

**BEFORE THE GOVERNING BOARD OF THE
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT**

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| <p>In the Matter of</p> <p>THEODORE D. SCHADE AIR POLLUTION CONTROL OFFICER GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT,</p> <p style="text-align: center;">Petitioner,</p> <p style="text-align: center;">vs.</p> <p>CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER</p> <p style="text-align: center;">Respondent.</p> | <p>Order Number 110317-01</p> <p>FINDINGS AND DECISION OF GOVERNING BOARD UPON HEARING FOR STIPULATED ORDER FOR ABATEMENT</p> <p>Hearing Date: March 17, 2011 Location: Bishop, California</p> |
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FINDINGS AND DECISION OF THE GOVERNING BOARD

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2 A petition from the Great Basin Unified Air Pollution Control District’s Air Pollution

3 Control Officer for a Stipulated Order for Abatement (“Order”) was heard on March 17,

4 2011, pursuant to notice and in accordance with the provisions of California Health and

5 Safety Code Section 40823 and District Rule 811. Seven members of the District Governing

6 Board were present: Board Chair, Linda Arcularius, Board members Tom Sweeney, Henry

7 Veatch, Larry Johnston, Tim Hansen, Richard Cervantes and John Eastman. The District

8 Governing Board was represented by George Poppic of the California Air Resources Board.

9 Petitioner, Theodore D. Schade, the Air Pollution Control Officer (APCO), was represented

10 by Randy Keller, District Counsel. Respondent, the City of Los Angeles Department of

11 Water and Power, was represented by Michelle Lyman, Deputy City Attorney for the City of

1 Los Angeles. The public was given the opportunity to testify. The matter was submitted and
2 evidence received. The District Governing Board finds, concludes and orders as follows:

3 **FINDINGS OF FACT**

4 1. The Great Basin Unified Air Pollution Control District (hereinafter “District”)
5 is organized pursuant to Division 16, Part 3, Chapter 3 of the California Health and Safety
6 Code, and is the sole and exclusive agency with the responsibility for comprehensive air
7 pollution control and regulation in the Great Basin Valleys Air Basin (California’s Alpine,
8 Mono and Inyo Counties), including that area of southern Inyo County known as the Owens
9 Lake bed (Exhibit 1).

10 2. Respondent, the City of Los Angeles, acting by and through its Department of
11 Water and Power, is a municipal corporation organized under the Los Angeles City Charter
12 and the constitution and laws of the State of California, doing business within the jurisdiction
13 of the Great Basin Unified Air Pollution Control District. Respondent operates a municipal
14 water collection, distribution and aqueduct system in Inyo and Mono Counties for the
15 purpose of supplying water to the residents of the City of Los Angeles.

16 3. Respondent is subject to District Governing Board Order 080128-01 adopted
17 on January 28, 2008 (Exhibit 2). District Governing Board Order 080128-01 is the order
18 contained in both the *2008 Owens Valley PM₁₀ Planning Area Demonstration of Attainment*
19 *State Implementation Plan (2008 SIP)* and the *2010 PM₁₀ Maintenance Plan and*
20 *Redesignation Request for the Coso Junction Planning Area*. This order requires the
21 Respondent to take a number of actions by certain specified dates in order to timely control
22 the particulate matter air pollution (PM₁₀) emissions caused by its water production,
23 diversion, storage and conveyance activities.

1 4. Respondent is also subject to District Hearing Board Order GB09-06 (Exhibit
2 3). District Hearing Board Order GB09-06 is the order associated with a variance, granted to
3 the Respondent on September 25, 2009, that provided the Respondent additional time to
4 implement PM₁₀ controls on some areas of the Owens Lake bed originally ordered by District
5 Governing Board Order 080128-01.

6 5. District Governing Board Order 080128-01 required Respondent to install a
7 total of 13.2 square miles of additional PM₁₀ controls beyond the 29.8 square miles of PM₁₀
8 controls constructed prior to January 1, 2007. These 13.2 square miles are known as the
9 “Phase 7” areas.

10 6. Of the required 13.2 total square miles in Phase 7, Respondent implemented
11 9.6 square miles in compliance with District Governing Board Order 080128-01 and District
12 Hearing Board Order GB09-06 and there are 0.5 square miles known as the “Channel Area”
13 on which no representations regarding compliance status are made in this Order. These 10.1
14 square miles are not the subject of this Order.

