



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
<http://www.nv.blm.gov>



In Reply Refer To:
3600 (NV-053)

Dear Interested Party:

The Bureau of Land Management, Las Vegas Field Office, is evaluating the sale of mineral materials. The materials would be sold by competitive sale in T. 26 S., R. 59 E., sec. 1 and T. 26 S., R. 60 E., sec. 6 and sec. 7, Clark County, Nevada. I have attached a copy of Environmental Assessment NV-050-2006-389 for your review. The EA analyzes the impacts of the proposed sale.

If you have any comments please forward them to this office no later than November 7, 2006. If you have questions concerning the proposed sale contact Edward Seum at (702) 515-5070.

Sincerely,

Mark R. Chatterton
Assistant Field Manager
Nonrenewable Resources

1 Enclosure
1. EA

LAS VEGAS FIELD OFFICE

**ENVIRONMENTAL ASSESSMENT
NV-050-2006-389
NEVADA**

**43 CFR 3600
MINERAL MATERIAL SALES
N-81778, N-82355**

**PREPARED BY THE
BUREAU OF LAND MANAGEMENT
September 2006**

I. Introduction

The Act of July 31, 1947, as amended (30 U.S.C. 601 et seq.) gives authority for the disposal of mineral materials from public lands of the United States. Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732) directs the Secretary to manage public lands under the principles of multiple use and sustained yield in accordance with land use plans developed under the act.

The 43 CFR 3600 regulations establish procedures for the exploration, development and disposal of mineral material resources under contract or permit for sale or free use. Activities occurring on public lands are subject to all Federal, State and local regulations concerning health and safety. Zoning laws or ordinances do not apply to federally managed lands.

II. Need for the Proposed Action

The Projects are located in T. 26 S., R. 59 E., section 1, NWSENE, SWSENE, SESENE, NESENE, NESE, and T. 26 S., R. 60 E., section 6, S2NE, NESW, S2SW, N2SE, SWSE, section 7, N2NW, Clark County, Nevada. The BLM has had two requests for competitive sale, one from Builders Concrete Supply and the other from Sierra Ready Mix. The size of each request requires a competitive sale to be made. Purchase of the materials from the BLM would allow both companies to meet the demands of the market. Materials are not available on private lands. Mineral material sales may be made as long as the aggregate damage to public lands and resources would not exceed the benefits derived from the proposed sale. The proposed action is in conformance with Federal Regulations and Bureau Policies. The action is in conformance with the Las Vegas Resource Management Plan signed October 1998.

A. Proposed Action and Alternatives

Proposed Action

The BLM would hold a competitive sale of mineral materials on two (case file numbers N-81778, N-82355) parcels of public land. N-81778 would contain 261 acres and N-82355 would contain 68 acres. Both parcels are in close proximity to one another. Sierra Ready Mix (SRM) is currently mining on 40 acres of the 261 acre parcel under a negotiated sale (see attached map). Builders Concrete Supply (BCS) does not currently have operations in the area but does have a well under right-of-way within the 68 acre parcel.

Under competitive sale regulations each contract would be awarded to the high bidder. The sales would be for 10 million tons of sand and gravel from the 261 acres and four (4) million tons from the 68 acres. Each contract would have a ten year expiration date with the possibility for renewal, from an area southeast of Jean, Nevada (See Maps). Access will be by existing roads. Of the 329 acres involved in the sales, 40 acres are currently being mined by SRM under a negotiated contract.

Planned operations by BCS on the 68 acre parcel include the following:

A pit would be excavated to 50 feet in depth with 2.5h:1v slopes. The pit would be approximately 40 acres in size. The other 28 acres would be used for setting up processing equipment, settling ponds and stockpile areas. Equipment would include a wash plant, crushers, screens and conveyors, dozers, loaders, haul trucks and a water truck. Materials would be ripped with a dozer and loaded onto the processing equipment by front end loader. The washed product would be loaded onto haul trucks and removed from site.

Water for washing the materials would be supplied by a well which is under a right-of-way (N-60835). The well location falls within the 68 acre parcel. BCS would need to maintain a water right for the well through the State Water Engineer's Office. Water would be clarified and recovered in three sediment ponds constructed on the site.

Planned operations by SRM on the 261 acre parcel include the following:

Materials to be mined would include sand and limestone for aggregate. Pits for sand removal would be mined to a depth of 30 feet. Pit slopes would be mined to a 2.5:1v slope. The limestone knob would be drilled and blasted to provide aggregate. The knob would be eventually mined to a flat area. Equipment on site would include a wash plant, crushers, screens and conveyors, dozers, loaders, haul trucks and a water truck.

SRM would use water from an existing well which is under a right-of-way (N-63619). The well location falls within the 40 acre parcel currently being mined by SRM. SRM would need to maintain a water right for the well through the State Water Engineer's Office. Sediment ponds would be used to recover water.

A winning bidder other than BCS or SRM would have to find their own water supply and obtain any approvals needed for its use. An existing road, which was recently paved, will be used to access both sites.

A bond, based on the cost to reclaim each site, is required as part of the contract process. Reclamation would include removal of all equipment and any foundations; sloping of the pit walls (at least 2.5h:1v) for visual and safety purposes; elimination of any stockpiled materials; ripping of any compacted areas; use of any fines or available topsoil as a growth medium and seeding with a native mixture. In addition, cacti and yucca would be salvaged prior to mining, stored on site and used during reclamation.

Upon completion of mining the wells would be removed unless another beneficial use for them is identified. The wells must be plugged and abandoned as required in Chapter 534 of the Nevada Administrative Code.

B. "No-Action" - Alternative

Under this alternative there would be no affects on the environment beyond the current mining of the 40 acres by SRM. No additional mining would take place and no additional resources would be affected. This alternative would be preferred only if undue or unnecessary degradation were shown likely to occur to a resource during the scoping process.

III. Affected Environment

The following discussion on the affected environment concerns those areas for which mitigation has not completely removed the impacts to the environment.

A. Declaration of No Effects

The area under consideration would not affect any Areas of Critical Environmental Concern, prime or unique farm lands, Native American Religious Concerns, hazardous or solid wastes, drinking or ground water, wetlands or riparian zones, recreation, visual resources, wild and scenic rivers, designated wilderness, noxious weeds or environmental justice.

B. Proposed Action

The areas to be disturbed are located east of Jean, Nevada within the legal location of T. 26 S., R. 59 E., section 1, NWSENE, SWSENE, SESENE, NESENE, NESE, and T. 26 S., R. 60 E., section 6, S2NE, NESW, S2SW, N2SE, SWSE, section 7, N2NW, Clark County, Nevada. Mineral materials from 329 acres would be sold by competitive sale to the highest bidder. The sites are on an alluvial fan composed of limestone and dolomitic materials, and a small limestone knob is also included for mining under the SRM proposal.

Local vegetation consists mainly of creosote and white bursage. Other species include cacti and yucca, red brome, four winged saltbush and globe mallow. Surveys of the sites did not find any special status plant species in the area. However, habitat for the white margined penstemon was found in the SENE and NESE of section 6, T. 26 S., R. 60 E. White margined penstemon is an herbaceous perennial which dies back to the ground after blooming. Due to the timing of the survey it is possible that the plant could not be identified. Part of this area would be disturbed under the Sierra Ready Mix proposal.

The area supports various species of birds, small mammals, rabbits, coyotes and reptiles. The area is desert tortoise habitat. Transect data shows the area as supporting low to moderate densities of tortoise. The desert tortoise is listed as a threatened species by the U.S. Fish and Wildlife Service. The area may also support Gila monsters. The Gila Monster is a State protected species.

A Class III inventory for cultural resources was performed on the 261 acres site. The

inventory found no cultural resources located within the Area of Potential Effect (APE) for the proposed undertaking (refer to BLM Cultural Resource Report 5-2549). As there are no historic properties within the APE; no further evaluation is required. On the 68 acre site, the BLM Archaeologist conducted an existing data review of the Area of Potential Effect (APE) for the proposed undertaking. The APE was previously evaluated for cultural resources. Refer to BLM Cultural Resource report 5-2324. There are no historic properties within the APE. No further analysis is required.

The general area is used extensively by recreationists through casual use. Uses include motorcycling, ATV and 4x4 driving, horseback riding, mountain biking and small game hunting.

C. "No-Action" - Alternative

No additional mining beyond the 40 acres currently being mined would take place under this alternative. There would be no additional effects on the environment.

IV. Environmental Consequences and Mitigating Measures

A. Proposed Action

Environmental Consequences

The areas are located in the North Ivanpah Valley Airshed which is currently managed for Prevention of Significant Deterioration. Air quality would be degraded temporarily. Dust would be generated during mining and reclamation. Building, upgrading and travel over existing roads by heavy equipment would also generate dust. The completion of activities would prevent further additions of dust. SRM is currently permitted to produce 300,000 tons of materials per year, and to emit 3.24 tons of PM10 and 3.52 tons of CO per year. Should SRM be the winning bidder they would still be required to stay within these permitted limits, unless they obtain a new permit for higher limits from the Clark County Department of Air Quality & Environmental Management.

BCS estimates that they would produce 300,000 tons of materials per year and would emit 3.3 tons of PM10 and 3.11 tons of CO per year. BCS would be required to obtain an air quality permit prior to disturbing the site that they have proposed to mine. A winning bidder other than SRM and BCS would have to obtain the proper air quality permits prior to commencing surface disturbing activities.

Wildlife inhabiting the project area would be displaced during the life of the operation. Reclamation of the site would give wildlife and vegetation a greater chance to reestablish over the long term. The community which reestablishes itself on the site would probably differ from the historic vegetation.

Burrowing mammals and reptiles occurring on the site may be killed during mining activities. However these species are generally common and widespread. Negative impacts would be minimal. Most other wildlife species would be temporarily displaced during mining and could possibly return to the site after reclamation is complete.

