

MUNI/WESTERN EXHIBIT 3-7
EASEMENT AGREEMENT WITH SAN BERNARDINO
VALLEY WATER CONSERVATION DISTRICT

RECORDING REQUESTED BY
REQUESTED BY SAN BERNARDINO VALLEY
WATER CONSERVATION DISTRICT

WHEN RECORDED MAIL TO

NAME Lawrence Libeu
MAILING San Bernardino Valley Water
ADDRESS Conservation District
 1630 Redlands Boulevard, Suite A
CITY, STATE San Bernardino CA 92373
ZIP CODE
No recording fee is due for this instrument
pursuant to Government Code §27383.

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Easement and License Agreement

This Easement and License Agreement ("**Agreement**") is entered into and effective this _____ day of _____, 2006 by and among San Bernardino Valley Water Conservation District ("**Grantor**") and San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County (collectively, "**Grantees**"). Each individual party to this Agreement is sometimes referred to as a "**Party**" and all of the parties to this Agreement are sometimes referred to as the "**Parties**."

Recitals

A. Grantor is the owner of certain real property located in the County of San Bernardino, California, which is depicted in the legend as "SBVWCD" and shaded blue on Exhibit "A" attached hereto (the "**Fee Property**"), and is shown in relationship to other ownerships of properties within the area. Grantor also owns, operates, and maintains a series of facilities for the diversion, conveyance, spreading, and recharge of Santa Ana River Water, both within and outside of the boundaries of the Fee Property. These facilities are more specifically delineated and depicted on Exhibit "B" hereto ("**Grantor's Facilities**").

B. Grantees have filed Water Right Application Nos. 31165 and 31370 (collectively, the "**Grantees' Applications**") with the State Water Resources Control Board (the "**SWRCB**") to appropriate water from the Santa Ana River. Grantor has filed Water Right Application No. 31371 with the SWRCB ("**Grantor's Application**").

C. On August 17, 2005, the Parties entered into a settlement agreement (the "**Settlement Agreement**") in which Grantor agreed to withdraw its protest to Grantees' Applications, and Grantees agreed to withdraw their protests to Grantor's Application, both

subject to compliance with the terms of the Settlement Agreement. The Settlement Agreement also called for a cooperative effort for the management of groundwater recharge in the San Bernardino Basin Area, which included Grantor granting an easement to Grantees for limited use of Grantor's facilities (including the Cuttle Weir and other intake structures) to divert water pursuant to the Grantees' Applications. A copy of the Settlement Agreement is attached as Exhibit "C."

D. Pursuant to the Settlement Agreement, Grantor wishes to provide Grantees with: (i) the reasonable right to use Grantor's Facilities shown on the map attached hereto as Exhibit "B," on a limited basis for the purpose of diverting water pursuant to Grantees' Applications, consistent with the Settlement Agreement; (ii) reasonable access to the Fee Property at such times and in such manners as to permit such use of Grantor's Facilities, again consistent with the Settlement Agreement; (iii) a license to permit Grantees' access to Grantor's Facilities located outside of the Fee Property, on a limited basis for the purpose of diverting water pursuant to the Grantees' Applications, consistent with the Settlement Agreement, and (iv) the possibility, subject to Grantor's permission and approval, and at Grantees' cost, to construct such additional facilities or enhancements to Grantor's Facilities located on the Fee Property ("**New Facilities**") as Grantees may find useful or necessary to place water diverted from the Santa Ana River to reasonable and beneficial use.

E. The Parties wish to memorialize the terms and conditions of such use of Grantor's Facilities and the Property by means of this Agreement.

Agreements

The Parties agree as follows:

1. Grant and Scope of Easement. Grantor hereby grants to Grantees a non-exclusive, perpetual, limited easement (the "**Easement**") over, across and through those portions of the Fee Property described in Exhibit "D" for Grantees to utilize Grantor's Facilities to divert, store, or spread, to place to reasonable and beneficial use, native water to be diverted from the Santa Ana River ("SAR Water") by Grantees, consistent with the terms and conditions stated herein, pursuant to and consistent with permits or licenses which may be issued by the SWRCB to Grantees pursuant to the Grantees' Applications ("**Grantees' Permits**").
 - a. The Easement includes the right for Grantees to use Grantor's Facilities located on the Fee Property consistent with the terms and conditions stated herein, in a reasonable manner to effectuate such diversion, storage, or spreading activity, *provided, however*, that Grantees shall only exercise the rights conveyed by the Easement in a manner that is: (i) consistent with the Settlement Agreement, (ii) consistent with Grantees' Permits, (iii) consistent with the terms of the then-applicable annual Groundwater Management Plan implemented pursuant to the Settlement Agreement ("**Groundwater Management Plan**"); and (iv) in such a manner as not to cause damage or unreasonable wear and tear on Grantor's Facilities.

- b. The Easement includes the reasonable right of Grantees' access over such remaining portions of the Fee Property that are reasonably necessary to the uses of Grantor's Facilities permitted hereunder. Grantees, and each of them, agree that, in exercising the rights conveyed as part of the Easement, they shall limit their use of access over the Fee Property to the greatest extent reasonably feasible.
- c. The Parties understand and acknowledge that the Easement burdens only Grantor's Facilities and such portion(s) of the Fee Property as may be reasonably necessary for access to and use of Grantor's Facilities permitted hereunder.
- d. The Parties understand and acknowledge that Grantees may only utilize Grantor's Facilities for diversion, spreading, or storing of SAR Water under the following conditions:
 - (1) There exists available capacity within Grantor's Facilities to accommodate such quantity or rate of SAR Water, as may be permitted to Grantees under Grantees' Permits at the time Grantee proposes to use Grantor's Facilities, which quantity or rate is within both the design hydraulic capacity and the then-applicable operational limits of Grantor's Facilities, which capacity is not then being used by, or required by, Grantor for any lawful purpose, including but not limited to maintenance, repair, rehabilitation, grading, construction, or reconstruction of Grantor's Facilities.
 - (2) The determination of the existence of available capacity for any specific facility of Grantor on any given day shall be made by Grantor, in Grantor's reasonable professional discretion. Grantees may challenge such determination using the procedures established in paragraph 8 below
 - (3) Notwithstanding any of the foregoing, for the purposes of this Agreement, there shall be deemed to exist "available capacity" in Grantor's Facilities at any time both of the following conditions are met: (i) Grantor has diverted and recharged the entire amount of groundwater recharge permitted for the Santa Ana River Recharge Areas (as that term is used in the Integrated Management Program Demonstration Project Agreement, or as such term may be defined in the Groundwater Management Plan), and any other areas in which Grantor's Facilities are located, under the Groundwater Management Plan then in effect for the applicable water year; and (ii) Grantor does not at that time have any ongoing or imminent maintenance, repair, rehabilitation, grading, construction or reconstruction activity occurring, or about to occur, in, on, or around the applicable facility, which would be delayed, hindered, made more expensive, or otherwise negatively impacted by Grantees' proposed use of the facility.
- e. The Parties agree that Grantees' use of the Easement and Grantor's Facilities is not subject to the provisions of California Water Code Sections 1810 *et seq.* and, in particular, agree that the rights conferred by this Easement are not limited to

70% of the unused capacity in a specific facility. The Parties further agree that Grantees need not provide any consideration not otherwise provided for in this Agreement for the rights granted under this Easement.

2. License for Use of Grantor's Facilities Outside of Fee Property. Grantor grants to Grantee a nonexclusive, perpetual, limited license (the "**License**") to utilize those portions of Grantor's Facilities located outside of the Fee Property, to divert, store, or spread, to place to reasonable and beneficial use, native water to be diverted from the Santa Ana River ("**SAR Water**"), by Grantees, consistent with the terms and conditions stated herein, pursuant to and consistent with the Grantees' Permits.
 - a. The License includes the right for Grantees to utilize such portions of Grantor's Facilities that are outside of the Fee Property consistent with the terms and conditions stated herein, in a reasonable manner to effectuate such diversion, storage, or spreading activity, provided, however, that Grantees shall only exercise the rights conveyed by the License in a manner that is: (i) consistent with the Settlement Agreement, (ii) consistent with Grantees' Permits, (iii) consistent with the terms of the then-applicable annual Groundwater Management Plan implemented pursuant to the Settlement Agreement ("**Groundwater Management Plan**"); and (iv) in such a manner as not to cause damage or unreasonable wear and tear on Grantor's Facilities.
 - b. The Parties understand and acknowledge that the License burdens only Grantor's Facilities outside of the boundaries of the Fee Property.
 - c. The Parties understand and acknowledge that Grantees may only utilize Grantor's Facilities pursuant to this License for diversion, spreading, or storing of SAR Water under the following conditions:
 - (1) There exists available capacity within Grantor's Facilities to accommodate such quantity or rate of SAR Water, as may be permitted to Grantees under Grantees' Permits at the time Grantee proposes to use Grantor's Facilities, which quantity or rate is within both the design hydraulic capacity and the then-applicable operational limits of Grantor's Facilities, which capacity is not then being used by, or required by, Grantor for any lawful purpose, including but not limited to maintenance, repair, rehabilitation, grading, construction, or reconstruction of Grantor's Facilities.
 - (2) The determination of the existence of available capacity for any specific facility of Grantor on any given day shall be made by Grantor, in Grantor's reasonable professional discretion. Grantees may challenge such determination using the procedures established in paragraph 8 below
 - (3) Notwithstanding any of the foregoing, for the purposes of this Agreement, there shall be deemed to exist "available capacity" in Grantor's Facilities at any time both of the following conditions are met: (i) Grantor has

diverted and recharged the entire amount of groundwater recharge permitted for the Santa Ana River Recharge Areas (as that term is used in the Integrated Management Program Demonstration Project Agreement, or as such term may be defined in the Groundwater Management Plan), and any other areas in which Grantor's Facilities are located, under the Groundwater Management Plan then in effect for the applicable water year; and (ii) the Grantor does not at that time have any ongoing or imminent maintenance, repair, rehabilitation, grading, construction or reconstruction activity occurring, or about to occur, in, on, or around the applicable facility, which would be delayed, hindered, made more expensive, or otherwise negatively impacted by Grantees' proposed use of the facility.

- d. The Parties agree that Grantees' use of the License and Grantor's Facilities is not subject to the provisions of California Water Code Sections 1810 *et seq.* and, in particular, agree that the rights conferred by this Agreement are not limited to 70% of the unused capacity in a specific facility. The Parties further agree that Grantees need not provide any consideration not otherwise provided for in this Agreement for the rights granted under this License.
- e. In granting this License, Grantor makes no representation, warranty, or promise, express, implied or otherwise, regarding Grantor's right, title, or interest in, on, to, over, through, or regarding any of the Grantor's Facilities located outside the boundaries of the Fee Property, nor any right Grantor may have to transfer any such existing right, title, or interest held by Grantor to Grantees, or either of them, for the purposes stated herein, nor the consistency or inconsistency of Grantees' proposed use of the Grantor's Facilities located outside of the Fee Property with any limitation on Grantor's own right to use such Grantor's Facilities. Any use of those Grantor's Facilities located outside of the Fee Property by Grantees, or either of them, shall occur entirely at Grantees' own risk, and Grantees, and each of them, shall be solely liable for securing any and all such additional permits, permissions, easements, licenses, rights of entry or rights of use as may be required under any applicable federal, state, or local regulation, or under any deed, easement, covenant, condition, restriction, or equitable servitude, recorded or unrecorded, applicable to any property outside the Fee Property on which any portion of Grantor's Facilities is located, and Grantees shall be solely liable for all costs incurred in connection therewith.

3. Maintenance and Operation.

- a. Grantor To Control Maintenance and Operation. Grantor shall have the exclusive authority to operate, maintain, repair, rehabilitate, grade, construct, and reconstruct all of Grantor's Facilities in such manner, and at such times, as Grantor shall, in its sole and absolute discretion, determine to be appropriate. Grantor shall have no obligation to perform any maintenance, repair, rehabilitation, grading, construction, or reconstruction of Grantor's Facilities,

whether located on or off of the Fee Property, for the benefit of Grantees, or to accommodate Grantees' exercise of any rights granted under this Agreement.

- b. Grantees May Request Maintenance. Grantees may, from time to time, request Grantor to perform such maintenance, repair, rehabilitation, grading, construction, or reconstruction on any of Grantor's Facilities, beyond that actually performed by Grantor, as Grantees may deem necessary or appropriate for Grantees' exercise of the rights granted under this Agreement. Any such request shall be submitted in writing to Grantor, detailing the work being requested, the reasons therefor, the estimated cost, and the estimated time for completing the construction or other activity requested. Upon receipt of such written request, Grantor may, but is not obligated to, perform the maintenance, repair, rehabilitation, grading, construction, or reconstruction as requested, may perform the requested work in such modified fashion as Grantor in the exercise of its reasonable professional judgment deems more appropriate, may refuse Grantees' request, or may grant to Grantees a temporary license or right of entry over portions of the Fee Property to permit Grantees to perform such work themselves, and at Grantees' sole cost and expense. Grantor may impose reasonable conditions on any such temporary license or right of entry, including but not limited to requiring Grantees to obtain any applicable licenses, permits, or approvals required to perform such proposed work, and requiring Grantees to serve as lead agency under the California Environmental Quality Act in connection with such proposed work.
- c. Operations Plan. Prior to any exercise by Grantees of any of the rights granted under this Agreement, Grantor and Grantee shall meet and confer, and must agree upon an Operations Plan, to assure consistency of operations activities between Grantor and Grantee regarding the use of Grantor's Facilities. The Operations Plan shall cover items including, but not limited to , who controls the physical operation of diversion structures, canals, and gates for diverting water into basins, priority or criteria for use of various recharge basins, coordination of the use of Grantor's Facilities with required or regularly scheduled maintenance, and record keeping , reporting, and availability of records regarding quantities of flows diverted or spread in or through Grantor's Facilities.