15 7. However, within the 3.1 square-mile balance of the 13.2 square-mile Phase 7
16 areas, there are six sub-areas known collectively as “Phase 7a” where Respondent did not
17 implement dust control measures in compliance with District Governing Board Order
18 080128-01 and District Hearing Board Order GB09-06. For the Phase 7a areas, District
19 Governing Board Order 080128-01 required Respondent to implement any combination of
20 approved PM₁₀ controls known as Best Available Control Measures (“BACM”), which
21 consists of Shallow Flooding, Managed Vegetation and Gravel Blanket, or an experimental,
22 non-BACM PM₁₀ control measure known as “Moat and Row.”

1 8. Respondent had the legal option to select at its sole discretion any of the
2 methods of dust control described in Findings of Fact Paragraph 7 herein and was required to
3 secure all appropriate approvals and construct the controls by the deadline set forth in the
4 order and modified by the variance. The deadline set by District Governing Board Order
5 080128-01 for constructing controls on the Phase 7a project areas was originally April 1,
6 2010, if Respondent selected BACM controls, or October 1, 2009, if Respondent selected
7 Moat & Row controls.

8 9. Using District-, State- and Federally-approved air pollution modeling
9 techniques specifically developed for Owens Lake emissions (District Board Order
10 080128-01, Attachment B, “Supplemental Control Requirements Determination Procedure”),
11 for the period 2006 through 2010 the District determined that the Phase 7a areas emitted an
12 annual average of approximately 6,265 tons of excess PM₁₀. These excess emissions have
13 caused and contributed to violations of the state and federal 24-hour PM₁₀ standards.

14 10. All of the Phase 7a areas are on State of California public lands managed by
15 the California State Lands Commission (“CSLC”). Respondent is required to secure a lease
16 from the CSLC before it may proceed to conduct any dust control activities occurring on
17 state lands. The CSLC is not subject to District Governing Board Order 080128-01 and
18 District Hearing Board Order GB09-06 or any other current order requiring it to control PM₁₀
19 emissions from the areas of the dried bed of Owens Lake owned by the State of California
20 and managed by the CSLC.

21 11. Respondent exercised its discretion to implement Moat and Row controls on
22 the Phase 7a project areas. In order to secure the necessary permits, leases and approvals
23 from other public agencies, Respondent was required to and did conduct full-scale dust

1 control performance testing of Moat and Row at two locations on the Owens Lake bed.
2 Results of the testing were disputed by the Petitioner and Respondent.

3 12. As a condition of considering Respondent's application for a Moat and Row
4 lease for the Phase 7a areas, CSLC staff required that Respondent prepare a supplemental
5 Environmental Impact Report ("SEIR") pursuant to the California Environmental Quality
6 Act ("CEQA"). Respondent agreed to prepare the SEIR required by CSLC staff. The SEIR
7 prepared and finalized by Respondent was not legally challenged by the CSLC or any other
8 party.

9 13. Delays caused by preparation of the SEIR and securing the necessary permits,
10 leases and approvals resulted in Respondent's inability to implement Moat and Row dust
11 control measures on Phase 7a by October 1, 2009. Respondent therefore sought and was
12 granted Variance Order GB09-06 from the District Hearing Board. The Variance Order
13 extended the deadline for completion of the Phase 7a Moat and Row controls by one year
14 from October 1, 2009 until October 1, 2010. The variance order also contained additional
15 requirements designed to reduce excess PM₁₀ emissions to the maximum extent feasible.
16 These requirements provided for PM₁₀ control through the use of temporary tilling on 3.5
17 square miles of area then under construction (a portion of the Phase 7 areas) and through
18 implementation of a future dust control project to be completed six months earlier than would
19 have normally been required under the provisions of Governing Board Order 080128-01. The
20 expedited future project is 2.03 square miles of BACM known as the "Phase 8" project,
21 which was ordered by the District Governing Board on December 6, 2010 (Order Number
22 101206-01).

1 14. For more than two years, Respondent negotiated with the CSLC in an attempt
2 to procure a lease to implement Moat and Row controls in the Phase 7a project areas.

