

Great Basin Unified Air Pollution Control District

2013 Amendment to the Owens Valley PM₁₀ SIP

Board Order 130916-01

Exhibit 6: District Governing Board Order Number
130819-01 – Findings and Decision of District Governing
board Upon Hearing for Stipulated Order for Abatement
110317-01, dated August 19, 2013

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

In the Matter of Joint Petition and Stipulation
to Modify District Governing Board Order No.
110317-01

THEODORE D. SCHADE
AIR POLLUTION CONTROL OFFICER
GREAT BASIN UNIFIED AIR POLLUTION
CONTROL DISTRICT,

vs.

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

Order Number 130819-01

FINDINGS AND DECISION OF
DISTRICT GOVERNING BOARD UPON
HEARING FOR STIPULATED
MODIFICATION TO STIPULATED
ORDER FOR ABATEMENT 110317-01

Hearing Date: August 19, 2013

Location: Bishop, California

FINDINGS AND DECISION OF THE GOVERNING BOARD

A joint petition from the Great Basin Unified Air Pollution Control District's ("District") Air Pollution Control Officer ("APCO") and the City of Los Angeles by and through its Department of Water and Power ("LADWP") was heard on August 19, 2013, pursuant to notice and in accordance with the provisions of California Health and Safety Code sections 40823 and 42450, District Rule 811, paragraph 22 of the Order 110317-01. Seven members of District Governing Board were present: Board Chair John Eastman, Board Vice-Chair Ron Hames, Linda Arcularius, Matt Kingsley, Larry Johnston, Byng Hunt, and Mary Rawson. The District Governing Board was represented by George Poppic of the California Air Resources Board. Co-Petitioner, Theodore D. Schade, APCO, was represented by Peter Hsiao of the law firm Morrison and Foerster. Co-Petitioner, LADWP was represented by Michelle Lyman, Deputy City Attorney for the City of Los Angeles. The public was given an opportunity to testify. The matter was submitted and evidence received including, but not limited to, the Original Stipulated Order for Abatement (Exhibit 1), LADWP's Petition with all

1 attachments to the District Governing Board to modify Order 110317-01 submitted to the
2 District on June 14, 2013 (Exhibit 2), the Term Sheet approved by the LADWP Board of
3 Commissioners on June 26, 2013, and the District Governing Board on June 27, 2013 (Exhibit
4 3), the District Board Report for the June 27, 2013 special meeting (Exhibit 4), and the
5 Settlement Agreement and Release (Exhibit 5), a confidential map of the 277-acre Initial
6 Eligible Cultural Resources Area (Exhibit 6), and a map of Phase 7a Modified Areas and Phase
7 7a Transition Areas (Exhibit 7). The District Governing Board finds, concludes, and orders as
8 follows:

9 **FINDINGS OF FACT**

10 1. Co-Petitioner APCO is authorized and empowered pursuant to Division 26, Part
11 3, Chapter 7 of the California Health and Safety Code as the public official responsible for air
12 pollution observation and enforcement in the Owens Valley Planning Area (“OVPA”).

13 2. Co-Petitioner LADWP is a municipal corporation organized under the Los
14 Angeles City Charter and the Constitution and laws of the State of California. LADWP
15 operates a municipal water collection, distribution, and aqueduct system in Inyo County that
16 supplies water to the residents of the City of Los Angeles.

17 **Abatement Order Key Terms**

18 3. On May 17, 2011, the District Governing Board adopted Stipulated Order for
19 Abatement No. 110317-01 (“Order 110317-01”). Order 110317-01 requires LADWP to
20 construct a dust control project, known as Phase 7a, on approximately six square miles of the
21 Owens Lakebed, which includes 3.1 square miles within six Dust Control Areas (“DCAs”),
22 T37-1, T37-2, T1A-3, T1A-4, T-32-1 and T12-1 (“Phase 7a areas”), and approximately 3
23 square miles of transition areas, as identified in Exhibit 4 of Order 110317-01 (“Transition
24 Areas”). Except as to the modifications made herein, Order 110317-01 remains in full force
25 and effect.

26 4. Paragraphs 1 and 4(a) of Order 110317-01 set forth the compliance schedule for
27 Phase 7a of December 31, 2013, to install dust controls and December 31, 2015, to achieve
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1 fully-compliant vegetation cover.

2 5. Order 110317-01 also requires dust controls be installed in the T12-1 tillage test
3 area by December 31, 2015. The District Governing Board subsequently adopted Board Order
4 No. 120206-07 extending the deadline to install BACM in DCA T12-1 from December 31,
5 2015, to May 1, 2016.

6 6. Paragraph 5 of Order 110317-01 provides that LADWP shall not be in violation
7 of Order 110317-01 if LADWP is acting in good faith to comply with the terms of the Order
8 110317-01, but is impeded or prevented from doing so by, among other things, events or
9 circumstances beyond its control. Paragraph 6 of Order 110317-01 permits the LADWP Board
10 of Water and Power Commissioners ("LADWP Board") to adopt a resolution to this effect, and
11 requires that LADWP notify the District's APCO of any such resolution within 15 days of its
12 adoption. If the APCO does not concur with the LADWP Board's resolution, the APCO shall
13 notify LADWP and the District Governing Board in writing within 15 days of receipt of the
14 LADWP Board's resolution. Within 30 days of such written notice, two District Governing
15 Board members and two LADWP Board members may meet to make a non-binding
16 recommendation as to whether LADWP has met the requirements of Paragraph 5 of Order
17 110317-01 and whether the requested Schedule of Increments should be granted, granted with
18 modifications, or denied.