4. Shared Costs of Maintenance.

- a. Grantor's Accounting of Maintenance Costs. On or before 30 days following execution of this Agreement by all parties, Grantor shall provide to Grantees an accounting of all costs incurred by Grantor in the course of performing all maintenance, repair, rehabilitation, grading, construction, or reconstruction work on Grantor's Facilities ("**Grantor's Maintenance Work**"), for the past five (5) water years. Thereafter, Grantor shall keep accurate records of all expenses incurred by Grantor in performing the Grantor's Maintenance Work during the course of each water year, and shall provide an accurate accounting to Grantees of same, on or before October 31 each year. Grantees shall have thirty (30) days from receipt of such accounting to make any objection to any item of work included in Grantor's accounting of the Grantor's Maintenance Work, or the costs

thereof, and the reasons for objection. Any disputes shall be resolved pursuant to paragraph 8 below. If Grantees, or either of them, do not advise Grantor in writing within that 30-day time period of any objections, such objections shall be deemed waived, and the Grantor's accounting shall be deemed a reasonable and accurate summary of the Grantor's Maintenance Work, and that such Grantor's Maintenance Work was reasonably and necessarily undertaken in maintaining the Grantor's Facilities.

- b. Accounting of Water Through Grantor's Facilities. Grantor and Grantees shall each keep accurate records of their respective amounts of water diverted, conveyed, spread, or recharged through the Grantor's Facilities during the portion of the water year remaining after the recordation of this Agreement, and during the course of each successive water year, and shall provide an accurate accounting to each other of the total amount of water so diverted, spread, conveyed, or recharged. The Parties shall have thirty (30) days from the receipt of such accounting to submit any objection in writing to the appropriateness or accuracy of inclusion of any amount of water reflected in the accounting, and the reasons for the objection. Any disputes shall be resolved pursuant to paragraph 8 below. If the Party receiving the accounting does not object in writing within such with the 30-day period, any such objections shall be deemed waived.
- c. Reimbursement of Proportionate Share of Grantor's Costs by Grantees. Grantees, and each of them, shall pay to Grantor a reimbursement for a portion of Grantor's costs in performing the Grantor's Maintenance Work, to be determined pursuant to the formula below:

$$GC = \frac{GW}{TW} \times MWA$$

Where: **GC** is the Grantee's Contribution towards the cost of the Grantor's Maintenance Work for the applicable water year, to be paid to Grantor; and

GW is the amount of water, in acre feet, the Grantees diverted, spread, conveyed, or recharged through Grantor's Facilities for the applicable water year; and

TW is the total amount of water, in acre feet, all Parties to this Agreement diverted, spread, conveyed, or recharged through Grantor's Facilities for the applicable water year; and

MWA is the average cost of Grantor's Maintenance Work performed by Grantor for the last five (5) water years, consisting of the applicable water year and the immediately preceding four (4) water years.

- d. Grantees' obligations for reimbursement under this paragraph shall be joint and several. Grantees shall make such reimbursement payment to Grantor no later

than December 15 of each year. Any unpaid amounts shall accrue interest at the rate of ten percent (10%) per annum, until paid.

5. No Warranty Regarding Property. Grantor makes no warranty, express, implied, or otherwise, to Grantees regarding Grantor's title to any property outside of the Fee Property, nor the Grantor's Facilities, whether located within or without the Fee Property, their condition, or suitability for any purpose contemplated by Grantees hereunder. The rights in the Grantor's Facilities conveyed by Grantor to Grantees hereunder are conveyed as the Fee Property, and all Grantor's Facilities, are at the time of recording of this Agreement, in "as is, where is" condition, with all faults, and Grantor makes no warranty, express or implied, regarding any physical, environmental, geologic, soil or subsurface, drainage, surface water, groundwater or other contamination, or other physical or environmental condition thereon. Grantor shall have no liability for any waste, substance, release, or condition on the Property, whether presently known or unknown to Grantees, relating to any matter whatsoever, including but not limited to any assessment, clean-up, removal, or disposal of any and all hazardous or toxic substance(s) or wastes, or other wastes or substances stored or existing on, in or under the Fee Property or Grantor's Facilities, or migrating to or from the Fee Property or Grantor's Facilities, including any such waste in soil and/or groundwater. Grantees expressly waive and release any and all rights, remedies, claims or rights of action of whatever kind or nature, legal or equitable, against Grantor, or to seek damages or other remedies in connection with or as a result of any "hazardous" or "toxic" "materials," "substances," or "waste," or as a result of any condition of pollution or nuisance, and as such terms are or may be defined under any federal, state or local law, rule or regulation, or other material wastes, or substances stored or existing or potentially existing on, in, or under, or migrating to or from, the Fee Property or the Grantor's Facilities, whether in any structure or container, or in building material, or in any soil, air, ground water, perched water, or surface water (hereafter "Claim") whether known or unknown, fixed or contingent, foreseeable or unforeseeable, including but not limited to any Claim under CERCLA (42 U.S.C. § 9601 et seq.), RCRA (42 U.S.C. §6901 et seq.), the Clean Water Act. (33 U.S.C. 1251 et seq.) the Hazardous Waste Control Law (California Health and Safety Code § 25100 et seq.), the Hazardous Substance Account Act (California Health & Safety Code § 25300 et seq.), the California underground storage tank laws (California Health & Safety Code § 25280 et seq.), the Porter Cologne Act (California Water Code § 13000 et seq.), California Health and Safety Code § 25280 et seq., and § 33459 et seq., the provisions of Proposition 65 (California Health & Safety Code § 25249.5 et seq.), and the State common law regarding nuisance, negligence, trespass, strict liability, contribution, and other common laws. In connection therewith, Grantees, and each of them, specifically waive the benefits and protections of California Civil Code section 1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor." Grantees, and each of them, acknowledge they have been advised of the import and consequences of waiving the provisions of Civil Code section 1542, and knowingly waive them.

6. Insurance. The Grantees, and each of them, shall procure, pay for and keep in full force and effect and at all times during the term of this Agreement:
- a. Commercial General Liability. Insurance insuring against liability for personal injury, bodily injury, death and damage to property arising from the Grantees' exercise of the rights granted hereunder. Said insurance shall include coverage in an amount equal to at least Five Million Dollars (\$5,000,000), shall contain "blanket contractual liability" and "broad form property damage" endorsements, shall name the Grantor, its directors, officers, employees, and authorized volunteers, as an additional insured. The Five Million Dollar (\$5,000,000) minimum shall be increased every five years following the execution of this Agreement, by a proportional amount equivalent to the increase in the U.S. Department of Labor's Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, All Items, for the Los Angeles-Orange County-Riverside California area, using the date this Agreement is recorded as the base year.
 - b. Worker's Compensation Insurance. Pursuant to Section 3700 of the California Labor Code, the Grantees shall procure, pay for and keep in full force and effect at all times during the term of the Agreement workers' compensation insurance with employer's liability in no less than the minimum amount required by law.
 - c. Automobile Liability Insurance. Grantees will provide proof of automobile liability insurance in the amount no less than the minimum amount required by law.
 - d. Evidence of Insurance. Prior to execution of the Agreement, Grantees shall furnish to the Grantor a Certificate of Insurance and endorsements. Each insurance policy shall not be cancelled nor cancelable by the insurance carrier without at least 30 days notice to Grantee.
 - e. Grantees' Self-Insured Retention. As an alternative to the Insurance required under this paragraph 6, Grantees may provide evidence of self-insured retention in amounts reasonably satisfactory to Grantor. Grantees' self-insured retention shall be considered reasonably satisfactory if it is approved by the Joint Powers Insurance Authority of the Association of California Water Agencies ("**JPIA**"), provided that JPIA is Grantor's insurer at the time of approval.
7. Covenant to Run With the Land. The Easement granted hereunder shall apply to and run in perpetuity with the Fee Property, and shall be binding upon and shall inure to the benefit of the Parties and their respective successors, agents, and permitted assignees.
8. Dispute Resolution. The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:
- a. Statement Describing Alleged Violation of Agreement. A Party or Parties alleging a violation of this Agreement (the "**Initiating Party(ies)**") shall provide a written statement describing all facts that it believes constitute a violation of this

Agreement to the Party(ies) alleged to have violated the terms of this Agreement (the “**Responding Party(ies)**”).

- b. Response to Statement of Alleged Violation. The Responding Party(ies) shall have thirty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party(ies) or to cure the alleged violation to the reasonable satisfaction of the Initiating Party(ies). The Initiating Party(ies) and the Responding Party(ies) shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.
- c. Mediation of Dispute. If the Initiating Party(ies) and the Responding Party(ies) cannot resolve the dispute within thirty days of the date of the written response, they shall engage a mediator, experienced in water-related disputes, to attempt to resolve the dispute. Each Party shall ensure that it is represented at the mediation by a Director or Trustee, and may be represented by counsel. These representatives of the Initiating Party(ies) and the Responding Party(ies) may consult with staff and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided *pro rata* among the Initiating Party(ies) and the Responding Party(ies).
- d. In the event the dispute centers on whether there is available capacity in Grantor’s Facilities, and time is of the essence to resolving the dispute because of the imminence of precipitation or other event which may make SAR Water available pursuant to Grantees’ Permits for only a very limited time, the timeframes for response to the Statement of Alleged Violation, and the timeframe for the meeting between the Parties following such response, shall be reduced to a period of three (3) business days. The Parties shall annually pre-select a mutually agreeable mediator to resolve any such disputes, in order to expedite any required mediation or disputes regarding available capacity.
- e. Reservation of Rights. Nothing in this paragraph 8 shall require a Party to comply with the dispute resolution process contained herein and, subject to Paragraph 13(f) below, each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a Party shall provide at least five calendar days’ written notice of its intent to sue to any Party.

9. New Facilities.

- a. New Facilities Application. The Parties contemplate that Grantees may, from time to time, find it necessary or convenient to construct additional facilities or modify Grantor’s Existing Facilities, on portions of the Fee Property, for the diversion, storage, or spreading of SAR Water pursuant to Grantee’s Permits (“New Facilities”). In the event Grantees desire to construct New Facilities on the Fee Property, Grantees shall notify Grantor in writing, providing to Grantor all of

the following: (i) proposed construction plans for the New Facility, including a description of the engineering specifications and intended operation of the New Facility proposed, (ii) a draft of an Easement Deed describing all interests in the Property Grantees request from Grantor in connection with the construction, maintenance, and operation of the New Facility, including a legal description of all affected areas of the Fee Property; (iii) maps, drawings, or other depictions of how the New Facility will relate to, and be compatible with, exiting Grantor's Facilities, with such engineering or other detail as Grantor may reasonably require ("New Facility Application"); and (iv) a draft of the environmental review documentation proposed in connection with the New Facility, under CEQA, NEPA, or otherwise. Upon receipt of such New Facility Application, Grantor shall review the proposed New Facility, and may approve, conditionally approve, or deny the New Facility Application, provided that Grantor's approval or conditional approval shall not be unreasonably withheld. Grantor's approval may be conditioned upon Grantee making the New Facility available for Grantor's use, provided such use does not unreasonably conflict with or impair Grantee's intended use. Grantor shall approve, conditionally approve, or deny a New Facility Application within one hundred eighty (180) days from receipt of all information required in the New Facilities Application.

- b. Restrictions on New Facilities. Notwithstanding any of the foregoing, Grantor shall be under no obligation to approve any New Facility Application for any of the following:
1. Any proposed New Facility located outside of the boundaries of Section 7 or Section 8.
 2. Any proposed New Facility that Grantor determines, in its reasonable discretion, conflicts in any way with any of the actions or permits contemplated as part of the Upper Santa Ana River Wash Land Management Plan and Habitat Conservation Plan ("Wash Plan").
 3. Any New Facility that damages, impairs, or makes more expensive to maintain or operate, any then-existing Grantor Facility.
 4. Any New Facility located on any portion of the Fee Property reserved by Grantor for any future facility of Grantor, as set out in any operation plan, capital facilities plan, or other similar plan approved by Grantor's Board of Directors at the time the New Facilities Application is complete.
- c. Grantees' Responsibilities on New Facilities.
1. Any approved New Facility shall be constructed by Grantees, at Grantees' sole cost and expense.
 2. Grantees, or either of them, shall be the lead agency for any environmental review required in connection with any New Facility, including any review under CEQA or NEPA, and Grantees shall be solely responsible

for securing and complying with all applicable permits or approvals required in connection with the construction, placement, operation, or maintenance of any New Facility.

