



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

CESPK-RDC-S

12 August 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023),<sup>1</sup> [SPK-2024-00425].

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.<sup>2</sup> AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.<sup>3</sup>

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),<sup>4</sup> the 2023 Rule as amended, as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

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<sup>1</sup> While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

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

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

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

a. The following table lists each individual feature within the review area and the jurisdictional status of each one (i.e., identifies whether each feature is/is not a water of the United States and/or a navigable water of the United States). None of the features within the review area are waters of the U.S. or navigable waters of the U.S.

Name of Aquatic Resource	Cowardin	Description	Waters of the U.S.	Navigable Waters of the U.S.
AR 1	R6	Ephemeral Riverine	No	No
AR 2	R6	Ephemeral Riverine	No	No
AR 3	R6	Ephemeral Riverine	No	No

## 2. REFERENCES.

a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")

b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))

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

3. REVIEW AREA. The approximately 442-acre project area is located [REDACTED] near the City of Silver Springs, Lyon County, Nevada. The area is characterized as a transition zone between the Sierra Nevada-influenced Semiarid hills and Basins terrain and the Lahontan Salt Shrub basin terrain within the Central Basin and Range ecoregion. The vegetation community is comprised of grasses and small shrubs, which includes greasewood (*Sarcobatus vermiculatus*), crested wheatgrass (*Agropyron cristatum*), bitterbrush (*Purshia tridentada*), big sagebrush (*Artemesia tridentada*), rubber rabbitbrush (*Chrysothamnus nauseous*), cheatgrass (*Bromus tectorum*), and Great Basin wildrye (*Leymus cinerius*). Soils in the review area include Cleaver gravelly sany loam, Otomo gravelly sandy loam, Vylach-Weena association, and Malpais gravelly loamy sand. (AJD MFR Enclosure 1). The average annual precipitation accumulation recorded at a nearby weather station in Virginia City, Nevada is 11.7 inches (NOAA Online Weather Data; retrieved July 30, 2024).

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. The nearest TNW, the Carson River, is located approximately 3.75-miles straight-line

distance to the south of the review area from estimation using the Corps Navigable Waters layer in Google Earth<sup>5</sup>

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. Since late 2010, the flowpath of AR 1-3 appears to be dissipated upon reaching a resource extraction establishment within 0.5 miles south of the review area. This establishment has seemingly undergone gradual increase in construction of pits, in addition to impervious surfaces for site access. Channelized flow of tributary systems west of US-95 Alternate in the direction of Lahontan Reservoir, including the culverted flowpath from south of the resource extraction establishment at US-50, appear to terminate near the highway intersection of US-50 and US-95ALT, approximately 1.0 miles west of the nearest TNW (i.e., Carson River).

6. SECTION 10 JURISDICTIONAL WATERS<sup>6</sup>: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.<sup>7</sup> N/A.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.

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<sup>5</sup> This MFR should not be used to complete a new stand-alone TNW determination. A stand-alone TNW determination for a water that is not subject to Section 9 or 10 of the Rivers and Harbors Act of 1899 (RHA) is completed independently of a request for an AJD. A stand-alone TNW determination is conducted for a specific segment of river or stream or other type of waterbody, such as a lake, where upstream or downstream limits or lake borders are established.

<sup>6</sup> 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce or is presently incapable of such use because of changed conditions or the presence of obstructions.

<sup>7</sup> This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

- a. Traditional Navigable Waters (TNWs) (a)(1)(i): N/A.
- b. The Territorial Seas (a)(1)(ii): N/A.
- c. Interstate Waters (a)(1)(iii): N/A.
- d. Impoundments (a)(2): N/A.
- e. Tributaries (a)(3): N/A.
- f. Adjacent Wetlands (a)(4): N/A.
- g. Additional Waters (a)(5): N/A.

## 8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES

a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not “waters of the United States” even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).<sup>8</sup> N/A.

b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water). The streams (AR 1-3) are features that do not meet the relatively permanent standard as (a)(3) tributaries. The flow regime of these features is characterized as ephemeral because flow derives from direct precipitation and as observed from historical aerial photography, appears to persist for very short duration (e.g., less than 24 hours). The stream features (AR 1-3) totaling 0.242 acres (3,989 linear feet) appear to be first and second Strahler order, derived from nearby foothill topographic features.

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

- a. Desk evaluation was conducted in July 2024.

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<sup>8</sup> 88 FR 3004 (January 18, 2023)

CESPK-RD-S

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), [SPK-2024-00425]

b. Maps, plans, plots or plat submitted by or on behalf of the applicant- Aquatic Resources Delineation Report [REDACTED] dated May 2024 (Encl. 1; Revised August 1, 2024).

c. USACE National Regulatory Viewer 3DEP DEM LiDAR, NWI, and Hydric Soils Layers- Accessed July 26, 2024 (Encl. 2).

d. USACE Google Earth Layers- Accessed July 25, 2024 (Encl. 3).