The project site falls within low to moderate density tortoise habitat. Desert tortoises could be killed or injured by equipment or vehicles during mining activities, during fence construction, or if the fence is damaged or not properly maintained. The action has a may affect determination for the threatened desert tortoise (*Gopherus agassizii*). This project will not affect any other federally listed species or designated critical habitat. Section 7 consultation for this activity is covered under the Programmatic Biological Opinion for Multiple Use Activities (1-5-97-F-251) contingent on compliance with the attached terms and conditions.

This action may affect migratory birds including burrowing owls. The proponent must comply with the Migratory Bird Treaty Act and avoid potential impacts to protected birds within the project area. A list of protected birds can be found at 50 C.F.R. 10.13.

The action may affect the Gila monster which is a State protected species. They could be displaced or killed during mining activities.

Mining would remove all vegetation from the 369 acres. Plants could be salvaged and stored for later use in reclamation. Native seed would also be required for use post mining to re-establish a vegetative cover.

Cumulative Effects

The action area associated with this project is the lands within the boundaries of the North Ivanpah Valley Airshed. The North Ivanpah Valley Airshed contains approximately 253 square miles or 161,920 acres of land.

Private Lands: Private lands, exclusive of the lands patented to Clark County for the Ivanpah Airport, make up approximately 4,100 acres of the area. Approximately 2,800 acres of these lands are associated with the communities of Goodsprings, Jean and Stateline, Nevada. The rest of the lands are scattered parcels, mainly in the northwest part of the airshed, that were patented under the Mining Law of 1872, as amended.

It can be reasonably expected that lands within the communities will be developed to their full potential for housing, business or industrial uses. This will probably take place over the next ten years due to continued growth in Southern Nevada and the potential development of the Ivanpah Airport. It is likely that the lands at Jean and Stateline would be limited to business and industrial uses as they would fall within a management area being developed by the County for the proposed airport.

Lands patented under the Mining Law could be developed through mining if valuable quantities of minerals still exist. It is not known what mineral resources might remain on the properties. They could also be developed for any use which might meet approval through County zoning and planning. Because of limited access, terrain, small size of the parcels involved, and their scattered nature it is not considered likely that development will occur in the near future.

Approximately 5,800 acres (see Cumulative Impacts 1 map) have been patented subject to valid existing rights, under Public Law 107-282, to Clark County for the potential development of the Ivanpah Airport. It is expected that construction of the airport and ancillary facilities will start in 2010. Construction will consist at a minimum of building runways, a control tower, hangar and maintenance buildings. A number of new access roads will be required along with the upgrading of existing roads. It is estimated that build-out for the airport would take up to five years and would involve at least 2,000 of the 5,800 acres.

The County has identified another, approximately 11,500 acres (see Cumulative Impacts 3 map) of public lands to be acquired as a management area for the Ivanpah Airport. These lands would serve as a buffer and would have development restrictions to reduce conflicts with the proposed airport. Most development of these lands would probably take place around Jean, Nevada. The BLM had designated 2,445 acres of public lands surrounding Jean, and 1,181 acres around Stateline for disposal in the Las Vegas Resource Management Plan. These lands would now be acquired by the County under P.L. 107-282. It is possible that these lands could be developed for uses compatible with the airport. An estimate of 10 - 15 years for development to take place is reasonable.

Public Lands: Certain actions on public lands, such as off-road vehicle use not associated with organized events, and dumping are difficult to control and may contribute to habitat destruction and degradation. These activities will increase as the development of private lands in the area increases.

There are currently seven Nevada Department of Transportation (NDOT) material site rights-of way located in the North Ivanpah Valley Airshed totaling approximately 1,600 acres. Only one of the material sites is currently considered to be active. These material sites are used by NDOT for regional transportation projects such as constructing new roads or repairing existing ones. Over the next 10 years it is probable that work will be required to improve I-15 and State Routes in the area due to construction of the Ivanpah Airport. It is estimated that up to 200 acres may be mined for mineral materials needed for the improvements.

The BLM designated 915 acres of public lands adjacent to the community of Goodsprings for disposal. Currently there has been no request that the BLM go ahead with the disposal of these lands through competitive sale. As the pressures of development in the area become greater the more likely a disposal action will take place. It is reasonable to assume that these lands will be disposed of and developed within the next 10 years.

The Table Mountain Wind Energy Project is proposed south of Goodsprings, along the western boundary of the North Ivanpah Valley Airshed. No grant has been issued to date for the project. Approximately 6,500 acres are shown on the Cumulative Impacts 3 map for the project. However, the actual disturbance by the project will be less. The exact location of the wind towers within the footprint shown is still undetermined at this time. Disturbance for the project will mainly consist of access roads and pads for the erection of wind towers. Actual disturbance may be only 500 - 600 acres. A buffer area to prevent conflicts with energy generation would also be required.

Portions of two utility corridors identified within the Las Vegas Resource Management Plan fall within the area. There are a number of existing power lines and other utilities traversing this area. Construction of an airport and other types of growth may require existing utilities to be upgraded, or new utilities be added. Disturbances will be linear and will occur over short periods of time.

The Right Community Pit was established in October of 1995. The pit is located in sec. 1, T. 26 S., R. 59 E., Clark County, Nevada and currently contains 639.36 acres. No mining has taken place in the community pit to date. BCS would mine 68 acres under their request. Additional contracts could be issued over the next 10 years which would affect the entire 639.36 acres.

SRM is currently mining on 40 acres located in sec. 6, T. 26 S., R. 60 E., Clark County, Nevada. They have a negotiated contract for 162,500 tons. To date they have produced approximately 75,000 tons and have estimated that they will use up the contract volume by the end of November 2006. Another negotiated sale would go into effect for a six month period at that time. The volume under that contract would be 180,000 tons.

There is the potential for additional sales in the project area, especially if sand and gravel mining is phased out in the Las Vegas Valley or construction of the Ivanpah Airport begins. In the next 5 years the BLM expects that as many as two additional mineral material sales might take place. The additional sales are likely to take place in close proximity to the areas currently being evaluated in this EA. This is due to the quality and types of materials available and also to the fact that there is a well established and maintained road.

Numerous mining claims exist in the area with the majority being questionable as to the locatability of the materials claimed. No mining Notices or Plans of Operation are active or proposed at this time. Most, if not all, of these mining claims would require a validity examination prior to any authorization to mine being approved. Areas mined on public lands will be required to be reclaimed.

B. "No-Action" - Alternative

No change in the environment will occur under the "No-Action" alternative.

Proposed Mitigating Measures

1. The permittee shall obtain all of the necessary permits from the Clark County Department of Air Quality & Environmental Management. Any construction (including soil and rock excavation and hauling) on a site impacting an area equal to or greater than 0.25 acres requires issuance of a dust control permit (and Dust Plan) prior to commencement of any construction activity. In addition Section 94 Construction Handbook best management practices must be employed at all times. Information on Clark County Air Quality Regulations and fees may be obtained at http://www.accessclarkcounty.com/air_quality/regs_enforcement.htm.
2. Sources within the PSD areas shall comply with all applicable provisions of Section 12 of the Air Quality Regulations pertaining to PM10 and CO. The permittee shall not exceed the emission limitations allowed under the permits issued. Failure to meet the emission limitations will be reason to suspend or revoke the authorization to remove mineral materials. The permittee shall agree to indemnify the United States against any liability arising from the release of dust on the permit area. This agreement applies without regard to whether a release is caused by the Holder, its agent or contractor, or unrelated third parties.
3. Applicable provisions of Section 45 pertaining to idling diesel trucks are to be implemented.
4. The permittee shall take measures to control fugitive dust (e.g. wet suppression, enclosures, etc.) at all material transfer points, stockpiles and throughout the facility. Each emission unit shall incorporate a water spray system and/or a baghouse to control emissions. The control units shall be maintained in good operating condition and be utilized at all times. Additional watersprays may be required at pertinent locations if an inspection indicates that opacity limits are being exceeded.
5. The permittee shall not operate equipment if the daily inspection indicates there is a significant drop in water flow rate, plugged nozzle, leak in the piping system or other problem which affects the efficiency of the water spray system. The permittee shall correct the problem before resuming operations.
6. The permittee shall not cause fugitive dust to become airborne without taking reasonable precautions and shall not cause or permit the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate.
7. Unpaved haul roads shall be treated with chemical dust suppressant and/or watered as necessary so as not to exhibit an opacity greater than 20% for any three minutes in a sixty minute period. The permittee shall have the option of paving roads used for the project.
8. Screens, conveyors and loading operations shall not exhibit an opacity greater than ten

percent for a period or periods aggregating more than three minutes in a sixty minute period.

9. All loaded trucks leaving the site shall be watered down and covered to reduce emissions of PM10. This condition applies to trucks regardless of whether they are owned and operated by the permittee.

10. Fugitive dust emissions from screens, crushers, conveyors, storage piles, transfer points and non-metallic mineral processing equipment not connected to baghouse controls shall be controlled by water sprays at emission points and/or maintenance of at least 2.5% moisture by weight in materials less than 3 inch in diameter.

11. During reclamation of the disturbed area, the permittee shall apply permanent dust abatement and control (e.g., rock mulch or other means) acceptable to the Authorized Officer.

12. An inventory of the site for noxious weeds shall be completed prior to disturbance. A report on the inventory will be forwarded to the BLM. All equipment to be used at the site shall be cleaned for noxious weeds, if it came from another area of weed infestation, prior to use on the site. No cleaning may take place on public lands. The project area must be kept free of noxious weeds throughout the projects life and at closure.

13. All cacti and succulents shall be salvaged prior to mining. The salvaged plants will be stored on site for use in reclamation of the site. Habitat for the white margined penstemon was found in the SENE and NESE of section 6, T. 26 S., R. 60 E. White margined penstemon is an herbaceous perennial which dies back to the ground after blooming. A survey for the plant will be required during the period that it usually blooms, prior to any disturbance of the habitat. Should plants be found the area will be avoided.

14. To reduce visual impacts, the minimum number of sand/gravel and spoil piles shall be utilized. Where possible these stockpiles will be placed on the south side of the project area and shall be kept at as low a height as possible. Where possible, equipment shall be kept on the pit floor. As work is completed, rehabilitation of surface disturbance to reestablish natural vegetation, topographic contour and color shall be completed.

15. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th - July 30th.

16. If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.

17. If any cultural resources are encountered during the course of testing or excavation,

permittee shall cease work in that location and shall immediately notify the authorized officer. Such work shall not resume until the authorized officer has given permission.

Proposed Mitigation Measures/Protocols for Gila monster

Helpful to any instructional program, personnel should at least know how to: 1) identify Gila monsters and be able to distinguish it from other lizards such as chuckwallas and banded geckos; 2) report any observations of Gila monsters to the Nevada Division of Wildlife (NDOW); 3) be alerted to the consequences of a bite resulting from carelessness or unnecessary harassment; and 4) be aware of protective measures provided under state law.

An encounter with a Gila Monster during operational activities require adherence to the following protocols.

a) Any encounters during project construction must be reported immediately to the Nevada Division of Wildlife at (702) 486-5127.

b) Live Gila monsters found in harms way on the construction site will be captured and detained in a cool, shaded environment (≤ 85 degrees F) by the project biologist trained in handling venomous reptiles until a NDOW biologist can arrive for documentation purposes. A clean 5-gallon plastic bucket w/ a secure, ventilated lid; an 18"x 18"x 4" plastic sweater box w/ a secure, vented lid; or, a tape-sealed cardboard box of similar dimension may be used for safe containment. Written information identifying mapped capture location, date, time, and circumstances (e.g. biological survey or construction) and habitat description (vegetation, slope, aspect, substrate) will also be provided to NDOW.

c) Injuries to Gila monsters may occur during excavation, road-grading, or other construction activities. In the event a Gila monster is injured, it should be transferred to a veterinarian proficient in reptile medicine for evaluation of appropriate treatment. Rehabilitation or euthanasia expenses will not be covered by NDOW. However, NDOW will be immediately notified during normal business hours. If an animal is killed or found dead, the carcass will be immediately frozen and transferred to NDOW with a complete written description of situation circumstances, habitat, and mapped location.

d) Should NDOW be delayed to assist, biological personnel on site may be requested to remove and release the Gila monster out of harms way. Should NDOW not be immediately available to respond for photo-documentation, a 35mm camera will be used to take good quality photographs of the Gila monster in situ at the location of live encounter or dead salvage. The pictures, preferably on slide film, will be provided to NDOW and will include:

1. Encounter location (landscape overview with Gila monster in clear view)
2. A clear overhead shot of the entire body with a ruler next to it for scale (Gila monster should fill camera's field of view)
3. A clear, overhead close-up of the head (head should fill camera's field of view).

Desert Tortoise - Terms and Condition of Biological Opinion in Area B

File No.1-5-97-F-251

In order to be exempt from the prohibitions of section 9 of the Act, the applicant must comply with the following terms and conditions, which implement the reasonable and prudent measures described below. These terms and conditions are non-discretionary.

1. Measures shall be taken to minimize take of desert tortoises due to project-related activities.
 - a. A qualified tortoise biologist, or designee of the Bureau, shall present a tortoise-education program to all foremen, workers, and other employees working on the project. The program will include information on the life history of the desert tortoise, legal protection for desert tortoises, penalties for violations of Federal and State laws, general tortoise activity patterns, reporting requirements, measures to protect tortoises, terms and conditions of the biological opinion, and personal measures employees can take to promote the conservation of desert tortoises. The definition of "take" will also be explained. Workers will be encouraged to carpool to and from project sites. The program shall be approved by the Service prior to implementation. Specific and detailed instructions will be provided on the proper techniques to capture and move tortoises which appear onsite, in accordance with Service-approved protocol. Currently, the Service-approved protocol is Desert Tortoise Council 1994, revised 1999.
 - b. A speed limit of 25 miles per hour shall be required for all vehicles on the project site and unposted dirt access roads.
 - c. During construction activities, tortoise burrows should be avoided whenever possible. If a tortoise is found onsite during project activities which may result in take of the tortoise (e.g., in harms way), such activities shall cease until the tortoise moves, or is moved, out of harms way. The tortoise shall be moved by a qualified tortoise biologist, or individual trained in the proper technique of handling and moving desert tortoises. All workers will also be instructed to check underneath all vehicles before moving such vehicles. *Tortoises often take cover under vehicles.*
 - d. The project shall require a tortoise biologist onsite during construction activities. Unless the area is fenced and cleared, the project will require an onsite biologist during construction of the project during the tortoise active period (March 1 through October 31), and a biologist on call during the tortoise inactive period (November 1 through February 28/29).
 - e. The Bureau must approve the selected consulting firm/biologist to be used by the applicant to implement the terms and conditions of the biological opinion or permit issued by the Bureau. Any biologist and/or firm not previously approved must submit a curriculum vitae and be approved by the Bureau before authorized to represent the Bureau in meeting compliance with the terms and conditions of the biological opinion. Other personnel may assist with implementing mitigation measures, but must be under direct field supervision by the approved qualified biologist.

In accordance with *Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise* (Service 1992), a qualified desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Bureau. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service-approved handling protocol (Desert Tortoise Council 1994, revised 1999) prior to conducting tasks in association with terms and conditions of the biological opinion. In addition, the biologist shall have the ability to recognize and accurately record survey results.

- f. All project areas including construction sites, access routes, staging areas, and fencelines, will be cleared by a qualified biologist before the start of construction or ground disturbance. The parcel shall be surveyed for desert tortoise using survey techniques which provide 100-percent coverage. During the tortoise active season, the pre-construction clearance shall be no more than 3 days before initiation of construction. During the tortoise inactive season, the pre-construction clearance shall be within 5 days before work begins.
- g. Desert tortoises encountered experiencing heat stress will be placed in a tub by a qualified tortoise biologist with one inch of water in an environment with a temperature between 76 degrees F and 95 degrees F for several hours, until heat stress symptoms are no longer evident.
- h. Tortoises and nests found shall be relocated by a qualified tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999). Burrows containing tortoises or nests will be excavated by hand, with hand tools, to allow removal of the tortoise or eggs.
- i. Tortoises that are moved offsite and released into undisturbed habitat on public land, must be placed in the shade of a shrub, in a natural unoccupied burrow similar to the hibernaculum in which it was found, or in an artificially constructed burrow in accordance with Desert Tortoise Council (1994, revised 1999).
- j. Desert tortoises moved during the tortoise inactive season or those in hibernation, regardless of date, must be placed into an adequate burrow. If one is not available, one will be constructed in accordance with Desert Tortoise Council (1994, revised 1999). During mild temperature periods in the spring and early fall, tortoises removed from the site will not necessarily be placed in a burrow.
- k. ***The project will require desert tortoise exclusion fencing.*** Fences will tie in to any existing fencing adjacent to the project area. The fence may be permanent or temporary, as determined on a case by case basis. Fenced areas will require an initial tortoise clearance of the fenceline prior to fence construction, and a tortoise clearance following fence

construction. Project sites to be fenced with permanent tortoise-proof fencing must be fenced prior to the commencement of surface disturbance activities within the project site. Fencing will consist of 1-inch horizontal by 2-inch vertical mesh. The mesh will extend at least 18 inches above ground and, where feasible, 6 inches below ground. In situations where it is not feasible to bury the fence, the lower 6-12 inches of the fence shall be bent at a 90-degree angle towards the potential direction of encounter with tortoise and covered with cobble or other suitable material to ensure that tortoise or other animals cannot dig underneath, thus creating gaps through which tortoises may traverse. The height of tortoise-proof fencing will be a minimum of 18 inches above ground. The fence shall be inspected, and zero clearance maintained between the bottom of the fence and the ground.

1. If fence construction occurs during the tortoise active season, a qualified tortoise biologist shall be onsite during construction of the tortoise-proof fence to ensure that no tortoises are harmed. If the fence is constructed during the tortoise inactive season, a biologist will thoroughly examine the proposed fenceline and burrows for the presence of tortoises no more than 5 days before construction. Any desert tortoises or eggs found in the fenceline will be relocated offsite by a qualified tortoise biologist in accordance with approved protocol. Tortoise burrows that occur immediately outside of the fence alignment that can be avoided by fence construction activities shall be clearly marked to prevent crushing.

Following Fence Construction: Prior to the commencement of project activities, all desert tortoises shall be removed from the site. A qualified biologist shall oversee the survey for and removal of tortoises using techniques providing 100-percent coverage of all areas. Two complete passes of 100-percent coverage will be accomplished. All desert tortoise burrows, and other species burrows which may be used by tortoises, will be examined to determine occupancy of each burrow by desert tortoises. Tortoise burrows shall be cleared of tortoises and eggs, and collapsed. Any desert tortoises or eggs found in the fenced area will be removed under the supervision of a qualified tortoise biologist in accordance with Service protocol.

- m. After a project has been fenced and a tortoise clearance completed, if the operator encounters a desert tortoise in imminent danger, the operator shall move the tortoise out of harm's way and on to adjacent Bureau land. If the tortoise cannot be avoided or moved out of harm's way onto Bureau land, it shall be placed in a cardboard box or other suitable container and held in a shaded area until the Clark County pickup service or Bureau personnel can retrieve the tortoise.
- n. On phased development projects, the operator may have the option with concurrence of the Bureau of initially fencing less than the total project acreage. The fenced area will be enlarged as the disturbance expands. To ensure that no tortoises are harmed, each new segment of fence will be constructed under the provision described in Terms and Conditions **1.k.** and **1.l.** above. Payment of the mitigation fee identified in Term and Condition **3.d.** below, will be required prior to surface disturbance of each phase.

- o. The operator shall inspect the fencing at least on a quarterly basis, to insure that it is in compliance with the standards described in Term and Condition **1.k** and **1.l** above, and shall perform maintenance when needed including removing trash, sediment accumulation, and other debris. Temporary fencing shall be removed at the end of the construction activity. Permanent fencing may be removed upon termination and reclamation of the project, or when it is determined by the Bureau and Service that the fence is no longer necessary. Monitoring and maintenance shall include regular removal of trash and sediment accumulation and restoration of zero ground clearance between the ground and the bottom of the fence, including re-covering the bent portion of the fence if not buried.
- p. Where the Bureau allows or requires the installation of a temporary tortoise-proof fence, the fence shall include as much of the proposed construction site as feasible. This may in some cases require the installation of temporary fencing along access routes. Typical fence design should consist of 1-inch mesh or 1-inch horizontal by 2-inch vertical mesh (hardware cloth or plastic) and be installed flush with ground and extend at least 18 inches above ground. Temporary tortoise-proof fencing should not be buried.