3 15. On April 6, 2010, the CSLC denied Respondent's application for the Moat
4 and Row lease. As a result of the CSLC's denial of the Moat and Row lease, Respondent
5 was unable to construct Moat and Row dust control measures on any part of the 3.1 square-
6 mile Phase 7a project areas and was required to remove the Moat and Row dust control
7 measures in place at the two Phase 7a demonstration areas. Thereafter, Respondent had
8 insufficient time to comply with CEQA, obtain the necessary permits, leases and approvals
9 and construct BACM on the 3.1 square mile Phase 7a project areas by October 1, 2010.

10 16. At all times relevant herein, Respondent acted in good faith to comply with
11 District Governing Board Order 080128-01 and District Hearing Board Order GB09-06.

12 17. As there were no approved PM₁₀ controls in place on the Phase 7a areas by
13 the October 1, 2010 deadline, Petitioner determined that Respondent was in violation of
14 District Governing Board Order 080128-01 and District Hearing Board Order GB09-06 on
15 that date. Petitioner determines that Respondent will remain in violation of District
16 Governing Board Order 080128-01 and District Hearing Board Order GB09-06 until
17 approved PM₁₀ controls are fully installed and operational on all Phase 7a areas.

18 18. "Fully installed and operational" means that all required Phase 7a and
19 "Transition Areas" (additional areas that are transitioned from an existing BACM to another
20 BACM in order to conserve water) infrastructure, earthwork and appurtenances necessary for
21 compliant BACM operation is installed and, in the case of managed vegetation BACM, all
22 plant materials are in place, but the plants may not necessarily be fully developed or grown

1 sufficiently to meet the 2008 SIP requirements for cover conditions. The Phase 7a and
2 Transition Areas locations are shown and described in Exhibit 4.

3 19. Due to the fact no approved controls were in place on the Phase 7a areas, on
4 October 1, 2010 the APCO issued Notice of Violation (“NOV”) number 471 to Respondent
5 for violating District Governing Board Order 080128-01 and District Hearing Board Order
6 GB09-06.

7 20. Paragraph 11 of District Governing Board Order 080128-01 requires the
8 APCO to use the “2008 Owens Valley Planning Area Supplemental Control Requirements
9 Determination Procedure” (“SCR procedure,” contained in Attachment B of Order) to
10 determine the need for additional PM₁₀ controls on the Owens Lake bed beyond those
11 required by the original Order.

12 21. The SCR procedure provides that if Respondent is in compliance with the
13 requirements set forth in “Board Order 080128-01 regarding the amount, timing and
14 operation of existing and future dust controls, the APCO will not issue additional written
15 SCR determinations until after May 1, 2010 and will not use data collected prior to April 1,
16 2010 for new determinations.” The last SCR determination was issued in January 2008 in
17 association with the 2008 SIP and used data up to June 30, 2006. The data collected starting
18 July 1, 2006 has not previously been used to make an SCR determination.

19 22. Respondent maintains the right to challenge SCR determinations made by the
20 APCO and orders for additional PM₁₀ controls issued by the APCO based on such SCR
21 determinations. Respondent retains all of its rights pursuant to Health and Safety Code §
22 42316, Attachment B to Board Order 080128-01, and all other available legal remedies to

1 challenge SCR determinations and orders based on such determinations. Nothing in this
2 Order for Abatement amends or otherwise changes the SCR procedures.

3 23. Notice of hearing on this matter was duly given and published in accordance
4 with Health and Safety Code §42450 and District Rule 811.

5 24. All parties have stipulated to this matter being heard by the District Governing
6 Board and have waived all rights to contest the ongoing authority of the District Governing
7 Board to hear this matter.

8 25. Members of the public were offered the opportunity to provide comment on
9 the Order of Abatement. No public comments were offered.

10 26. To the extent any of these Findings of Fact are considered or deemed to be
11 Conclusions or part of the Order, they are incorporated into those sections as if fully set forth
12 therein.

13 CONCLUSIONS

14 1. The District Governing Board finds that Respondent is in violation of
15 requirements in District Governing Board Order 080128-01 and District Hearing Board
16 Order GB09-06 due to Respondent's failure to implement approved PM₁₀ control measures
17 on the 3.1 square-mile Phase 7a areas by October 1, 2010. The District estimates these
18 violations are expected to result in approximately 6,265 tons of excess PM₁₀ per year to be
19 emitted from the Phase 7a areas of the dried bed of Owens Lake. These emissions would
20 have been controlled if the Phase 7a PM₁₀ controls had been implemented according to
21 requirements. Excess PM₁₀ emissions from the Phase 7a areas are expected to continue to
22 cause or contribute to exceedances of both state and federal 24-hour PM₁₀ standards.

