fully mitigates any impacts to Covered Species and contributes to their conservation. This HCP has been developed as part of Section 10(a)(1)(B) of the Endangered Species Act (ESA) and § 2081 of the California Fish and Game Code requirements to address the potential incidental take of listed species under the ESA and California Endangered Species Act (CESA).

The 1997 MOU between LADWP and Inyo County, California Department of Fish and Wildlife (CDFW), Sierra Club, California State Lands Commission, Owens Valley Committee, and Carla Scheidlinger called for the establishment of a “habitat conservation plan” for threatened and endangered species. The MOU states that habitat for these listed species can be managed for their conservation, while simultaneously meeting the LADWP’s requirement to deliver water to Los Angeles. See Section 1.5 for an overview of the relationship of the HCP to other Relevant Planning Documents.

LADWP operates and maintains extensive man-made and natural waterways. This includes 1,300 mi (2,092 km) of roads, 450 mi (724 km) of natural waterways, 84 mi (135 km) of aqueducts, and 111 mi (179 km) of man-made ditches and canals with several hundred water diversions - all in the Plan Area.

Land and water use activities during the past century reduced habitat for listed fish and avian species within the Plan Area. In addition, the introduction of nonnative species has reduced available habitat. LADWP has initiated comprehensive strategies to improve natural resource management in the Plan Area. An integral part of watershed management includes the protection of habitat for candidate, threatened and endangered fish and wildlife species. The goal of recently implemented watershed management, stream restoration, and grazing management strategies by LADWP has been to improve quality of all habitats.

1.3 Species Covered by Permit

Owens tui chub (*Siphateles bicolor snyderi*), Owens/Long Valley speckled dace (*Rhinichthys osculus* spp.), bi-state population of Greater Sage-Grouse (*Centrocercus urophasianus*), Yellow-billed Cuckoo (*Coccyzus americanus*), Willow flycatcher (*Empidonax traillii*), and Bell's Vireo (*Vireo bellii*), collectively called Covered Species (Table 1-1). All subspecies of Willow flycatcher and Bell's vireo that may occur in the Plan Area are included in this HCP. Habitat models were developed with the subspecies (*extimus* and *pusillus*) in mind, but are sufficiently broad enough to cover existing habitat suitability for the species level. With the exception of Greater Sage-Grouse, all Covered Species are aquatic or woody riparian obligate species (riparian obligate species); therefore, the HCP focuses on aquatic and woody riparian (riparian) habitats. Aquatic and riparian habitats were mapped and evaluated, and suitable habitat was rated for each Covered Species. Potential habitat for Greater Sage-Grouse was also mapped.

Other special status species were considered during the development of this HCP but not included. Plant species considered but not included are Fish Slough milk-vetch (*Astragalus lentiginosus* var. *piscinensis*), Owens Valley checkerbloom (*Sidalcea covillei*), Nevada Oryctes (*Oryctes nevadensis*), and Inyo County Mariposa lily (*Calochortus excavatus*). Wildlife species considered but not included are Swainson's hawk (*Buteo swainsoni*), Pygmy rabbit (*Brachylagus idahoensis*), and Owens Valley vole (*Microtus californicus vallicola*). Covered Activities are not expected to result in take to the species not included. Further, the conservation actions in the HCP for the seven Covered Species are also expected to benefit these non-covered species.

1.4 Regulatory Framework for the HCP and Incidental Take Permit

This HCP will comply with the following statutes.

1.4.1 Federal Laws

Federal Endangered Species Act (ESA) of 1973, as Amended

The purposes of this act are to provide for the conservation of threatened and endangered species and the ecosystems upon which they depend. Section 10(a)(1)(B) of the ESA includes provisions that allow private landowners to proceed with activities that may take listed species while conducting otherwise lawful activities without violating Section 9 of the ESA. Pursuant to ESA implementing regulations (50 CFR, parts 17 and 22), HCPs are conservation plans that include measures to minimize and mitigate effects to listed species and may include proposed and candidate species and other rare or vulnerable species.

