

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): August 11, 2009

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Sacramento District, IVANPAH AIRPORT SITE Ivanpah Lake Playa, SPK-2004-50472

C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State: **Nevada** County/parish/borough: **Clark** City: **Primm**
Center coordinates of site (lat/long in degree decimal format): Lat. **35.67° N**, Long. **-115.35° W**
Universal Transverse Mercator: **11 649155.01 3948632.11**

Name of nearest waterbody: **Ivanpah Lake**

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: **Ivanpah Lake**

Name of watershed or Hydrologic Unit Code (HUC): **Ivanpah-Pahrump Valleys, California, Nevada, 16060015**

X Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.

X Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form. **Those sites that are located entirely in the state of Nevada and flow into Roach Lake are recorded on a separate JD Form.**

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

X Office (Desk) Determination. Date: August 11, 2009

X Field Determination. Date(s): June 17, 2009

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There **no** "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. [Required]

Waters subject to the ebb and flow of the tide.

Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There **are** "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. [Required]

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- TNWs, including territorial seas
- Wetlands adjacent to TNWs
- Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
- Non-RPWs that flow directly or indirectly into TNWs
- Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
- Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
- Impoundments of jurisdictional waters
- X Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: linear feet: width (ft) and/or **3.63** acres.

Wetlands: acres.

c. Limits (boundaries) of jurisdiction based on: OHWM

Elevation of established OHWM (if known): .

2. Non-regulated waters/wetlands (check if applicable):³

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

Explain: .

SECTION III: CWA ANALYSIS

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

- E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):⁴**
- which are or could be used by interstate or foreign travelers for recreational or other purposes.
 - from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
 - which are or could be used for industrial purposes by industries in interstate commerce.

X Interstate isolated waters. Explain: **The aquatic resources associated with this Jurisdictional Determination cross the Nevada/California border and flow into Ivanpah Lake. Ivanpah Lake is an interstate isolated water (33 CFR 328.3 (a)(2)), with the majority of its area falling within the State of California. Roughly 5% of the total area of Ivanpah dry lake is situated within Nevada. Published recreational uses of Ivanpah dry lake are limited to a few non-water (no recreational navigation) related activities, including camping, archery, kite bugging and land sailing.**

Based on 33 CFR 328.3 (a)(2), which includes definitions of jurisdictional waters, the drainages associated with Ivanpah Lake that cross from Nevada into California would be regulated as interstate waters.

Other factors. Explain: .

Identify water body and summarize rationale supporting determination: These drainages are ephemeral waterways that drain from Nevada into California and ultimately create Ivanpah Lake, an isolated interstate Playa Lake.

Provide estimates for jurisdictional waters in the review area (check all that apply):

X Tributary waters: linear feet width (ft).

X Other non-wetland waters: **3.63** acres.

Identify type(s) of waters: .

Wetlands: acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.

Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.

Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).

Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: .

Other: (explain, if not covered above): .

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource: .

Wetlands: acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

Non-wetland waters (i.e., rivers, streams): linear feet, width (ft).

Lakes/ponds: acres.

Other non-wetland waters: acres. List type of aquatic resource: .

Wetlands: acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

X Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: .

X Data sheets prepared/submitted by or on behalf of the applicant/consultant.

X Office concurs with data sheets/delineation report.

Office does not concur with data sheets/delineation report.

Data sheets prepared by the Corps: .

Corps navigable waters' study: .

U.S. Geological Survey Hydrologic Atlas: .

