

Great Basin Unified Air Pollution Control District

2013 Amendment to the Owens Valley PM₁₀ SIP

Board Order 130916-01

2013 SIP Amendment Comments

GBUAPCD Response dated September 24, 2013 to
LADWP Comments

LADWP letter received September 16, 2013
(dated September 11, 2013)

LADWP letter received September 16, 2013
(dated September 13, 2013)

Theodore D. Schade
Air Pollution Control Officer



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537
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September 24, 2013

Mr. Martin L. Adams
Director of Water Operations
Los Angeles Department of Water and Power
P.O. Box 51111
Los Angeles, California 90051-5700

Ms. Michelle Lyman
Deputy City Attorney
Office of the City Attorney
P.O. Box 51111, Suite 340
Los Angeles, California 90051-0100

RE: Comments on the Owens Valley and Coso Junction SIP Amendments

Dear Ms. Lyman and Mr. Adams,

This letter is a response to the Los Angeles Department of Water and Power's (LADWP's) comment letters and oral comments at Great Basin Air Pollution Control District's (District's) public hearing on September 16, 2013 regarding amendments to the Owens Valley and Coso Junction PM₁₀ State Implementation Plans (Letters by Ms. Lyman, 9/13/2013 and Mr. Adams, 9/16/2013; and oral comments presented at Public Hearing, 9/16/2013). The LADWP's letters were not sent at the time set for the submission of written comments before the hearing. The unlabeled computer disks submitted by Mr. Adams' at the hearing, which could not be read at that time, are not considered part of the record. In addition, the LADWP's failure to provide those materials to the Air Pollution Control Officer and to the District's counsel in advance is a breach of the parties' previous and long-standing agreements in this regard.

Despite this non-compliance, and although the LADWP did not request a written response to the comments, District staff responds below to the issues raised in the letters and oral comments.

1. Content of Amendment to the SIP and Board Order

In drafting the amendments to the SIP and Board Order 080128-01, District staff abided by the "Phase 7a and Keeler Dunes Settlement Terms" agreed to by the District and the LADWP (dated June 25, 2013). Paragraph II.B.1.c) states:

SIP and Board 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 approve the amended SIP.

The District’s adherence to the agreement was supported at the hearing by Ms. Michelle Lyman from the Office of the City Attorney representing the LADWP, who stated that “the SIP amendment before you does meet the...absolute minimum floor requirements of what you would need to do in order to comply with the terms of the Settlement Agreement” and the amendment “does satisfy your obligation, your technical obligation under the Settlement Agreement.”

The title of the agreement itself, “*Phase 7a and the Keeler Dunes Settlement Terms*,” conveys the limited range of issues addressed in the settlement. The broader regulatory and technical issues raised by the LADWP in its comment letter and during the meeting are longstanding issues that have been discussed since 2006. The 2013 Settlement Agreement does not include a requirement or provision to resolve these other issues through this SIP amendment. However, as always, District staff is available to meet with LADWP staff to discuss resolving LADWP’s concerns.

As you are aware, the Board considered the LADWP’s comments and took actions to address the issues raised in the letters. At the Board meeting, District staff was directed to work with the LADWP to further develop BACM transition procedures and also to refine the definition of brine shallow flooding and to have a framework for those discussions brought to back to the Board.

2. Best Available Control Measure (BACM) Transition Policy

Although the issue raised in Ms. Lyman’s letter regarding modifying the BACM transition policy was not mutually contemplated by the Board representatives during the development of the settlement agreement, and therefore was not included in the SIP amendment, as mentioned above, the District Governing Board directed staff to work with the LADWP to develop BACM transition procedures and to have a framework for those discussions brought to the first Board meeting in 2014. However, District staff reiterates the point raised at the Board meeting: that any transition procedure must provide at least as much public-health protection as the current transition requirements—there can be no backsliding or relaxation of existing air pollution controls—this is prohibited by law.

Until the BACM transition requirements are revised, the LADWP is currently allowed to transition up to three square miles of the current shallow flood areas to another BACM under the provisions of the Phase 7a modified Stipulated Order of Abatement (SOA). This temporary BACM transition provision of the SOA allows more area than the one and half square miles provided for under the current BACM transition limit in the 2008 SIP. The excess air pollution emissions associated with the transition were offset and this special allowance under the SOA is in effect until the Phase 7a project is completed in 2016. This three year window should provide sufficient opportunity for all interested parties to develop a transition strategy that can help LADWP reduce water-use on the lake bed and provide sufficient protection for the public from air pollution caused during the transition period.

3. Keeler Dunes Dust Control

Because dust from the Keeler Dunes causes an average of six federal PM₁₀ standard violations per year in the town of Keeler, the successful completion of this project is a high priority for the District. The City's \$10 million public-benefit contribution to the District will only be used for the purpose of implementation, and operation and maintenance of dust control measures in the Keeler Dunes. The District intends to implement the dust control measures as expeditiously as practicable in the Keeler Dunes and to maintain those measures. To accomplish that goal, the District may utilize the assistance of other agencies and interested parties. Nothing in the settlement agreement precludes the District's solicitation of assistance from other parties.