19 7. Paragraph 21 of Order 110317-01 provides that the District Governing Board
20 shall retain jurisdiction over the matter in Order 110317-01 until December 31, 2015, unless
21 Order 110317-01 is amended or modified. The District Board's jurisdiction was extended to at
22 least May 2016, which is the amended deadline to install BACM in the DCA T12-1, when it
23 adopted District Governing Board Order 120206-07.

24 8. Paragraph 22 of Order 110317-01 provides that either the APCO or LADWP
25 may petition the District Governing Board for a modification of Order 110317-01 with or
26 without a stipulation. The District Governing Board may modify Order 110317-01 without a
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1 stipulation upon a showing of good cause and upon making findings required by Health and
2 Safety Code section 42451, subdivision (a), and District Rule 805, subdivision (a).

3 9. LADWP is currently in full compliance with Order 110317-01.

4 **Phase 7a Cultural Resources Evaluation**

5 10. LADWP was required under District Governing Board Order 080128-01
6 (“Board Order 080128-01”), the enforcement Board Order for the 2008 Owens Valley PM₁₀
7 Planning Area Demonstration of Attainment State Implementation Plan (“2008 SIP”), to
8 analyze the environmental impacts of the Phase 7a project under the California Environmental
9 Quality Act (Pub. Res. Code, §§ 21000, et seq.) (“CEQA”).

10 11. LADWP retained Garcia and Associates (“GANDA”), a natural and cultural
11 resources consulting firm with state-certified archaeologists, to conduct all of the
12 archaeological investigations necessary to comply with CEQA requirements for Phase 7a.
13 Between May and August 2011, GANDA conducted a Phase I pedestrian survey of the
14 subareas within Phase 7a and discovered there were extensive unanticipated archaeological and
15 cultural resources throughout the proposed project. The 2008 SEIR mitigation measures
16 require among other things, that if the Phase I pedestrian survey identified significant
17 unanticipated cultural and archaeological resources, LADWP must conduct an assessment of
18 potentially impacted cultural sites—both known and undiscovered—for significance under
19 CEQA through the implementation of Phase II investigations. (SEIR § 3.3.5; p. 3.3-24; *see*
20 *also* Appendix R-E [Final Cultural Resources Technical Report], § 5.3, pp. 5-107-109.)
21 LADWP was required to obtain an Archaeological Investigation Permit from California State
22 Lands Commission (“CSLC”) before conducting the Phase II testing and evaluation. CSLC
23 approved the permit on September 1, 2011.

24 12. After CSLC approved the permit, GANDA commenced Phase II testing and
25 evaluation of the sites identified during the Phase I pedestrian survey to determine the sites’
26 eligibility for inclusion in the California Register of Historical Resources (“CRHR”) and
27 National Register of Historic Places (“NRHP”). In October 2011, GANDA completed its
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1 Phase II testing and evaluation of the DCAs impacted by archaeological and cultural resources.
2 GANDA determined that the impacted DCAs contain 16 archaeological sites, of which six are
3 CRHR-eligible. GANDA advised LADWP to avoid any ground disturbing activities in or near
4 the CRHR-eligible sites and, if avoidance was not feasible, LADWP was required to complete
5 a Phase III recovery before commencing ground disturbing activities in or near the CRHR-
6 eligible sites.

7 13. In November and December 2011, LADWP evaluated whether it could proceed
8 with the necessary geotechnical work on the impacted DCAs while avoiding the disturbance of
9 the CRHR-eligible sites. LADWP determined that it was infeasible to avoid disturbance of the
10 four CRHR-eligible sites identified in one of the DCAs during geotechnical work and,
11 therefore, LADWP did not proceed with geotechnical work on that DCA. In addition, on
12 December 13, 2011, GANDA issued a stop work order to LADWP pursuant to its authority
13 under the CSLC permit, requiring LADWP to stop all geotechnical work or other construction-
14 related ground disturbing activity on another DCA until after the completion of Phase III
15 archaeological data recovery excavations. LADWP determined that the CRHR-eligible sites
16 on this DCA could be avoided during geotechnical work. LADWP completed the geotechnical
17 work on in December 2011. LADWP, however, determined that it could not avoid any of the
18 Phase 7a CRHR-eligible sites if it constructed dust control measures in accordance with Order
19 110317-01.