3. Prior to initiating construction of any New Facility, Grantee shall provide to Grantor a copy of all conditions, restrictions, or limitations imposed on the Property or any aspect of Grantor's Facilities or the New Facility, by any regulatory or permitting agency or body, for Grantor's review and acceptance. Grantor shall have no less than forty-five (45) days to review and accept or reject any such conditions, restrictions, or limitations, which approval shall not be unreasonably withheld.
 4. Grantees' indemnification of Grantor stated in Paragraph 3 of the Settlement Agreement shall in all respects apply to any New Facility and to any action taken by Grantees, or either of them, in connection therewith.
 5. Grantees shall be solely responsible for all continuing costs of any New Facility, including any costs for placement, construction, maintenance, or operation or replacement. Notwithstanding this subparagraph, in the event Grantor has conditioned approval of the New Facility on Grantor's access to, or use of, the new Facility, Grantee shall be able to recover from Grantor all formally adopted tolls, charges, or rates charged by Grantee to all similar users for the use of such New Facility.
 6. Any relocation or other substantial modification to any New Facility shall require Grantee to file a new New Facility Application to Grantor, which shall be subject to the full New Facility Application review and approval process set out in Paragraph 9(a) above.
- d. Approval of New Facilities. Upon approval by Grantor of a New Facility Application, and subject to completion of construction of same in accordance with approved plans, Grantor shall record a New Facility Easement Deed in a form mutually acceptable to Grantor and Grantee, and Grantee shall retain title to, and responsibility for, such approved New Facility.
10. Grantee's Rights to Proposed Exchange Properties Conditioned Upon BLM Approval. Grantor has advised Grantee that certain portions of the Fee Property are the subject of current negotiations between Grantor and the United States Bureau of Land Management ("BLM"), the purpose of which is to effectuate an exchange between Grantor and BLM in connection with the Santa Ana River Wash Land Management Plan and Habitat Conservation Plan ("Wash Plan"). Such areas are depicted in Exhibit "E" hereto ("**Exchange Property**"). This contemplated land exchange will involve an appraisal of the Exchange Property and property presently owned by BLM, to be offered in exchange. Grantor and Grantees acknowledge the Easement contemplated hereunder may have a material effect on the appraised values of the Exchange Property. Nothing hereunder is intended to restrict or complicate Grantor's ability to effectuate such transfer. The

effectiveness of any and all of rights granted to Grantees under this Agreement with respect to the property depicted in Exhibit "E," shall be conditioned on the express prior written approval of this Agreement by BLM, and agreement by Grantor of (1) any conditions placed by BLM thereon, and (2) the impact, if any, the Easement has on the appraised value of the Exchange Property. All such approvals must be secured prior to the recordation of this Easement. In the event BLM does not approve the Easement, or Grantor's approvals on the items listed above are not granted, the Exchange Property shall be excluded from the Easement.

11. Indemnification. The provisions of paragraph 3 of the Settlement Agreement are incorporated herein by reference as if set forth in full.
12. Assignment or Transfer. Grantees, or either of them, may not transfer or assign the rights conveyed in this Agreement to any non-Party without the prior express written consent of Grantor, which consent shall not be unreasonably denied or delayed. Any attempted transfer or assignment without such prior written consent of Grantor shall be void.
13. Recordation. Grantor shall, at its cost and expense, have this Agreement recorded in the Official Records of San Bernardino County.
14. General Provisions.
 - a. Authority. Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs and that by doing so, such Party is not thereby in breach of any other contract or agreement. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
 - b. Headings. The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.
 - c. Amendment. This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement and any such amendment or modification shall be effective only when duly acknowledged by all of the Parties and recorded in the Official Records of San Bernardino County.
 - d. Construction and Interpretation. This Agreement has been arrived at through negotiation and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
 - e. Waiver. No waiver of any violation or breach of this Agreement shall be considered to be a waiver or breach of any other violation or breach of this Agreement, and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.

- f. Attorneys' Fees. The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall, provided that such Party(ies) complied with the Dispute Resolution procedures of paragraph 8 above prior to initiating such litigation or other action, be entitled to reasonable attorneys' fees, expert witnesses' fees, and costs of suit, in addition to any other relief.
- g. Jurisdiction and Venue. The Parties agree that any litigation involving the construction of this Agreement shall be initiated in the Superior Court of San Bernardino County, California.
- h. Entire Agreement. This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- i. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective Parties to this Agreement.
- j. Necessary Actions. Each Party agrees to execute and deliver such additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- k. Third Party Beneficiaries. This Agreement shall not create any right or interest in any non-Party, or in any member of the public, as a third party beneficiary.
- l. Representations and Warranties. Each representation and warranty contained herein or made pursuant hereto shall be deemed to be material and to have been relied upon and shall survive the execution, delivery and termination of this Agreement.
- m. Relationship. Nothing contained in this Agreement shall be deemed or construed, either by the Parties or by any third party, to create the relationship of principal and agent or create any partnership, joint venture, or other association among the Parties.
- n. Notices. All notices, requests, demands, or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or if served by electronic mail or facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the fifth day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:

San Bernardino Valley Water Conservation District
1630 Redlands Boulevard, Suite A
Redlands, CA 92373
(909) 793-2503
(909) 793-0188 (FAX)
Attn: General Manager

San Bernardino Valley Municipal Water District
P.O. Box 5906
San Bernardino, CA 92412-5906
(909) 387-9222
(909) 387-9247 (FAX)
Attn: General Manager

Western Municipal Water District of Riverside County
450 Alessandro Boulevard
Riverside, CA 92508
(909) 789-5000
(909) 780-3837 (FAX)
Attn: General Manager

Any Party may change the foregoing information by providing thirty days' written notice of the change as provided above.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT

By: Cheryl Tubbs
President, Board of Directors

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT

By C. Patrick Milligan
President, Board of Directors

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY

By Kevin D. Jeffries
President, Board of Directors

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ 200_, before me, _____, Notary Public,
personally appeared _____

_____ personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ 200_, before me, _____, Notary Public,
personally appeared _____

_____ personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ 200_, before me, _____, Notary Public,
personally appeared _____

_____ personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ 200_, before me, _____, Notary Public,
personally appeared _____

_____ personally
known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)
on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed
the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

EXHIBIT A

Exhibit A-1	Exhibit A-3	Exhibit A-5
Exhibit A-2	Exhibit A-4	Exhibit A-6

EXHIBIT A

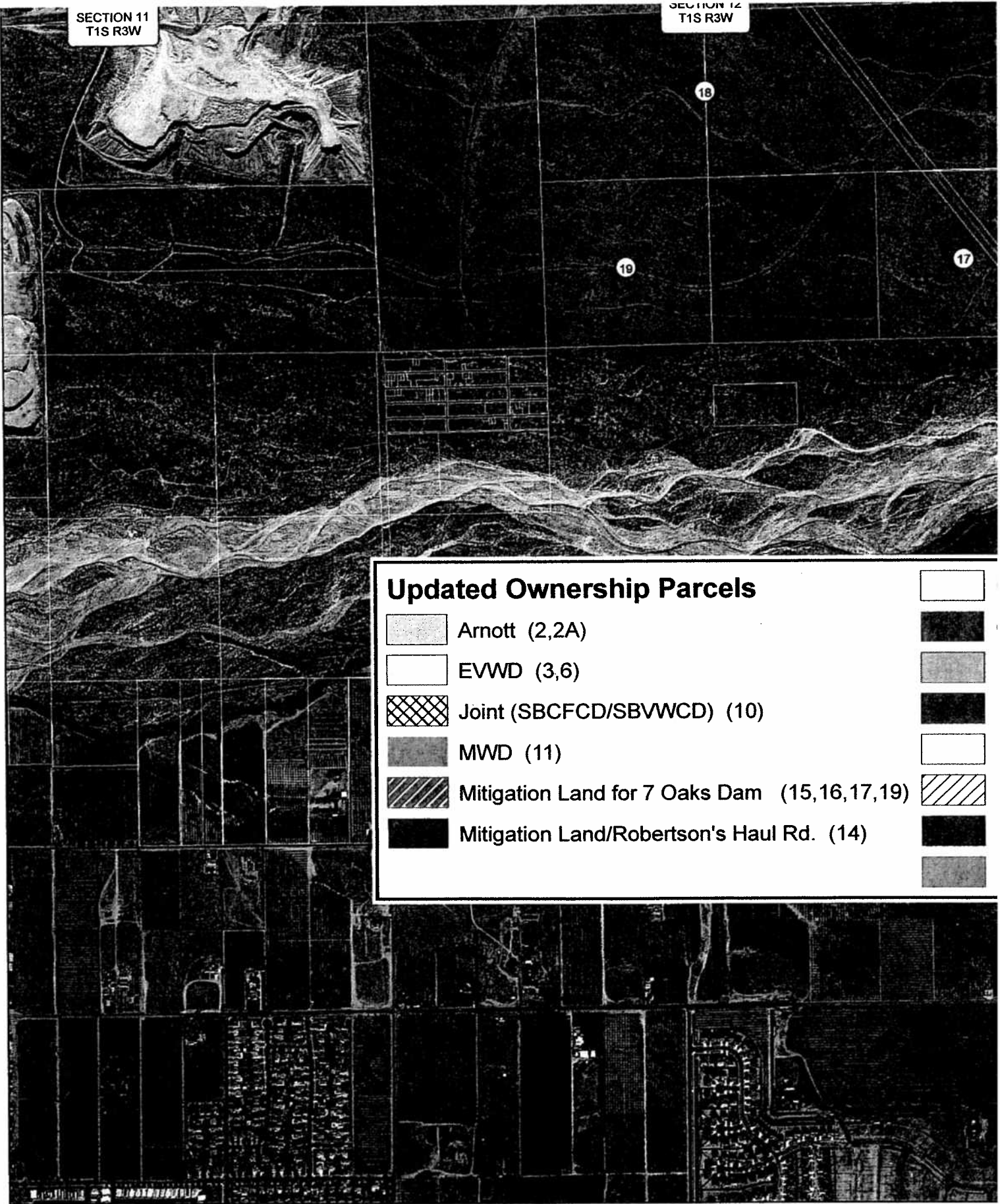


SECTION 11
T1S R3W











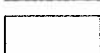
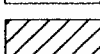
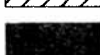