4. The Context of the SIP Amendment Can be Found in its Exhibits

Although there is a much background to the recent SIP amendment, the inclusion of non-essential information in the Board Order for the SIP amendment is not required for the approval and implementation of the SIP amendment. The accompanying exhibits (1 through 6) to the Board Order contain the history of these issues. The exhibits include the 2006 Settlement Agreement agreeing to use non-BACM Moat and Row in the Phase 7a areas, the 2008 SIP ordering controls in Phase 7a, the time-extension variance issued for Phase 7a in 2009, the stipulated order for abatement issued for Phase 7a in 2011, the 2013 Settlement Agreement providing more time to complete Phase 7a, and the 2013 modified SOA.

5. Coso Junction SIP Taken as a Separate Action

The proposed action included simultaneously approving amendments to the Owens Valley SIP and the Coso Junction SIP to incorporate the proposed changes to the 2008 SIP Board Order 080128-01, since it is the primary enabling legislation to implement control measures on the Owens Lake bed and is also a maintenance measure for the Coso Junction SIP. Ms. Lyman stated at the Board meeting that it makes sense that the plans should be consistent, but suggested that the Coso Junction SIP should be taken in a separate action from the Owens SIP. The Board agreed and approved separate Board Orders for the two planning areas.

At the public hearing, the Board approved Board Order 130916-02 to adopt the recommended changes in the Coso Junction PM₁₀ SIP. However, during the process of reviewing the SIP package for submittal to EPA and CARB, staff found that the text in the body of the SIP, notably "Section 5.1 – Contingency Measures" should also be revised to summarize the changes to Board Order 080128-01 in Appendix C as indicated in the newly adopted Board Order 130916-01. To address concerns raised by the LADWP regarding public notice, District staff will recommend withdrawing the recently approved Board Order 130916-02, and re-noticing the Coso Junction SIP revision to allow staff to revise text in the body of the SIP to explain the changes to Appendix C. The revised Coso SIP amendment will be presented to the District Board at their December 2013 meeting.

6. Brine Shallow Flood BACM is Different from Shallow Flood BACM

Although the shallow flood BACM definition is not limited to the use of fresh water and can be implemented with brine as well, there are advantages to using brine instead of fresh water for the shallow flood BACM at Owens Lake. The two obvious advantages to brine are that it has a much lower evaporation rate than fresh water and it is a locally available resource that is already on and under the lake bed. The staff and the District Board agree that a definition of brine shallow flood BACM is needed. In response to the LADWP's comment, the District Board directed staff to develop a framework to work with the City to define brine shallow flood BACM and to bring it back to the District Board at the first meeting in 2014.

7. CD Submittal

After the public hearing, the District reviewed the contents of the CD that Mr. Martin Adams submitted to the Board at the meeting for the purpose of putting information into the public record for the SIP adoption. According to Ms. Lyman the CD included all the past issues they raised to the District. Ms. Lyman said, "On that CD is probably every objection we've ever voiced to the SIP; it's the equivalent of probably every letter and comment that we've had back and forth with your staff about the defects of the SIP." Following the hearing, the District found that the CD included some material previously provided to the District, but more importantly, it also included material never submitted to the District. Especially disturbing in light of Ms. Lyman's testimony, it excluded correspondence and material that the District provided to LADWP that directly responded to the issues raised by the LADWP. The CD does not contain a "back and forth" of correspondence with the District as stated by Ms. Lyman, but it includes only correspondence that went "forth" from LADWP to the District. It also includes correspondence sent to other agencies without contemporaneous copies being sent to the District. At the hearing, the Board members clearly indicated their dissatisfaction with LADWP's submittal of late comments for the sole purpose of placing material into the record and they especially questioned the value in submitting the information on unlabeled CDs that the Board could not read. For the purposes of the record of the SIP amendment, the District will not consider the information on the CD to have been properly submitted and, therefore, it will not be included in the record.

The District will contact LADWP staff to initiate efforts to discuss the BACM transition requirements and the definition of brine shallow flood BACM.

Sincerely,

A handwritten signature in blue ink, appearing to read "T.D. Schade", with a stylized flourish at the end.

Theodore D. Schade
Air Pollution Control Officer

cc: John Eastman, District Board Chairman
Ron Hames, District Board Vice Chairman
Linda Arcularius, District Board

Mr. Martin L. Adams
Ms. Michelle Lyman

September 24, 2013

Larry Johnston, District Board
Byng Hunt, District Board
Matt Kingsley, District Board
Mary Rawson, District Board
Ron Nichols, LADWP

Department of Water and Power



the City of Los Angeles

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General Manager

September 11, 2013

District Governing Board
c/o Tori DeHaven, District Clerk
Great Basin Unified Air Pollution Control District
157 Short Street
Bishop, California 93514-3537



Subject: September 16, 2013, Governing Board Meeting, Agenda Item 4; Public Hearing on Approval of Order Amending the 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan et al.

