DEPARTMENT OF THE ARMY
915 Wilshire Boulevard
Los Angeles, California 90017

February 26, 2010

DOCKET	
09-AFC-5	
DATE	FEB 26 2010
RECD.	MAR 04 2010

REPLY TO
ATTENTION OF
Office of the Chief
Regulatory Division

Joshua Zinn
AECOM
1420 Kettner Boulevard, Suite 500
San Diego, California 92101

SUBJECT: Determination Regarding Requirement for Department of the Army Permit

Dear Mr. Zinn:

Reference is made to your request (File No. SPL-2009-00928-SME) dated August 26, 2009, for clarification on whether a Department of the Army Permit is required for the Abengoa Mojave Solar Energy Project (35.0173, -117.3058) located near the community of Lockhart, San Bernardino County, California.

As you may know, the Corps' evaluation process for determining whether or not a Department of the Army permit is needed involves two tests. If both tests are met, then a permit is required. The first test determines whether or not the proposed project is located in a water of the United States (i.e., it is within the Corps' geographic jurisdiction). The second test determines whether or not the proposed project is a regulated activity under Section 10 of the River and Harbor Act or Section 404 of the Clean Water Act. As part of our evaluation process, we have made the determination below.

Geographic Jurisdiction:

Based on the approved jurisdictional determination dated February 26, 2010, we have determined the Abengoa Mojave Solar Energy project site does not contain waters of the United States pursuant to 33 C.F.R. §325.9.

Activity:

Based on the information you have provided, we have determined the proposed work, were it to occur in waters of the U.S. (see above, *"Geographic Jurisdiction"*), would involve a discharge of dredged or fill material and therefore, would be regulated under Section 404 of the Clean Water Act if the activity is performed in the manner described in your request.

Requirement for a Department of the Army Permit:

Based on the discussion above, we have determined your proposed project is not subject to our jurisdiction under Section 404 of the Clean Water Act and a Section 404 permit would not be required from our office if the activity is performed in the manner described.

Notwithstanding our determination above, your proposed project may be regulated under other Federal, State, and local laws.

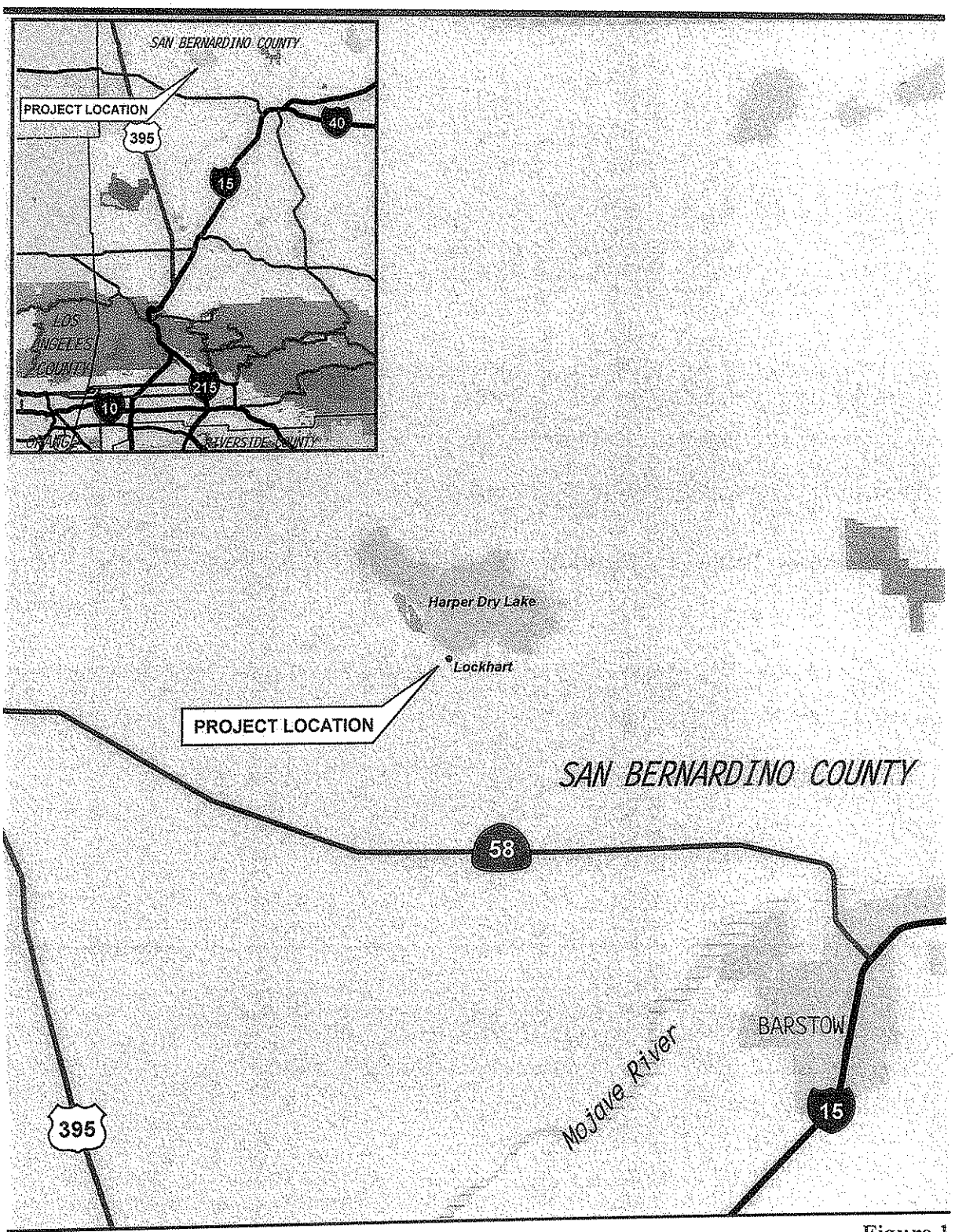
If you have any questions, please contact Stephen Estes at 213-452-3660 or via e-mail at Stephen.M.Estes@usace.army.mil.