1 2. The District Governing Board finds that Petitioner and Respondent have
2 worked together to develop a number of corrective actions and Petitioner has committed to
3 take such actions so as to provide effective PM₁₀ control on the Phase 7a as expeditiously as
4 feasible. Until dust control measures are implemented pursuant to this Order, there is the
5 potential for excess emissions and state and federal air quality standards violations to
6 continue to occur.

7 3. The District Governing Board finds that Respondent can achieve compliance
8 with District requirements as expeditiously as feasible by implementing BACM, including an
9 APCO-approved BACM test on Area T12-1 only, on the 3.1 square-mile Phase 7a areas.

10 4. The District Governing Board finds that, in addition to the expeditious
11 implementation of BACM, Respondent must offset the potential excess PM₁₀ air pollution
12 emissions that may be emitted during the non-compliance period by taking additional actions
13 to control and/or offset any excess air pollution emissions to the extent feasible.

14 5. The District Governing Board finds that due to the need to construct extensive
15 infrastructure to deliver water to the emissive Phase 7a areas, if Respondent were to
16 terminate, or reduce its water production, diversion, storage or conveyance activities in Inyo
17 County, the available water could not immediately or readily be put to use in reducing excess
18 PM₁₀ air pollution emissions.

19 6. The District Governing Board finds it is not reasonable under California
20 Health and Safety Code section 42316 to require Respondent to cease or curtail its water
21 production, diversion, storage and conveyance activities in Inyo County during the non-
22 compliance period, since the water is needed to comply with dust control requirements for
23 the existing 39.9 square miles of PM₁₀ control measures currently operating at Owens Lake

1 as required by District Governing Board Order 080128-01 and District Hearing Board Order
2 GB09-06.

3 7. Therefore, the District Governing Board finds that the cessation or curtailment
4 of Respondent's water production, diversion, storage and conveyance activities in Inyo
5 County during the non-compliance period is contrary to Health and Safety Code § 42316 and
6 would not provide a corresponding benefit in reducing the excess PM₁₀ emissions.

7 8. The District Governing Board finds that, in addition to the essential and
8 mandatory requirements that Owens Lake dust controls be effective and ensure that air
9 quality standards are met in a timely manner, it is important that Owens Lake dust controls
10 be as cost-efficient and water-use-efficient as possible.

11 9. The District Governing Board finds that issuance of this Order will not
12 constitute a taking of property without due process of law.

13 10. The District Governing Board finds that corrective actions to be taken by the
14 Respondent and compliance with the conditions set forth in this Order will bring the
15 Respondent's water production, diversion, storage and conveyance activities into compliance
16 with District orders, rules and requirements as expeditiously as feasible.

17 11. To the extent any of these Conclusions are considered or deemed to be
18 Findings of Fact or part of the Order, they are incorporated into those sections as if fully set
19 forth therein.

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ORDER

THEREFORE, subject to the aforesaid statements, findings and good cause appearing, the Governing Board of the Great Basin Unified Air Pollution Control District orders as follows:

1. Except as provided in Paragraph 2 of this Stipulated Order for Abatement (Order), below, Respondent shall install, operate and maintain Best Available Control Measures (BACM) on approximately 3.1 square miles of the Owens Lake bed known as the “Phase 7a” areas and on approximately 3.0 square miles known as the “Transition Areas” as shown and described in Exhibit 4. BACM shall consist of the existing approved Shallow Flooding, Managed Vegetation, Gravel Blanket or any new/modified District-approved BACM. BACM are described in Paragraphs 12, 15, 16 and 17 of District Governing Board Order 080128-01, as well as in Chapter 5 of the 2008 SIP.

2. Respondent shall construct existing BACM, or conduct testing of new or modified BACM, as set forth in Attachment D of District Governing Board Order 080128-01 on up to one-third (0.33) square mile of the Phase 7a project area. The test area is limited to the Phase 7a subarea known as “T12-1” and is shown in Exhibit 4. BACM testing shall begin before October 1, 2011 and shall be conducted as provided in the 2008 SIP. As provided in District Governing Board Order 080128-01, Attachment D, additional research on potential new, modified and adjusted BACM shall be allowed within the 43.0 square mile 2008 Total Dust Control Area (which is described in District Board Order 080128-01, Exhibit 1).