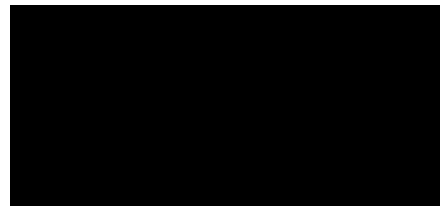
e. USGS National Map Viewer National Hydrography Dataset, Flowline, and DEM Layers-Accessed July 26, 2024 (Encl. 4).

f. USACE ERDC Antecedent Precipitation Tool- Retrieved July 10, 2024 (Encl. 5).

g. Digital Globe Aerial Photographs, Archive Dated January 20, 2011; October 29, 2011; March 28, 2020; May 5, 2020; September 25, 2022; November 5, 2023; and April 3, 2024 (Encl. 6).

10. OTHER SUPPORTING INFORMATION. Aquatic Resources Delineation Report [REDACTED] dated May 2024 (Encl. 1; Revised August 1, 2024).

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



7 Encls

1. ARD

2. National Regulatory Viewer

3. USACE Google Earth

4. USGS National Map

5. Antecedent Precipitation Tool Reports

6. Digital Globe Imagery







Aquatic Resource Detail 2

Feature	Class	Length (ft)	Acres
AR1	Non-Relatively Permanent	1507	0.035
AR2	Non-Relatively Permanent	1567	0.144
AR3	Non-Relatively Permanent	915	0.063

Feature	Class	Length (ft)
UP1	Upland Swale	4406
UP10	Upland Swale	4248
UP11	Upland Swale	1537
UP12	Upland Swale	1200
UP13	Upland Swale	4621
UP2	Upland Swale	1457
UP3	Upland Swale	394
UP4	Upland Swale	821
UP5	Upland Swale	681
UP6	Upland Swale	758
UP7	Upland Swale	4494
UP8	Upland Swale	72
UP9	Upland Swale	4076



APPENDIX A, FIGURE 1  
AQUATIC RESOURCE OVERVIEW  
  
SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

- ★ Data Point
- Control Point
- Non-Relatively Permanent
- Upland Swale
- ▭ Survey Area (442acres)
- 02-US Highway