SECTION 12
T1S R3W

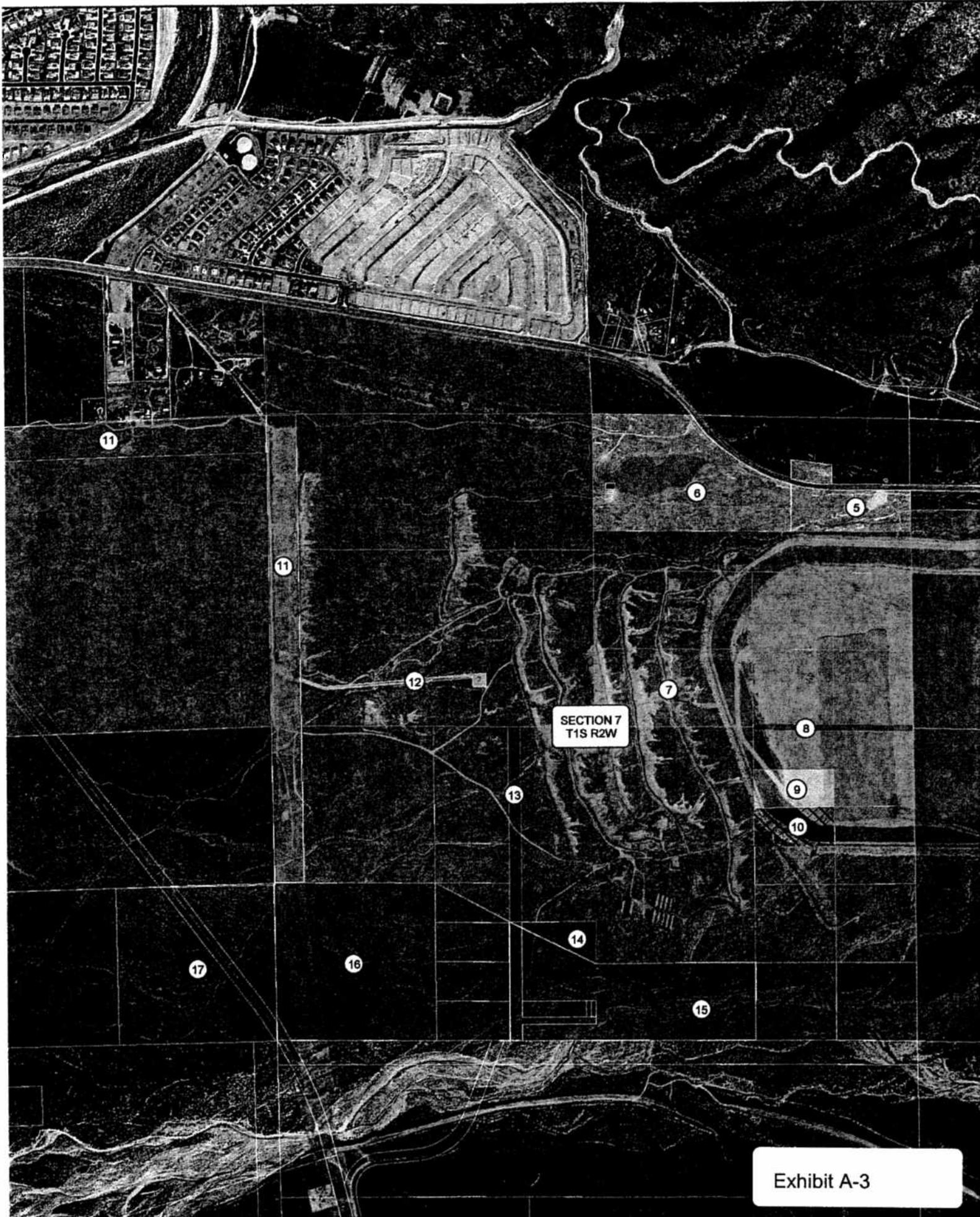
SECTION 11
T1S R3W

SECTION 12
T1S R3W

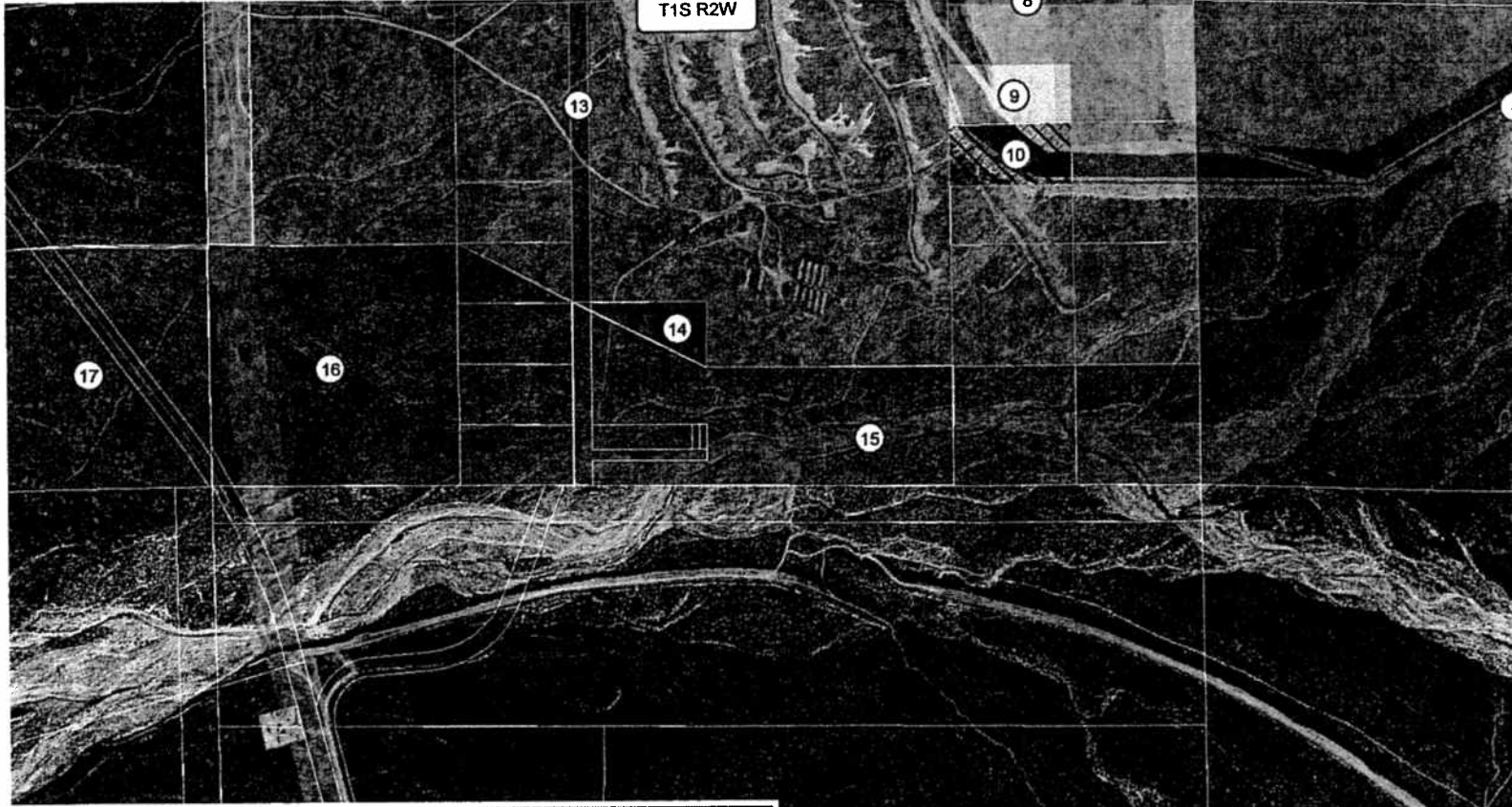










Updated Ownership Parcels

-  Arnott (2,2A)
 -  EVWD (3,6)
 -  Joint (SBCFCD/SBVWCD) (10)
 -  MWD (11)
 -  Mitigation Land for 7 Oaks Dam (15,16,17,19)
 -  Mitigation Land/Robertson's Haul Rd. (14)
- 
- 
- 
- 
- 
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- 
- 

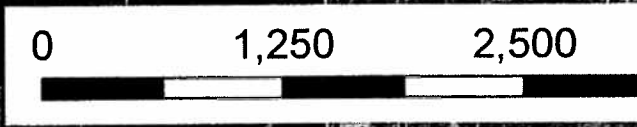


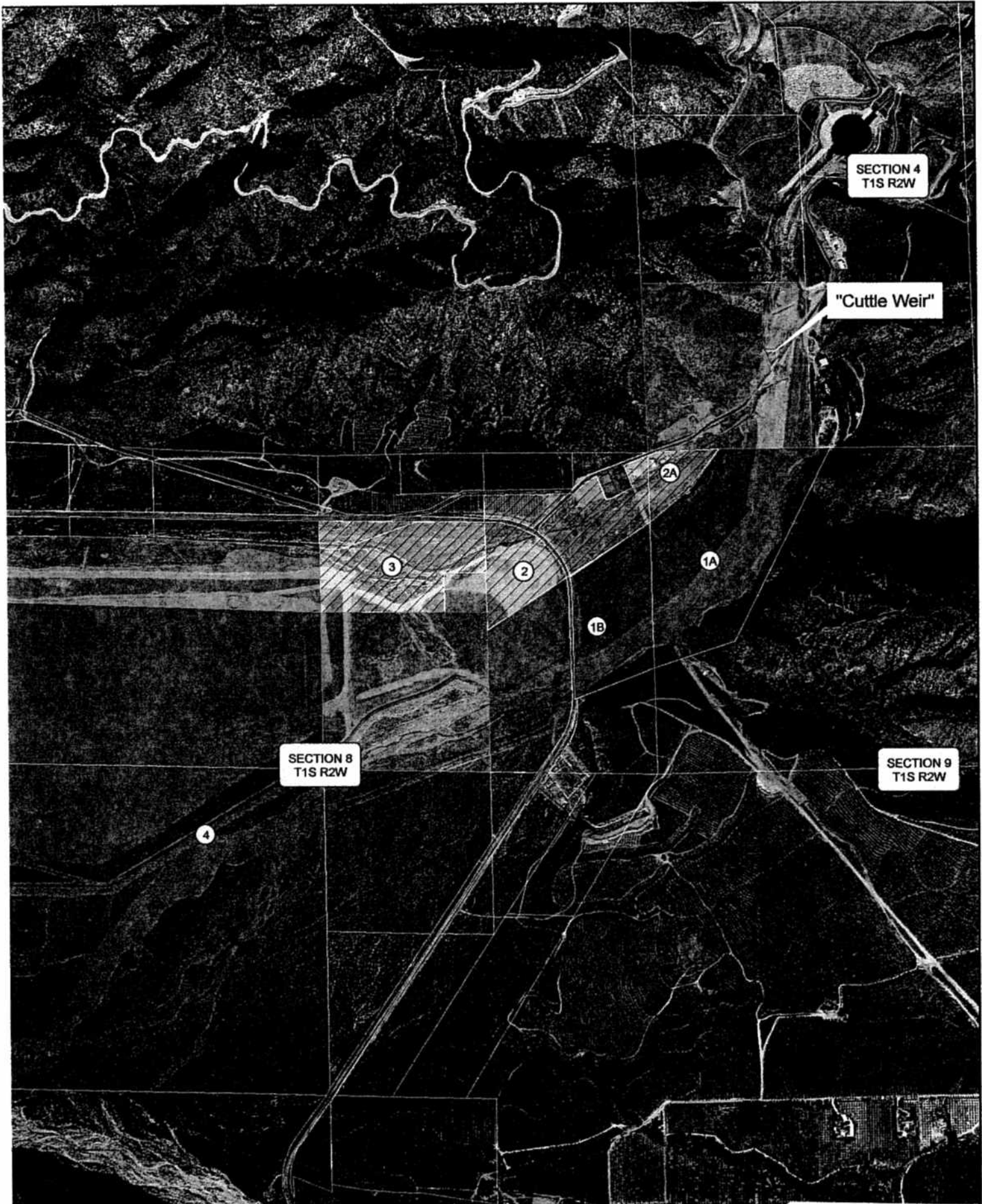
SECTION 7
T1S R2W



	Private (9)
	Other Government (8,13)
	Robertson's Ready Mix (7)
	SBCFCD (1A,1B)
	SBVMWD (5)
	SBVWCD Water Spreading Easements (2,3)
	BLM (4,18)
	SBVWCD

Data last revised: 10/16/06





SECTION 4
T1S R2W

"Cuttle Weir"

2A

1A

1B

3

2

SECTION 8
T1S R2W

SECTION 9
T1S R2W

4

SECTION 8
T1S R2W

SECTION 9
T1S R2W

4

1 inch = 1000 FT.