⁴ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

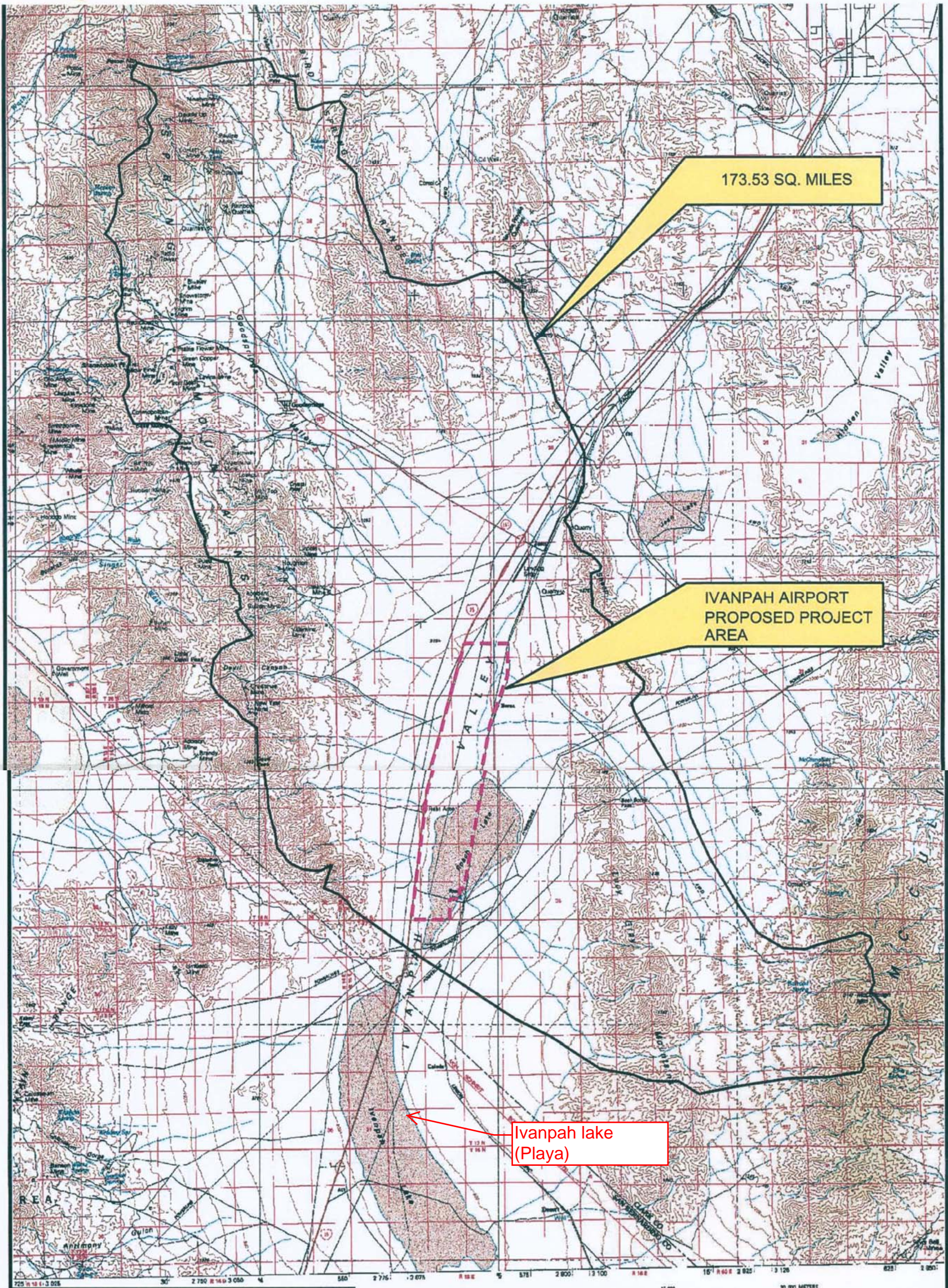
- USGS NHD data.
- USGS 8 and 12 digit HUC maps.
- X U.S. Geological Survey map(s). Cite scale & quad name: **1:24K; NV-ROACH**
- USDA Natural Resources Conservation Service Soil Survey. Citation: .
- National wetlands inventory map(s). Cite name: .
- State/Local wetland inventory map(s): .
- FEMA/FIRM maps: .
- 100-year Floodplain Elevation is: (National Geodetic Vertical Datum of 1929)
- X Photographs: X Aerial (Name & Date): .
or Other (Name & Date): .
- X Previous determination(s). File no. and date of response letter: **SPL-2006-00921** (April 4, 2006), SPL-2007-00415 (Ivanpah Valley Solar Energy Project – May 15, 2009).
- Applicable/supporting case law: .
- Applicable/supporting scientific literature: .
- Other information (please specify): .