Dear Governing Board Members:

The City of Los Angeles acting by and through its Department of Water and Power (LADWP) submits this letter in connection with Great Basin Unified Air Pollution Control District's (District) proposed amendment to the 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan (2008 SIP). The 2008 SIP Amendment is required by the recent Phase 7a Settlement Agreement and Term Sheet negotiated and approved by LADWP and the District related to the Phase 7a dust control project and Keeler Dunes release in order to implement the terms of that agreement.

While the District's proposed 2008 SIP Amendment incorporates many of the terms agreed to in the Settlement Agreement and Term Sheet, LADWP believes that some elements of the SIP Amendment are inconsistent with the terms and intent of the Settlement Agreement and Term Sheet, for example, the District's inclusion of an amendment to the Coso Junction Maintenance Plan in the same order amending the 2008 SIP. LADWP has submitted a separate letter from Ms. Michelle Lyman to the Governing Board addressing those concerns and suggesting revisions to the District's proposed 2008 SIP Amendment.

Also, the 2008 SIP Amendment does not resolve various issues that are outside the scope of the Settlement Agreement, which LADWP has raised in numerous letters, reports and other correspondence submitted to the District, the California Air Resources Board (CARB), the United States Environmental Protection Agency (EPA), and other

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regulatory agencies since the District adopted the 2008 SIP. The 2008 SIP was approved by CARB on June 11, 2008, and subsequently submitted to EPA; however, it was never approved by EPA, so there is still an opportunity to resolve these issues, which include, but are not limited to, the 2008 SIP's reliance upon the District's Dust ID Model; incorporation of the supplemental control requirements determination process; inclusion of a control strategy that focuses almost exclusively on Owens Lake; reliance on an inaccurate lake level elevation; and, fails to account for all potential sources for PM10 emissions. In lieu of repeating these arguments here, LADWP has assembled for the Board's convenience copies of its prior correspondence and reports addressing these issues and included them on a DVD that is enclosed with this letter.

LADWP requests that the District Board address these issues and resolve the inconsistencies between the Settlement Agreement and Term Sheet. LADWP further requests that the District include this letter and the accompanying DVD of exhibits, as well as the separate letter from Ms. Lyman addressing the inconsistencies between the 2008 SIP Amendment and the Settlement Agreement, as part of the administrative record for Agenda Item 4, and that these materials also be included in any package submitted to CARB and EPA related to the 2008 SIP Amendment.

Thank you for your consideration. Please contact me at (213) 367-1014, or Mr. William T. Van Wagoner, Manager of Owens Lake Regulatory Issues and Future Planning, at (213) 367-1138, if you would like to discuss these issues further.

Sincerely,



Martin L. Adams
Director of Water Operations

WTVW:rdn
Enclosures

c: Mr. Theodore D. Schade, District Air Pollution Control Officer
Mr. William T. Van Wagoner

Index of Exhibits to September 2013, letter to Great Basin re: Amendment to 2008 Owens Valley SIP

Tab	Date	Document Description
1.	June 3, 2011	LADWP Response to Great Basin 2011 Preliminary SCRD (Alternatives Analysis and Transmittal Letter)
2.	December 23, 2011	LADWP Brief re: Application of CARB First Procedural Order
3.	December 23, 2011	CARB Staff Analysis re: Whether Section 42316 Requires 2011 SCRD Appeal be Decided Within 90 Days
4.	March 29, 2012	Opening Brief by LADWP
5.	March 29, 2012	Appendix of Citations to Administrative Record In Support of LADWP Opening Brief
6.	March 29, 2012	Compendium of Authority Cited in LADWP Opening Brief
7.	March 29, 2012	Declaration of William Van Wagoner In Support of LADWP Opening Brief, plus Exhibits
8.	March 29, 2012	Declaration of Mark Schaaf In Support of LADWP Opening Brief, plus Exhibits
9.	March 29, 2012	Declaration of Carole Denardo In Support of LADWP Opening Brief, plus Exhibits
10.	April 30, 2012	Reply Brief by LADWP
11.	April 30, 2012	Appendix of Citations to Administrative Record In Support of LADWP Reply Brief
12.	April 30, 2012	Compendium of Authority Cited in LADWP Reply Brief
13.	April 30, 2012	Declaration of Michelle Lyman In Support of LADWP Reply Brief, plus Exhibits
14.	April 30, 2012	Declaration of Mark Schaaf In Support of LADWP Reply Brief, plus Exhibits
15.	April 30, 2012	Declaration of Kathryn M. Casey In Support of LADWP Reply Brief, plus Exhibits