1 3. The BACM and BACM-testing described in Order Paragraphs 1 and 2 shall
2 generally be constructed as set forth in the Project Description attached as Exhibit 5. The
3 Parties agree that in order for the project to comply with Health and Safety Code Section
4 42316, the Phase 7a project will rely upon and incorporate the use of all three approved
5 BACMs.

6 4. Respondent shall install fully operational BACM for the Phase 7a areas and
7 Transition Areas according to the following schedule:

8 a. Except the T12-1 BACM test area, BACM controls shall be fully
9 installed and operational (as defined in Findings of Fact Paragraph 18, above) by
10 December 31, 2013. All Phase 7a and Transition areas controlled by the Managed
11 Vegetation BACM are to achieve fully-compliant BACM vegetation cover as specified in
12 the March 2010 Managed Vegetation BACM Proposal (Exhibit 6) by December 31,
13 2015. The APCO shall submit said Proposal to the District Governing Board for
14 approval and incorporation into the 2008 SIP prior to July 31, 2011.

15 b. For the T12-1 BACM test area (as provided in Order Paragraph 2,
16 above) either any existing BACM or a District-approved new BACM shall be fully
17 installed and operational by December 31, 2015 or an earlier date, if specified in the
18 District's approval of the new BACM.

19 5. Respondent shall not be deemed in violation of this Order if Respondent is
20 acting in good faith to comply with the terms of Order Paragraphs 1 through 4, but is
21 impeded in its ability to comply with one or more of those terms of this Order as applicable
22 to the Phase 7a and Transition Areas due to:

1 a. Unreasonable delays caused by the California State Lands
2 Commission (CSLC), the District, or any other agency, except the City of Los Angeles
3 and its agencies, in processing Respondent’s application for a required permit, approval
4 or lease necessary to allow Respondent to implement any of the three BACM, or the
5 proposed 7a project.

6 b. Denial by the CSLC, the District, or any other agency, except the
7 City of Los Angeles and its agencies, of a required permit, approval or lease necessary to
8 allow Respondent to implement any of the three BACM, or the proposed 7a project.

9 c. A condition for a required permit, approval or lease made by the
10 CSLC, the District or any other agency, except the City of Los Angeles and its agencies,
11 that is unreasonable, unduly onerous, or that is not comparable to conditions contained in
12 similar permits, approvals or leases necessary to allow Respondent to implement any of
13 the three BACM, or the proposed 7a project.

14 d. Delays caused by any third party challenge to Respondent’s
15 compliance with CEQA related to the Phase 7a areas or the Transition Areas.

16 e. A condition of Force Majeure, which is defined to mean an
17 extraordinary event or circumstance beyond the control of the parties, such as a war,
18 labor actions, riot, crime, disruption of utilities or acts of God (such as adverse weather,
19 earthquake, volcanic eruption or other natural disaster). Adverse weather is any weather
20 condition, including but not limited to flooding and dust storms, that forces the
21 Respondent to suspend all construction operations or prevents the Respondent from
22 proceeding with 50 percent or more of the normal labor force and of the equipment

1 engaged on critical path work. Delays shall only be granted for adverse weather days
2 greater than 30 days for each 12 month period from April 1 through March 31.

3 f. Force Majeure is not intended to excuse delays or conditions where
4 non-performance is caused by the usual and natural consequences of external forces, or
5 where the intervening circumstances are specifically contemplated.

6 The Parties shall follow the procedure set forth in Order Paragraph 6 to determine if
7 Respondent acted in good faith, but has been impeded in its ability to comply with the Order
8 for any of the causes or conditions set forth above.

9 6. If Respondent's Board of Commissioners determines that Respondent has
10 been impeded in its ability to comply with the requirements of this Order due to one or more
11 conditions set forth in Order Paragraph 5, the following procedure shall be followed:

12 a. The Board of Commissioners shall pass a resolution making such a
13 finding. If such a resolution is passed by the Board of Commissioners, Respondent shall
14 notify the APCO in writing within 15 days of such resolution, and propose a detailed
15 schedule of increments of progress setting deadlines for future actions to come into full
16 compliance with this Order and to request an extension of the deadlines contained in this
17 Order ("Schedule of Increments").

18 b. If the APCO concurs with the Board of Commissioners resolution,
19 the Respondent and APCO shall jointly petition the District Governing Board to modify
20 this Order as provided in Order Paragraph 22.