B. ADDITIONAL COMMENTS TO SUPPORT JD:

Ivanpah dry lake is NOT a TNW or an (a)(3) water. Ivanpah lake is an interstate ((a)(2)) water, with the majority of its area falling within the California state border. Roughly 5% of the total area of Ivanpah dry lake is situated within Nevada. Currently, there are no known or published recreational uses. Published recreational uses of Ivanpah dry lake are limited to a few non-water (no recreational navigation) related activities, including camping, archery, kite bugging and land sailing.

Based on 33 CFR 328.3 (a)(2), which includes definitions of jurisdictional waters, the drainages associated with Ivanpah Lake that cross from Nevada into California would be regulated as interstate waters.

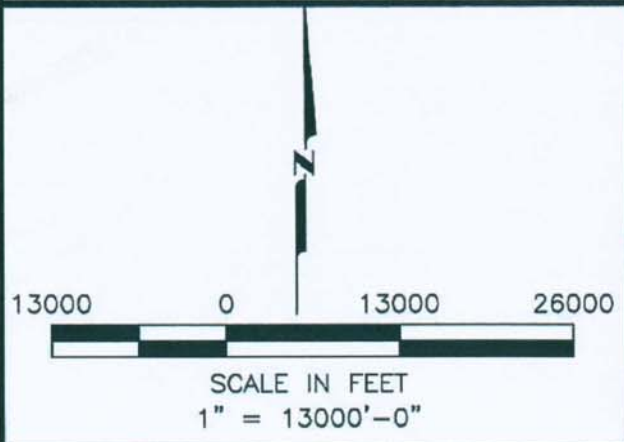
Regulatory Action Type		Size	Cowardin	HGM	Local Waterway
	Wetland #	Acres			
SPK-2004-50472(52)	(ISOLATE)	0.29	R4SB2	RIVERINE	Ivanpah Lake
SPK-2004-50472(53)	(ISOLATE)	0.34	R4SB3	RIVERINE	Ivanpah Lake
SPK-2004-50472(54)	(ISOLATE)	1.36	R4SB4	RIVERINE	Ivanpah Lake
SPK-2004-50472(55)	(ISOLATE)	0.46	R4SB5	RIVERINE	Ivanpah Lake
SPK-2004-50472(56)	(ISOLATE)	0.83	R4SB6	RIVERINE	Ivanpah Lake
SPK-2004-50472(57)	(ISOLATE)	0.24	R4SB7	RIVERINE	Ivanpah Lake
SPK-2004-50472(58)	(ISOLATE)	0.1	R4SB8	RIVERINE	Ivanpah Lake
SPK-2004-50472(59)	(ISOLATE)	0.008	R4SB9	RIVERINE	Ivanpah Lake
	Total	3.628			



173.53 SQ. MILES

IVANPAH AIRPORT
PROPOSED PROJECT
AREA

Ivanpah lake
(Playa)