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Tab	Date	Document Description
16.	May 7, 2012	LADWP Response to CARB Staff Assessment of 2011 SCRD Appeal
17.	May 7, 2012	Appendix of Citations to Administrative Record in LADWP Response to CARB Staff Assessment of 2011 SCRD Appeal
18.	July 12, 2012	Letter from LADWP (Somach) to Great Basin re: Request for 6 Month Extension to Review 2012 SCRD
19.	August 10, 2012	Letter from LADWP (Somach) to Great Basin Governing Board (Johnston) re: 2012 SCRD
20.	September 19, 2012	Letter from LADWP to Great Basin re: Response to Preliminary 2012 SCRD, plus Appendices A-D
21.	December 7, 2012	Letter from LADWP (Adams) to Great Basin Board re: Request to Reconsider 2012 SCRD
22.	January 25, 2013	Letter from LADWP (Adams) to Great Basin re: 2012 SCRD
23.	August 22, 2013	LADWP's Opening Brief in CARB Appeal Proceedings re: 2012 SCRD, plus Exhibits
24.	October 13, 2011	Letter from LADWP to EPA re: 2011 Network Plan
25.	May 16, 2012	Letter from LADWP to Great Basin re: 2012 Network Plan
26.	September 28, 2012	Letter from LADWP to EPA re: 2012 Network Plan
27.	January 8, 2013	Letter from LADWP to EPA re: Supplemental Comments on 2012 Network Plan
28.	April 18, 2013	Letter from EPA to Great Basin re: Approval of 2012 Network Plan
29.	June 17, 2013	Letter from LADWP to EPA re: LADWP Response to EPA Comments on Termination of Licenses for Dirty Socks, North Beach and Mill Site

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30.	August 23, 2013	Letter from LADWP to EPA re: Federal Register Notice of Approval of 2012 Network Monitoring Plan
31.	July 10, 2013	Letter from LADWP to Great Basin re: 2013 Network Plan
32.	July 31, 2013	Letter from LADWP to EPA re: 2013 Network Plan
33.	September 3, 2013	Letter from LADWP to EPA re: Supplemental Comments on 2013 Network Plan
34.	November 29, 2012	Letter from LADWP to Great Basin re: Termination of Licenses for Dirty Socks, North Beach and Mill Site SLAMS Monitors
35.	March 22, 2013	Letter from LADWP to CSLC re: Objections to Proposed Relocation of North Beach Monitor
36.	March 22, 2013	Letter from LADWP to Bureau of Land Management (BLM) re: Right of Way CACA 50145 (DCA T5-1)
37.	April 25, 2013	Letter from LADWP to BLM re: Great Basin Request to Amend ROW 046216
38.	May 17, 2013	Letter from LADWP to BLM re: Great Basin Request to Amend ROW 042345
39.	June 19, 2013	Letter from LADWP to BLM re: Great Basin Request to Relocate Monitor in ROW 50145 and Modify ROW 042345 to Relocate Two Monitors
40.	July 3, 2013	Letter from LADWP to CSLC re: Objections to Proposed Relocation of North Beach Monitor
41.	May 11, 2012	Letter from LADWP to EPA re: Exceptional Event Demonstration for Dust Event on March 6-7, 2012, at Owens Lake, including (Attachment A) April 17, 2012 Air Sciences Memorandum re: Summary of Lake Emissions from March 6-7, 2012, Event at Owens Lake
42.	June 8, 2012	Letter from LADWP to EPA re: Request to Investigate May 25, 2012, Event

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Tab	Date	Document Description
43.	August 14, 2012	Letter from LADWP to Great Basin re: Request to Investigate May 25, 2012, Event
44.	August 31, 2012	Letter from LADWP to EPA re: LADWP Comments on EPA's Draft Guidance to Implement Requirements for the Treatment of Air Quality Monitoring Data Influenced by Exceptional Events, plus attachments
45.	September 20, 2012	Letter from LADWP to Great Basin re: Request to Investigate May 25, 2012, Event
46.	November 29, 2012	Letter from LADWP to EPA re: Exceptional Event Flag and Investigation Request for 2010-2011
47.	December 17, 2012	Letter from LADWP to EPA re: Update to November 29, 2012, Exceptional Events Flag and Investigation Request for 2010-2011
48.	January 31, 2013	Letter from LADWP to EPA re: Exceptional Event Flag and Investigation Request for 2011-2012 Year
49.	March 28, 2013	Letter from LADWP to Great Basin re: Request to Remove Data Influences by Off-Lake Sources from 2011-2012 Dust ID Modeling
50.	September 15, 2011	Letter from LADWP to EPA re: February 2011 PM10 Exceedance at Coso Junction
51.	January 18, 2012	Letter from LADWP to EPA re: PM10 Exceedance at Coso Junction on February 8, 2011
52.	March 23, 2012	Letter from LADWP to EPA re: PM10 Exceedance at Coso Junction on February 8, 2011
53.	June 5, 2012	Letter from LADWP to EPA re: Response to Great Basin May 17, 2012, letter on Coso Junction
54.	May 1, 2010	Assessment of the Owens Lake Dust ID and Mitigation Program (prepared by Expert Panel, Chat Cowherd, Jack Gillies, and Larry Hagen)
55.	April 4, 2012	Letter from LADWP to EPA re: OTM 30
56.	April 17, 2012	Letter from EPA to LADWP re: OTM 30