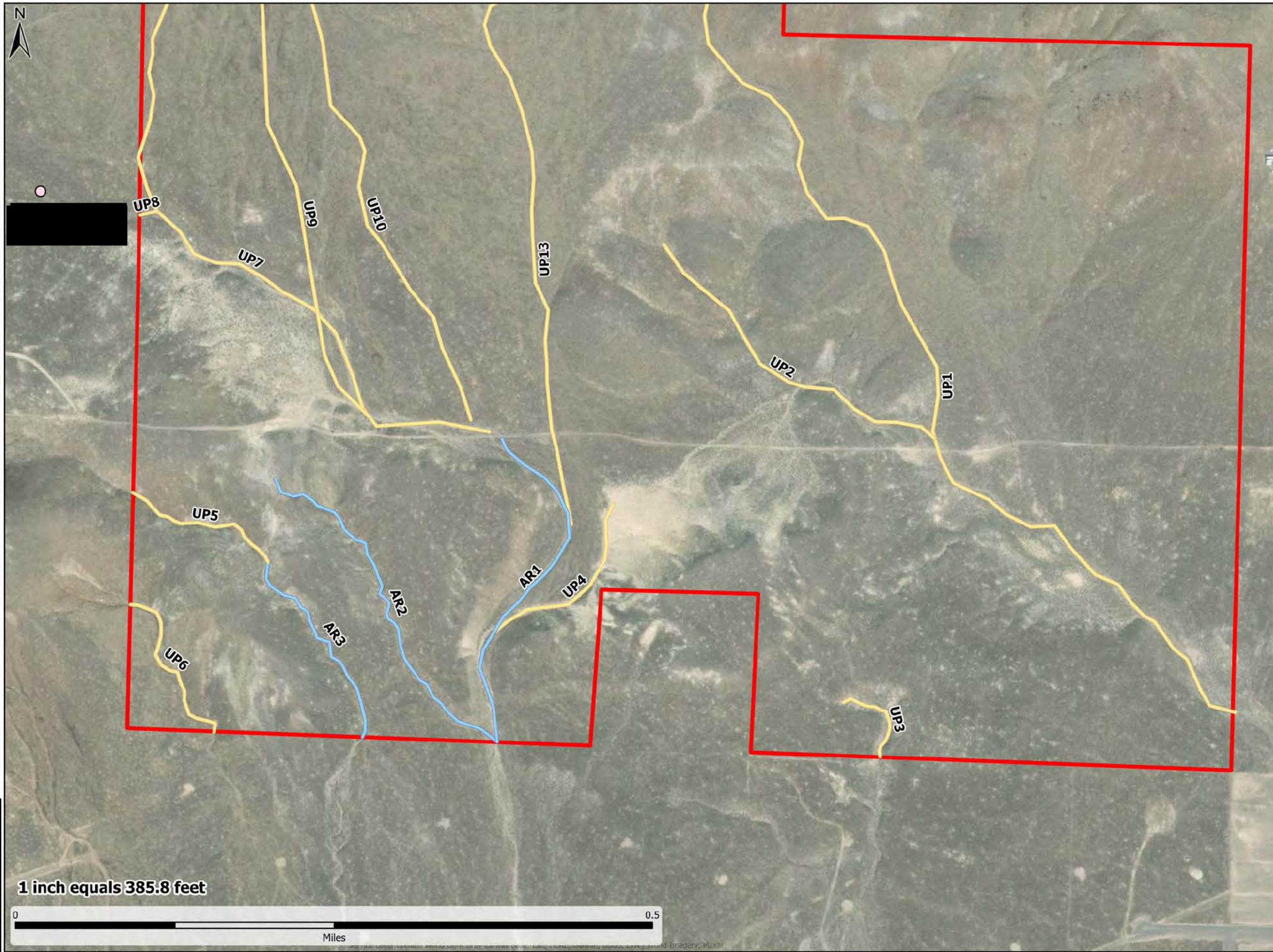
1 inch equals 0.14 miles



Aquatic Resource Detail 1

8/1/2024





APPENDIX A, FIGURE 2  
AQUATIC RESOURCE DETAIL 1  
SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

- Control Point
- Non-Relatively Permanent
- Upland Swale
- Survey Area

8/1/2024









APPENDIX B, FIGURE 1  
SURVEY VICINITY  
SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