The ESA prohibits the "take" of threatened and endangered species. Section 3 of the ESA defines take as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect, or to attempt to engage in any such conduct." "Harm" is defined as "significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering"; while "harass" includes the "intentional or negligent actions that create the likelihood of injury to listed species by annoying them to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering". "Incidental take" is take that is not the purpose of carrying out of an otherwise lawful activity.

The Services (USFWS and National Oceanographic and Atmospheric Administration [NOAA] Fisheries Service), under Section 10(a)(1)(B) of the ESA, may issue permits to take listed species during non-federal activities. The activities described in the ITP cannot appreciably reduce the likelihood of the survival and recovery of species in the wild. The ESA requires the development and implementation of a conservation plan that contributes to the recovery of the species.

National Environmental Policy Act (NEPA) of 1969

NEPA requires that federal agencies analyze the environmental impacts of their actions, such as issuance of an ITP, and include public participation in the planning and implementation of their actions. The purposes of this act are to

“declare a national policy which will encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality” (42 U.S.C. Sec. 4321).

NEPA establishes the format and content requirements for the document that provides the environmental analysis and documentation of impacts from the proposed action to the human environment. NEPA compliance is obtained through one of the following actions:

- (1) Preparation of an environmental impact statement, conducted for HCPs that would have a significant effect on the human environment,
- (2) Preparation of an environmental assessment for moderate but less than significant effect HCPs, and
- (3) Preparation of a categorical exclusion for HCPs that would have a negligible effect and a negligible cumulative effect on the human environment.

Categorical exclusions for low-effect HCPs meet NEPA requirements by excluding them from further NEPA analysis. This is documented through the preparation of an Environmental Action Statement.

The Migratory Bird Treaty Act (MBTA) of 1918, as Amended, and the Bald and Golden Eagle Protection Act (BGEPA) of 1940, as Amended

These two acts are designed to protect most species of native birds by prohibiting the taking, possession, and commerce of such birds, except when permits are issued.

For the MBTA: If the proposed actions are likely to take birds protected under both the MBTA and the ESA, the HCP must meet the MBTA’s requirements in 50 CFR 21.27 for issuing a Special Purpose Permit and the ESA’s Incidental Take Permit issuance criteria in 50 CFR 17.22(b)(1) for endangered species or 17.32(b)(1) for threatened species. For Covered Species protected under both acts, the applicant must also obtain from the Office of Migratory Birds in Region 8 of the USFWS a Special Purpose Permit to take these bird species, and renew this permit every three years to ensure coverage for take of these bird species under the MTBA for the duration of the ITP. For birds that are Covered Species, protected by the MBTA, and not listed under the ESA, no take is authorized under the MBTA (including killing and wounding of any such birds, or take of eggs and active nests).

For BGEPA: If the proposed actions are likely to take bald or golden eagles and the proposed HCP fails to meet the BGEPA permit issuance standards, the USFWS will not issue the associated ESA section 10(a)(1)(B) ITP.

When specific conditions have been met, language is included in the terms and conditions of the HCP concerning the MBTA and BGEPA species.

The National Historic Preservation Act (NHPA) of 1966, as Amended

One purpose of the NHPA is to minimize potential harm and damage to historic properties. Section 106 of the National Historic Preservation Act mandates federal agencies to review all federal projects that may impact sites listed on, or eligible for listing on, the National Register of Historic Places. It requires the federal agency to "take into account" the effect a project may have on historic properties and "seek ways to avoid, minimize, or mitigate" any adverse effects on historic properties. It allows the public an opportunity to comment on the potential impact a proposed project may have on significant archaeological or historic sites.

1.4.2 Federal Regulations

The Section 10(a)(1)(B) Permit Process - Habitat Conservation Plan Requirements and Permit Issuance Criteria

The Section 10(a)(1)(B) permit process for obtaining an ITP has three phases: (1) HCP development; (2) formal permit processing; and (3) the implementation.

During HCP development, the project applicant prepares an HCP that integrates the proposed project or activity with conservation of Covered Species. An HCP, submitted in support of an ITP application, must include the following information:

- The impacts likely to result from the proposed taking of Covered Species for which ITP coverage is requested;
- the conservation plan for the Covered Species. The HCP identifies the biological goals, objectives, and actions of the conservation plan;
- measures that will be implemented to monitor, minimize, and mitigate impacts;
- funding that will be made available to undertake such measures;
- procedures to deal with unforeseen circumstances;
- alternative actions considered that would not result in take and reasons why such alternatives are not being used; and
- additional measures the USFWS may require as necessary or appropriate for purposes of the HCP.