Measures shall be taken to minimize predation on tortoises by ravens drawn to the project area.

This will involve a litter-control program. This program will include the use of covered, raven-proof trash receptacles, removal of trash from the construction site to the trash receptacles following the close of each work day, and proper disposal of trash in a designated solid waste disposal facility. Vehicles hauling trash to the landfill and leaving the landfill must be secured to prevent litter from blowing out along the road.

Measures shall be taken to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation, due to project-related activities.

- a. If possible, overnight parking and storage of equipment and materials, including stockpiling, shall be within previously disturbed areas or areas to be disturbed which have been cleared by a tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the tortoise biologist which will minimize habitat disturbance.
- b. All vehicle traffic will be restricted to existing access roads. New access roads will be created only when absolutely necessary and only when approved by the Bureau. Routes for new access roads will be flagged by the tortoise biologist prior to surface disturbance.
- c. Project activity areas will be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. Blading of vegetation will occur only to the extent necessary and shall be limited to areas designated for that purpose by the Bureau or tortoise biologist.
- d. Remuneration fees apply to future disturbance in tortoise habitat. Past disturbance or disturbance on land not considered to be tortoise habitat by a tortoise biologist, and approved

by the Bureau, are not assessed a tortoise remuneration fee. Remuneration fees will be used to fund management actions which are expected to benefit the desert tortoise. Actions may involve: Habitat acquisition; population or habitat enhancement or protection; research that increases our knowledge of desert tortoise biology, habitat requirements, or factors affecting habitat attributes; reducing loss of individual animals, documenting the species' current status and trend, and preserving distinct population attributes or any other action described in the Management Oversight Group's report titled *Compensation for the Desert Tortoise* (Hastey, et al. 1991) or Recovery Plan.

- e. Payment of a remuneration fee, currently set at \$705.00 per acre, will be required for all projects *prior* to issuance of the lease, permit, notice to proceed, or other Bureau authorization, with the following exceptions:

Because many mining plans of operation are phased in over a number of years, remuneration fees may be collected prior to the beginning of each phase.

Mineral material sales and leases will be charged a fee of 25 cents per cubic yard up to the equivalent of \$705.00 per acre of disturbance, or will be assessed \$705.00 per acre for each phase of disturbance, at the discretion of the Bureau.

The current rate of \$705.00 per acre will be indexed for inflation as described in Term and Condition **3.g.** below.

- f. For Community Sand And Gravel Sales: Fees will be assessed on the basis of cubic yards of material removed from project site. A fee of 25 cents per cubic yard will be applied until such time as the fees collected are equal to \$705.00 per acre for each acre of surface disturbance, or the equivalent rate as indexed for inflation. The fee shall be paid directly to the Bureau while purchasing mineral materials at the Las Vegas District Office. The fee shall be deposited directly into the Bureau's 5320 account.
- g. This rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31 of each year, beginning January 31, 1998. Fees assessed or collected for projects covered under this biological opinion after January 31st of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at: <http://stats.bls.gov/news.release/cpi.nws.htm>.

The total fee for this project is \$155,805.00 (\$705.00 x 221 acres) and \$47,940.00 (\$705.00 x 68 acres).

This fee will be paid directly to the Desert Tortoise Public Lands Conservation Fund (Account Number 730-9999-2315), administered by Clark County or any other administrator approved by the Bureau and Service. The administrator serves as the banker of these funds and receives no benefit from administering these funds. These funds are independent of any other fees collected by Clark County for desert tortoise conservation planning.

The payment shall be accompanied by the **Section 7 Fee Payment Form**, (Attachment) and completed by the payee. The project proponent or applicant may receive credit for payment of such fees and deduct such costs from desert tortoise impact fees charged by local government entities. Payment shall be by certified check or money order payable to Clark County Treasurer (or other administrator named by the Bureau and Service), and delivered to:

Clark County Desert Conservation Program
c/o Dept. of Air Quality and Environmental Management
Clark County Government Center
500 So. Grand Central Parkway, first floor (front counter)
Las Vegas, Nevada 89106
(Contact: (702) 455-5821)
Acct. No. 730-9999-2315

In addition, a copy of the Section 7 Fee Payment Form will be accompanied with a payment verification and delivered to:

The Bureau of Land Management
Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
Attn: Assistant Field Manager, Non-renewable Resources
Division

- h. Projects resulting in residual impacts will require the submission of a Bureau-approved reclamation plan, unless determined by the Bureau and Service that reclamation rehabilitation is not necessary. The reclamation plan will describe objectives and methods to be used, species of plants and/or seed mixture to be used, time of planting, success standards, and follow-up monitoring. Depending upon the size and location of the project, reclamation could simply involve recontouring, if needed, and rehabilitation and restriction of access points or could involve reclamation over the entire area of surface disturbance. Reclamation will be addressed on a case-by-case basis.

Measures shall be taken to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and consultation reinitiation requirements contained in the biological opinion.

- a. The project applicant shall notify the Bureau at least 10 days before initiation of the project. Notification shall be made to the Bureau's wildlife staff at (702) 515-5000.
- b. The Bureau wildlife staff (702/515-5000) and Service (702/515-5230) must be notified of any desert tortoise death or injury due to the project implementation by close of business on the following work day.

- c. All appropriate NDOW permits or letters of authorization shall be acquired prior to handling desert tortoises and their parts, and prior to initiation of any activity that may require handling tortoise.
- d. The project proponent must submit a document to the Bureau within 30 days of completion of the project showing the number of acres disturbed; remuneration fees paid; and number of tortoises taken, which includes capture and displacement, killed, injured, and harassed by other means, during implementation of programmatic actions.
- e. For tortoise removals in Clark County, the applicant shall make prior arrangements with Clark County's tortoise pickup service (702/593-9027) at least 10 days prior to the commencement of tortoise collection. Outside Clark County, initial notification shall be made to the Bureau as stated in Term and Condition **4.a.** above.

V. Consultation and Coordination

A. Resource Reviewing Staff

Edward Seum	Geologist
Susanne Rowe	Archaeologist
Mark Slaughter	Wildlife Biologist
Christina Lund	Botanist
Bob Bruno	Recreation Specialist

Individuals and Public Agencies Contacted

Clark County Department of
Comprehensive Planning
500 South Grand Central Parkway
P.O. Box 551741
Las Vegas, Nevada 89155-1741

Clark County
Department of Air Quality Management
P.O. Box 555210
Las Vegas, Nevada 89155-5210

Clark County Public Response
500 South Grand Central Parkway
P.O. Box 551700
Las Vegas, Nevada 89155-1700

Robert W. Hall
Nevada Environmental Coalition
10720 Button Willow Drive
Las Vegas, Nevada 89134

Nevada State Clearing House
Department of Administration
209 E Musser St., Room 200
Carson City, Nevada 89701-4298

Scott Melder
6105 East Sahara Ave., #118
Las Vegas, Nevada 89142

Nevada Department of Wildlife
Southern Region
Attn: Brad Hardenbrook
4747 W. Vegas Drive
Las Vegas, Nevada 89108

Public Comments:

VI. Recommendation and Rationale

A. Recommendation

Approve the project incorporating the appropriate, recommended mitigating measures into the General Stipulations for each contract.

B. Rationale

Approval of the project is in conformance with Federal Mineral Material Regulations, the land use plan and current Bureau policy which encourages mineral development.

Prepared By: Edward Seum

Date: September 27, 2006

FINDING OF NO SIGNIFICANT IMPACT/DECISION RECORD.

I have reviewed this environmental assessment including the explanation and resolution of any potentially significant environmental impacts. I have determined that the proposed action will not have any significant impacts on the human environment and that an EIS is not required. I have determined that the proposed project is in conformance with the approved land use plan. It is my decision to implement the project with the recommended mitigation measures.