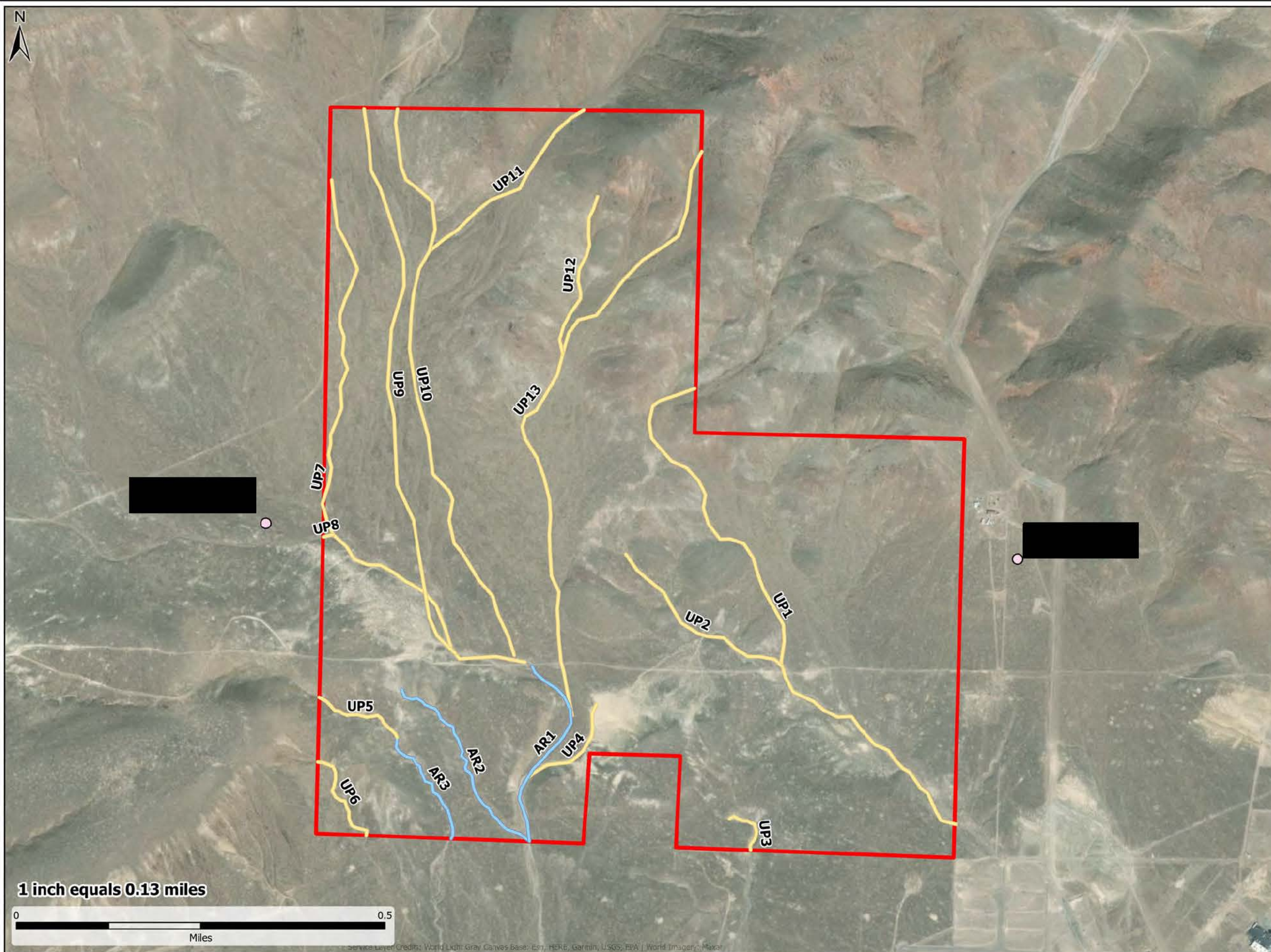
 Survey Area

1 inch equals 2.3 miles



8/1/2024









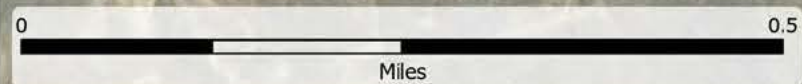
## APPENDIX B, FIGURE 2

### SURVEY AREA

SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