The permit processing begins when a complete application package is submitted to USFWS. A complete application package consists of 1) an HCP, 2) an Implementing Agreement (IA), if applicable, 3) a permit application, and 4) a \$100 fee from the applicant, when applicable. The USFWS publishes a Notice of Availability of the HCP in the Federal Register which initiates the public comment period on the draft HCP. The USFWS also prepares an Intra-Service Section 7 Biological Opinion and a Set of Findings; the latter document evaluates the Section 10(a)(1)(B) permit application

using the permit issuance criteria (see below). An Environmental Action Statement, Environmental Assessment, or Environmental Impact Statement serves as the USFWS's record of compliance with NEPA, which is distributed for a 30-day, 60-day, or 90-day public comment period, respectively, and simultaneously with the HCP comment period.

The USFWS has identified two types of HCPs based on the extent and magnitude of the impacts. Low-effect HCPs are those with: (1) minor or negligible effects to listed, proposed, or candidate species and their habitats covered under the HCP; (2) minor or negligible effects on other environmental values or resources in the human environment; and (3) minor to negligible cumulative effects to the human environment. The ITP associated with a low-effect HCP authorizes a level of incidental take of listed species that has a negligible effect to the species.

To qualify as a low effect HCP, the anticipated effects to listed species and their habitat must be assessed prior to implementation of the mitigation. LADWP worked with the USFWS to determine whether the impacts to listed species are negligible or minor and can be considered low-effect.

A Section 10(a)(1)(B) ITP is granted upon a determination by the USFWS that all requirements for permit issuance have been met. Statutory criteria for issuance of the ITP require:

- preparation of a conservation plan. Section 3 of the ESA defines conservation as using all methods and procedures necessary to bring an endangered or threatened species to the point at which measures provided in the ESA are no longer necessary (i.e., recovery).

The conservation plan specifies:

- the taking will be incidental;
- the impacts of incidental take will be minimized and mitigated to the maximum extent practicable;
- adequate funding for the HCP and procedures to handle unforeseen circumstances is ensured;
- the taking will not appreciably reduce the likelihood of survival and recovery of the species in the wild;
- the applicant will provide additional measures that the USFWS requires as being necessary or appropriate; and
- the USFWS has received assurances, as may be required, that the conservation plan will be implemented.

The public is notified of issuance of the ITP through publication in the Federal Register.

Implementation begins after the ITP has been issued. The Applicant, now Permittee, is responsible for implementing the HCP and permit terms and conditions. USFWS monitors the Permittee's compliance with the HCP and the ITP as well as the long-term progress and success of the HCP.

The ITP may include an Implementing Agreement between the Permittee and USFWS that ensures implementation of the terms of the HCP and describes remedies should any party fail to perform its obligations.

The USFWS HCP Handbook encourages applicants to consider listed plants during the HCP process because the Section 7(a)(2) prohibition against jeopardy also applies to plant species (USFWS and NOAA 2000). This means that if during the mandatory Section 7 consultation (as part of the Section 10 permitting process), listed plant species would likely be jeopardized from implementation of the HCP, and the USFWS could decline to issue the ITP.

1.4.3 No Surprises Policy

The USFWS No Surprises Policy means that if unforeseen circumstances arise during an ITP timeframe and the Permittee has complied with all the terms and conditions of the ITP including implementation of the HCP, USFWS will not require additional lands, funds, or restrictions on land or other natural resources released for development or use from the Permittee. Unforeseen circumstances include the listing of proposed species, candidate species, or species of concern that were included in the ITP; these assurances do not apply to species not covered in the HCP.