0 2,500 5,000
Feet

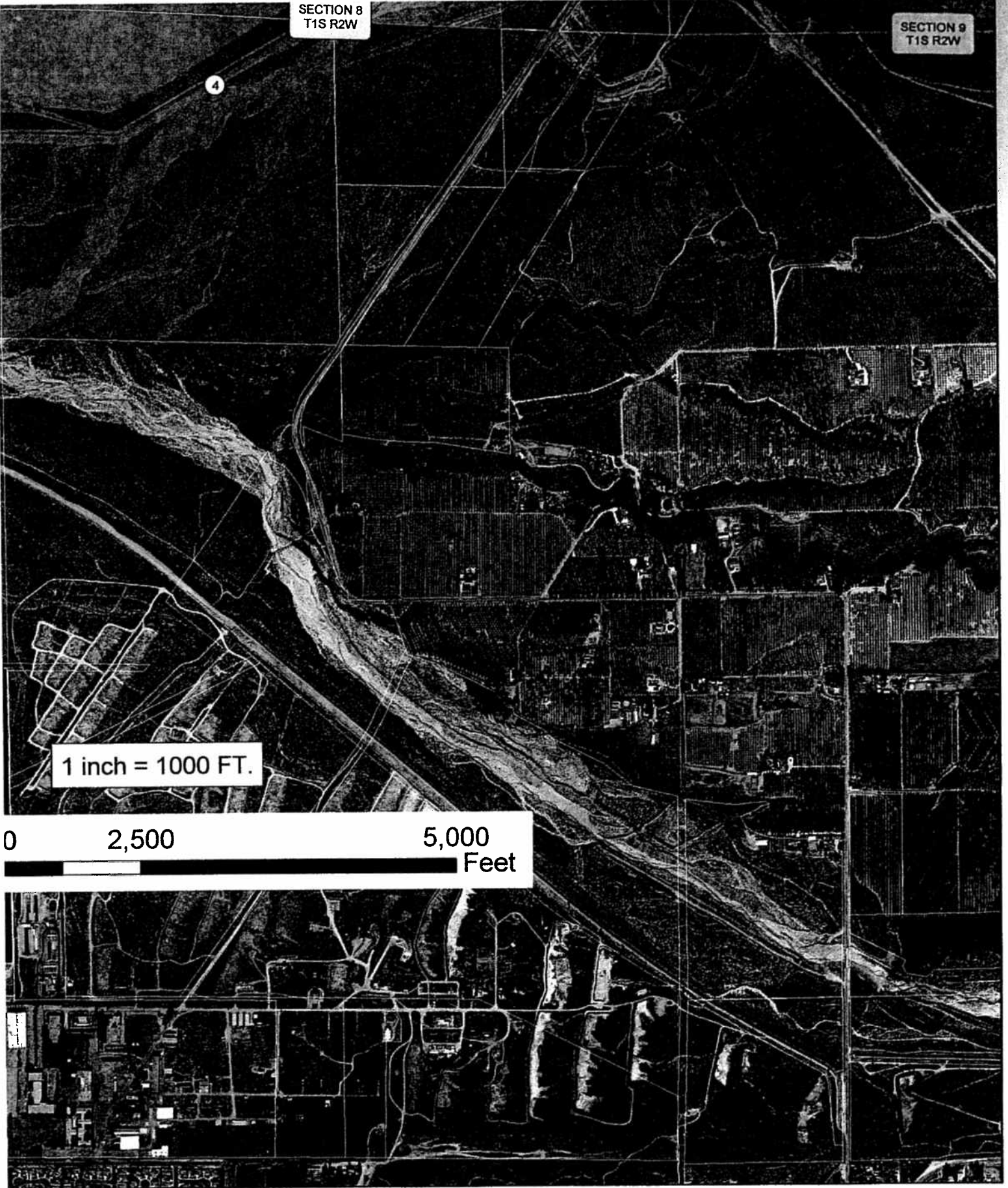


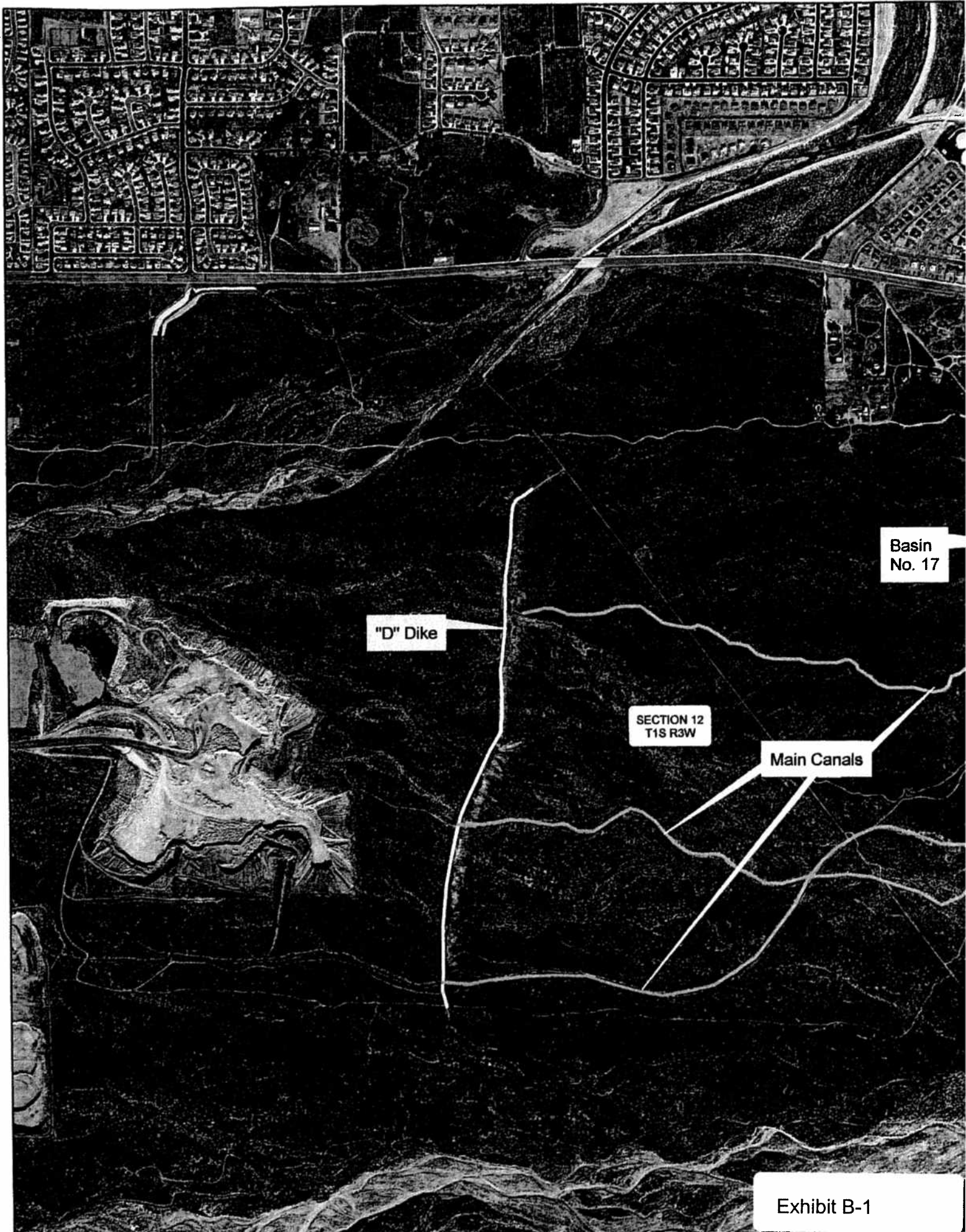
EXHIBIT "A"