Please be advised that you can now comment on your experience with Regulatory Division by accessing the Corps web-based customer survey form at: http://per2.nwp.usace.army.mil/survey.html.

Sincerely,

Mark Durham
Chief, South Coast Branch
Regulatory Division

Enclosures

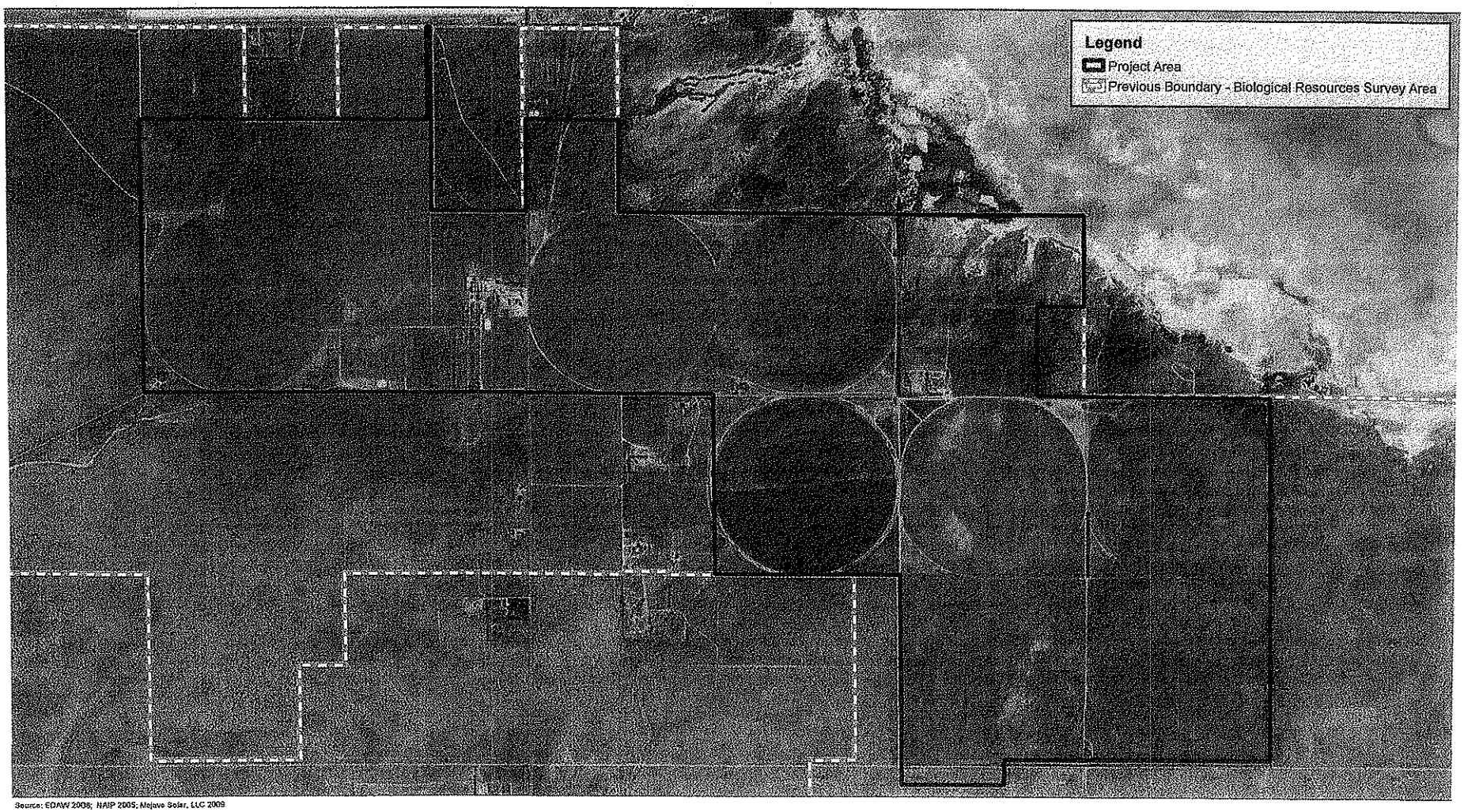


Source: Thomas Guide, 2007

4.5 2.25 0 4.5 Miles

Approximate Scale: 1 inch = 4.5 miles

Figure 1
Regional Map



