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Exempt from filing
 fees. Government Code
 § 6103.

FILED

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INYO CO. SUPERIOR COURT
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 BY *Baker* DEPUTY

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**CITY OF LOS ANGELES, DEPARTMENT OF WATER AND
 POWER**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF INYO**

**CITY OF LOS ANGELES
 DEPARTMENT OF WATER AND
 POWER,**

Petitioner and Plaintiff,

vs.

**GREAT BASIN UNIFIED AIR
 POLLUTION CONTROL DISTRICT,**

Respondents and Defendant.

Case No. *SI CVPT 06-41092*

**VERIFIED PETITION FOR WRIT OF
 ADMINISTRATIVE AND TRADITIONAL
 MANDAMUS AND COMPLAINT FOR
 DECLARATORY AND INJUNCTIVE
 RELIEF**

1 Petitioner and Plaintiff, the City of Los Angeles, by and through the Department of
2 Water and Power of the City of Los Angeles (the "City") petition this Court for a writ of
3 mandate, pursuant to Code of Civil Procedure §§ 1094.5, 1085 and 1086, and for
4 injunctive and declaratory relief under Code of Civil Procedure § 1060. The City alleges
5 as follows:

6 THE PARTIES

7 1. The City is a Charter City and an incorporated city located in Los Angeles
8 County, California. The City implemented and is implementing, operating and
9 maintaining dust control measures on the Owens Lake bed, located in the County of Inyo.

10 2. Respondent and Defendant the Great Basin Unified Air Pollution Control
11 District (the "District") is a local agency of the California Air Resources Board
12 ("CARB"), created and organized under California Health and Safety Code Section 40000
13 *et seq.* As a local administrative agency of CARB, the District is subject to CARB
14 oversight and may not adopt a regulation or order or take any action that exceeds the
15 scope of, or is inconsistent with, its statutory authority.

16 JURISDICTION AND VENUE

17 3. This Court has jurisdiction over this action pursuant to Code of Civil
18 Procedure §§ 1060, 1085, and 1094.5. Venue is proper in this Court pursuant to Code of
19 Civil Procedure § 395 because the property that is the subject of this action, the Owens
20 Lake bed, is located in the County of Inyo and the District maintains an office in the
21 County of Inyo.

22 PROCEDURAL BACKGROUND

23 4. This petition concerns the monitoring and control of particulate matter
24 measuring less than or equal to 10 microns or micrometers ("PM₁₀"). Under the Federal
25 Clean Air Act ("CAA"), 42 U.S.C. § 7401 *et seq.*, the United States Environmental
26 Protection Agency ("USEPA") developed National Ambient Air Quality Standards
27 ("NAAQS") for major air pollutants including PM₁₀.

28 5. The CAA required all states to submit State Implementation Plans (SIPs) to

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1 the USEPA to document how the NAAQS would be met in the state by applicable
2 deadlines. The California Legislature delegated the responsibility and authority to meet
3 this requirement to CARB and authorized CARB to implement this requirement through
4 thirty-five (35) local air pollution control districts. Health & Safety Code §§ 39500 *et seq.*
5 The District is one of these local air pollution control districts.

6 6. Owens Lake is located in Inyo County in eastern California, south of the
7 City of Lone Pine and north of the City of Olancho. The land on which the Owens Lake
8 bed is located is owned primarily by the State of California and managed by the State
9 Lands Commission.

10 7. Portions of Owens Lake have become dry allegedly due to diversions of
11 water from the Owens River beginning in the 1860s. The dry portions of the Owens Lake
12 bed, approximately two-thirds of the historic lake surface area, are comprised primarily of
13 dry "playa" soils and crusts. The "playa" soils and crusts are believed to be a source of
14 wind-borne sand during significant wind events, and this source is believed to contribute
15 to concentrations of PM₁₀.

16 8. The District has regulatory authority over air quality issues with respect to
17 the portion of Inyo County where Owens Lake is situated, and is responsible for
18 developing a SIP to address PM₁₀ levels for an area known as the Owens Valley Planning
19 Area ("OVPA"), which encompasses Owens Lake.

