

Great Basin Unified Air Pollution Control District

2013 Amendment to the Owens Valley PM₁₀ SIP

Board Order 130916-01

Exhibit 4: Phase 7a and Keeler Dunes Settlement Terms
dated June 25, 2013 (“Terms Sheet”)

**GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT
AND
LOS ANGELES DEPARTMENT OF WATER AND POWER**

**PHASE 7a AND KEELER DUNES
SETTLEMENT TERMS
JUNE 25, 2013**

The following constitutes the Settlement Terms (the “Terms”) for the Phase 7a Stipulated Order for Abatement (SOA) and Keeler Dunes issues between the Great Basin Governing Board (GB) and the Los Angeles Department of Water and Power (LADWP):

I. MODIFICATION OF SOA

A. GB and LADWP agree that GB shall modify the Phase 7a SOA to do the following:

1. Deadline Extensions

- a) Existing December 31, 2013 deadline for all infrastructure for BACM and compliant operation (other than Managed Vegetation Compliance) to be installed and fully operational extended to December 31, 2015.
- b) Existing December 31, 2015 deadline for Managed Vegetation Controls (fully compliant managed vegetation cover) extended to December 31, 2017.

2. Assumptions for Extension of Deadlines

- a) Timely Availability of necessary leases from State Lands and of necessary permits from other agencies

- b) Acceptance by GB of 328 acres of Eligible Cultural Resource (ECR) areas. ECR areas are defined as California Register of Historical Resources (CRHR)-eligible areas plus necessary buffer areas and are to be removed from Phase 7a and placed into Phase 7b (see below) and potentially the subject of a new future Board order. A confidential map of the existing 328-acre ECR areas shall be attached to the amended SOA.
- c) Force majeure process of original SOA to be followed for newly discovered potential ECRs.

B. Creation of Phase 7b

1. Phase 7b would be created for the treatment of the 328 acres of ECR areas plus any newly discovered cultural resources within Phase 7a that are determined by LADWP's state certified archaeologist to be CRHR-eligible and necessary buffer areas (the "Additional Phase 7b Areas") and whose determination is confirmed by a second, state certified archaeologist mutually agreeable to GB, LADWP and State Lands (the "Second Archaeologist").
2. Initially Phase 7b would include 328 acres of previously identified ECR areas from Phase 7a (the "Initial Phase 7b Areas").
3. Any areas in Phase 7a (beyond the Initial Phase 7b Areas) where ECRs are located during Phase 7a construction shall be handled as part of Phase 7b (the "Additional Phase 7b Areas"). Promptly upon discovery of any cultural resources during the Phase 7a construction process, LADWP shall promptly notify GB of, and confer with GB about, such discovery, and LADWP's state certified archeologist shall fulfill their legal obligations relative to assessing and making recommendations for cultural resources. LADWP's state certified archaeologist shall be responsible for evaluating whether any newly discovered cultural resource areas within Phase 7a are CRHR-eligible, and if so, the additional buffer areas necessary to address disturbance of the

CRHR eligible areas; such evaluations shall be confirmed by the Second Archaeologist. Newly identified CRHR eligible areas and necessary buffer areas shall become ECR areas and become part of the Additional Phase 7b Areas.

4. Cultural Resource Task Force

- a) The amended SOA will establish a Cultural Resource Task Force (CRTF). The CRTF will be an advisory group consisting of LADWP, GB, State Lands, State Historical Preservation Office, and Local Tribal Representatives. The CRTF shall be able to draw upon outside resources and experts, as needed, to aid the CRTF's process. LADWP shall be responsible for paying the reasonable costs of the CRTF, including reimbursements for travel expenses of CRTF members.
- b) The CRTF will initially be charged to make recommendations to GB and LADWP as to the best course of action and timing for the treatment of the Initial Phase 7b Areas. Such treatment could include whether particular areas should be permanently avoided, subject to Phase III cultural recovery or subject to some less intensive form of cultural recovery to protect cultural resources in the Initial Phase 7b Areas. The CRTF will make non-binding recommendations to the GB Governing Board and LADWP regarding treatment of the Initial Phase 7b Areas on or before December 31, 2014. LADWP and GB shall commit to form the CRTF and host its initial meeting within ninety (90) days after the effective date of the amended SOA.
- c) The CRTF shall also make non-binding recommendations to GB and LADWP with respect to the treatment of ECRs that may become part of the Additional Phase 7b Areas. After making its recommendations for the Initial Phase 7b Areas, the CRTF shall remain in existence to make recommendations for any Additional Phase 7b Areas that may be designated ECRs by LADWP's state certified archaeologist and confirmed by the Second Archaeologist.