Source: EDAW 2008; NAIP 2005; Mojave Solar, LLC 2009

1,375 687.5 0 1,375 Feet

Scale: 1 = 16,500; 1 inch = 1,375 feet

Figure 3
Project Footprint

Path: P:\2008\08080191 Harper Lake Abengoa AFC\6.0 GIS\6.2 Project Directory\6.2.5 Layout\BIO\WETLANDS\JDR_figures\fig 3_Project_footprint.mxd, 06/19/09, Angello

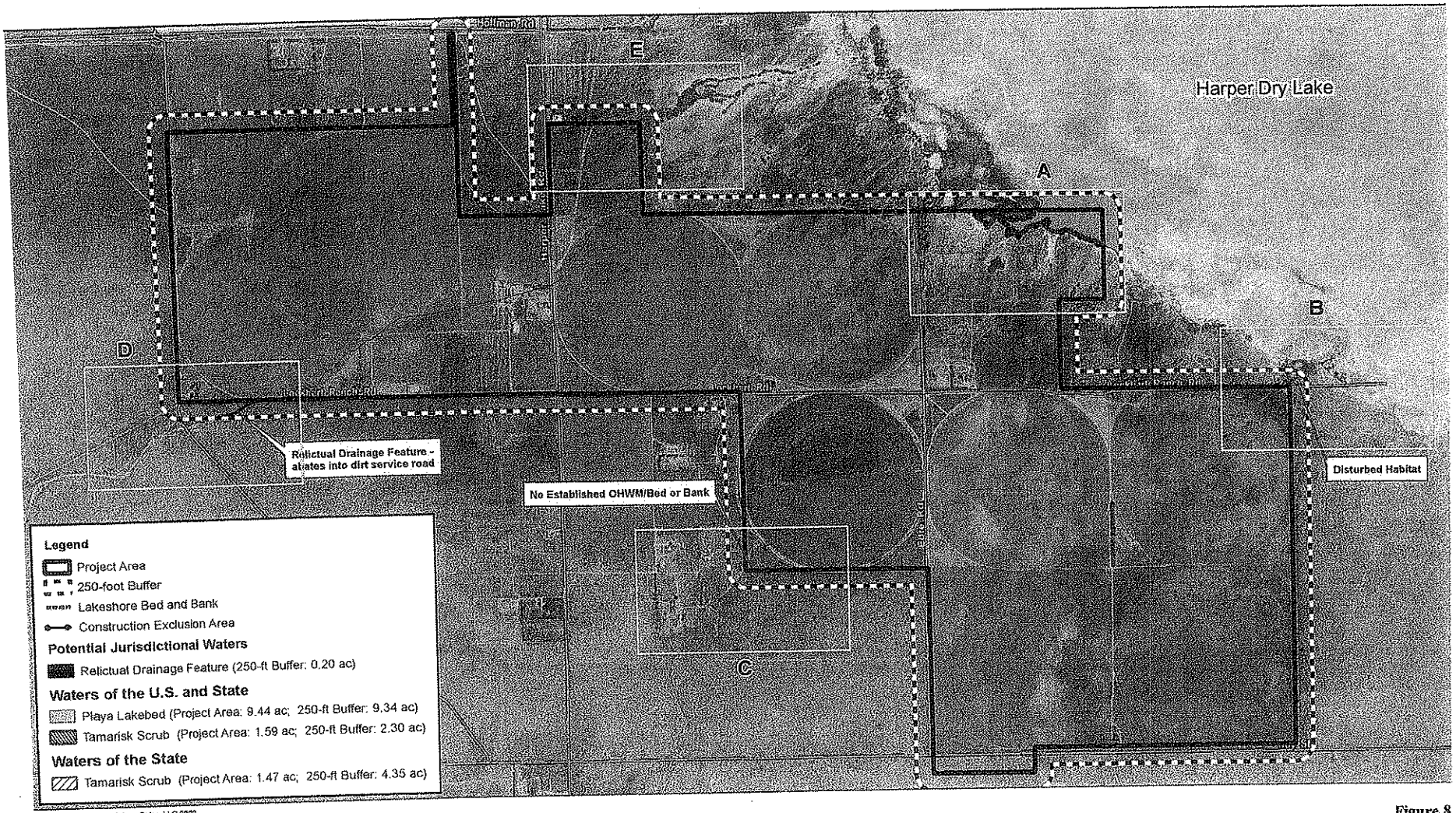


Figure 8
Potential Jurisdictional Waters of the U.S. and State