-  Survey Area
-  Non-Relatively Permanent
-  Upland Swale
-  Control Point

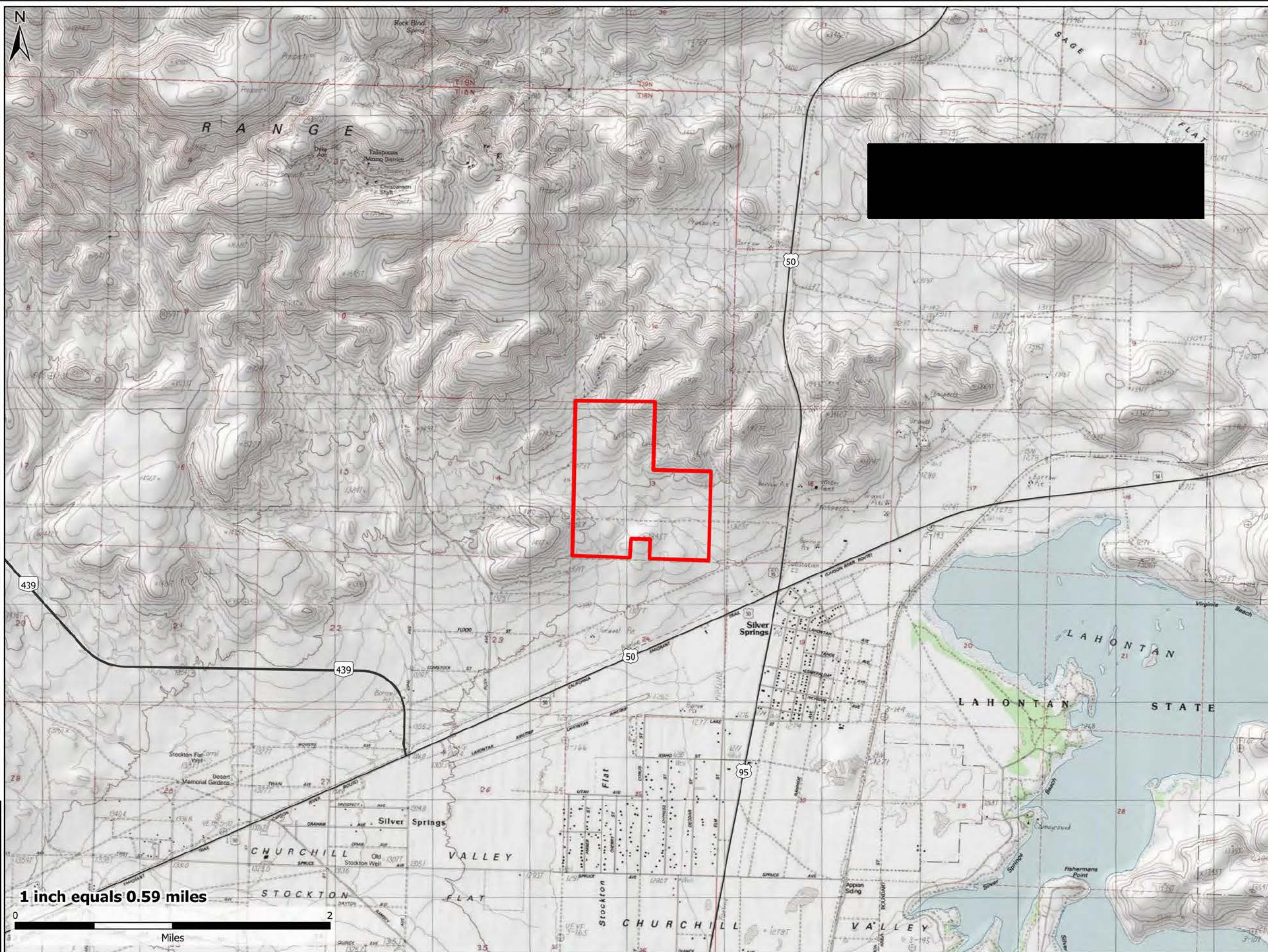
1 inch equals 0.13 miles



Service Layer Credits: World Light Gray Canvas Base: Esri, HERE, Garmin, USGS, EPA | World Imagery: Maxar