- d) If after considering the non-binding recommendations of the CRTF, GB exercises its discretion to order LADWP to install dust controls in either the Initial Phase 7b Areas or in the Additional Phase 7b Areas, GB will issue a new Board order or orders after receiving input from LADWP and will determine if any SIP amendment is necessary. The new Board order or orders shall include control completion deadlines that take into account project circumstances, including but not limited to, recovery and additional environmental work necessary to complete the project at issue. The new Board order or orders shall recognize that the construction period shall be subject to all time-extensions-for-cause provisions of Paragraphs 5 and 6 of the SOA.
- e) Like the SOA for Phase 7a, any future order or orders issued by GB pertaining to Phase 7b will give due consideration to the shared goals of GB and LADWP to control air pollution and decrease the use of water for dust control at Owens Lake. In making its recommendations, the CRTF will also give due consideration to GB's and LADWP's shared water saving and air pollution control goals.
- f) The CRTF will be advisory in nature only, and GB and LADWP will retain final determination as to the treatment of ECR areas. GB reserves the right to issue a future order or orders requiring LADWP to install dust controls on Phase 7b areas and LADWP reserves the right to contest any such order.
- g) Permanent avoidance of any portion of the Phase 7b Areas will be considered by GB, which, upon approval, shall amend the 2008 SIP and Board Order 080128-01 in order to get USEPA approval.

C. No Fines

- 1. GB shall not fine, issue fees or impose any other type of penalty upon LADWP with respect to any areas of Phase 7a, provided that the Phase 7a dust controls are put into place within the time frames set forth in Section I.A.1.

2. GB shall not fine LADWP for any areas in the Initial Phase 7b Areas and the Additional Phase 7b Areas pursuant to the SOA and this agreement.

D. Modification of SOA

1. The amended SOA shall clarify that the discovery of any cultural resources that are determined by LADWP's state-certified archeologist to be potentially CRHR-eligible shall be included in the SOA's existing time-extensions-for-cause, as set forth in SOA Paragraphs 5 and 6.
2. The amended SOA shall reiterate that GB and LADWP shall make every effort to develop, approve and deploy high-confidence waterless dust control measures in all areas where dust controls are ordered.
3. The amended SOA shall state that the modification of the SOA by GB and LADWP shall not be construed as a waiver by either party of any rights, remedies, legal theories or positions that either party may choose to assert in any hearing, proceeding, tribunal or action now or in the future except with respect to the particular subject matter contained in the amended SOA and the Keeler and Other Dunes Release".¹
4. The effective date of the amended SOA shall be the date upon which the necessary decision makers of the City of Los Angeles and the GB Governing Board agree to enter into this agreement to modify the SOA.

E. Clarification on BACM

1. GB hereby approves Reduced Thickness Gravel BACM (2 inches of gravel with geotextile fabric underlay).

¹ LADWP disputes the legality of and does not agree to the Supplemental Control Requirements Determination (SCRD) process. GB asserts that LADWP agreed to the SCRD process in the original Phase 7a SOA and elsewhere, and the SCRD process is now the law. GB and LADWP have a continuing disagreement on this point.