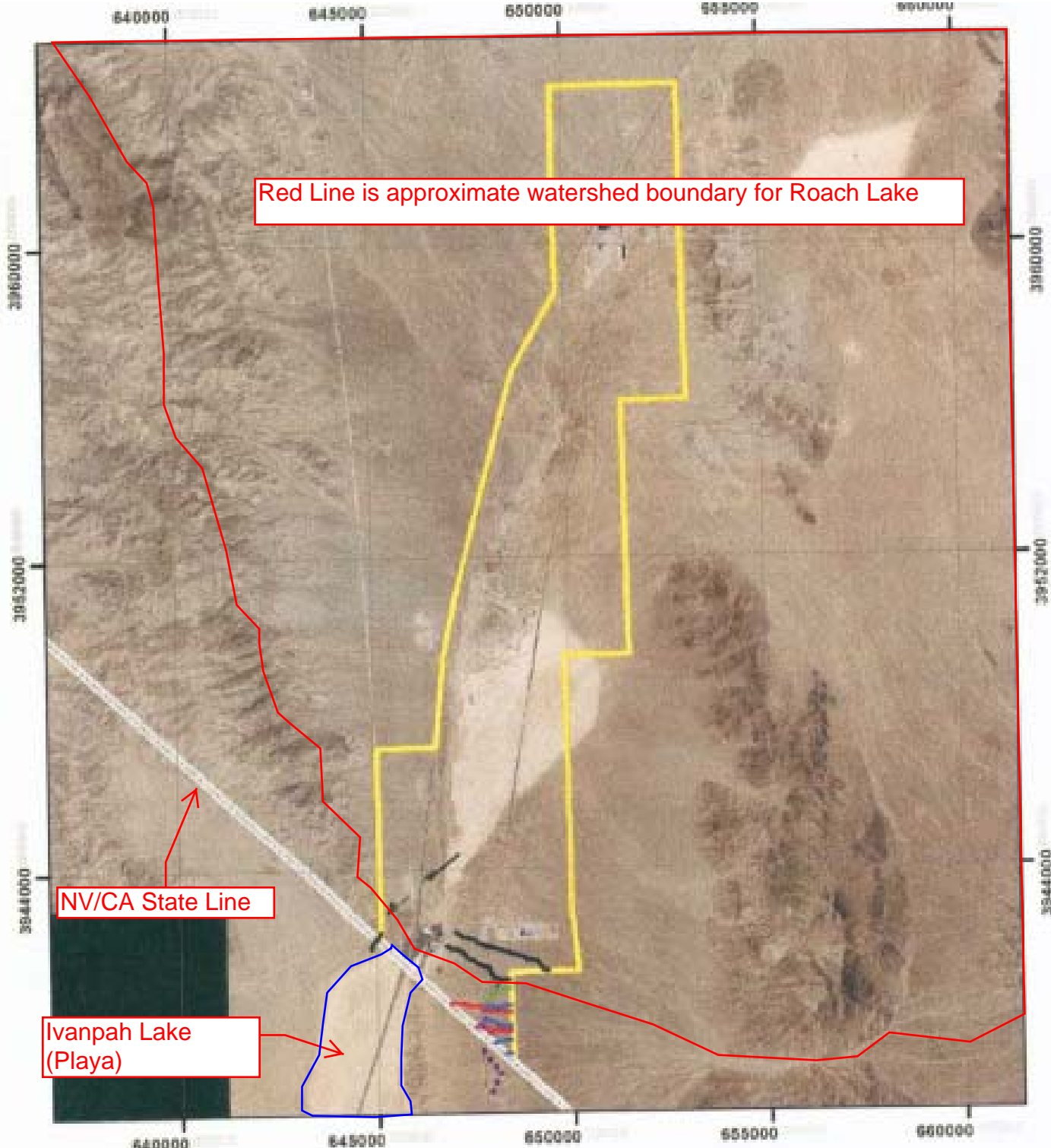


MACTEC
Engineering, Planning, Surveying,
& Construction Services

IVANPAH AIRPORT
PROJECT AREA HYDROGEOGRAPHIC
BASIN

FIGURE
1

DRAWN	JOB NUMBER	APPROVED	DATE	REVISED DATE
KH	4706-03-0037	JP	6/25/04	



Red Line is approximate watershed boundary for Roach Lake

NV/CA State Line

Ivanpah Lake (Playa)