Authorized Official: _____

Date: _____

Mark R. Chatterton
Assistant Field Manager
Nonrenewable Resources

Stipulations for N-81385 and N-81401

1. The permittee shall obtain all of the necessary permits from the Clark County Department of Air Quality & Environmental Management. Any construction (including soil and rock excavation and hauling) on a site impacting an area equal to or greater than 0.25 acres requires issuance of a dust control permit (and Dust Plan) prior to commencement of any construction activity. In addition Section 94 Construction Handbook best management practices must be employed at all times. Information on Clark County Air Quality Regulations and fees may be obtained at http://www.accessclarkcounty.com/air_quality/regs_enforcement.htm.
2. Sources within the PSD areas shall comply with all applicable provisions of Section 12 of the Air Quality Regulations pertaining to PM10 and CO. The permittee shall not exceed the emission limitations allowed under the permits issued. Failure to meet the emission limitations will be reason to suspend or revoke the authorization to remove mineral materials. The permittee shall agree to indemnify the United States against any liability arising from the release of dust on the permit area. This agreement applies without regard to whether a release is caused by the Holder, its agent or contractor, or unrelated third parties.
3. Applicable provisions of Section 45 pertaining to idling diesel trucks are to be implemented.
4. The permittee shall take measures to control fugitive dust (e.g. wet suppression, enclosures, etc.) at all material transfer points, stockpiles and throughout the facility. Each emission unit shall incorporate a water spray system and/or a baghouse to control emissions. The control units shall be maintained in good operating condition and be utilized at all times. Additional watersprays may be required at pertinent locations if an inspection indicates that opacity limits are being exceeded.
5. The permittee shall not operate equipment if the daily inspection indicates there is a significant drop in water flow rate, plugged nozzle, leak in the piping system or other problem which affects the efficiency of the water spray system. The permittee shall correct the problem before resuming operations.
6. The permittee shall not cause fugitive dust to become airborne without taking reasonable precautions and shall not cause or permit the discharge of visible emissions of fugitive dust beyond the lot line of the property on which the emissions originate.
7. Unpaved haul roads shall be treated with chemical dust suppressant and/or watered as necessary so as not to exhibit an opacity greater than 20% for any three minutes in a sixty minute period. The permittee shall have the option of paving roads used for the project.
8. Screens, conveyors and loading operations shall not exhibit an opacity greater than ten percent for a period or periods aggregating more than three minutes in a sixty minute period.
9. All loaded trucks leaving the site shall be watered down and covered to reduce emissions of PM10. This condition applies to trucks regardless of whether they are owned and operated by the permittee.
10. Fugitive dust emissions from screens, crushers, conveyors, storage piles, transfer points and non-metallic mineral processing equipment not connected to baghouse controls shall be controlled by water sprays at emission points and/or maintenance of at least 2.5% moisture by weight in materials less than 3 inch in diameter.
11. During reclamation of the disturbed area, the permittee shall apply permanent dust abatement and control (e.g., rock mulch or other means) acceptable to the Authorized Officer.
12. An inventory of the site for noxious weeds shall be completed prior to disturbance. A report on the inventory will be forwarded to the BLM. All equipment to be used at the site shall be cleaned for noxious weeds, if it came from another area of weed infestation, prior to use on the site. No cleaning may take place on public lands. The project area must be kept free of noxious weeds throughout the projects life and at closure.
13. All cacti and succulents shall be salvaged prior to mining. The salvaged plants will be stored on site for use in reclamation of the site.
14. To reduce visual impacts, the minimum number of sand/gravel and spoil piles shall be utilized. Where possible these stockpiles will be placed on the south side of the project area and shall be kept at as low a height as possible. Where possible, equipment shall be kept on the pit floor. As work is completed, rehabilitation of surface disturbance to reestablish natural vegetation, topographic contour and color shall be completed.
15. To prevent undue harm, habitat-altering projects or portions of projects should be scheduled outside bird breeding season. In upland desert habitats and ephemeral washes containing upland species, the season generally occurs between March 15th - July 30th.
16. If a project that may alter any breeding habitat has to occur during the breeding season, then a qualified biologist must survey the area for nests prior to commencement of construction activities. This shall include burrowing and ground nesting species in addition to those nesting in vegetation. If any active nests (containing eggs or young) are found, an appropriately-sized buffer area must be avoided until the young birds fledge.
17. If any cultural resources are encountered during the course of testing or excavation, permittee shall cease work in that location and shall immediately notify the authorized officer. Such work shall not resume until the authorized officer has given permission.

Proposed Mitigation Measures/Protocols for Gila monster

Helpful to any instructional program, personnel should at least know how to: 1) identify Gila monsters and be able to distinguish it from other lizards such as chuckwallas and banded geckos; 2) report any observations of Gila monsters to the Nevada Division of Wildlife (NDOW); 3) be alerted to the consequences of a bite resulting from carelessness or unnecessary harassment; and 4) be aware of protective measures provided under state law.

An encounter with a Gila Monster during operational activities require adherence to the following protocols.

- a) Any encounters during project construction must be reported immediately to the Nevada Division of Wildlife at (702) 486-5127.

b) Live Gila monsters found in harms way on the construction site will be captured and detained in a cool, shaded environment (≤ 85 degrees F) by the project biologist trained in handling venomous reptiles until a NDOW biologist can arrive for documentation purposes. A clean 5-gallon plastic bucket w/ a secure, ventilated lid; an 18"x 18"x 4" plastic sweater box w/ a secure, vented lid; or, a tape-sealed cardboard box of similar dimension may be used for safe containment. Written information identifying mapped capture location, date, time, and circumstances (e.g. biological survey or construction) and habitat description (vegetation, slope, aspect, substrate) will also be provided to NDOW.

c) Injuries to Gila monsters may occur during excavation, road-grading, or other construction activities. In the event a Gila monster is injured, it should be transferred to a veterinarian proficient in reptile medicine for evaluation of appropriate treatment. Rehabilitation or euthanasia expenses will not be covered by NDOW. However, NDOW will be immediately notified during normal business hours. If an animal is killed or found dead, the carcass will be immediately frozen and transferred to NDOW with a complete written description of situation circumstances, habitat, and mapped location.

d) Should NDOW be delayed to assist, biological personnel on site may be requested to remove and release the Gila monster out of harms way. Should NDOW not be immediately available to respond for photo-documentation, a 35mm camera will be used to take good quality photographs of the Gila monster in situ at the location of live encounter or dead salvage. The pictures, preferably on slide film, will be provided to NDOW and will include:

1. Encounter location (landscape overview with Gila monster in clear view)
2. A clear overhead shot of the entire body with a ruler next to it for scale (Gila monster should fill camera's field of view)
3. A clear, overhead close-up of the head (head should fill camera's field of view).

Desert Tortoise - Terms and Condition of Biological Opinion in Area B

File No. 1-5-97-F-251

In order to be exempt from the prohibitions of section 9 of the Act, the applicant must comply with the following terms and conditions, which implement the reasonable and prudent measures described below. These terms and conditions are non-discretionary.

1. Measures shall be taken to minimize take of desert tortoises due to project-related activities.

a. A qualified tortoise biologist, or designee of the Bureau, shall present a tortoise-education program to all foremen, workers, and other employees working on the project. The program will include information on the life history of the desert tortoise, legal protection for desert tortoises, penalties for violations of Federal and State laws, general tortoise activity patterns, reporting requirements, measures to protect tortoises, terms and conditions of the biological opinion, and personal measures employees can take to promote the conservation of desert tortoises. The definition of "take" will also be explained. Workers will be encouraged to carpool to and from project sites. The program shall be approved by the Service prior to implementation. Specific and detailed instructions will be provided on the proper techniques to capture and move tortoises which appear onsite, in accordance with Service-approved protocol. Currently, the Service-approved protocol is Desert Tortoise Council 1994, revised 1999.

b. A speed limit of 25 miles per hour shall be required for all vehicles on the project site and unposted dirt access roads.

c. During construction activities, tortoise burrows should be avoided whenever possible. If a tortoise is found onsite during project activities which may result in take of the tortoise (e.g., in harms way), such activities shall cease until the tortoise moves, or is moved, out of harms way. The tortoise shall be moved by a qualified tortoise biologist, or individual trained in the proper technique of handling and moving desert tortoises. All workers will also be instructed to check underneath all vehicles before moving such vehicles. *Tortoises often take cover under vehicles.*

d. The project shall require a tortoise biologist onsite during construction activities. Unless the area is fenced and cleared, the project will require an onsite biologist during construction of the project during the tortoise active period (March 1 through October 31), and a biologist on call during the tortoise inactive period (November 1 through February 28/29).

e. The Bureau must approve the selected consulting firm/biologist to be used by the applicant to implement the terms and conditions of the biological opinion or permit issued by the Bureau. Any biologist and/or firm not previously approved must submit a curriculum vitae and be approved by the Bureau before authorized to represent the Bureau in meeting compliance with the terms and conditions of the biological opinion. Other personnel may assist with implementing mitigation measures, but must be under direct field supervision by the approved qualified biologist. In accordance with *Procedures for Endangered Species Act Compliance for the Mojave Desert Tortoise* (Service 1992), a qualified desert tortoise biologist should possess a bachelor's degree in biology, ecology, wildlife biology, herpetology, or closely related fields as determined by the Bureau. The biologist must have demonstrated prior field experience using accepted resource agency techniques to survey for desert tortoises and tortoise sign, which should include a minimum of 60 days field experience. All tortoise biologists shall comply with the Service-approved handling protocol (Desert Tortoise Council 1994, revised 1999) prior to conducting tasks in association with terms and conditions of the biological opinion. In addition, the biologist shall have the ability to recognize and accurately record survey results.

f. All project areas including construction sites, access routes, staging areas, and fence lines, will be cleared by a qualified biologist before the start of construction or ground disturbance. The parcel shall be surveyed for desert tortoise using survey techniques which provide 100-percent coverage. During the tortoise active season, the pre-construction clearance shall be no more than 3 days before initiation of construction. During the tortoise inactive season, the pre-construction clearance shall be within 5 days before work begins.

g. Desert tortoises encountered experiencing heat stress will be placed in a tub by a qualified tortoise biologist with one inch of water in an environment with a temperature between 76 degrees F and 95 degrees F for several hours, until heat stress symptoms are no longer evident.

h. Tortoises and nests found shall be relocated by a qualified tortoise biologist in accordance with Service-approved protocol (Desert Tortoise Council 1994, revised 1999). Burrows containing tortoises or nests will be excavated by hand, with hand tools, to allow removal of the tortoise or eggs.

i. Tortoises that are moved offsite and released into undisturbed habitat on public land, must be placed in the shade of a shrub, in a natural unoccupied burrow similar to the hibernaculum in which it was found, or in an artificially constructed burrow in accordance with Desert Tortoise Council (1994, revised 1999).

j. Desert tortoises moved during the tortoise inactive season or those in hibernation, regardless of date, must be placed into an adequate burrow. If one is not available, one will be constructed in accordance with Desert Tortoise Council (1994, revised 1999). During mild temperature periods in the spring and early fall, tortoises removed from the site will not necessarily be placed in a burrow.

k. The project will require desert tortoise exclusion fencing. Fences will tie in to any existing fencing adjacent to the project area. The fence may be permanent or temporary, as determined on a case by case basis. Fenced areas will require an initial tortoise clearance of the fence line prior to fence construction, and a tortoise clearance following fence construction. Project sites to be fenced with permanent tortoise-proof fencing must be fenced prior to the commencement of surface disturbance activities within the project site. Fencing will consist of 1-inch horizontal by 2-inch vertical mesh. The mesh will extend at least 18 inches above ground and, where feasible, 6 inches below ground. In situations where it is not feasible to bury the fence, the lower 6-12 inches of the fence shall be bent at a 90-degree angle towards the potential direction of encounter with tortoise and covered with cobble or other suitable material to ensure that tortoise or other animals cannot dig underneath, thus creating gaps through which tortoises may traverse. The height of tortoise-proof fencing will be a minimum of 18 inches above ground. The fence shall be inspected, and zero clearance maintained between the bottom of the fence and the ground.