2. GB hereby approves Brine Shallow Flooding BACM as a subcategory of Shallow Flooding BACM. GB and LADWP acknowledge and agree that the foregoing approval of Brine Shallow Flooding BACM shall not make LADWP liable for maintenance of the natural Brine Pool on Owens Lake. "Brine Pool" is defined as those areas below elevation 3,553.55 feet.
3. GB will commit to work with the LADWP on an accelerated testing schedules and BACM approval, if warranted, for Roughness Elements and Tillage in soil type areas where these controls can be applied. Within 30 days of the effective date of the amended SOA, GB and LADWP shall agree upon accelerated testing schedules for the candidate Roughness Elements and Tillage BACMs in soil types where these control can be applied. Said schedules will include consideration for BACM approval of these candidate measures by the GB Board within one year of completion of the schedules (within 13 months of the effective date of the amended SOA). If the accelerated testing does not result in approved BACM designation for the candidate measures, LADWP and the GB Board will jointly assess why the accelerated testing did not result in BACM approvals. GB and LADWP also will commit to work on accelerated testing schedules and BACM approvals for other forms of BACM.
4. GB will memorialize its approvals set forth in Sections I E. (1) and (2) and any future approvals pursuant to Section I E. (3) in formal GB board resolutions and orders. GB and LADWP will jointly appeal to State Lands to approve use of new BACMs promptly upon their approval by GB and, with respect to the approvals set forth in Sections I E. (1) and (2) within 90 days of the effective date of the amended SOA.

II. KEELER DUNES

A. Keeler Dunes Dust Control Project

1. LADWP shall provide \$10 Million to GB as a public benefit contribution to and will support GB's "Keeler Project" (as defined herein below) to control PM10 emissions from the Keeler Dunes. LADWP shall tender the \$10 Million in a single payment to GB within 90 days after the effective date of the amended SOA and the following two actions are completed: 1) delivery to LADWP of the "Keeler and Other Dunes Release" (defined herein below) and 2) the submittal to the California Air Resources Board (CARB) as described in Paragraph II.B.1.c., below. The "Keeler and Other Dunes Release" shall not be effective until GB receives the \$10 Million payment.
2. GB shall use the funds for environmental impact analysis, design, permitting, construction, operation, maintenance, management, monitoring and directly related activities for a dust emission control project at Keeler Dunes (the "Keeler Project"). No funds shall be used for the purpose of attorney fees, public affairs or governmental relations (collectively, "Public Affairs") or contractors or subcontractors for Public Affairs. The Keeler Project includes all those portions of the Keeler Dunes owned by LADWP and BLM. GB shall have exclusive authority over, and responsibility for, the Keeler Project. LADWP shall have no responsibility for the design, permitting, construction, operation, maintenance, management, monitoring and other activities directly and exclusively related to the Keeler Project for as long as dust controls are required.
3. Upon delivery of the "Keeler and Other Dunes Release" (defined herein below) and the SIP and Board Order 080128-01 amendment submittal to the CARB as described in Paragraph II.B.1.c., below, LADWP will immediately provide GB with access to its property in the Keeler Dunes area in order to complete environmental impact analyses and for all design, permitting, construction, operation, maintenance, management, monitoring and activities directly and exclusively related to the Keeler

Project. So long as such access is provided by LADWP, GB shall indemnify in perpetuity, defend and hold LADWP (and the City of LA) harmless for personal injuries caused by the negligence or willful misconduct of GB with respect to all activities undertaken by GB and its employees, agents and contractors on LADWP's property and GB shall promptly repair any damage to LADWP's property caused by GB's activities on LADWP's property except that GB shall not be required to repair any alteration of the property that is part of or related to the design or implementation of the dust control measures for the Keeler Project. Any dust monitoring undertaken by GB on LADWP's Keeler Dunes property shall exclusively be for the Keeler Project and shall not be used for any other purpose.

4. LADWP, at its sole cost and expense, shall have the right (without obligation) to audit GB's books and records on an annual basis to verify that the \$10 Million contributed by LADWP has been exclusively used to fund the Keeler Project in accordance with the amended SOA, the amended SIP, the Keeler and Other Dunes Release and any other document memorializing the Terms, and for no other purpose. GB shall fully co-operate with any annual audit of the Keeler Project initiated by LADWP.