1.4.4 State Laws

California Endangered Species Act (CESA) of 1985

This act tends to parallel the federal ESA, specifically addressing species or subspecies native to California and extending protection to listed plant species occurring on non-federal lands. CESA prohibits the take of plant and animal species designated by the California Fish and Game Commission as either threatened or endangered in California, and also prohibits take of species petitioned for listing, such as candidate species. CDFW may authorize the incidental take of any listed species (but not Fully Protected species) by permit if the conditions set forth in Fish and Game Code § 2081 subdivisions (b) and (c) are met. Some of the incidental take requirements are similar between the federal ESA and CESA. However, CESA requires “full mitigation” as opposed to the “maximum extent practicable” and the CESA definition of ‘take’ does not include definitions for “harm” or “harass”. In addition, CESA requires more detailed information in the Biological Opinion about mitigation measures including who will do the measures, which will have oversight of performance of the measures, when the measures will be done, how measures will be monitored for effectiveness, and how these measures will be funded. The Biological Opinion must also state that the CDFW must approve any important requirements or details that have not been identified in the HCP.

Fully Protected Species

In addition to federal and state endangered status, Owens pupfish is also Fully Protected under Fish and Game Code § 5515. Under § 2081, CDFW is unable to authorize take of Fully Protected species. However, incidental take of fully protected species can be authorized either under the Natural Community Conservation Plan (§ 2935) or when conducting research on the recovery of the species (§ 5515).

California Environmental Quality Act (CEQA) of 1970

CEQA is the state counterpart of NEPA. CEQA guidelines mandate environmental analysis of projects in California to evaluate whether a proposed project may have adverse effects on the environment and, if so, to reduce or eliminate those effects through alternative actions or mitigation measures (CCR, Title 14, Chapter 3, § 15000 et seq.). Discretionary projects undertaken by private parties that require judgment or deliberation by a public agency in determining whether a permit will be issued, must comply with CEQA. CEQA, like NEPA, contains categorical exemptions where impacts to the environment are determined to be insignificant.

1.4.5 State Regulations

Projects within the Plan Area may require a Lake or Streambed Alteration Agreement, pursuant to § 1600 et seq. of the Fish and Game Code, if the activity will substantially divert or obstruct the natural flow or substantially change the bed, channel, or bank (which may include associated riparian resources) of a river, stream or lake, or use material from a streambed. CDFW's issuance of a Lake or Streambed Alteration Agreement for a project that is subject to CEQA will require CEQA compliance actions by the CDFW as a responsible agency. CDFW, as a responsible agency under CEQA, may consider the lead agency's Negative Declaration or Environmental Impact Report for the project. To minimize additional requirements by the CDFW pursuant to § 1600 et seq. and/or under CEQA, the document should fully identify the potential impacts to the lake, stream, or riparian resources and provide adequate avoidance, mitigation, monitoring and reporting commitments for issuance of the agreement.

California State Safe Harbor Agreement Program Act.

California State Safe Harbor Agreement Program Act (SHAPA) § 2089.2-2089.26 encourages landowners to manage their lands voluntarily, by means of state safe harbor agreements approved by CDFW, to benefit endangered, threatened, or candidate species without being subject to additional regulatory restrictions as a result of their conservation efforts.

The key to the goals of conserving, protecting, restoring, and enhancing endangered, threatened, and candidate species, is their habitat. A significant portion of the state's current and potential habitat for these species exists on property owned by private citizens, municipalities, tribes, and other nonfederal entities. Conservation efforts on these lands and waters are critical to help these declining species. Using a collaborative stewardship approach to these lands and waters will help ensure the success of these efforts.

The purpose of the SHAPA is to encourage landowners to manage their lands voluntarily to benefit endangered, threatened, or candidate species by protecting landowners from additional regulatory restrictions as a result of their conservation efforts.

SHAPA does not relieve landowners of any legal obligation with respect to endangered, threatened, or candidate species existing on their land. The program is designed to increase species populations, create new habitats, and enhance existing habitats. Although this increase may be temporary or long-term, California state safe

harbor agreements shall not reduce the existing populations of species present at the time the baseline is established by the department.

1.5 Relationship of the HCP to other Relevant Planning Documents

Water resources in Inyo County are managed according to the *Agreement between the County of Inyo and the City of Los Angeles and its Department of Water and Power on a Long Term Groundwater Management Plan for Owens Valley and Inyo County* (Water Agreement) established in 1991. Mono County is not a party to the Water Agreement. The goal of the Water Agreement is to avoid certain described changes in vegetation and to cause no significant effect on the environment, which cannot be acceptably mitigated while providing a reliable supply of water for export to Los Angeles and for use in Inyo County.