l. If fence construction occurs during the tortoise active season, a qualified tortoise biologist shall be onsite during construction of the tortoise-proof fence to ensure that no tortoises are harmed. If the fence is constructed during the tortoise inactive season, a biologist will thoroughly examine the proposed fence line and burrows for the presence of tortoises no more than 5 days before construction. Any desert tortoises or eggs found in the fence line will be relocated offsite by a qualified tortoise biologist in accordance with approved protocol. Tortoise burrows that occur immediately outside of the fence alignment that can be avoided by fence construction activities shall be clearly marked to prevent crushing. **Following Fence Construction:** Prior to the commencement of project activities, all desert tortoises shall be removed from the site. A qualified biologist shall oversee the survey for and removal of tortoises using techniques providing 100-percent coverage of all areas. Two complete passes of 100-percent coverage will be accomplished. All desert tortoise burrows, and other species burrows which may be used by tortoises, will be examined to determine occupancy of each burrow by desert tortoises. Tortoise burrows shall be cleared of tortoises and eggs, and collapsed. Any desert tortoises or eggs found in the fenced area will be removed under the supervision of a qualified tortoise biologist in accordance with Service protocol.

m. After a project has been fenced and a tortoise clearance completed, if the operator encounters a desert tortoise in imminent danger, the operator shall move the tortoise out of harm's way and on to adjacent Bureau land. If the tortoise cannot be avoided or moved out of harm's way onto Bureau land, it shall be placed in a cardboard box or other suitable container and held in a shaded area until the Clark County pickup service or Bureau personnel can retrieve the tortoise.

n. On phased development projects, the operator may have the option with concurrence of the Bureau of initially fencing less than the total project acreage. The fenced area will be enlarged as the disturbance expands. To ensure that no tortoises are harmed, each new segment of fence will be constructed under the provision described in Terms and Conditions **1.k.** and **1.l.** above. Payment of the mitigation fee identified in Term and Condition **3.d.** below will be required prior to surface disturbance of each phase.

o. The operator shall inspect the fencing at least on a quarterly basis, to insure that it is in compliance with the standards described in Term and Condition **1.k** and **1.l.** above, and shall perform maintenance when needed including removing trash, sediment accumulation, and other debris. Temporary fencing shall be removed at the end of the construction activity. Permanent fencing may be removed upon termination and reclamation of the project, or when it is determined by the Bureau and Service that the fence is no longer necessary. Monitoring and maintenance shall include regular removal of trash and sediment accumulation and restoration of zero ground clearance between the ground and the bottom of the fence, including re-covering the bent portion of the fence if not buried.

p. Where the Bureau allows or requires the installation of a temporary tortoise-proof fence, the fence shall include as much of the proposed construction site as feasible. This may in some cases require the installation of temporary fencing along access routes. Typical fence design should consist of 1-inch mesh or 1-inch horizontal by 2-inch vertical mesh (hardware cloth or plastic) and be installed flush with ground and extend at least 18 inches above ground. Temporary tortoise-proof fencing should not be buried.

Measures shall be taken to minimize predation on tortoises by ravens drawn to the project area.

This will involve a litter-control program. This program will include the use of covered, raven-proof trash receptacles, removal of trash from the construction site to the trash receptacles following the close of each work day, and proper disposal of trash in a designated solid waste disposal facility. Vehicles hauling trash to the landfill and leaving the landfill must be secured to prevent litter from blowing out along the road.

Measures shall be taken to minimize destruction of desert tortoise habitat, such as soil compaction, erosion, or crushed vegetation, due to project-related activities.

a. If possible, overnight parking and storage of equipment and materials, including stockpiling, shall be within previously disturbed areas or areas to be disturbed which have been cleared by a tortoise biologist. If not possible, areas for overnight parking and storage of equipment shall be designated by the tortoise biologist which will minimize habitat disturbance.

b. All vehicle traffic will be restricted to existing access roads. New access roads will be created only when absolutely necessary and only when approved by the Bureau. Routes for new access roads will be flagged by the tortoise biologist prior to surface disturbance.

c. Project activity areas will be clearly marked or flagged at the outer boundaries before the onset of construction. All activities shall be confined to designated areas. Blading of vegetation will occur only to the extent necessary and shall be limited to areas designated for that purpose by the Bureau or tortoise biologist.

d. Remuneration fees apply to future disturbance in tortoise habitat. Past disturbance or disturbance on land not considered to be tortoise habitat by a tortoise biologist, and approved by the Bureau, are not assessed a tortoise remuneration fee. Remuneration fees will be used to fund management actions which are expected to benefit the desert tortoise. Actions may involve: Habitat acquisition; population or habitat enhancement or protection; research that increases our knowledge of desert tortoise biology, habitat requirements, or factors affecting habitat attributes; reducing loss of individual animals, documenting the species' current status and trend, and preserving distinct population attributes or any other action described in the Management Oversight Group's report titled *Compensation for the Desert Tortoise* (Hastey, et al. 1991) or Recovery Plan.

e. Payment of a remuneration fee, currently set at \$705.00 per acre, will be required for all projects *prior* to issuance of the lease, permit, notice to proceed, or other Bureau authorization, with the following exceptions:

Because many mining plans of operation are phased in over a number of years, remuneration fees may be collected prior to the beginning of each phase.

Mineral material sales and leases will be charged a fee of 25 cents per cubic yard up to the equivalent of \$705.00 per acre of disturbance, or will be assessed \$705.00 per acre for each phase of disturbance, at the discretion of the Bureau. The current rate of \$705.00 per acre will be indexed for inflation as described in Term and Condition **3.g.** below.

f. For Community Sand And Gravel Sales: Fees will be assessed on the basis of cubic yards of material removed from project site. A fee of 25 cents per cubic yard will be applied until such time as the fees collected are equal to \$705.00 per acre for each acre of surface disturbance, or the equivalent rate as indexed for inflation. The fee shall be paid directly to the Bureau while purchasing mineral materials at the Las Vegas District Office. The fee shall be deposited directly into the Bureau's 5320 account.

g. This rate will be indexed for inflation based on the Bureau of Labor Statistics Consumer Price Index for All Urban Consumers (CPI-U) on January 31 of each year, beginning January 31, 1998. Fees assessed or collected for projects covered under this biological opinion after January 31st of each year will be adjusted based on the CPI-U. Information on the CPI-U can be found on the Internet at: <http://stats.bls.gov/news.release/cpi.nws.htm>.

The surface disturbance for this project is (___feet x ___feet = ___acres). The total fee for this project is \$49,350.00 (\$705.00 x 70 acres) or \$21,150.00 for the 30 acre parcel and \$28,200.00 for the 40 acre parcel, depending who the winning bidder is on each parcel.

This fee will be paid directly to the Desert Tortoise Public Lands Conservation Fund (Account Number 730-9999-2315), administered by Clark County or any other administrator approved by the Bureau and Service. The administrator serves as the banker of these funds and receives no benefit from administering these funds. These funds are independent of any other fees collected by Clark County for desert tortoise conservation planning. The payment shall be accompanied by the **Section 7 Fee Payment Form**, (Attachment) and completed by the payee. The project proponent or applicant may receive credit for payment of such fees and deduct such costs from desert tortoise impact fees charged by local government entities. Payment shall be by certified check or money order payable to Clark County Treasurer (or other administrator named by the Bureau and Service), and delivered to:

Clark County Desert Conservation Program
c/o Dept. of Air Quality and Environmental Management
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Las Vegas, Nevada 89106
(Contact: (702) 455-5821)
Acct. No. 730-9999-2315

In addition, a copy of the Section 7 Fee Payment Form will be accompanied with payment verification and delivered to:

The Bureau of Land Management
Las Vegas Field Office
4701 North Torrey Pines Drive
Las Vegas, Nevada 89130
Attn: Assistant Field Manager, Non-renewable Resources Division

h. Projects resulting in residual impacts will require the submission of a Bureau-approved reclamation plan, unless determined by the Bureau and Service that reclamation rehabilitation is not necessary. The reclamation plan will describe objectives and methods to be used, species of plants and/or seed mixture to be used, time of planting, success standards, and follow-up monitoring. Depending upon the size and location of the project, reclamation could simply involve recontouring, if needed, and rehabilitation and restriction of access points or could involve reclamation over the entire area of surface disturbance. Reclamation will be addressed on a case-by-case basis.

Measures shall be taken to ensure compliance with the reasonable and prudent measures, terms and conditions, reporting requirements, and consultation reinitiation requirements contained in the biological opinion.

a. The project applicant shall notify the Bureau at least 10 days before initiation of the project. Notification shall be made to the Bureau's wildlife staff at (702) 515-5000.