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57.	May 29, 2012	Letter from LADWP to EPA re: Appearance of OTM 30 on EPA's TTN Network
58.	June 14, 2012	Letter from EPA to LADWP re: May 29, 2012, letter on OTM 30
59.	August 14, 2012	Letter from LADWP to EPA re: OTM 30
60.	September 17, 2012	Letter from LADWP to EPA re: Independent Review of OTM 30
61.	November 30, 2012	Letter from EPA to LADWP re: Letter Concerning OTM 30
62.	January 8, 2013	Letter from LADWP to EPA re: OTM 30
63.	March 29, 2013	Letter from LADWP to EPA re: OTM 30
64.	April 19, 2013	Letter from EPA to LADWP re: January 8, 2013, and March 29, 2013, letters
65.	August 31, 2011	Letter from LADWP to Great Basin re: BACM Tillage Test on T12-1
66.	November 1, 2011	Letter from LADWP to Great Basin re: Tillage BACM Study Quality Assurance Project Plan
67.	November 1, 2011	LADWP Board Resolution 012-097 re: BACM Tillage on T12-1
68.	December 21, 2011	Letter from LADWP to Great Basin re: Tillage BACM Test on T12-1 Dust Mitigation Program
69.	January 25, 2011	Joint Petition of LADWP and Great Basin Air Pollution Control Officer (APCO) to Modify Order 110317-01 and Extend Deadline for Installation and Operation of BACM on T12-1 [adopted in Board Order 120206-07]
70.	May 30, 2012	Letter from LADWP to Great Basin re: Tillage BACM Test in Area T12-1; LADWP Resolution 012097

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71.	July 17, 2012	Letter from LADWP to Great Basin re: Use of Tillage Test Plan Data Analysis Protocol in Determining Effectiveness of Tillage
72.	September 11, 2012	Letter from LADWP to Great Basin re: Scope of Work and Selection of Independent Auditor on Tillage BACM Test
73.	November 7, 2012	Letter from LADWP to Great Basin re: Independent Auditor for Tillage BACM Study
74.	December 13, 2012	LADWP Transmittal Letter re: Materials Submitted by LADWP to Great Basin Board on December 13, 2012, plus Exhibits
75.	February 21, 2013	Letter from LADWP to Great Basin re: March 7, 2013, Public Workshop on Origin and Development of the Keeler Dunes
76.	May 9, 2013	Letter from LADWP to Great Basin re: Staff Presentation at March 7 Hearing
77.	November 29, 2012	Letter from LADWP to Great Basin re: Off-Lake Sources in the Dust ID Model
78.	January 25, 2013	Letter from LADWP to Great Basin re: Request to Install Sand Motion Monitors on LADWP Property
79.	April 12, 2013	Letter from LADWP to Great Basin re: Follow Up from February 5, 2013, Call to Discuss Screening of Off-Lake Sources and Reply to December 20, 2012, letter Requesting Permission to Install Sand Motion Monitors on LADWP Property
80.	June 14, 2013	LADWP Petition to Modify Phase 7a Abatement Order, plus Exhibits
81.	August 14, 2013	LADWP Board of Commissioners Agenda Report (August 27, 2013, Meeting; Item No. 27) re: Approval of Settlement Agreement and Release Concerning Modification to Phase 7a Stipulated Order for Abatement and Keeler Dunes Project; Authorization to Submit Joint Petition Re: Stipulated Modification to Phase 7a Abatement Order, plus Exhibits



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September 13, 2013

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District Governing Board
c/o Tori DeHaven, District Clerk
Great Basin Unified Air Pollution Control District
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Re: City of Los Angeles Department of Water and Power Comments
Regarding District Staff's Proposed Amendment to the 2008 State
Implementation Plan

Dear Governing Board Members:

The City of Los Angeles acting by and through its Department of Water and Power (LADWP) submits this letter in connection with Great Basin Unified Air Pollution District (District) staff's proposed amendment to the *2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan* (2008 SIP) (SIP Amendment). While the District staff's proposed 2008 SIP Amendment adequately addresses some of the terms contained in the Settlement Agreement, the amendment is incomplete and, in some instances, inconsistent with the terms, intent and spirit of the Settlement Agreement that the District and LADWP Boards' worked so diligently and in good faith to develop and which they meant to effectuate through a corresponding amendment to the 2008 SIP and Board Order.

LADWP believes these issues should be resolved before the District Board acts on the SIP Amendment. LADWP requested additional time to discuss and resolve important issues related to the SIP amendments, however, District staff denied LADWP's request and instead insisted that the hearing for adoption of the SIP Amendment proceed at the earliest possible opportunity in order to quickly trigger LADWP's obligation to pay the District \$10 million for the Keeler Dunes Project. LADWP is similarly eager to see the Keeler Project implemented as quickly as possible, but not at the expense of a SIP Amendment that adequately reflects the terms and

intent of the Settlement Agreement. LADWP respectfully requests that the District Board continue this public hearing to give the District Board time to consider LADWP's objections to District staff's proposed SIP Amendment and allow LADWP and District staff additional time to discuss and hopefully resolve the issues so a mutually agreeable SIP Amendment may be brought to the District Board for its approval.

LADWP's concerns with the SIP Amendment are described below.