8/1/2024





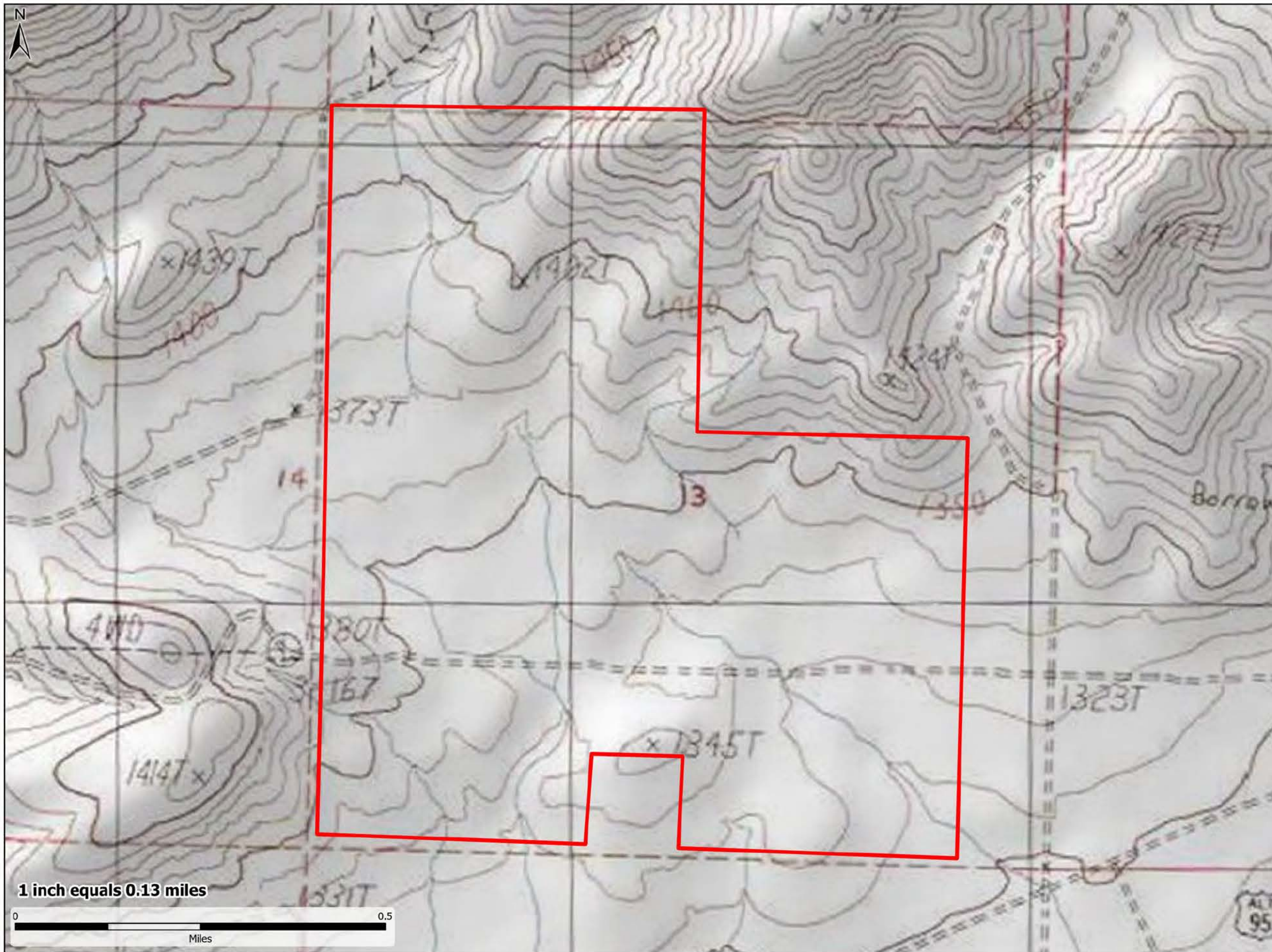
APPENDIX B, FIGURE 3  
TOPOGRAPHIC MAP

SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

 Survey Area

8/1/2024



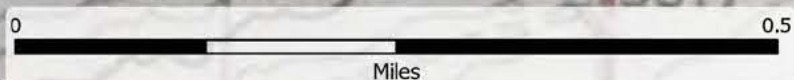


APPENDIX B, FIGURE 4  
TOPOGRAPHIC MAP - DETAIL

SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

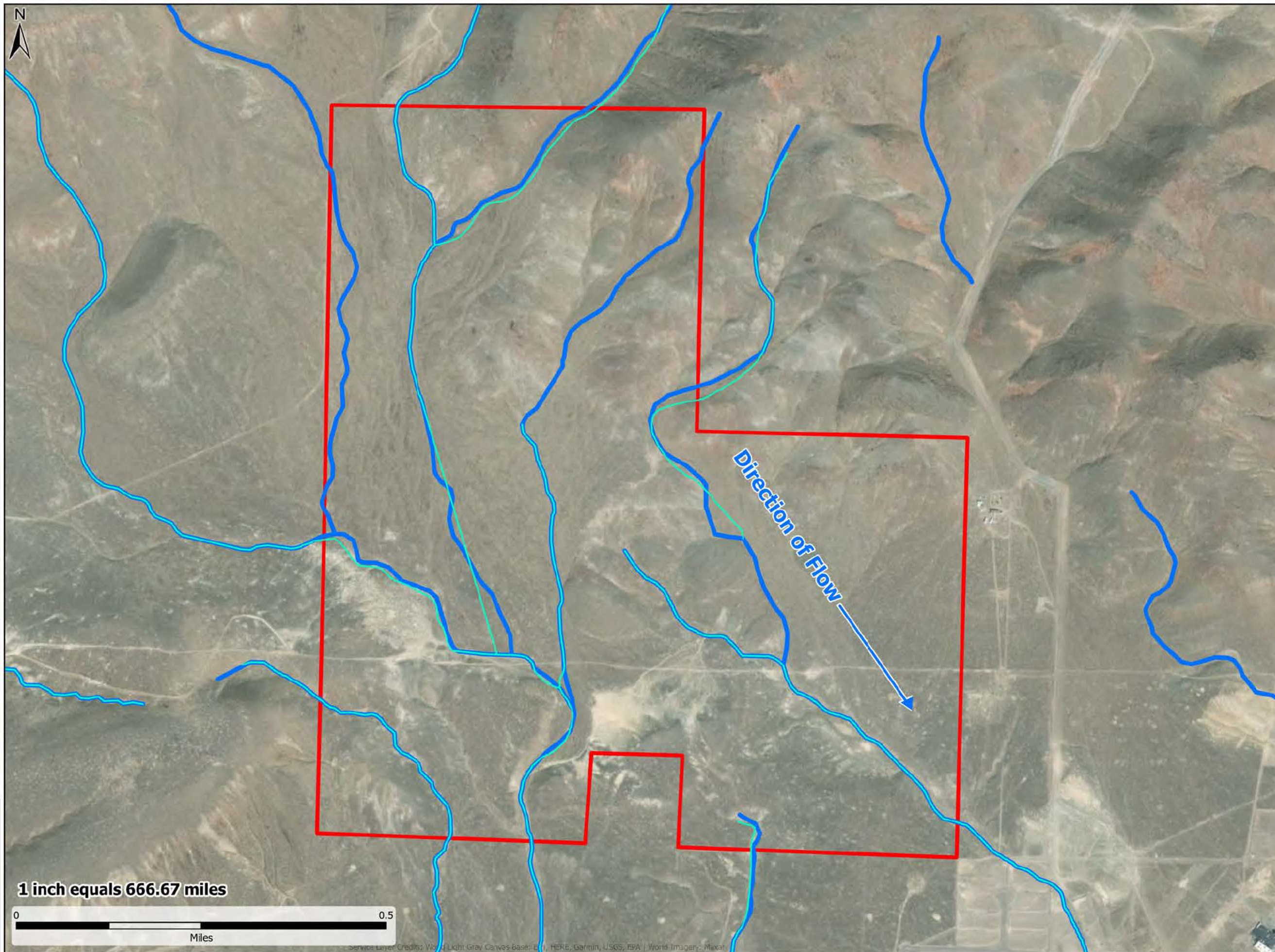
 Survey Area

1 inch equals 0.13 miles



8/1/2024





**APPENDIX B, FIGURE 5**  
NHD and NWI DATA  
SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

- Survey Area