B. Release of LADWP/LA City for Keeler and Other Dunes Areas

1. Upon the effective date of the amended SOA, GB shall deliver to LADWP a release (the "Keeler and Other Dunes Areas Release") as follows:
 - a) Release for Keeler Dunes:

GB forever releases LADWP from any and all liability under any and all federal, state and local laws that GB can enforce and settle, including but not limited to the Health and Safety Code, those portions of the SIP that can be enforced by GB, and fugitive dust emissions rules, for dust emissions, regardless of origin, from the Keeler Dunes, including but not limited to portions of Keeler Dunes owned by LADWP. GB forever agrees not to request, encourage or join in an enforcement

action by any other agency against LADWP related to dust emissions, regardless of origin, from the Keeler Dunes, including but not limited to portions of the Keeler Dunes owned by LADWP. A map defining the geographical boundaries of the Keeler Dunes is attached and incorporated into this agreement.

- b) Release for Swansea and Olancha Dunes (collectively these dunes are defined as the Other Dunes Areas):

GB forever releases LADWP from any and all liability under any and all federal, state and local laws that GB can enforce and settle, including but not limited to the Health and Safety Code, those portions of the SIP that can be enforced by GB, and fugitive dust emissions rules, for dust emissions, regardless of origin, from the Other Dunes Areas in the vicinity of Owens Lake, including but not limited to portions of such dunes that may be owned by LADWP. GB forever agrees not to request, encourage or join in an enforcement action by any other agency against LADWP related to dust emissions, regardless of origin, from the Other Dunes Areas in the vicinity of Owens Lake. This agreement does not release LADWP from liability for dust emissions resulting from any future groundwater pumping by LADWP at or below the 3600-foot contour in the Owens Lake area. Maps defining the geographical boundaries of the Other Dunes Areas in the vicinity of Owens Lake are attached and incorporated into this agreement.

- c) SIP and Board Order Amendment:

Great Basin shall amend the SIP and Board Order 080128-01 consistent with the terms of this agreement and the “Keeler and Other Dunes Areas Release” and shall request the USEPA and CARB to approve the amended SIP.

2. LADWP reserves the right to contest and defend any alleged violations not covered by the releases herein, including but not limited to the right to contest and defend any alleged violations of Rule 401, or alleged violations of H&S 42316 below the 3600-foot elevation and above the 3600-foot elevation in those areas outside the Keeler

Dunes and Other Dunes Areas. GB reserves the right to assert that any such defenses are barred or otherwise not legally supported.

3. After the date of this agreement, GB shall hold no hearings regarding LADWP's liability/responsibility for dust emissions from the Keeler Dunes or from the Other Dunes Areas.

III. GENERAL SETTLEMENT CONDITIONS

- A. All Settlements and other matters contained in the amended SOA and Keeler Release shall be subject to final approval by LADWP Board of Commissioners and all other necessary decision makers at the City of Los Angeles.
- B. All Settlements and other matters contained in the amended SOA and Keeler Release shall be subject to approval of GB Board and shall be memorialized in GB Board modification of SOA and appropriate GB resolutions, the 2008 SIP, if required, and Board orders.
- C. GB and LADWP shall memorialize the Terms in formal settlement documents, including the amended SOA, the Keeler Release and the Other Dunes Area Release, within 30 days after approval of the Terms by the GB Board and by the LADWP Board of Commissioners and all other necessary decision makers at the City of Los Angeles. Prior to such approvals and until such time that public disclosure is mandated by law, GB and LADWP shall not disclose the Terms or the existence and content of the SOA Mediation and shall keep the Terms confidential.
- D. Once the Terms are fully approved by the GB Board and by the LADWP Board of Commissioners and all other necessary decision makers at the City of Los Angeles, GB and LADWP shall issue a joint press release to announce the successful conclusion of the SOA Mediation, the Terms, the amended SOA and the Keeler Release.

- E. The parties to the SOA Mediation shall each execute a copy of this document to evidence that it contains the final and complete statement of the Terms resulting from the SOA Mediation that will be submitted for approval to the LADWP Board of Commissioners and all other necessary decision makers at the City of Los Angeles and to the GB Board.
- F. Prior to the public announcement of this Agreement, LADWP and GB will develop a mutually agreeable joint communication, which announces and explains this Agreement. The Parties agree not to disclose or divulge the content and substance of the Settlement Terms to any third parties, including, but not limited to members of the press or media, unless and until LADWP and the District have approved a final settlement. The confidentiality requirements do not extend to the undersigned participants' discussions with their respective party's legal counsel and governing boards, regarding the settlement meetings.