1. **The SIP Amendment Does Not Implement the Parties' Agreement to Transition Shallow Flooding to Non-Water Intensive Best Available Control Measures (BACM).**

LADWP and the District agreed in the Settlement Agreement to transition wherever possible current, water-intensive BACM controls to high-confidence, waterless dust control measures. (Settlement Agreement, § I.e.ii.) However, this objective cannot be fulfilled under the terms of the 2008 SIP. The current language of the 2008 SIP requires LADWP remain in compliance **at all times** with the BACM performance standards even when transitioning from one BACM to another BACM. This is an impossible standard to meet that could expose LADWP to significant financial and regulatory liability if it were to fall out of compliance during the course of transitioning to new BACM. Even though District staff understands transition of shallow flood areas is a major infrastructure project that cannot feasibly be accomplished within the July-October timeframe required by the current terms of the 2008 SIP, they have refused to amend the 2008 SIP as necessary to allow the actual transition of BACM. In fact, District staff has indicated their intention to extract additional concessions from LADWP, as they did with the Clean Air Projects Program (CAPP) payment, before LADWP will be permitted to implement the BACM transition agreed to in the Settlement Agreement.

District staff's refusal to incorporate in the SIP Amendment a means by which to feasibly transition shallow flood areas renders the agreement to transition "wherever possible" meaningless. While the Commissioners who negotiated the Settlement Agreement did not discuss the details of how the transition from shallow flood to waterless dust control measures would occur, it is clear the Commissioners from both LADWP and the District Board meant for this transition **to occur** by way of a SIP Amendment "consistent" with the Settlement Agreement. A SIP Amendment that provides no means for transition to occur without placing LADWP in violation of the SIP is simply inconsistent with the terms of the Settlement Agreement and undermines the intent of both parties to transition to waterless dust control measures. Consequently, in order to implement the Settlement Agreement, LADWP requests the language of the 2008 SIP be modified at Section 7.9 of the 2008 SIP and Paragraph No. 12 in the SIP Board Order to read as follows:

"Existing BACM controls may be replaced with other BACM to help reduce implementation and operating costs and water usage. Any approved BACM can be changed to any other approved BACM. The District 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 on

Owens Lake. LADWP may transition up to 3.0 square miles of existing Shallow Flood controls at a time to any combination of BACM or BACM test areas. These 3.0 square mile transition areas do not need to meet the performance specifications for BACM during the transition period and until the new BACM is fully implemented. however, such transitions must be done in a manner that at all times results in the performance specifications for one or the other BACMs being met."

The above language is nearly identical to the language set forth in the March, 2011 Stipulated Order of Abatement (SOA) which the District Governing Board agreed to as part of its promise to support the transition to less water intensive BACM. Adding this language to the SIP Amendment, then, is consistent with the SOA and will provide ***the minimum means necessary to turn the commitment to transition water intensive to waterless dust controls on Owens Lake into a reality.***

2. **District Staff's Proposed Language Regarding the Keeler Dunes Is Inconsistent With the Settlement Agreement.**

As part of the Settlement Agreement, LADWP agreed to provide the District with a public benefit contribution of \$10 million for the District to use to develop and implement a plan to control PM10 emissions in the Keeler Dunes (Keeler Project) in exchange for the District granting LADWP a full release of any and all liability for the Keeler Dunes. The definition of the Keeler Project was negotiated and explicitly defined in the Settlement Agreement as including "all those portions of the Keeler Dunes owned by LADWP and the United States Bureau of Land Management ("BLM")." (Settlement Agreement, § II.a.ii.) The Settlement Agreement also states that:

- "The District 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 any other activities directly and exclusively related to the Keeler Project for as long as dust controls are required." (Settlement Agreement, § II.a.ii. [emphasis added].)
- "The District shall use the \$10,000,000 for environmental impact analysis, design, permitting, construction, operation, maintenance, management, monitoring and directly-related activities for a dust emission control project a Keeler Dunes..." (Settlement Agreement, § II.a.ii.) The money is to be exclusively used to fund the Keeler Project. (See also Settlement Agreement, § II.a.iv.)
- "The District forever releases LADWP from any and all liability under any and all federal, state, and local laws that the District can enforce and settle, including but not limited to the Health and Safety Code, those portions of the 2008 SIP that can be enforced by the district, and fugitive dust emission rules, for dust emissions, regardless of origin, from the Keeler Dunes, including but not limited to portions of the Keeler Dunes owned by LADWP." (Settlement Agreement, § II.b.i.)

- "The District shall amend the 2008 SIP and Board Order 080128-01 consistent with the terms of this Agreement including the Keeler and other Dunes Release as defined in sections II(b)(i)-(ii)." (Settlement Agreement, § II.b.iii.)

These terms make the District solely responsible for all emissions from the area defined as the Keeler Project. These terms were essential to LADWP's agreement to give the District \$10 million and must be included in the SIP Amendment. Further, the District staff made it clear in the hearings on the origin and development of the Keeler Dunes that PM10 emissions at the Keeler Dunes were required to be controlled and that LADWP's water gathering activities were solely responsible for Keeler Dunes.