- NHD Data StreamRiver
- NWI Data Riverine

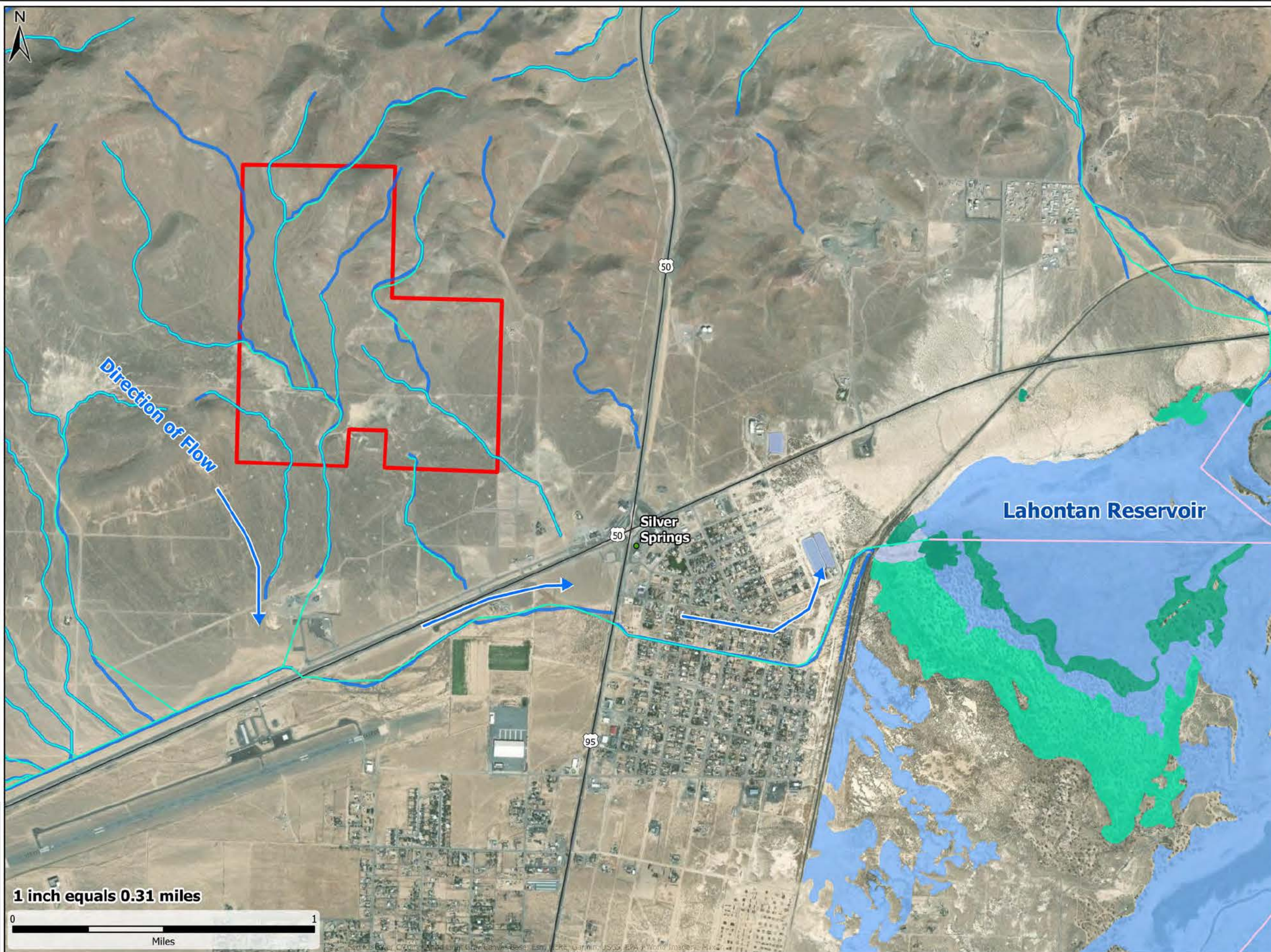
8/1/2024

1 inch equals 666.67 miles

0 0.5  
Miles

Service Layer Credits: World Light Gray Canvas-base: Esri, HERE, Garmin, USGS, EPA, World Imagery, Maxar





**APPENDIX B, FIGURE 6**  
NHD and NWI DATA  
SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV

- Survey Area
- NHD Data**
  - Stream/River
  - Artificial Path
- NWI Data**
  - Freshwater Emergent Wetland
  - Freshwater Forested/Shrub Wetland
  - Freshwater Pond
  - Lake
  - Riverine