21 c. If the APCO does not concur with the Board of Commissioners
22 resolution, the following shall occur:

1 i. The APCO shall notify the Respondent and the District
2 Governing Board in writing of his finding within 15 days of receipt of the Board of
3 Commissioner’s resolution.

4 ii. Within 30 days of such written notice by the APCO to
5 Respondent, two District Governing Board members and two of Respondent’s Board
6 members may meet to make a non-binding recommendation as to whether
7 Respondent has met the requirements of Order Paragraph 5 and whether the requested
8 Schedule of Increments should be granted, granted with modifications, or denied.
9 The final recommendation, if any, shall be made in writing within 15 days of the
10 meeting. If a recommendation is not made, or the meeting does not take place within
11 30 days of written notice by the APCO, Respondent may request a final determination
12 from the District Governing Board at a public hearing, as provided in Order
13 Paragraph 22.

14 iii. If there is written recommendation pursuant to Order Paragraph
15 (6)(c)(ii), the APCO shall submit such written recommendation to the District
16 Governing Board. The Respondent shall have the burden of proof by a
17 preponderance of the evidence that the conditions set forth in Order Paragraph 5 have
18 been met.

19 iv. If, at a public hearing, as provided in Order Paragraph 22, the
20 District Governing Board finds that Respondent has proved by a preponderance of the
21 evidence that the conditions set forth in Order Paragraph 5 have been met, the District
22 Governing Board shall grant or grant with modifications the Schedule of Increments
23 to allow Respondent additional time to comply without additional financial penalties

1 being imposed for the delay. In addition, Respondent shall not be found in violation
2 of this Order.

3 d. The Respondent retains all of its appellate and other legal rights to
4 contest the findings of the District Governing Board to a court of competent jurisdiction.

5 7. In order to decrease water use on Owens Lake consistent with the stated goals
6 of the Respondent and the District, up to 3.0 square miles of existing Shallow Flood controls
7 as described in the attached Project Description (Exhibit 5) may be transitioned to any
8 combination of the three approved BACM measures (Managed Vegetation, Shallow
9 Flooding and/or Gravel Blanket) in order to provide a water supply for the 3.1 square miles
10 of Phase 7a areas. The Transition Areas and the Phase 7a areas (with the exception of Area
11 T12-1, which will be a BACM test) when completed shall only include BACM and will not
12 include Moat and Row or any other non-BACM.

13 8. The parties stipulate that during construction of the Transition Areas, the
14 Transition Areas may not be compliant at all times with the BACM requirements set forth in
15 Governing Board Order 080128-01. Respondent therefore shall take “Reasonable
16 Precautions” to control particulate matter emissions to the extent practicable during
17 construction of the Transition Areas as set forth in District Rule 401A (adopted 09/05/74;
18 amended 12/04/06). Respondent has developed a Conceptual Dust Control Plan for the
19 Transition Areas consistent with, and considered to be the Reasonable Precautions required
20 by, District Rule 401A and (attached hereto as Exhibit 7). Upon completion of the design of
21 the Transition Areas and prior to any construction or any time when dust control measures in
22 Transition Areas may be modified in a manner that would cause the areas not to comply with
23 BACM requirements, Respondent shall submit to the APCO for his approval a final Dust

1 Control Plan. The APCO shall expeditiously review Respondent's plan and shall not
2 unreasonably withhold his approval of such plan. Despite the terms of Sections 7.9 of the
3 2008 SIP and Attachment D to the Board Order, if the Transition Areas are not BACM
4 compliant and if there is a monitored exceedance or if the Dust ID Protocol predicts an
5 exceedance of the National Ambient Air Quality Standard for PM₁₀ caused solely by
6 emissions from the Transition Areas (as determined by the "Dust ID" procedure set forth in
7 the 2008 SIP), the District shall not take enforcement action pursuant to the Health and
8 Safety Code, a variance will not be required and the Respondent shall not be deemed in
9 violation of this Order, District Governing Board Order 080128-01, the 2008 SIP, or other
10 District rules or orders related to such exceedances, provided that Respondent implements
11 the approved Dust Control Plan or under circumstances of force majeure prohibiting
12 compliance with the Dust Control Plan during this transition period

13 9. Respondent shall submit quarterly written reports on Phase 7a and Transition
14 Area progress to the APCO and Board Clerk. Quarterly reports shall describe the status of
15 the work completed during that quarter, the planned work for the next four quarters,
16 compliance with the schedule, and specifically identify issues that could delay progress on
17 the Phase 7a project. Respondent shall promptly notify the District in writing of any
18 circumstances that could cause project delays. Quarterly reports shall be due within 30 days
19 of the end of each calendar quarter. The first quarterly report subject to this Order shall be
20 due on or before July 30, 2011 and the last quarterly report subject to this Order shall be due
21 for the quarter during which Respondent has achieved full compliance for all Phase 7a areas
22 and all Transition Areas.