District staff proposes the SIP Amendment include the following language regarding the Keeler Dunes: "[a]ny PM10 control measures necessary for the Keeler dunes will be implemented by the District, or by entities other than the LADWP, by December 31, 2015." This language suggests that controls on the Keeler Dunes may or *may not* be necessary despite the parties' agreement that such controls are necessary for the benefit and protection of the community. This language could be interpreted in the future to allow a situation where LADWP pays \$10 million for the Keeler Project to be implemented, but District staff later determines that that lesser or no controls are needed, or that such controls should be implemented by another responsible party.

During discussions regarding the proposed SIP Amendment, LADWP was informed by the Air Pollution Control Officer (APCO) that he may want to pursue the California Department of Transportation (Caltrans) to pay for the installation of dust controls because of the impacts its flood control berms located northeast of Highway 136 had on the development of the Keeler Dunes. At the December 13, 2012 hearing before the District Board, LADWP presented evidence showing that Caltrans, not LADWP, is responsible for excess emissions from the Keeler Dunes. That argument, and the evidence LADWP presented in support of it, was rejected out of hand by District staff who continued to insist that LADWP, and LADWP alone, is responsible for emissions from the Keeler Dunes. District staff's desire to possibly hold others accountable for emissions at Keeler Dunes after steadfastly blaming LADWP and prompting LADWP pay a \$10 million settlement calls into question the fairness and accuracy of District staff's Keeler Dunes "analysis" and ultimately, the need for, and use of, of LADWP's substantial public benefit contribution. The SIP Amendment should be revised to eliminate the reference to "other entities" and reflect the actual terms of the Settlement Agreement which provides that the District is solely responsible for addressing emissions at Keeler Dunes. LADWP requests that a verbatim recitation of the language of the Settlement Agreement pertaining to the Keeler Dunes, as contained in the bulleted points above, be spelled out in the SIP Amendment in lieu of the language regarding "other entities" and other language proposed by District staff that is nowhere contained in the Settlement Agreement.

3. The Board Order for the SIP Amendments Provides No Context for the SIP Amendments.

In the proposed SIP Amendment, District staff includes the historical facts and circumstances leading up to the March 2011 SOA, but omits the current facts and circumstances that explain and justify the SIP Amendment. Settlement negotiations

commenced between LADWP and District Board commissioners because LADWP was unable to meet the Phase 7a deadlines set forth in the SOA due to the unexpected discovery of significant cultural resources. The unexpected discovery of extensive cultural resources throughout the Phase 7a areas resulted not only in the need for an extension of the Phase 7a deadlines, but also for a process by which to ensure the treatment of such resources in a responsible manner. These facts and circumstances provide the underlying basis for the resulting Settlement Agreement and SIP Amendment. The SIP Amendment proposed by District staff, however, provides no context, and therefore no justification, for *why* the District Board has agreed to a time extension for dust controls to be implemented on the Phase 7a areas. Further, there is an insufficient explanation of the facts and circumstances surrounding, and justification for, the District Board's agreement to release LADWP for all liability related to the Keeler Dunes in exchange for a public benefit contribution for Great basin to implement the Keeler Dunes Project. It is important to include the context for the actions of the District Board in amending the 2008 SIP so that decision-makers at the California Air Resources Board (CARB) and the U.S. Environmental Protection (EPA), who will ultimately approve or approve the SIP Amendment, may make a decision informed by the facts.

4. There was No Agreement to Amend the Coso Junction Maintenance Plan.

The Settlement Agreement does not mention the *2010 PM10 Maintenance Plan and Redesignation Request for the Coso Junction Planning Area* (Coso Plan). The Settlement Agreement only discusses modifications to the 2008 SIP and Board Order 080128-01. LADWP never agreed to amend the Coso Plan, and would never have agreed to incorporate amendments to the Coso Plan within the SIP Amendments had the issue been raised during settlement negotiations. If the Coso Plan is to be amended, it must be done so in a separately noticed proceeding and via a separate amendment. During negotiations over the content of the proposed SIP Amendment between LADWP and District staff and their counsel, LADWP repeatedly expressed its objection to the addition of language regarding the Coso Plan within the 2008 SIP Amendment.

Despite LADWP's objections, the proposed SIP Amendment includes numerous references to the Coso Plan. The 2008 SIP makes absolutely no reference to Coso Junction and the Coso Plan is *not* part of the 2008 SIP. The Coso Plan is limited in both geographical and regulatory scope to the Coso Junction Planning Area (CJPA), and is therefore wholly irrelevant to the Owens Valley Planning Area (OVPA) that is the subject of the 2008 SIP and SIP Amendment. The 2008 SIP control strategy, as implemented through the Board Order 080128-01, applies solely to the OVPA and is designed to bring the OVPA – not the CJPA – into attainment with the NAAQS. The CJPA has already been declared by EPA to be in attainment. No further controls anywhere, including at Owens Lake, are necessary for the CJPA to be in attainment. The modifications to the 2008 SIP proposed as part of the SIP Amendment concern the installation of *future controls* in the Phase 7a area of the OVPA and are not necessary to bring the CJPA into compliance with the NAAQS. The SIP Amendment has absolutely no bearing on the CJPA or the EPA-approved Coso Plan and will not require any modifications or other changes to the Coso Plan. The District Board should, accordingly, strike all references to the Coso Plan from the SIP Amendment.