Exhibit A-6

EXHIBIT B

Exhibit B-1	Exhibit B-3	Exhibit B-5
Exhibit B-2	Exhibit B-4	Exhibit B-6

EXHIBIT B



"D" Dike

SECTION 12
T1S R3W

Basin
No. 17

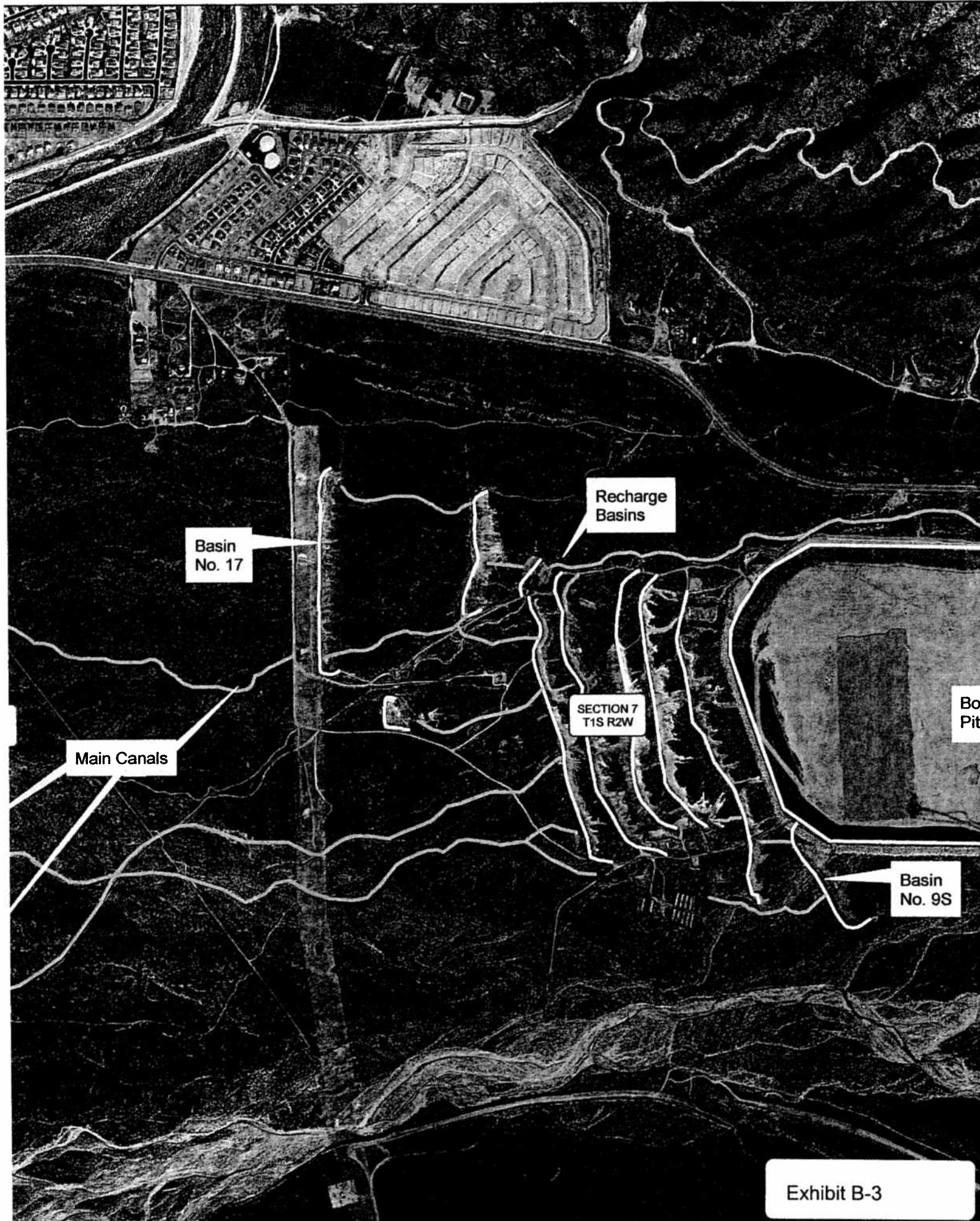
Main Canals

Exhibit B-1

SECTION 12
T1S R3W

Main Canals





Basin No. 17

Recharge Basins

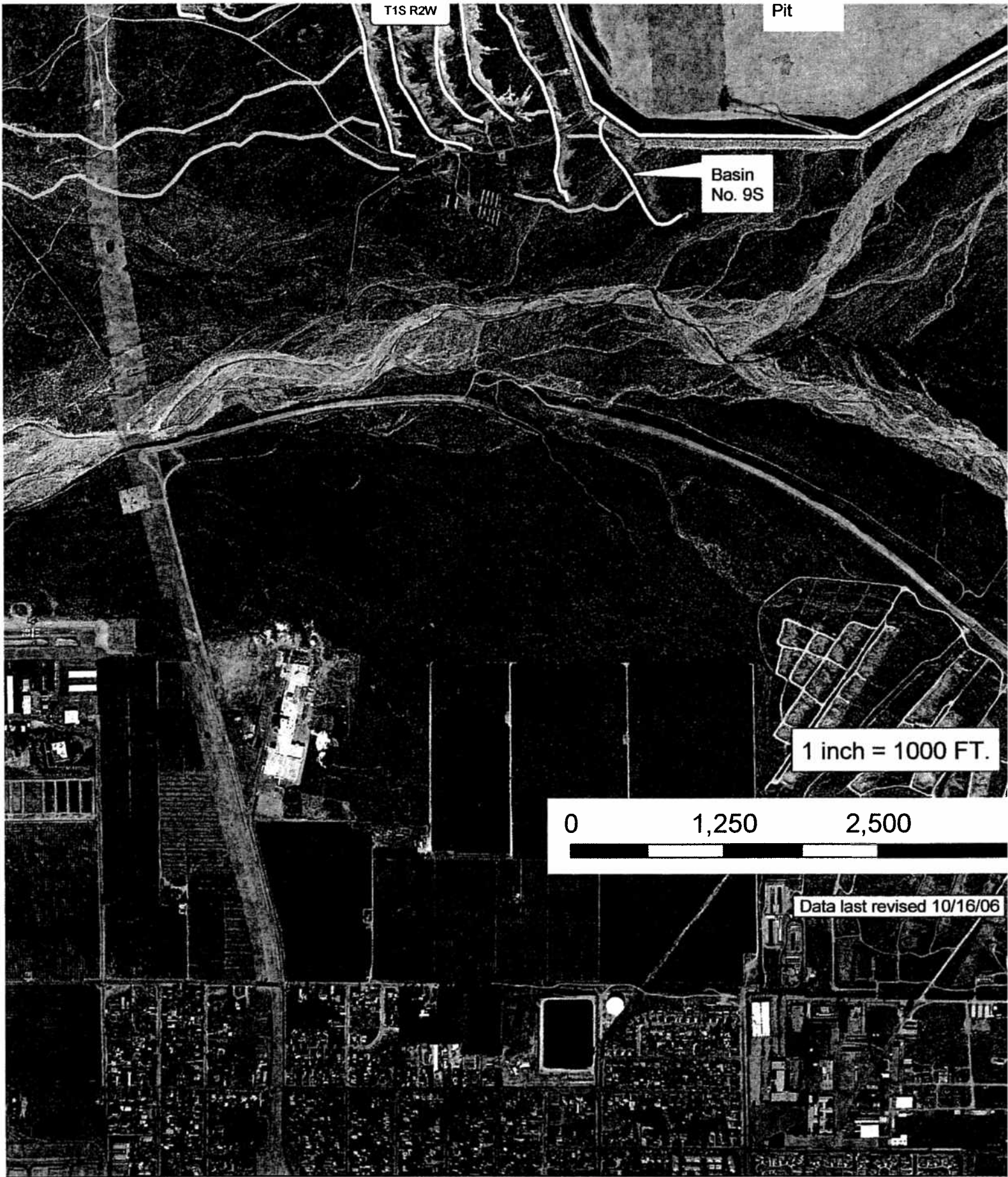
SECTION 7
T1S R2W

Main Canals

Bo
Pit

Basin
No. 9S

Exhibit B-3

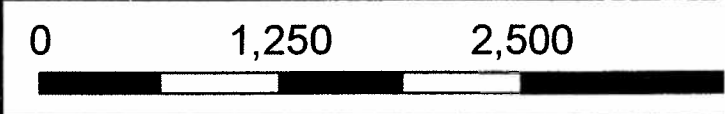


T1S R2W

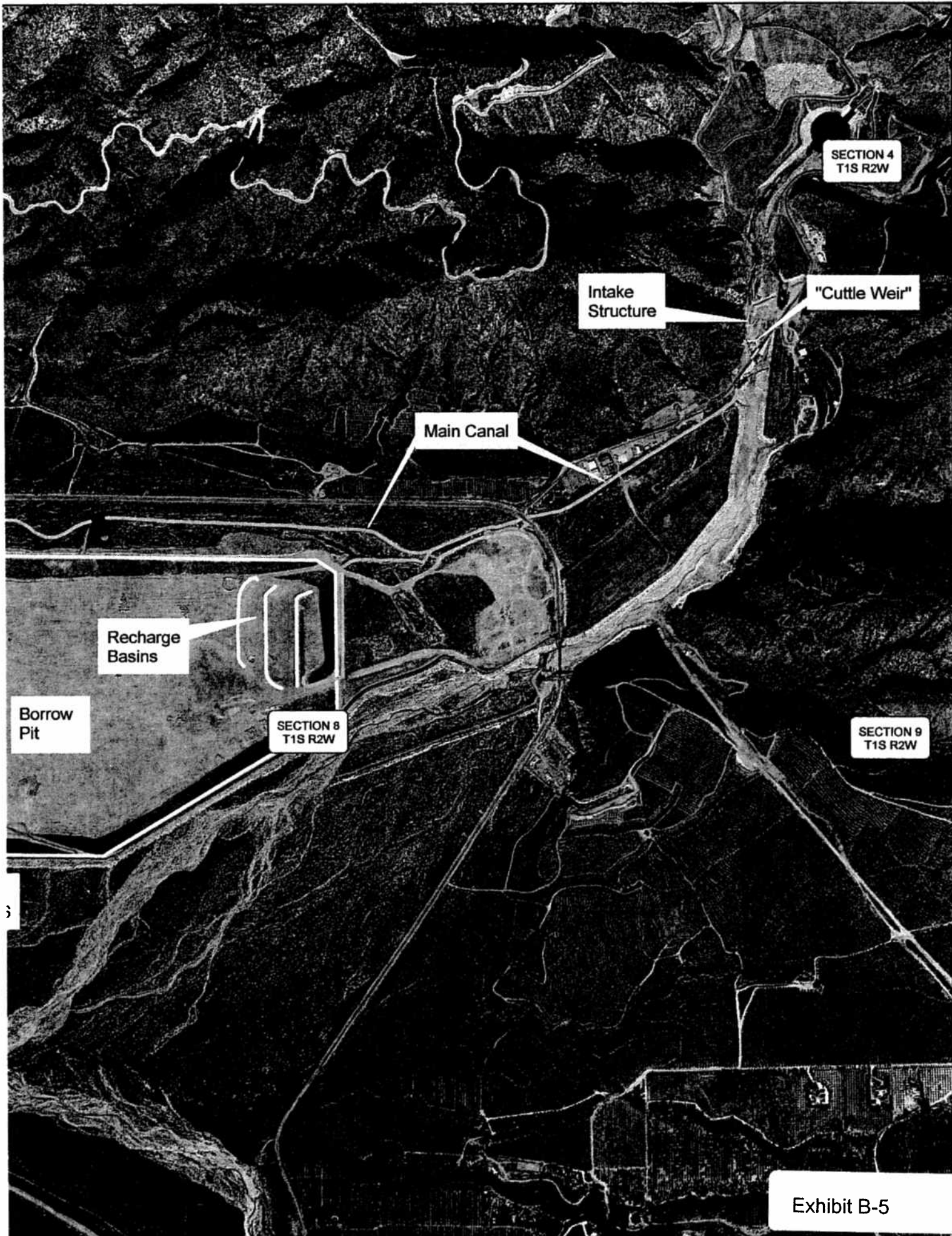
Pit

Basin
No. 9S

1 inch = 1000 FT.



Data last revised 10/16/06



SECTION 4
T1S R2W

Intake
Structure

"Cuttle Weir"

Main Canal

Recharge
Basins

Borrow
Pit

SECTION 8
T1S R2W

SECTION 9
T1S R2W

Exhibit B-5

Pit

SECTION 8
T1S R2W

SECTION 9
T1S R2W

1
S

1 inch = 1000 FT.

2,500

5,000

Feet

Data last revised 10/16/06

EXHIBIT "B"

EXHIBIT C

**Settlement Agreement
Among
San Bernardino Valley Water Conservation District,
San Bernardino Valley Municipal Water District and
Western Municipal Water District of Riverside County**

This Settlement Agreement Among San Bernardino Valley Water Conservation District, San Bernardino Valley Municipal Water District and Western Municipal Water District of Riverside County ("Agreement") is entered into and effective this __ day of August, 2005. Each of the parties to this Agreement is referred to as "Party" and collectively the parties to this Agreement are referred to as the "Parties."

Recitals

- A. San Bernardino Valley Municipal Water District ("Valley District") and Western Municipal Water District of Riverside County ("Western") have filed Water Right Application Nos. 31165 and 31370 with the State Water Resources Control Board (the "State Board"), which applications seek to divert for beneficial use the waters of the Santa Ana River.
- B. San Bernardino Valley Water Conservation District ("Conservation District") has filed Water Right Application No. 31371 with the State Board, which application also seeks to divert for beneficial use the waters of the Santa Ana River.
- C. Valley District and Western have filed a protest with the State Board against the Conservation District's application and the Conservation District has filed a protest with the State Board against Valley District and Western's applications.
- D. The Parties now wish to resolve their respective protests on mutually agreeable terms and to memorialize those terms in this Agreement.

Agreements

The Parties agree as follows:

1. *Agreement to Exhibit A.* The Parties agree to implement the terms and conditions set forth in Exhibit A, which is attached hereto and incorporated herein by reference.
2. *Amendment to Seven Oaks Accord.* The Parties will seek to amend the Seven Oaks Accord to include the Conservation District as a party and to include the following provisions, as well as the provisions of paragraph 1 above, in an amended Seven Oaks Accord:
 - a. Bear Valley *et al.* would not object to diversions made under the Conservation District's two licenses, and

- b. Bear Valley *et al.* would support changing the period of diversion of the Conservation District's licenses so as to permit diversions under those licenses on a year-round basis.

3. *Indemnification.*

- a. *Indemnification by Conservation District.* The Conservation District shall indemnify, defend and hold harmless Valley District and Western, their directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the diversion and/or spreading of water by Conservation District from either the Santa Ana River or Mill Creek. In particular, and without limiting the scope of the foregoing indemnification, the Conservation District shall indemnify, defend and hold harmless Valley District and Western, their directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to any spreading of water in a manner that is not consistent with the requirements of the annual groundwater management plan described in Exhibit A.
- b. *Indemnification by Valley District and Western.* Valley District and Western shall indemnify, defend and hold harmless the Conservation District, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to the diversion and/or spreading of water by Valley District and Western from the Santa Ana River. In particular, and without limiting the scope of the foregoing indemnification, Valley District and Western shall indemnify, defend and hold harmless the Conservation District, its directors, officers, employees and agents from and against all damages, liabilities, claims, actions, demands, costs and expenses (including, but not limited to, costs of investigations, lawsuits and any other proceedings whether in law or in equity, settlement costs, attorneys' fees and costs), and penalties or violations of any kind, which arise out of, result from, or are related to any spreading of water in a manner that is not consistent with the requirements of the annual groundwater management plan described in Exhibit A.
- c. *Indemnification Procedures.* Any Party that is an indemnified party (the "Indemnified Party") that has a claim for indemnification against another Party

(the "Indemnifying Party") under this Agreement, shall promptly notify the Indemnifying Party in writing, *provided, however*, that no delay on the part of the Indemnified Party in notifying the Indemnifying Party shall relieve the Indemnifying Party from any obligation unless (and then solely to the extent) the Indemnifying Party is prejudiced. Further, the Indemnified Party shall promptly notify the Indemnifying Party of the existence of any claim, demand, or other matter to which the indemnification obligations would apply, and shall give the Indemnifying Party a reasonable opportunity to defend the same at its own expense and with counsel of its own selection, *provided* that the Indemnified Party shall at all times also have the right to fully participate in the disputed matter at its own expense. If the Indemnifying Party, within a reasonable time after notice from the Indemnified Party, fails to defend a claim, demand or other matter to which the indemnification obligations would apply, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle (exercising reasonable business judgment), the claim or other matter, on behalf, or for the account, and at the risk, of the Indemnifying Party. If the claim is one that cannot by its nature be defended solely by the Indemnifying Party, then the Indemnified Party shall make available all information and assistance to the Indemnifying Party that the Indemnifying Party may reasonably request.

4. **Liquidated Damages.** The Parties recognize that it would be extremely difficult and impractical to ascertain the extent of detriment that could result from groundwater spreading in excess of or at times different from that called for in the annual groundwater management plan described in Exhibit A. The Parties have determined and agree that, in the event that a Party spreads water in excess of or at times different from that called for in the annual groundwater management plan, the Party engaged in such excess or untimely spreading shall pay the sum of \$1,000 per acre-foot spread in violation of the annual groundwater management plan into a fund to be established and administered by Valley District for the development and implementation of the annual groundwater management plan under the auspices of the Seven Oaks Accord, including any amendment thereto, or successors thereto, or amendments to any successors thereto, which sum is believed by the Parties to be a reasonable estimate of the costs to water purveyors in the San Bernardino Valley of remedying such violation of the groundwater management plan. Nothing in the foregoing provision shall be construed in any manner to limit the amount of damages obtainable pursuant to an action to enforce the indemnification, defense or hold harmless provisions of paragraph 3 above.

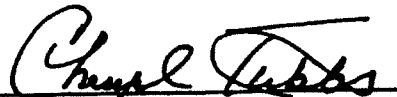
Conservation District

Valley District

Western

5. *Term.* The terms and/or conditions of this Agreement, including those in Exhibit A hereto, shall continue in full force and effect until terminated by mutual agreement of all Parties hereto.

SAN BERNARDINO VALLEY WATER CONSERVATION DISTRICT



By: Cheryl Tubbs
President, Board of Directors

SAN BERNARDINO VALLEY MUNICIPAL WATER DISTRICT



By: C. Patrick Milligan
President, Board of Directors

WESTERN MUNICIPAL WATER DISTRICT OF RIVERSIDE COUNTY



By: S.R. Al Lopez
President, Board of Directors

Exhibit A

1. The Conservation District would:

- a. withdraw its protest of the Valley District/Western applications and not object to diversions made pursuant to permits issued for those applications;
- b. in the same way as Bear Valley *et al.* support those applications before the SWRCB and other regulatory agencies;
- c. grant Valley District/Western an access agreement/easement to use the Conservation District's facilities (including the Cuttle Weir and other intake structures) on a "space-available" basis to divert water pursuant to the Valley District/Western applications;
- d. not object to the diversion of up to the first 88 cfs of natural flow of the Santa Ana River by Bear Valley *et al.*;
- e. amend Water Right Application No. 31371 to limit diversions from the Santa Ana River to a maximum of 39,600 afy, which diversions would be in addition to diversions under License Nos. 2831 and 2832;
- f. agree to limit the spreading of all water diverted from the Santa Ana River and/or Mill Creek (including water diverted under License Nos. 2831 and 2832, Application No. 31371, and any claims of pre-1914 appropriative rights or riparian rights) so as to conform with the requirements of an annual groundwater management plan to be developed by Valley District and Western after consultation with the Conservation District and Bear Valley *et al.* (see below);
- g. agree that any extraction, sale or transfer of water spread under its water rights or under the water rights of others within the San Bernardino Basin Area would only be undertaken pursuant to the terms of the Cooperative Water Project agreement;
- h. have no right to extract, sell, or transfer water spread under its water rights outside the San Bernardino Basin Area, save with the prior written approval of Valley District and Western; and
- i. not waive any claims to riparian or pre-1914 appropriative water rights to divert water from the Santa Ana River or Mill Creek.

2. Valley District and Western would:

- a. consult with Conservation District (in the same fashion we consult with Bear Valley *et al.*) in the development of an annual groundwater management plan for the SBBA (see below), *provided* that Valley District and/or Western shall have a veto over the groundwater management plan for the purpose of ensuring that the groundwater management plan allows for maintaining the safe yield of the San Bernardino Basin Area and to meet their respective obligations in the Colton,

Riverside North and Riverside South Basins in accordance with the 1969 *Western Judgment*, and *provided further* that until the final groundwater model being developed as part of the San Bernardino Consent Decree process is completed, the Parties shall develop an interim groundwater management plan using existing knowledge and the existing Valley District/Western groundwater model;

- b. attempt in the annual groundwater management plan simultaneously to satisfy several objectives:
 - (1) maximize the quantity of water spread each year at the Santa Ana River spreading grounds,
 - (2) establish and maintain a minimum 50-foot depth to groundwater in the Pressure Zone,
 - (3) maintain groundwater levels in the Forebay Area within 10 feet of the levels that would have occurred in the absence of the project, and
 - (4) otherwise avoid significant impacts on the environment;

- c. subject to the Conservation District's agreement to comply with the annual groundwater management plan:
 - (1) withdraw our protest of the Conservation District's application as revised per paragraph 1(e) above and not object to diversions made pursuant to a permit issued for that application;
 - (2) support that application as revised per paragraph 1(e) above before the SWRCB and other regulatory agencies;
 - (3) not object to diversions made under the Conservation District's License Nos. 2831 and 2832, which diversions would be senior to any diversion of water by Valley District and Western under Water Right Application Nos. 31165 and 31370;
 - (4) support changing the period of diversion of the Conservation District's licenses so as to permit diversions under those licenses on a year-round basis;

x

- 3. All Parties would agree to the goal of coordinating the annual groundwater management plans developed by Valley District and Western under the Accord with the groundwater management program that is being developed by a number of parties (including Valley District and Western) to implement the consent decree in *City of San Bernardino v. United States*.