The Water Agreement further requires that LADWP operate and maintain canals. Specifically, LADWP,

“shall continue to operate canals in accordance with its practices from 1970 (past practices have included taking canals out of service for maintenance and for operational purposes). However, any permanent change in canal operations, compared to past practices, shall be subject to prior Standing Committee approval. [LADWP] will continue to determine and implement maintenance activities to control aquatic weeds and ditch bank vegetation in order to maintain canals in a clean and efficient manner.”

The 1997 MOU resolved conflicts and concerns among the parties about LADWP's *1991 Environmental Impact Report Water from the Owens Valley to Supply the Second Los Angeles Aqueduct, 1970 to 1990, 1990 Onward, Pursuant to a Long Term Groundwater Management Plan* (1991 EIR). This 1991 EIR assessed the impacts of groundwater pumping in and water export from the Owens Valley from 1970-1990 associated with an augmentation to the aqueduct that began exporting additional water in 1970. The 1997 MOU calls for the establishment of a “habitat conservation plan” for indigenous threatened and endangered species. According to the 1997 MOU, this “habitat conservation plan” will, ‘identify conservation areas within the planning area which will be managed to facilitate restoration of threatened and endangered species to viable populations’ and, to the extent feasible, ‘consolidate and/or provide linkages and corridors between critical habitats in the planning area to reduce gaps and habitat discontinuity.’ In addition, the 1997 MOU specifically claims the scope of the “habitat conservation plan” will determine the recoverability and attainability of delisting for threatened and endangered species, will integrate with watershed management goals, and will integrate threatened and endangered species monitoring with the overall monitoring. This HCP is intended to satisfy some but not all of the 1997 MOU obligations.

The 1997 MOU calls for the development of two plans: the Lower Owens River Project (LORP) plan and the Owens Valley Land Management Plan (OVLMP). The LORP, guided by a number of legal and scientific documents as compensatory mitigation for impacts related to groundwater pumping by LADWP, provides for the release of permanent water flows in 62 miles of the Lower Owens River to restore the river and create thousands of acres of habitat for fish and wildlife. LADWP developed and implemented the OVLMP (2010), as required by the 1997 MOU. The OVLMP provides

habitat, recreation, and land use direction for City lands in Inyo County (excluding the LORP area).

The LORP includes four main features:

- 1) the lower Owens River-riparian ecosystem,
- 2) the Owens River delta habitat area,
- 3) off-river lakes and ponds, and
- 4) the Blackrock waterfowl habitat area.

To date there is no single 'LORP plan' but instead many documents associated with different aspects of the LORP including the 2004 EIR (with 2006 supplement) and this HCP. In developing this HCP, LADWP recognizes the role Owens Valley residents play in ecosystem management and supports sustainable levels of agriculture, livestock grazing and recreation.

The CDFW issued a Lake and Streambed Alteration Agreement for "Long-Term Agreement Regarding Proposed Routine Maintenance Activities for the LORP" in 2010 (Notification No. 1600-2008-0146-R6).

The OVLMP is an LADWP internal planning document that pertains to LADWP lands in Inyo County outside of the LORP planning area. Where appropriate, the OVLMP uses Long Valley and Upper Owens River areas as a model. The OVLMP was finalized in 2010 and includes management plans for grazing, recreation, fire control, and exotic plants.

In 2007, CDFW issued to LADWP a Lake and Streambed Alteration Agreement for "Routine Maintenance Work in Waterways in Inyo and Mono Counties" (Notification No. 1600-2007-0111-R6).

1.6 Public and Agency Involvement

This HCP was developed by LADWP in coordination with USFWS and CDFW. Several public meetings were held, beginning in February 2007, to discuss the purpose, scope, and extent of the HCP and solicit input from stakeholders in the Plan Area. LADWP, USFWS, and CDFW participated and presented information at the public meetings. Stakeholders, including county representatives, recreation groups, chambers of commerce, environmental organizations, the Cattlemen's Association, and others were invited to attend these meetings. Public comments were considered and incorporated into this HCP when possible.