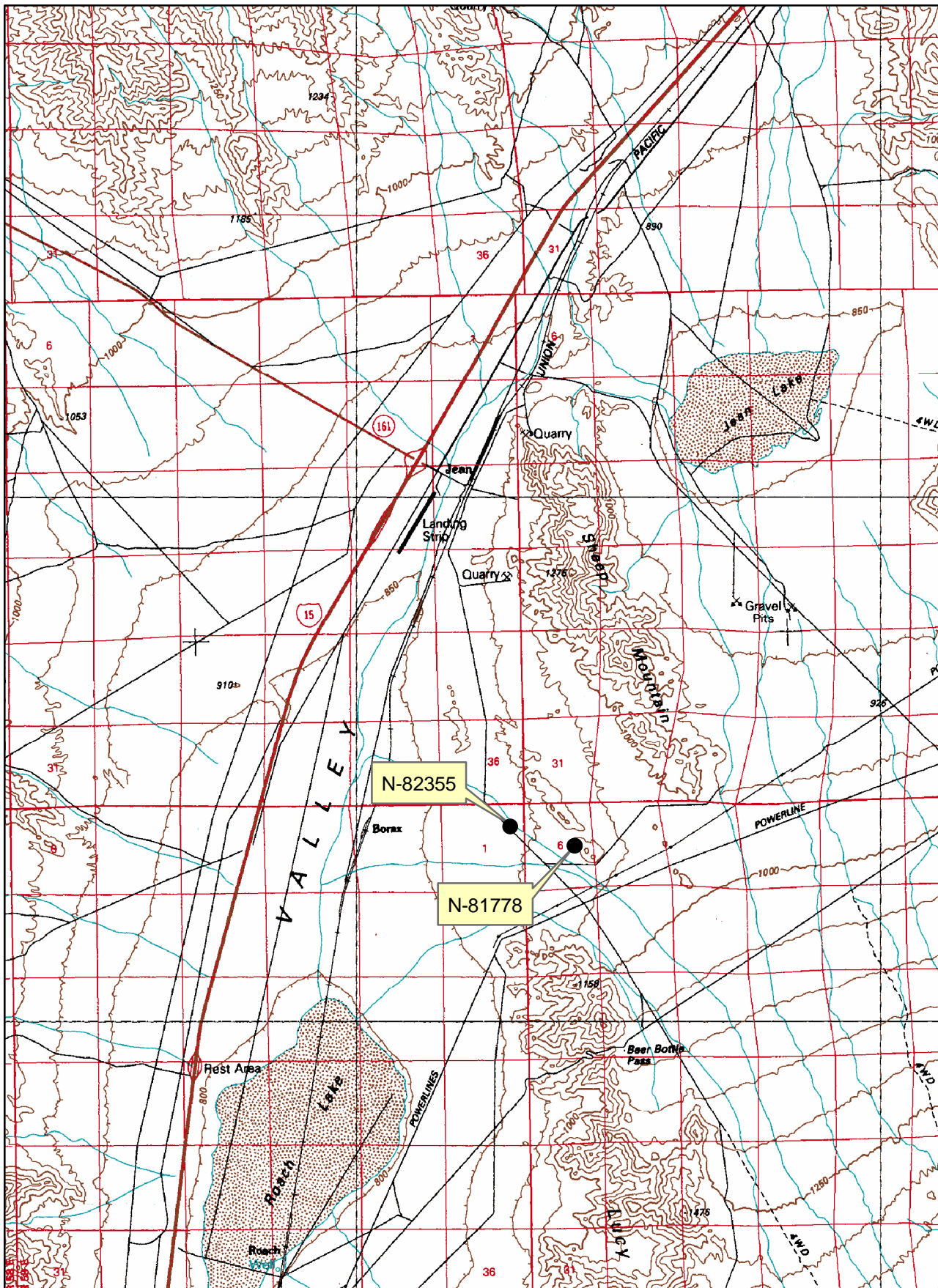
b. The Bureau wildlife staff (702/515-5000) and Service (702/515-5230) must be notified of any desert tortoise death or injury due to the project implementation by close of business on the following work day.

c. All appropriate NDOW permits or letters of authorization shall be acquired prior to handling desert tortoises and their parts, and prior to initiation of any activity that may require handling tortoise.

d. The project proponent must submit a document to the Bureau within 30 days of completion of the project showing the number of acres disturbed; remuneration fees paid; and number of tortoises taken, which includes capture and displacement, killed, injured, and harassed by other means, during implementation of programmatic actions.

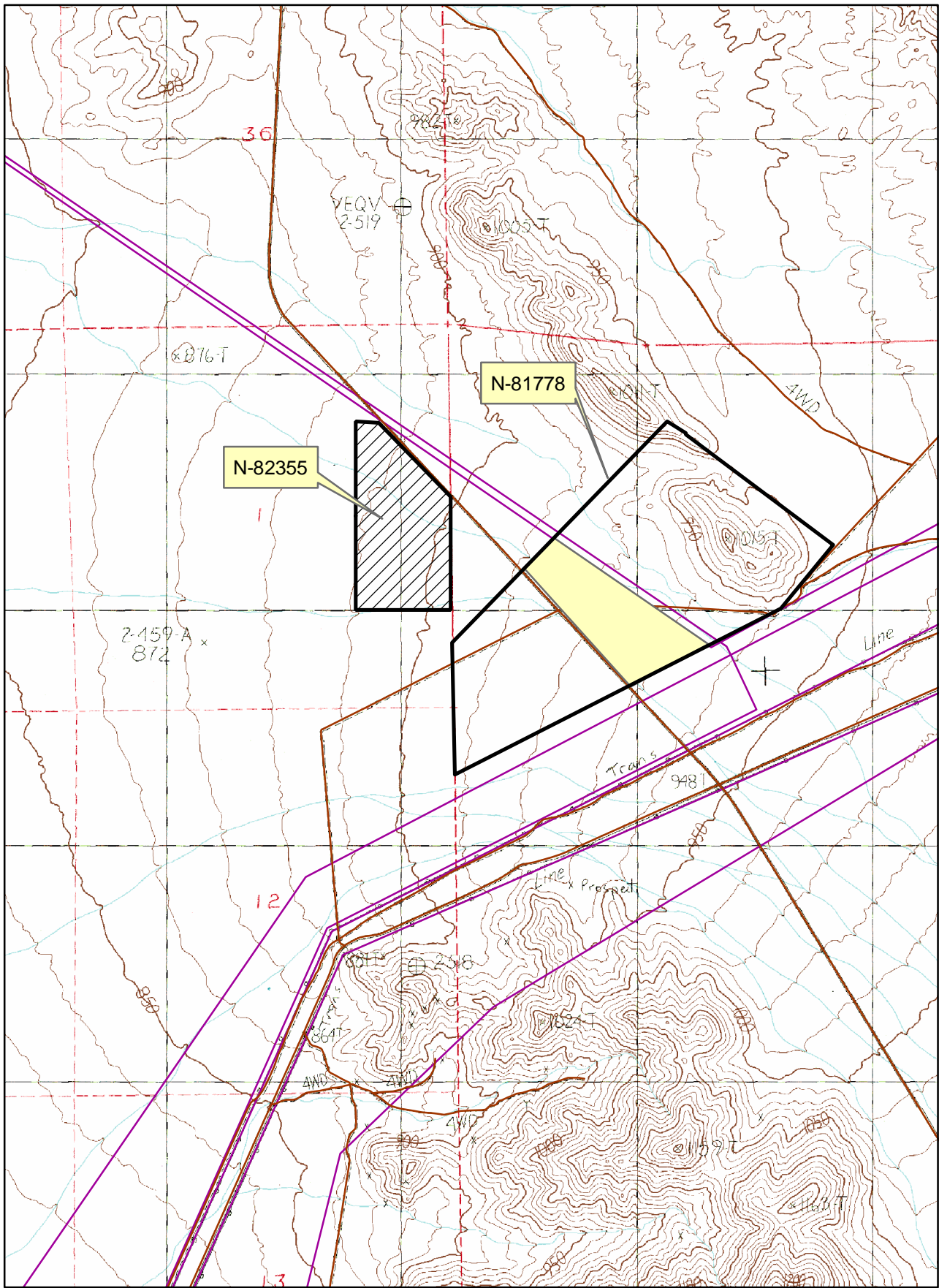
e. For tortoise removals in Clark County, the applicant shall make prior arrangements with Clark County's tortoise pickup service (702/593-9027) at least 10 days prior to the commencement of tortoise collection. Outside Clark County, initial notification shall be made to the Bureau as stated in Term and Condition **4.a.** above.