20 9. In the early 1980s, the District asserted jurisdiction under the CAA over the
21 City based on air emissions from the Owens Lake bed. The City contested this assertion
22 by filing a writ of mandamus lawsuit (the "CAA Lawsuit"). In the CAA Lawsuit the City
23 alleged that the District had no jurisdiction over the City under the CAA because the
24 City's water gathering operations from the Owens River do not qualify as a "facility"
25 under the CAA and the City does not own the property on which the Owens Lake Bed is
26 located.

27 10. In 1983, the District and the City agreed to a settlement and dismissal of the
28 CAA Lawsuit based on the enactment of Health and Safety Code Section 42316 by the

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1 California Legislature. The District has no authority over the City's water gathering
2 operations except the limited authority granted in Section 42316. Pursuant to Section
3 42316(a), the District may require the City to "undertake reasonable measures, including
4 studies to mitigate the air quality impacts of its activities in the protection, diversion,
5 storage or conveyance of water" Section 42316(a) further provides that the
6 mitigation measures imposed by the District "may only be required or amended on the
7 basis of substantial evidence establishing that water production, diversion, storage, or
8 conveyance by the City causes or contributes to violations of state or federal ambient air
9 quality standards." Section 42316(b) provides the City with the right to appeal to CARB
10 regarding any measure imposed on the City by the District.

11 11. On August 7, 1987, the USEPA identified the OVPA as an area not meeting
12 the PM₁₀ NAAQS. In January 1993, the OVPA was reclassified by USEPA as a serious
13 nonattainment area under the CAA. Under the CAA, the District was required to submit a
14 PM₁₀ Attainment SIP to the USEPA by February 8, 1997.

15 12. The District released a proposed PM₁₀ Attainment SIP in 1997. Portions of
16 the District's PM₁₀ Attainment SIP were challenged by the City. On July 27, 1998, the
17 District approved a Memorandum of Agreement ("MOA") with the City resolving the
18 City's challenge and describing the actions the City would take at the Owens Lake bed as
19 part of the District's PM₁₀ Attainment SIP. The actions that the City agreed to take
20 include implementation of dust control measures on 16.5 square miles of Owens Lake bed
21 by December 31, 2003. The MOA provides that it "in no way prejudices future actions on
22 similar issues."

23 13. On November 16, 1998, the District adopted the PM₁₀ Attainment SIP (the
24 "1998 SIP") and the 1998 SIP was approved by the USEPA on August 17, 1999. The
25 1998 SIP incorporated the requirement of the MOA that the City implement actions on
26 16.5 square miles of Owens Lake bed by the end of 2003. The actions on these 16.5
27 square miles are referred to as "Increment 1." The City fully complied with all of its
28 timing and implementation obligations with respect to the Increment 1 dust control

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1 measures. The 1998 SIP also provided that the District would submit a Revised SIP
 2 2003 ("2003 RSIP"). The 2003 RSIP was to determine a final control strategy to attain
 3 the PM₁₀ NAAQS by December 31, 2006.

4 14. The 2003 RSIP was adopted by the District on November 13, 2003 and
 5 approved on February 27, 2004 by the CARB. It has not been approved by the USEPA.
 6 The 2003 RSIP required the City to implement dust control measures on an additional
 7 13.3 square miles of Owens Lake bed. The supplemental controls on the 13.3 square
 8 miles are referred to as "Increment 2". The 2003 RSIP also included a provision whereby
 9 the District would determine at least once per year, starting in 2004, whether there have
 10 been any monitored or modeled exceedances of the PM₁₀ NAAQS after 2002 from areas
 11 on the Owens Lake bed not included in Increment 1 or Increment 2. According to the
 12 2003 RSIP, those areas that are determined by the District to have been the source of
 13 NAAQS exceedance will be included in "Supplemental Control Requirements (SCR)" and
 14 referred to as Increment 3.

15 15. The 2003 RSIP established a three-step process for determining the need for
 16 supplemental controls. First, the Air Pollution Control Officer of the District ("APCO")
 17 will make a determination regarding the need for supplemental controls. Second, the City
 18 has 60 days to respond in writing to the District regarding the APCO's determination by
 19 presenting alternative analysis of the data relied on by the APCO in his determination.
 20 Finally, the District has 90 days from the APCO's determination to take action to accept,
 21 modify, reject or take no action on the City's analysis.

22 16. On December 21, 2005, the APCO of the District issued his 2004/2005
 Determination regarding the need for additional supplemental controls on the Owens Lake