1 10. Based on the 2008 SIP modeling protocol estimate of 6,265 tons of excess
 2 annual PM₁₀ air pollution emissions expected to be caused by Respondent's failure to
 3 implement effective PM₁₀ controls on the Phase 7a areas by the mandatory deadlines,
 4 Respondent shall pay six-million-five-hundred-thousand dollars (\$6,500,000.00) to the
 5 District to offset and mitigate such excess emissions that may occur between October 1, 2010
 6 and December 31, 2013.

7 11. Except as provided in Order Paragraphs 5, 6, 8 and 9, above, and failure to
 8 comply with BACM implementation and operation deadlines for all Phase 7a areas and
 9 Transition areas as set forth in Order Paragraph 4, above, or by deadlines as subsequently
 10 modified by the District as provided in Paragraph 22, Respondent shall be subject to
 11 additional daily offset payments prorated by the amount of noncompliant area according to
 12 the following formula:

$$\text{Offset Amount (\$/day)} = \$5,500 + \$4500 (A_{7a} + A_{TA})/6.1$$

14 where,

15 A_{7a} = Non-compliant Phase 7a Area (square miles), and

16 A_{TA} = Non-compliant Transition Area (square miles).

17 12. Respondent shall make the payment as set forth in of this Order Paragraph 10,
 18 above, within 90 days of the date of this Stipulated Order for Abatement, or within 90 days
 19 of the issuance of an order to pay, if additional payments are demanded, as provided in
 20 Paragraph 11 above, for failure to meet the completion dates set forth in Order Paragraph 4,
 21 above.

22 13. Eighty-five percent (85%) of the excess air pollution offset/mitigation
 23 payment made by Respondent to the District under Paragraphs 10 and 11 of this Order shall

1 be deposited into an Owens Lake Excess Air Pollution Offset Fund established by the
2 District. These monies shall be used for Clean Air Projects within the District (Inyo, Mono
3 and Alpine Counties) with preference given to projects in the Owens Valley PM₁₀ Planning
4 Area. "Clean Air Projects" are defined as improvements, replacements, or programs that
5 directly or indirectly result in a reduction in air pollution emissions. Monies shall not be
6 used to fund projects that Respondent is required to undertake or implement. The District
7 Governing Board shall have the sole authority and discretion regarding project selection and
8 approval, but will consider any project recommendations made by Respondent. Projects
9 shall be publicized as joint projects of the Great Basin Unified Air Pollution Control District
10 and the Los Angeles Department of Water and Power. Fifteen percent (15%) of the Clean
11 Air Projects funds will be deposited into the District's regular budget account. All costs
12 incurred by the District to administer the Clean Air Projects program will be paid by the
13 District from the District regular budget account. The District shall have the sole discretion
14 and responsibility for the Clean Air Projects program administration, planning and
15 implementation, and Respondent shall not be responsible for program costs other than for the
16 offset mitigation payments in compliance with Paragraphs 10 and 11 of this Order.

17 14. The APCO shall resume the Supplemental Control Requirement
18 determinations required in Paragraph 10 of District Governing Board Order 080128-01 and
19 shall use data collected since July 1, 2006 to make such determinations.

20 15. The parties commit to work cooperatively to support Respondent's efforts to
21 develop and implement new PM₁₀ control measures or modify existing measures that are as
22 water-use efficient as possible.

1 16. Respondent shall comply with all other District rules, codes, orders and
2 regulations not covered by this Order for Abatement, including all provisions of District
3 Governing Board Order 080128-01 and District Hearing Board order GB09-06 that have not
4 been modified by this Order for Abatement. Respondent's violation of any District rules,
5 codes, orders or regulations not covered by this Order for Abatement, including all other
6 provisions of District Governing Board Order 080128-01 and District Hearing Board Order
7 GB09-06, shall be subject to District enforcement and will be considered separate violations
8 not subject to the limitations and reductions set forth in the Order for Abatement.