In witness thereof, the parties hereto have set their hands to this agreement on June 27, 2013.

Great Basin Unified
Air Pollution Control District

Los Angeles
Department of Water and Power

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

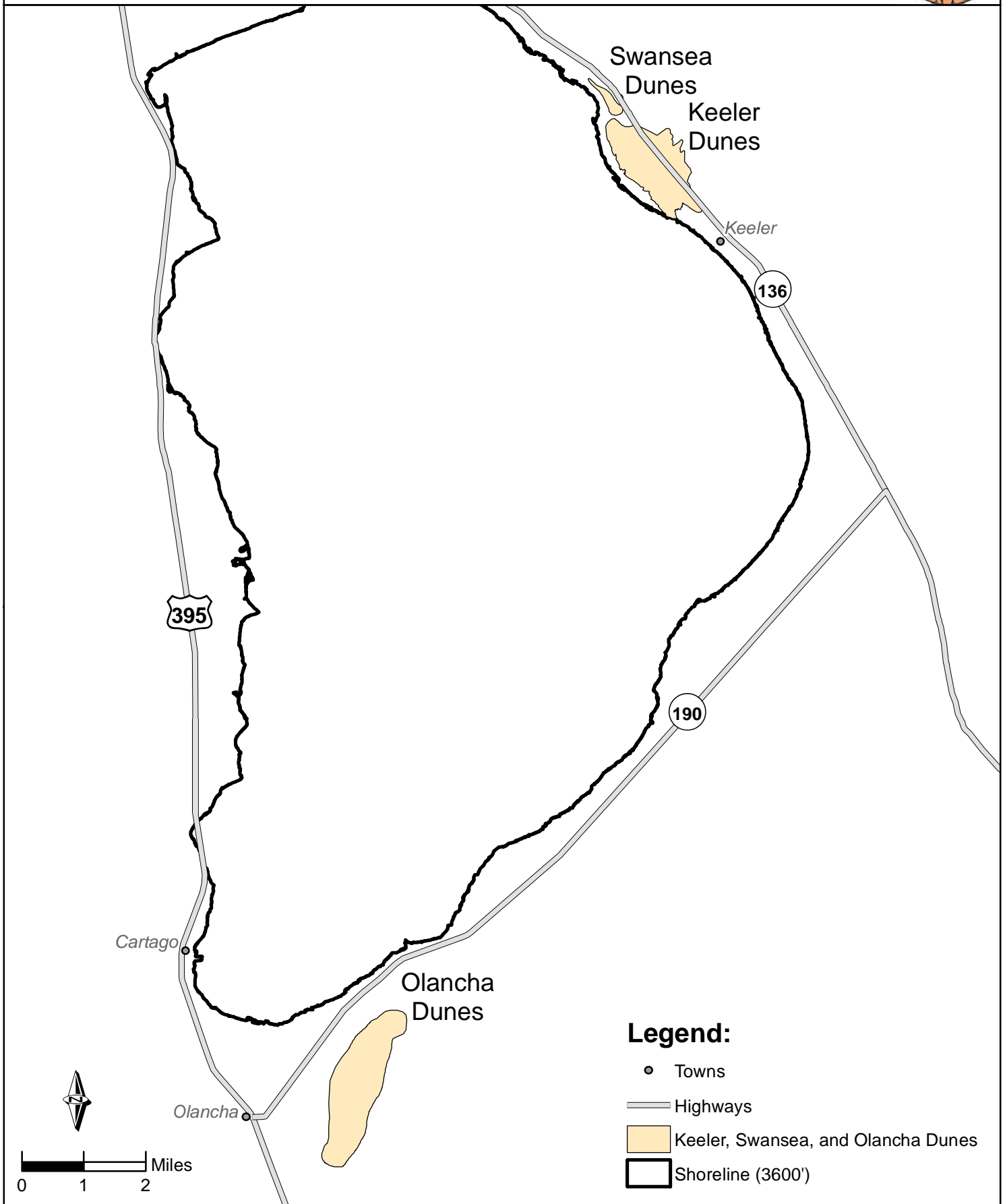
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Keeler, Swansea, and Olancha Dunes