4. All Parties agree that all spreading will be as described in the groundwater management plan for that year and no spreading would take place without being authorized by the groundwater management plan. If there are opportunities for spreading at the Santa Ana River spreading grounds early in the water year (e.g., October through December) before the Parties can complete the groundwater management plan for that year, the Conservation District could spread the lesser of: (i) the average annual quantity spread during the 1934-35 to 1959-60 Base Period of the *Western* Judgment (4,941 afy) less any new spreading by Bear Valley *et al.* which was not being done during the Base Period or (ii) a quantity less than 4,941 af developed by the Western-San Bernardino Watermaster in its best professional judgment.
5. The priority of use of water would be as follows:
 - a. Conservation District License Nos. 2831 and 2832 would have first priority.
 - b. Valley District/Western Application No. 31165 would have second priority.
 - c. Conservation District Application No. 31371 would have third priority.
 - d. Valley District/Western Application No. 31370 would have fourth priority.
 - e. If the water management plan for that year calls for spreading in the SAR spreading grounds beyond the 10,400 af in Licenses 2831 and 2832, Valley District/Western will step back and allow Conservation District to divert up to 39,600 afy under its new permit for spreading at the SAR spreading grounds in accordance with the water management plan.
 - f. All spreading would be as described in the water management plan for that year and no spreading would take place without being authorized by the water management plan.
6. No Party's participation in the groundwater management plan's development, or agreement to operate under it, can be used by any Party to allege any forfeiture of any claimed water right.

Groundwater Management Plan Process

Paragraph 4 of the Seven Oaks Accord provides as follows:

Groundwater Spreading Program. Applicants, after consultation with Water Users, shall develop and manage a groundwater spreading program that is intended to maintain groundwater levels at the wells specified in Exhibit G at relatively constant levels, in spite of the inevitable fluctuations due to hydrologic variation. The groundwater spreading program shall identify target water level ranges in the specified wells and shall be subject to the requirement that such spreading not worsen the problem of high groundwater levels in the Pressure Zone. The determination of whether a particular action will worsen groundwater levels in the Pressure Zone shall be made using the integrated surface and groundwater models used by Applicants in the environmental impact report for the Applications, as those models may be refined in the future.

The key word in this paragraph is the word "consultation" in the first sentence. Although the Seven Oaks Accord doesn't describe the process of consultation in detail, here's how we intend to consult with the Water Users (and Conservation District if we reach a settlement) in developing the annual management plan. Obviously, this process will change over time as our agencies collectively gain experience in managing the SBBA.

1. We intend to convene one or more meeting(s) of Valley District, Western, the Water Users and Conservation District no later than each October 1 to share information about the status of the SBBA and to develop a shared idea of how much water could be recharged in the event of a dry year, a normal year, or a wet year. These discussions would be like those that led to the interim spreading agreement this past fall.

2. By each October 15, Valley District and Western would develop a preliminary spreading plan for that water year using the SAIC/Geosciences model, as it may be refined over time. The plan would consider dry, normal and wet year scenarios and would attempt to identify spreading strategies for each year type. Valley District and Western would then circulate that preliminary spreading plan to all of the signatories of the revised Seven Oaks Accord for comments and refinements. It is in all of our collective interest to make the plan as effective as possible so Valley District and Western will be looking for any additional information from the Water Users or the Conservation District that can achieve our goals of keeping the SBBA as full as possible without causing high groundwater or other adverse environmental effects.

3. Based on comments from the Water Users and the Conservation District, Valley District and Western would issue a draft management plan by each November 15.

4. The parties to the Seven Oaks Accord would vote on whether or not to adopt the draft management plan by each December 1. The management plan would be adopted if it were approved by a two-thirds vote of a quorum of the parties to the Accord, provided that both Valley District and Western must approve any management plan. In other words, if the Conservation District were to be a party to the Accord, approval of an annual management plan

would require a minimum of four votes (if only five parties were in attendance) or a maximum of six votes (if every party attended).

5. If the parties are not able to adopt the draft management plan by each December 1, they would work cooperatively address any concerns and develop a revised proposal as soon as possible. If the parties cannot develop a proposal that receives support from two-thirds of a quorum by each January 1, the parties would implement any proposal that is approved by a majority vote of a quorum of the parties to the Accord, again provided that both Valley District and Western must approve any management plan. In other words, if the Conservation District were to be a party to the Accord, approval of an annual management plan after each January 1 would require a minimum of three votes (if only five parties were in attendance) or a maximum of five votes (if every party attended).

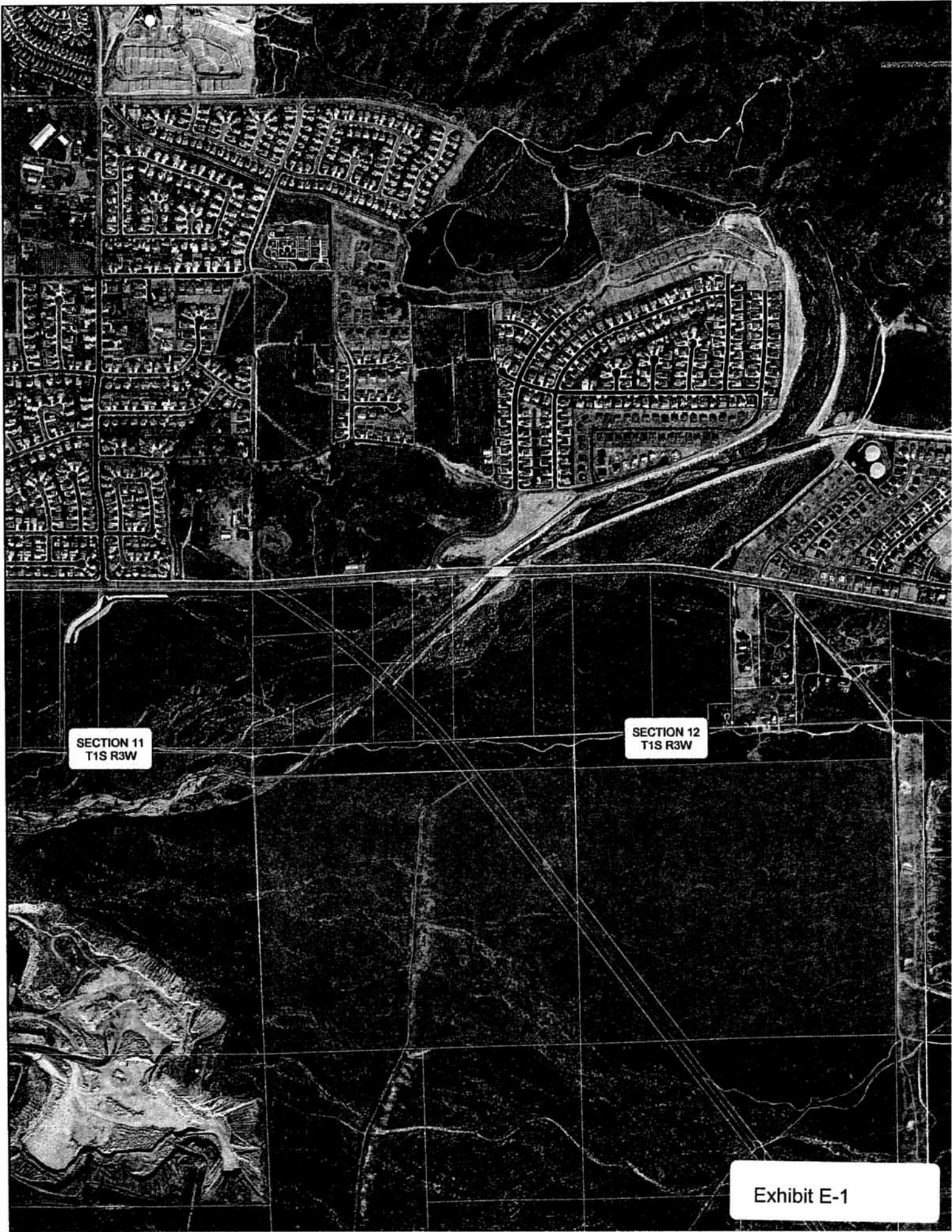
6. If spreading is possible before the date on which the parties approve an annual groundwater management plan, Valley District and Western would consult with our partners on a real-time basis and use our best professional judgment to direct the spreading of water in a manner that advances the goals of the annual management plan (see paragraph 2(b)). No party would spread water without Valley District and Western's prior consent.