In addition, District staff and its counsel are aware that LADWP has, and continues to, dispute the applicability of the Coso Plan and District staff's repeated contentions that exceedances at Coso Junction were caused by dust emissions from Owens Lake. The inclusion of language regarding the Coso Plan in the proposed 2008 SIP Amendment is contrary to the language and intent of the Settlement Agreement and is designed to aid District staff and its counsel in efforts to hold LADWP liable for air quality violations in Coso Junction. While LADWP does not believe that inclusion of references to the Coso Plan within the 2008 SIP Amendments gives the Coso Plan any greater enforceability or legal validity, LADWP believes that the inclusion of such references will allow the District's counsel to make such an argument. Good faith in the adoption of a SIP Amendment "consistent" with the Settlement Agreement dictates that language regarding the Coso Plan be removed from the SIP Amendment given the absolute lack of intent by the parties to address anything having to do with Coso Junction or the Coso Plan and given the fact the Coso Plan is, and was during negotiations, a known area of dispute between the District and LADWP. The 2008 SIP Amendment should not be used as the vehicle of surprise, or unfair advantage, by either party, but should be a true reflection of the terms, spirit and intent of the Settlement Agreement.

5. The Brine Shallow Flooding BACM Is Not Subject to the General Shallow Flooding Requirements Under the 2008 SIP.

The Settlement Agreement and SIP Amendment include, among other things, the addition of a new approved BACM to be added to Appendix C of the 2008 SIP referred to as "Brine Shallow Flooding" (Brine BACM). Aside from sharing part of a name, Brine BACM is separate and distinguishable form of BACM from the Shallow Flooding BACM that is already included in the 2008 SIP and subject to numerous requirements, including efficiency standards and criteria. The definition of Brine BACM included in the SIP Amendments suggests – incorrectly – that these Shallow Flooding requirements are equally applicable to the new Brine BACM. This is incorrect and inconsistent with the parties' settlement discussions and our shared goal of implementing water-efficient and cost-effective dust controls.

Shallow Flooding is a different control measure from the newly-approved Brine BACM. Under Shallow Flooding, water is continually dispersed onto the lakebed in order to wet the playa and suppress dust emissions. There is no "end" to the use of water for Shallow Flooding BACM because once the prior flooding has evaporated or been absorbed into the playa then additional water is dispersed. Thus, Shallow Flooding is the most water-intensive BACM. In contrast, Brine BACM involves the one-time use of high-salinity water that, once dispersed onto the playa, dries and creates a brine "crust" on the surface of the land that effectively suppresses airborne PM10 emissions. There is no need to disperse additional water with Brine BACM because the barrier created by the brine crust – unless disturbed – can suppress dust emissions indefinitely. There is therefore no rational basis for the Brine BACM to be subject to the exhaustive Shallow Flooding requirements outlined in the 2008 SIP, particularly the control efficiency standards.

Further, under the Settlement Agreement, the existing brine pool, which is defined as those areas at Owens Lake below 3,553.55 feet, is considered Brine BACM

District Governing Board
c/o Tori DeHaven, District Clerk
September 13, 2013
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and LADWP has no obligations with respect to these areas. (Settlement Agreement, § I.F.ii.) The 2008 SIP and Board Order need to reflect this new BACM. Therefore, LADWP is requesting the following language be added to the 2008 SIP and Board Order:

"The Governing Board approves 'Brine Shallow Flooding BACM' as a subcategory of Shallow Flooding BACM. The areas at Owens Lake below 3,553.55 feet are an existing natural Brine Pool that are considered fully controlled as Brine Shallow Flooding BACM. LADWP is not responsible for dust controls or otherwise for any of the areas within the existing natural Brine Pool, and is not required to or liable for maintenance of the existing natural Brine Pool. Brine Shallow Flooding BACM may also be implemented on any other areas of Owens Lake. Brine Shallow Flooding BACM is defined as areas that have an extremely high concentration of salinity and become dry or crusted over time. The District and LADWP will work together to develop a mutually agreeable description for Brine Shallow Flooding BACM and a method or methods for determining when an area is compliant with Brine Shallow Flooding BACM."

The inclusion of Brine Shallow Flooding BACM in the Settlement Agreement and its approval as a new control measure for the OVPA reflects LADWP's and the District's mutual goal of transitioning from water-intensive BACM like Shallow Flooding to more cost-effective and water-use conscious control measures. The current SIP Amendment language and definition for Brine BACM is inconsistent with this shared goal and therefore directly contrary to the letter and spirit of the Settlement Agreement. The SIP Amendment and Board Order should be modified to clarify this issue and to confirm that the Shallow Flooding requirements prescribed in the 2008 SIP are applicable to the new Brine BACM.

Thank you for your consideration of these comments. We look forward to working with the District in the future on this and other matters related to our mutual goals of improving air quality in Owens Valley in a cost-effective and non-water intensive manner.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michelle Lyman", with a long, sweeping horizontal line extending to the right.

Michelle Lyman
Deputy City Attorney