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February 22, 2006

Mr. Theodore D. Schade  
Air Pollution Control Officer  
Great Basin Unified Air Pollution Control District  
157 Short Street  
Bishop, California 93514-3537

Dear Mr. Schade:

Pursuant to the provisions of the Owens Valley PM<sub>10</sub> Planning Area Demonstration of Attainment, State Implementation Plan – 2003 Revision (2003 SIP) and Order #031113-01 (Order) issued by the Great Basin Unified Air Pollution Control District (District), the City of Los Angeles Department of Water and Power (City) hereby submits its response to the 2004/2005 Determination (Determination) by the Air Pollution Control Officer (APCO) of the District that supplemental control requirements are warranted on an additional 9.31 square miles of the Owens Lake playa in excess of the 29.8 square miles of controls required under the 2003 SIP and preliminary design for 0.66 square miles designated as "watch" areas are also required (enclosed). The Determination that the City must implement controls on these 9.31 square miles and "watch" areas has been issued despite the fact that the City has only completed implementation of dust control measures on approximately 23 square miles of the Owens Lake playa. Thus, the Determination attempts to substantially expand the City's obligations before the effectiveness of the control measures that the City has agreed to implement under the 2003 SIP can even be evaluated.

The City vigorously contests the APCO's Determination. The Determination purports to identify areas of the Owens Lake playa that have changed due to natural circumstances and are now sufficiently emissive to prevent attainment of the PM<sub>10</sub> National Ambient Air Quality Standards (NAAQS or standards) by the December 31, 2006 attainment deadline of the 2003 SIP. In fact, as a result of the District's use of improper and unauthorized modeling approaches, corrupt and biased model input data, flawed analyses, and noncompliant information collection techniques, the Determination that additional areas require controls is clearly in error. Underlying the fundamental inadequacy of the Determination is the inability of the District's analytical approach to

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properly address, or even account for in any fashion, the temporary impacts of construction of the control measures that the City is implementing under the 2003 SIP. This unforeseen, and unplanned for, impact invalidates the analytical foundation of the District's approach.

The dust generation mechanisms associated with construction impacts on PM<sub>10</sub> and how they relate to the District's analytical approach are described in great detail in the City's response (enclosed) to the Determination. However, at the most basic level, despite the City's concerted efforts to minimize dust generation to the full extent practicable, construction of dust control measures (e.g., installation of pipelines, construction of berms and roads, furrowing of the playa surface to cultivate managed vegetation, etc.) unavoidably disturbs large areas of the Owens Lake bed, thereby causing additional sand and sand-sized particles to become available on the surface. The movement of these particles, in turn, affects areas downwind of the construction, inflating the sand motion levels recorded there. This elevated sand motion has, as a result, then wrongly caused these areas to be flagged for dust control. Other than to cease construction, the City has no feasible alternative for avoiding this unintended, temporary construction impact. Notwithstanding the clearly disruptive impact of the construction, the District has not taken any steps to modify its analytical approach, or to account in any way for the effects of construction.

In addition to its failure to modify its analytical approach to address construction-related impacts, the District has violated other provisions of the 2003 SIP, including: (1) the unauthorized use of substitute data for areas of the playa where data is unavailable (referred to as "data filling"); (2) the improper use of data from areas that will be subject to dust control measures by the end of 2006 (i.e., the data are not representative of the controlled conditions that the model is intended to evaluate); (3) the use of data that has been impaired by man-made disturbance; (4) the placement of data collection equipment in locations that do not adequately represent the areas to which they apply or that are impacted by nearby irregularities; and (5) the failure to comply with requirements for the conduct of inspections to verify the boundaries of areas of the Owens Lake bed believed to be emissive. The cumulative effect of these defects is evident from the unacceptable performance level of the modeling relied upon by the District: over a large range of dust (PM<sub>10</sub>) concentrations, the predictive capability of the model is essentially zero. At best the predictive capability of the model is below 30 percent. When dust (PM<sub>10</sub>) levels are low to moderate, the model erroneously flags areas for supplemental control over half the time.

These flagrant defects in the District's analytical methods and implementation of the model illustrate that the Determination has no real evidentiary support, and that any decision of the District to uphold any requirement for supplemental controls would be arbitrary and capricious and contrary to requirements of the 2003 SIP and Order.

More broadly, the District's issuance of the Determination evidences a patent disregard for overarching public policy considerations. Specifically, the regulatory provisions upon which the Determination is based are intended to address the possibility that areas of the Owens Lake playa that are not targeted for dust control measures in the 2003 SIP might: (1) become more emissive due to long-term natural changes in the condition of the Owens Lake bed, and (2) thereby, prevent attainment of the NAAQS. The Determination fails on both counts.

With respect to the first issue, the City has provided in this submittal irrefutable evidence that changes in the playa are temporary, and are not due to natural changes, but rather to construction-related disturbances to the Owens Lake playa. These construction-related impacts on the sand motion data collected by the District will cease as soon as implementation is complete and the dust control measures replace the pulverized crust associated with disturbed areas of the playa. In fact, the evidence provided herein demonstrates convincingly that, once completed, the dust control measures essentially eliminate dust emissions from the control area and substantially reduce dust emissions in adjacent areas (i.e., those not slated for dust controls). The District provided no evidence that areas of the Owens Lake bed have changed on a long-term basis due to natural conditions, nor has the District provided evidence presented to counter the overwhelming evidence herein that the changes in the playa are short term and construction-related.