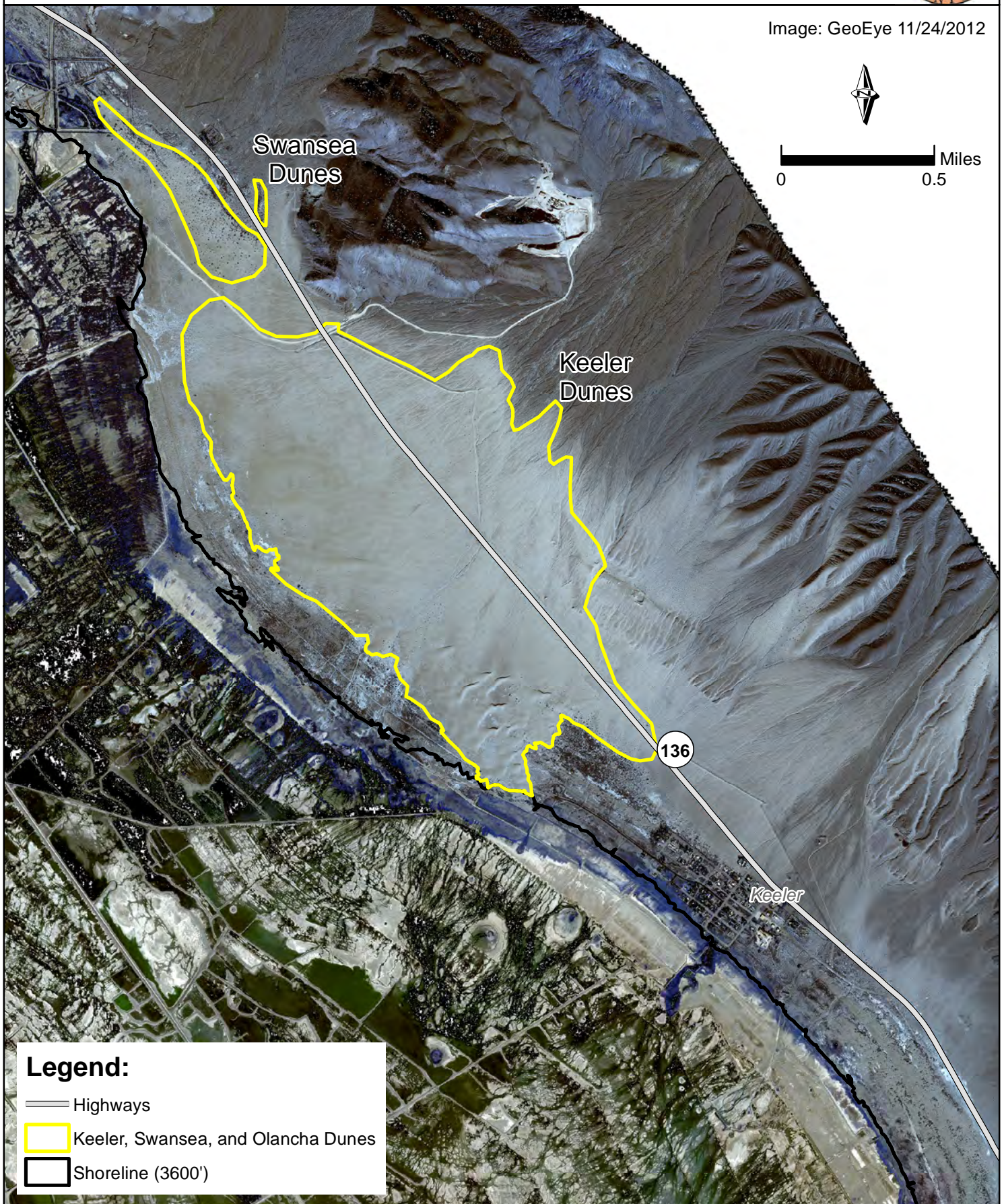


Keeler and Swansea Dunes - Detail

Image: GeoEye 11/24/2012



0 0.5 Miles



Legend:

- Highways
- Keeler, Swansea, and Olancho Dunes
- Shoreline (3600')



Olancha Dunes - Detail