Ivanpah Airport Preliminary Jurisdictional Delineation

Potentially Jurisdictional Waters
within Project Boundary
Average Width in Feet

- 4.0
- 6.0
- 10.5

- Project Boundary
- State Boundary
- Flood Control Berm
- Impounded Channel

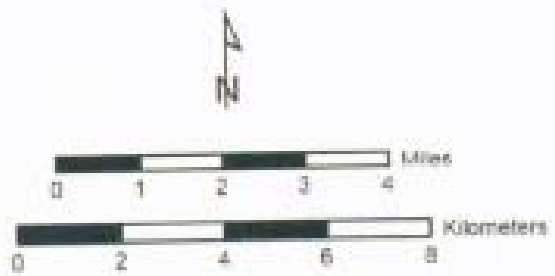


Figure 2. Noise Impact Area

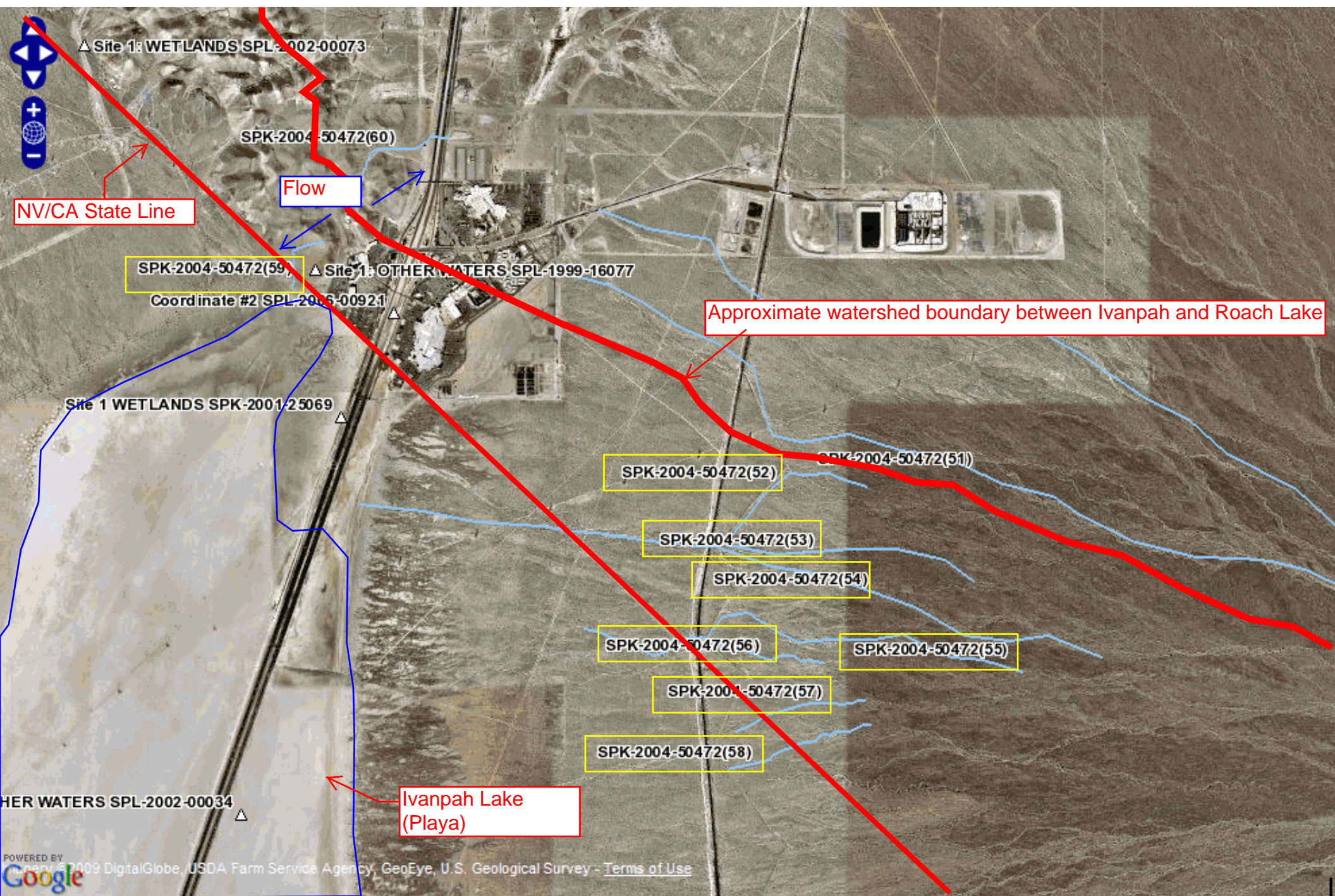


Figure 3: Drainages in NCA - closeup