9 17. This Order for Abatement does not act as a variance and Respondent is
10 subject to all rules and regulations of the District except as provided in this Order for
11 Abatement.

12 18. Final compliance shall be achieved, and this Order for Abatement shall
13 terminate when Phase 7a and the Transition Areas are fully operational, but no later than
14 December 31, 2015. Respondent shall notify the Clerk of the Board and the APCO in
15 writing when final compliance is achieved.

16 19. Respondent enters into this Stipulated Order for Abatement without admitting
17 liability and for the limited purpose of settling NOV No. 471 issued to Respondent by the
18 APCO on October 1, 2010, and for violation of Governing Board Order 080128-01, and for
19 violation of District Hearing Board Order GB09-06. Respondent specifically waives and
20 agrees not to appeal or otherwise contest this Stipulated Order for Abatement under Health
21 and Safety Code Section 42316 or any other cause of action. Respondent however, reserves
22 its legal and appellate rights to contest any allegation that it has violated this Stipulated Order
23 for Abatement. Respondent does not waive or give up its right to contest any other future

1 order, NOV, civil or criminal prosecution, or any other action the District may bring against
2 Respondent subsequent to entry of this Stipulated Order for Abatement.

3 20. This Stipulated Order for Abatement is a full and final settlement of NOV
4 No. 471 issued by the APCO to Respondent on October 1, 2010, and for the violation of
5 Governing Board Order 080128-01. The stipulated order is the final integrated agreement
6 between the parties regarding the matters addressed herein. By entering this Stipulated Order
7 of Abatement, Respondent is hereby released from any additional liability for these
8 violations except as set forth in this Order.

9 21. The District Governing Board shall retain jurisdiction over this matter until
10 December 31, 2015, unless the Order is amended or modified.

11 22. The parties may petition the District Governing Board for a modification of
12 this Order for Abatement with or without a stipulation. The Governing Board may modify
13 the Order for Abatement without the stipulation of the parties upon a showing of good cause
14 therefore and upon making the findings required by Health and Safety Code Section
15 42451(a) and District rule 805(a). Any modification of the Order shall be made only at a
16 public hearing held upon ten (10) days published notice and appropriate notice to the parties.

17 23. The United States Environmental Protection (USEPA) Region 9 has been
18 informed of this agreement made and entered into between the District and Respondent.

19 24. Petitioner and Respondent stipulate that the District Governing Board has full
20 and complete jurisdiction in the matter of this Stipulated Order for Abatement.

21 25. Petitioner and Respondent affirm that their respective signatories below have
22 the authority to represent and bind their respective parties to the terms of this Stipulated
23 Order for Abatement.

1 **Reviewed and Stipulated by:**

2 Air Pollution Control Officer, Petitioner:

3 *T. D. Schade*
4 Theodore D. Schade, Air Pollution Control Officer

1 April 2011
Date

5 Los Angeles Department of Water and Power, Respondent:

6 *Ronald O. Nichols*
7 Ronald O. Nichols, General Manager

3/30/11
Date

8 **ORDERED FOR THE BOARD BY:**

9 *Linda Arcularius*
10 Linda Arcularius, Chair, District Governing Board

April 1, 2011
Date

11

ATTEST:

12

Shirley Ono
Shirley Ono, Acting Board Clerk

13

Date: April 1, 2011

14

15

APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, CITY ATTORNEY

MAR 29 2011

Michelle Lyman
MICHELLE LYMAN
DEPUTY CITY ATTORNEY

List of Exhibits

- 1
- 2 Exhibit 1 Owens Lake – Map
- 3 Exhibit 2 District Governing Board Order 080128-01, contained in the *2008 Owens*
- 4 *Valley PM₁₀ Planning Area Demonstration of Attainment State*
- 5 *Implementation Plan*, January 28, 2008
- 6 Exhibit 3 District Hearing Board Order GB09-06, *Findings and Order Granting*
- 7 *Regular Variance from Requirements Set Forth in Governing Board Order*
- 8 *080128-01*, September 25, 2009
- 9 Exhibit 4 Phase 7a and Transition Areas– Map and Coordinate Description
- 10 Exhibit 5 Phase 7a and Transition Areas Project Description
- 11 Exhibit 6 March 2010 Managed Vegetation BACM Proposal
- 12 Exhibit 7 Conceptual Transition Area Dust Control Plan