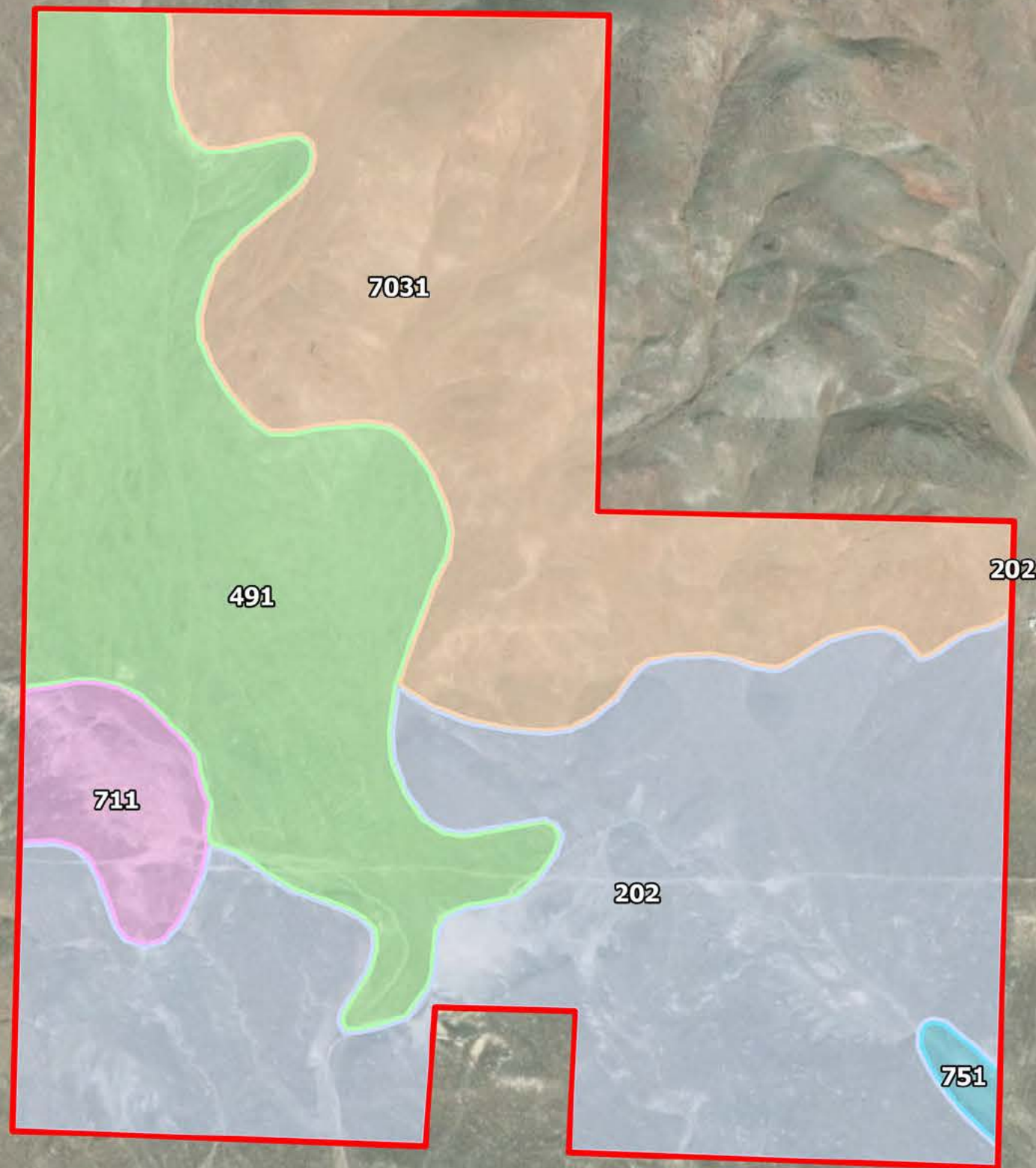




APPENDIX B, FIGURE 7

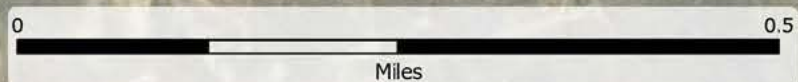
NRCS SOILS REPORT

SHINTAKU, LEPOME PARCELS  
PROJECT  
LYON, NV



- Survey Area
- MUSYM
- 202
- 491
- 7031
- 711
- 751

1 inch equals 0.13 miles



Service Layer Credits: World Light Gray Canvas base: Esri, HERE, Garmin, USGS, EPA | World Imagery, Maxar

8/1/2024