Location Map



Mesquite Lake 1:100,000



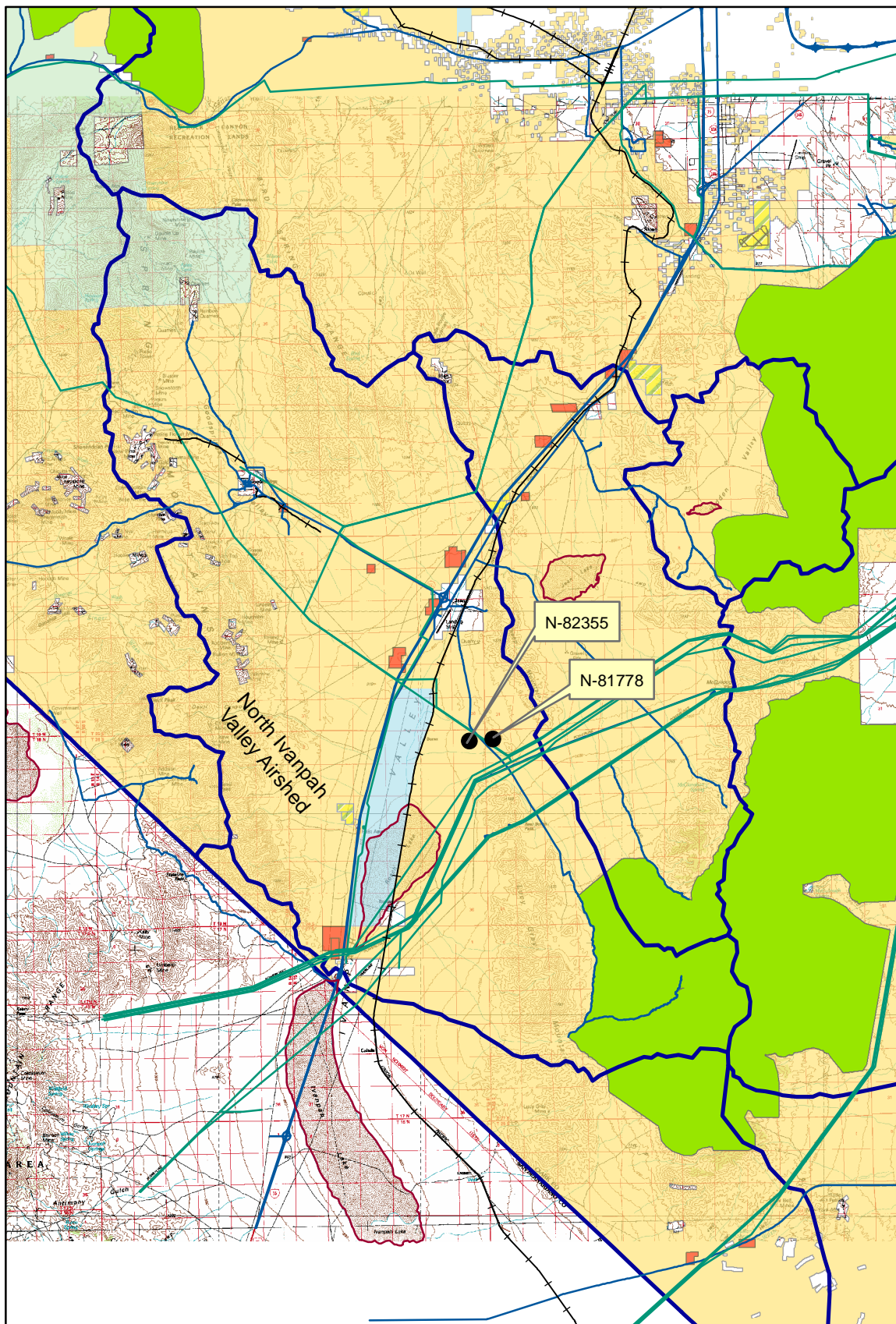


Goodsprings & Jean 7.5' Quads 1:24,000



Area currently being mined

Proposed Sites



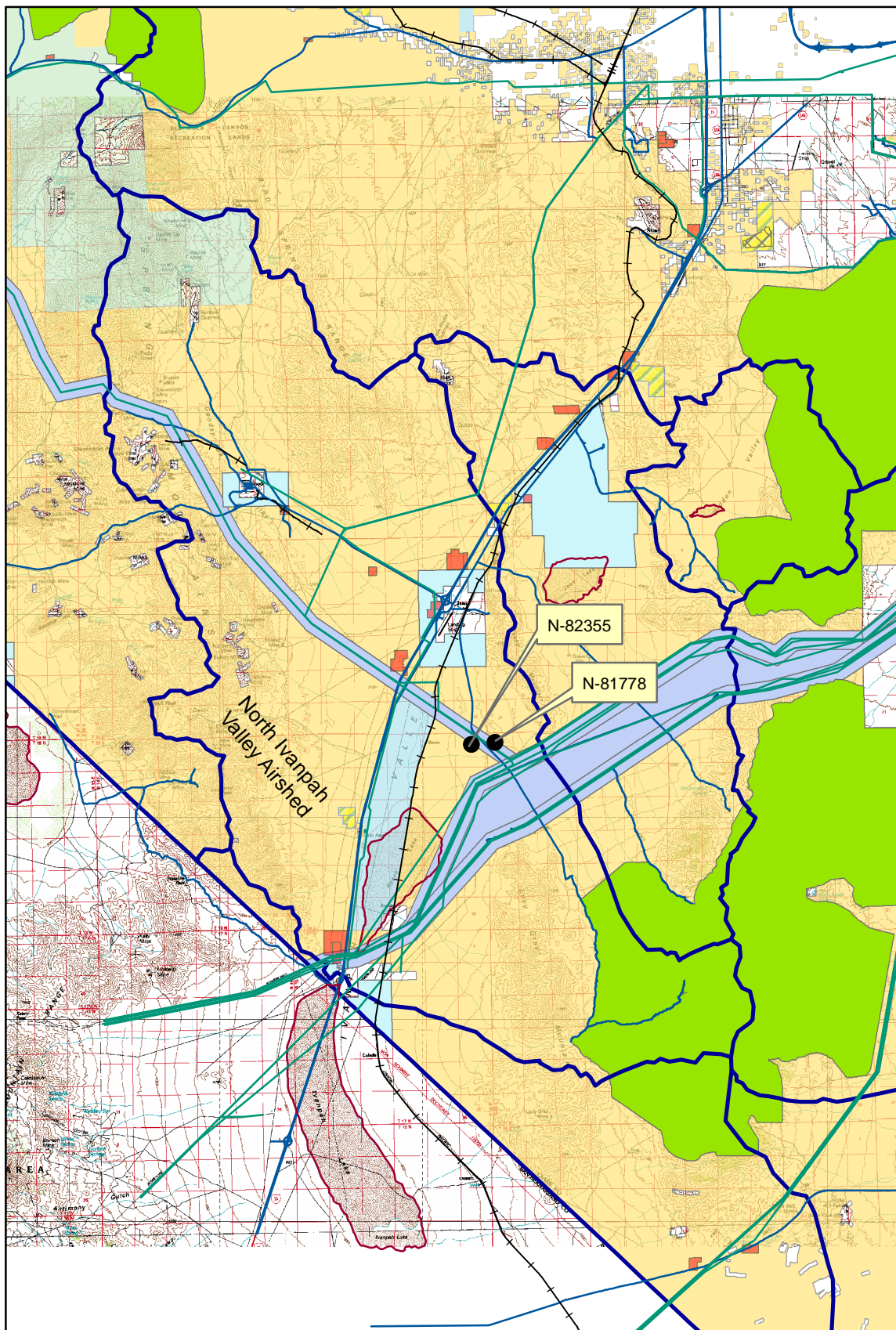
Legend

- railroads arc
- powerlines arc
- drylakes arc
- roads arc
- basins_cccp arc
- ACTIVE, Clark County Regional Pit
- ACTIVE
- PROPOSED
- INACTIVE
- wsa polygon

Mesquite Lake 1:100,000

4 2 0 4 Miles

Cumulative Impacts 1



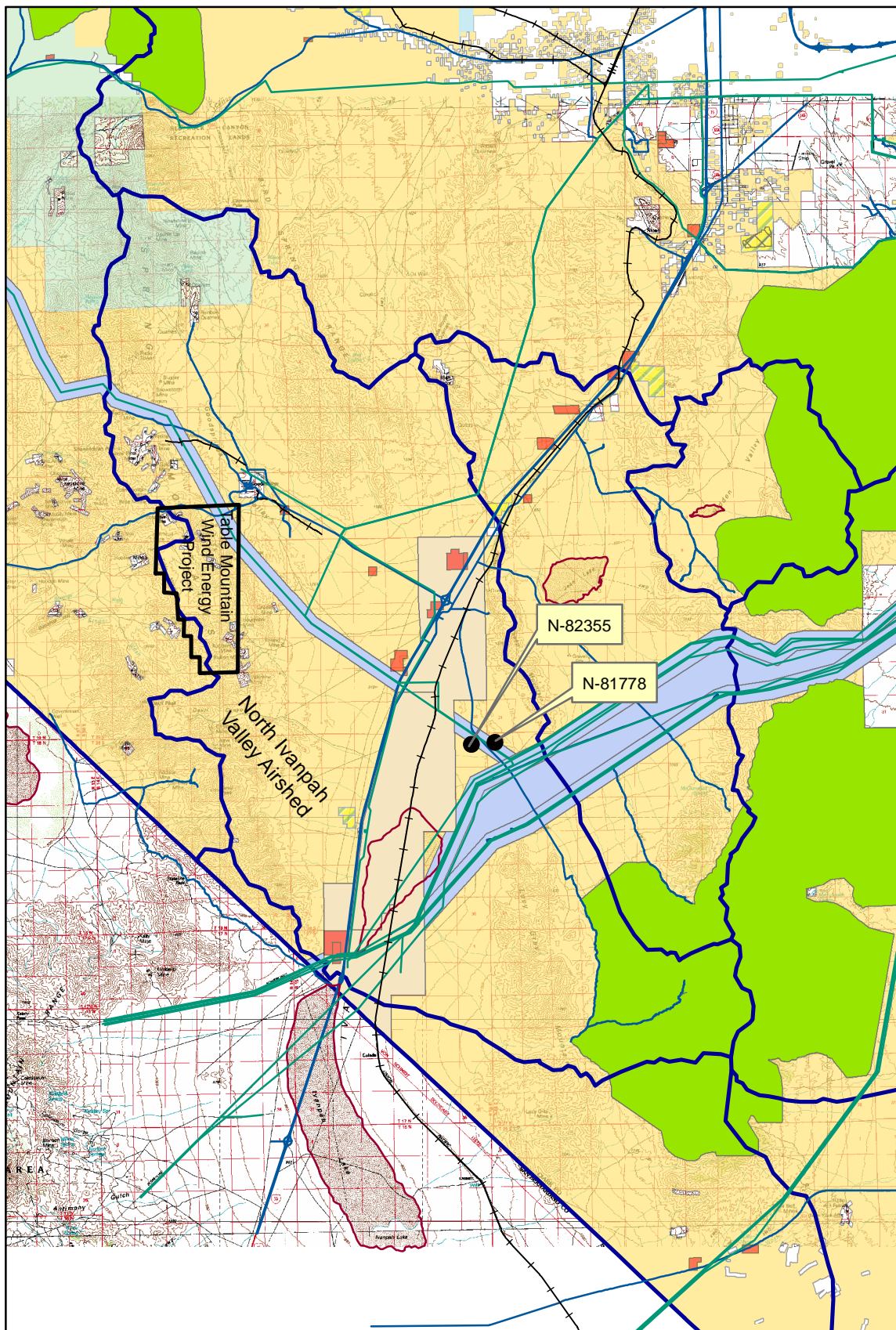
Legend

- +— railroads arc
- powerlines arc
- drylakes arc
- roads arc
- basins_cccp arc
- ACTIVE, Clark County Regional Pit
- ACTIVE
- PROPOSED
- INACTIVE
- wsa polygon
- disposal_rmp polygon
- corridors polygon

Mesquite Lake 1:100,000

4 2 0 4 Miles

Cumulative Impacts 2



Legend

- +— railroads arc
- powerlines arc
- drylakes arc
- roads arc
- basins_cccp arc
- ACTIVE, Clark County Regional Pit
- ACTIVE
- PROPOSED
- INACTIVE
- wsa polygon
- cma polygon
- corridors polygon

Mesquite Lake 1:100,000

4 2 0 4 Miles

Cumulative Impacts 3