EXHIBIT E

Exhibit E-1	Exhibit E-3	Exhibit E-5
Exhibit E-2	Exhibit E-4	Exhibit E-6

EXHIBIT E



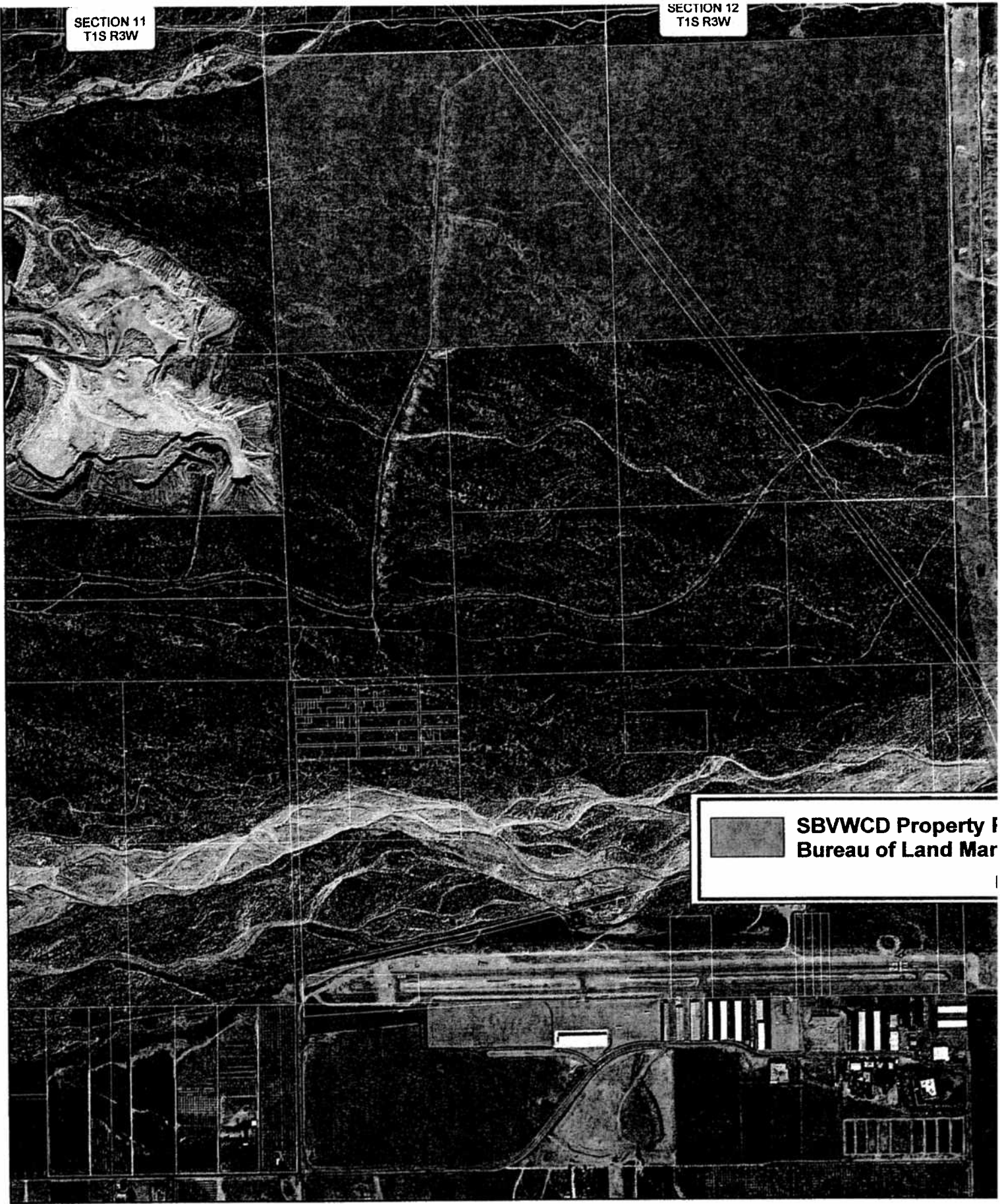
SECTION 11
T1S R3W

SECTION 12
T1S R3W

Exhibit E-1

SECTION 11
T1S R3W

SECTION 12
T1S R3W



SBVWCD Property
Bureau of Land Management

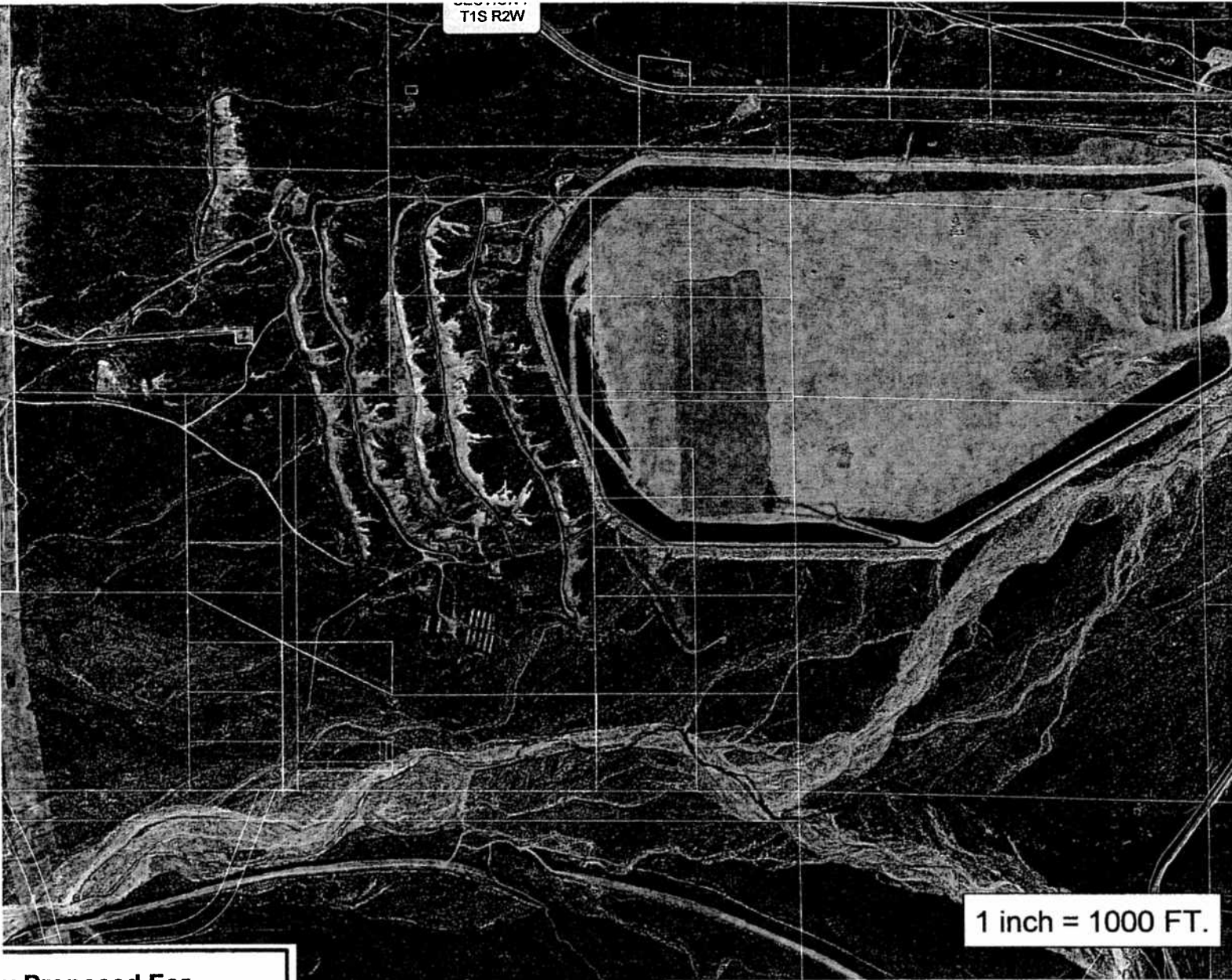


SECTION 7
T1S R2W

2

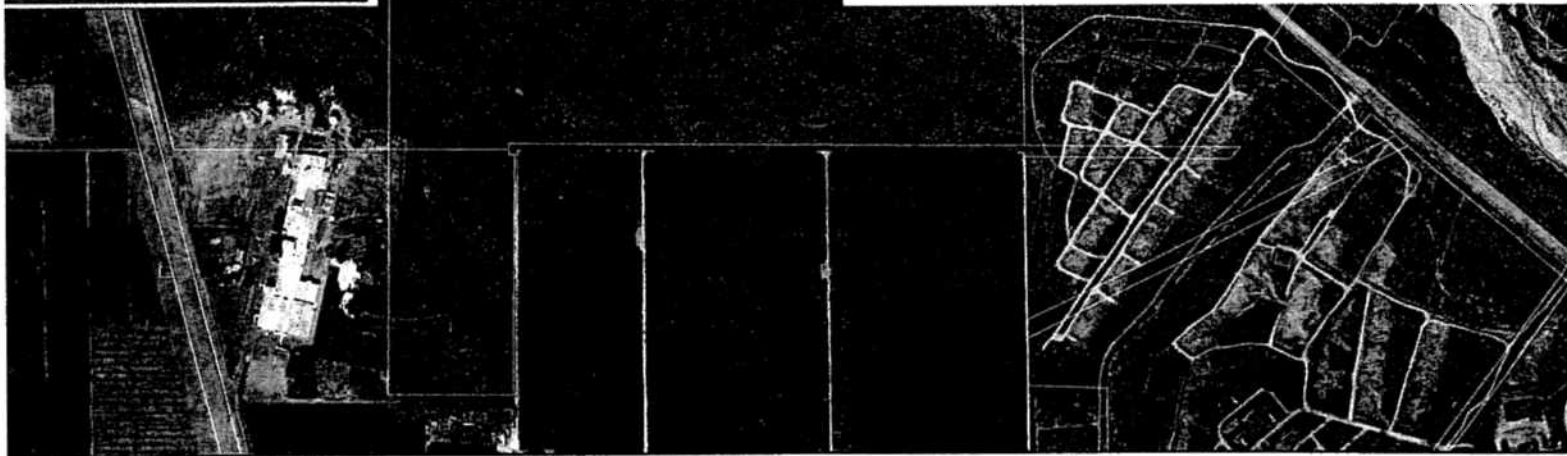
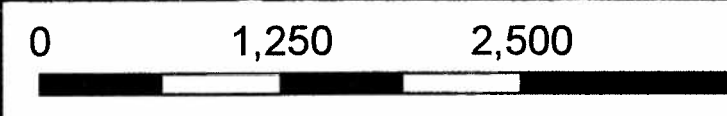
Exhibit E-3

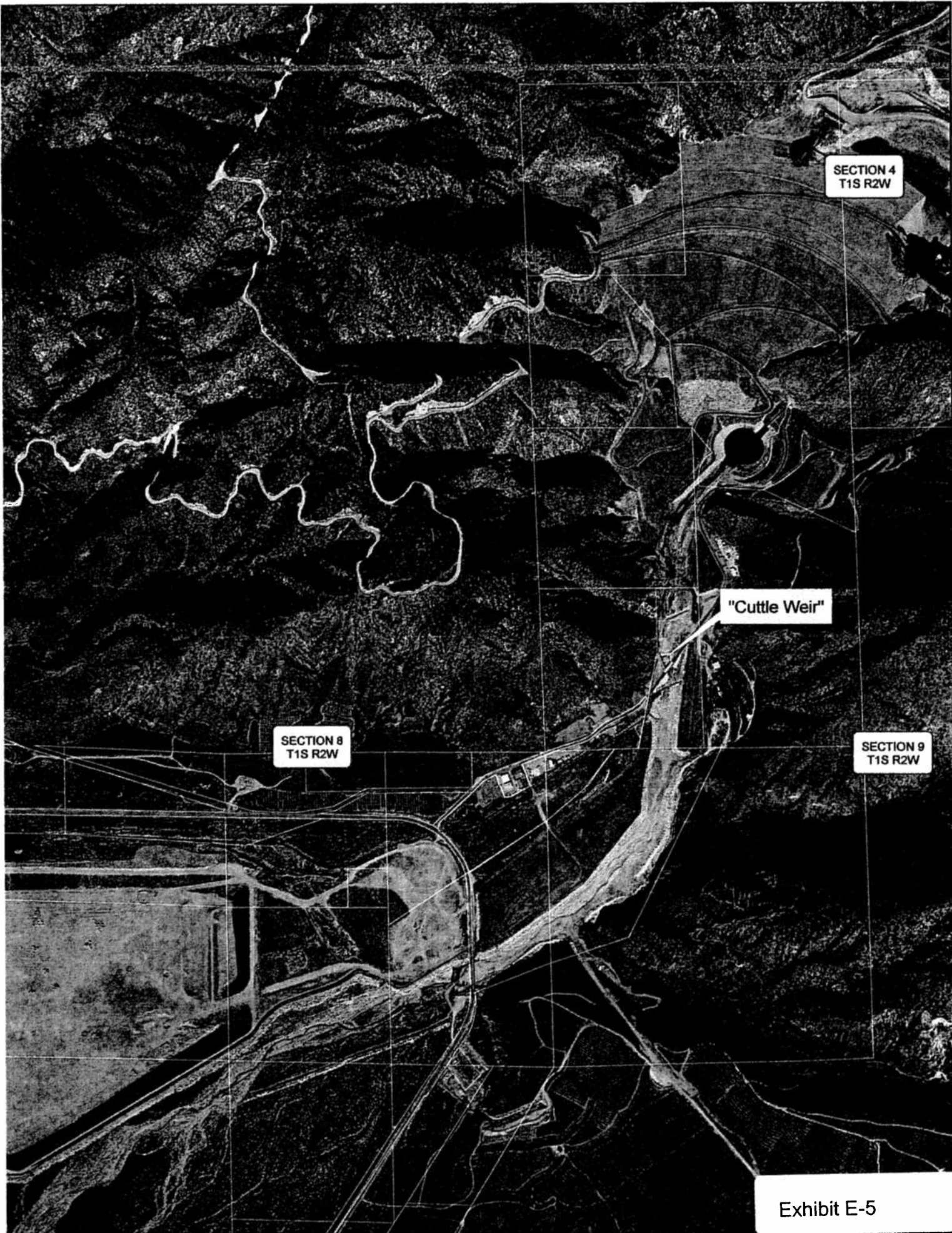
SECTION
T1S R2W



1 inch = 1000 FT.

**y Proposed For
lanagement Exchange**
Data last revised: 10/23/06





SECTION 4
T1S R2W

SECTION 8
T1S R2W

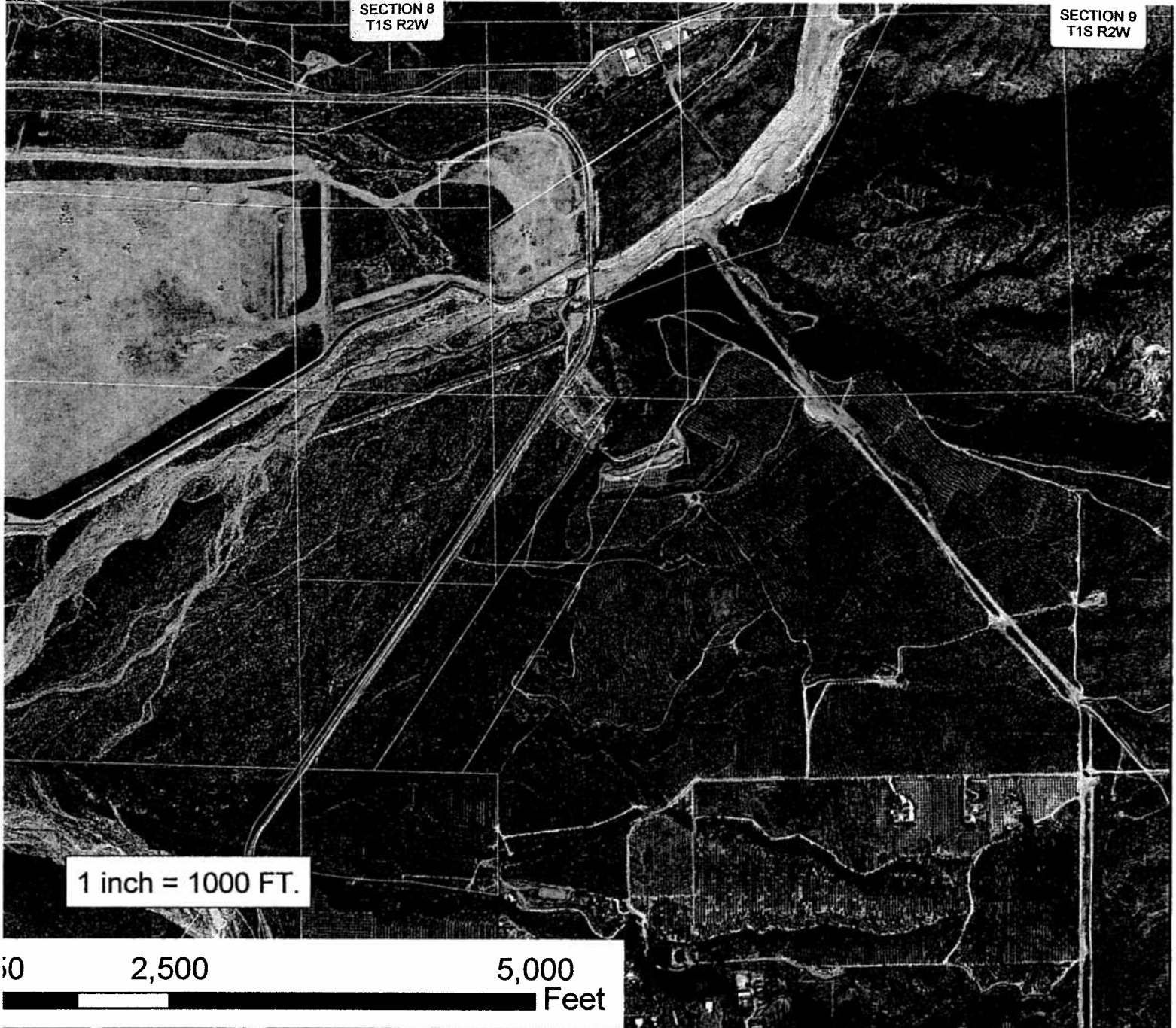
SECTION 9
T1S R2W

"Cuttle Weir"

Exhibit E-5

SECTION 8
T1S R2W

SECTION 9
T1S R2W



1 inch = 1000 FT.

0 2,500 5,000
Feet



EXHIBIT "E"

Exhibit E-6