As to the issue of whether the implementation of dust control measures on 29.8 square miles will result in attainment by the December 31, 2006 deadline, the Determination completely ignores the reasonable further progress (RFP) milestones identified in the 2003 SIP. Under the Clean Air Act, the RFP milestones, and not the NAAQS, serve as the basis for determining whether sufficient progress is being made towards attainment during the period leading up to the attainment deadline. In this case, available evidence indicates that overall levels of dust emitted from the playa on an annual basis are declining ahead of pace with the RFP milestone projections (See Figure 1 below), despite the temporary and disrupting influence of construction-related dust emissions generated by the City's implementation of dust control measures. Even more compelling is the downward trend in the number of air quality exceedances around

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Owens Lake. Figure 1 shows that average number of annual exceedances at three long-term monitoring stations has declined substantially during the period that the City has been constructing dust control measures, and reaffirms the 2003 SIP's premise that there is a direct correlation between implementation of dust control measures on the 29.8 square miles and reduction in PM<sub>10</sub> emissions from the Owens Lake playa. It is estimated that even in 2004 when the project was only two-thirds complete, that the dust concentrations had been reduced by nearly 70 percent with 11 square miles of dust control still to be built.

And yet the District has determined that over nine square miles more is needed. It is reasonable to assume that when the final 11 square miles of dust control required by the 2003 SIP are implemented, the dust emissions will be reduced even further such that the NAAQS will be met following completion of the dust control measures on the 29.8 square miles at the end of 2006. It is equally unreasonable to suggest that it will take over nine square miles in addition to reduce what might amount to a less than significant amount of dust.

In sum, the District's Determination fails to properly identify the underlying causes, mechanisms, and locations of dust source areas, and applies an improper standard to measure progress towards attainment. In the absence of evidence that dust emissions are long term and caused by natural changes on the playa, the 2003 SIP only permits the District to impose contingency measures if the RFP milestones in Table 7.1 of the 2003 SIP are not met. The District has presented no evidence—and no evidence exists—that the 2003 SIP has failed to keep pace with the RFP milestones.

The considerable burden and severe impacts that the District's proposed action would impose on the City should not be underestimated. The City will invest over \$400 million to implement dust control measures on the 29.8 square miles required by the 2003 SIP. The City believes that this investment is well-founded and serves an extremely beneficial purpose. To construct dust control measures on the additional 9.31 square miles will cost from \$90 to \$120 million. Unfortunately, the lack of environmental necessity for the additional 9.31 square miles casts great doubt on the wisdom of investing up to \$120 million without determining whether the controls on the 29.8 square miles will indeed result in attainment of the NAAQS, particularly where all trend information indicates that the standards will indeed be met.

Given these circumstances, the legal requirements of the 2003 SIP and the associated Order, public policy considerations, and common sense, the District must rescind the

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Determination in its entirety. The information provided in this submittal also strongly supports the conclusion that the District must wait until construction of dust control measures is completed at the end of December of 2006, and the analytical deficiencies of the current 2003 SIP are corrected in an amended SIP, before it can properly assess the need for supplemental controls. At that time, the 2003 SIP control strategy will have been fully implemented, the construction equipment will have been removed from the Owens Lake bed, and the needed improvements will have been made. After allowing sufficient time for the playa surface to heal (that is, to return to a less mechanically disturbed condition), a new post-construction, post-dust control data set will have to be collected for use in the modeling analysis. In the meantime, LADWP will redouble its efforts to assist the District in making the necessary refinements to the data collection and modeling process. Only then will it be appropriate to rerun the Dust ID Model and to assess the need for supplemental dust control on the Playa. Our common goal is a more accurate, defensible, and effective long-term dust control program on the Owens Lake playa.

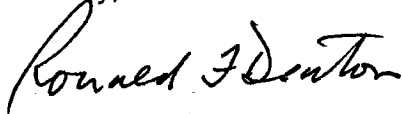
The enclosed document, Volume 1, Summary of Key Points, and Volume 2, Appendices, set forth the evidence upon which the above statement is based. Section 2 of Volume 1 provides contextual background for the current situation at Owens Lake. Section 3 explains the legal and policy provisions that govern the District's decision. Section 4 of this submittal describes, in detail, the nature of each of the above-referenced violations, irregularities, and flawed approaches. Section 5 explains how one or more of these violations, irregularities, and flawed approaches apply to each of the 34 supplemental control areas (SCAs) that comprise the 9.31 square miles and, in turn, the "watch area" identified in the Determination. Section 6 provides conclusions and recommendations based on the evidence provided. Volume 2 provides additional technical information to support the information provided in Volume 1.

Things have changed in the Owens Valley. The air is cleaner throughout the Owens Valley Planning area because less dust is coming off of Owens Lake as a result of the City's efforts in constructing and operating dust control measures. The City takes pride in its commitment to improve air quality and in these results. It would be extremely unfortunate for the District to impose new requirements on the City based on hastily made or uncertain analyses, even as construction continues of facilities required in the 2003 SIP. Those facilities should be allowed a chance to do their appointed job. Therefore, the City does not think it unreasonable for the District to take time out to refine the processes and procedures to identify dust on Owens Lake so as to decrease the uncertainties, and increase our collective confidence before any more dust control is conceived to be done.

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Please contact Mr. Richard F. Harasick of my staff at (213) 367-0910, if you have questions or need additional information. We look forward to your review of our analysis and our mutual efforts at Owens Lake.

Sincerely,



Ronald F. Deaton  
General Manager

RFH:mm

Enclosures

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Mr. Tony Barrett, GBUAPCD Board Chairman  
Mr. Larry Biland  
Ms. Sylvia Oye  
Mr. Richard F. Harasick