20 14. LADWP and the District's APCO met several times to discuss LADWP's
21 progress on Phase 7a and possible alternatives to the project, including whether irreversible
22 impacts to the cultural resources could be avoided, allowing the archaeologically-sensitive
23 areas to remain untouched. In August 2012, GANDA completed its final Phase II Testing
24 Report¹ and evaluation of historical and archaeological resources in all of the Phase 7a DCAs,
25 except for the T12-1 tillage test area. In its January 30, 2012, memorandum, GANDA
26 informed LADWP that two DCAs contains a total of 53 archaeological sites, five of which are

27 ¹ The Phase II Testing Report contains sensitive cultural resources information that cannot be
28 publicly disclosed under protection laws.

1 CRHR-eligible. GANDA recommended that the CRHR-eligible sites be completely avoided
2 and that no geotechnical sampling or other construction-related ground disturbances be
3 performed on these DCAs, since the CRHR-eligible sites encompass much of much of the
4 DCAs and cannot otherwise be avoided. GANDA further recommended that if avoidance or
5 preservation in place were determined to be infeasible, then no ground disturbances should
6 occur on the two impacted DCAs until after the completion of Phase III archaeological data
7 recovery excavations.

8 15. As a result of its investigations GANDA determined there are eleven sites in the
9 Phase 7a project area eligible for listing in the CRHR. Three of the eleven sites are likely
10 locations involving the Owens Valley Indian Wars.

11 **Phase 7a CEQA Process**

12 16. The entire Phase 7a and Transition Areas are a single project under CEQA and
13 Order 110317-01. (Cal. Code Reg., tit. 14, § 15378, subd. (a).) In accordance with CEQA,
14 LADWP conducted one environmental evaluation for the entire Phase 7a project, and
15 LADWP determined that no single part of the project could be implemented until CEQA for
16 the entire project was completed. Therefore, even though some of the Phase 7a and Transition
17 Areas are not known to contain significant cultural resources, LADWP determined that design
18 could not be completed, permits from other agencies could not be obtained, construction
19 contracts could not be awarded, and construction of the dust controls could not commence until
20 LADWP had completed the entire CEQA process for Phase 7a.

21 17. In May 2011, LADWP prepared an Initial Study based on State CEQA
22 Guidelines Appendix G, which concluded that: (i) construction and operation of the proposed
23 Phase 7a project would result in significant effects on the environment; and, (ii) that an EIR
24 was required to analyze those environmental effects. A Notice of Preparation of the EIR,
25 along with the Initial Study, was filed with the State Clearinghouse on May 23, 2011. A public
26 scoping meeting for the Phase 7a project was held on June 7, 2011, at LADWP's office in
27 Keeler, California.

1 18. LADWP released the draft EIR in January 2013 for a 45 day public comment
2 period. Over the course of the next several months, LADWP staff considered and responded to
3 public comments from the District, CSLC, and other stakeholders; conducted further
4 consultations with Native American groups and others about project impacts and comments on
5 the draft EIR; and, revised the draft EIR, as necessary, to incorporate any changes to the
6 project.

7 19. CEQA requires that the EIR identify a reasonable range of alternatives to the
8 proposed Phase 7a project that “would feasibly attain most of the basic objectives of the
9 project but would avoid or substantially lessen any of the significant effects of the project,” and
10 then provide detailed discussion of the comparative merits of each alternative for the decision-
11 making body of the lead agency (LADWP Board) to consider before deciding which form of
12 the project, if any, to ultimately approve. (CEQA Guidelines, §§ 15126.6, 15004, subd. (a).)
13 Alternatives were identified in the EIR that would avoid impacts to cultural resources by
14 excluding CRHR-eligible areas from the Phase 7a dust control project.

15 20. On June 4, 2013, the LADWP Board considered and certified the Final EIR and
16 approved the Avoidance Alternative for the Phase 7a project. The Avoidance Alternative
17 involved construction of the original proposed Phase 7a project in all areas except for 350
18 acres of Phase 7a subareas T1A-3, T32-1, T37-1 and T37-2 (“Avoidance Area”) known to
19 contain significant cultural resources. Because the Avoidance Alternative would protect these
20 significant cultural resources, increase vegetated area on the lake and improve the habitat value
21 of the Transition Areas, it was identified as environmentally superior to the originally proposed
22 Phase 7a project and to the other alternatives evaluated in the Phase 7a EIR. The EIR also
23 concluded that a Phase III data investigation and recovery would not be feasible mitigation for
24 these eleven sites because of the importance of these sites to both the archaeological and local
25 Native American communities for their prehistoric and historic value as unique historical
26 resources. The LADWP Board approved the Phase 7a project and certified the Final EIR
27 subject to and contingent upon the District’s Governing Board’s approval of a modification to
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Order 110317-01 to remove the Avoidance Area from the original Phase 7a area, and to make any other additional changes necessary to ensure consistency between Order 110317-01, the Phase 7a project, and the Final EIR.

Compliance with Order 110317-01 Procedure to Obtain Extension of Time

21. On February 6, 2012, LADWP advised the District Governing Board at its meeting that numerous cultural resources had been discovered, and that LADWP may need to return to the Board to seek additional time to comply with Order 110317-01.

22. On February 7, 2012, in accordance with Paragraphs 5 and 6(a) of Order 110317-01, the LADWP Board passed Resolution No. 012-170, finding that LADWP had acted in good faith to comply with the terms of Order 110317-01, but had been otherwise impeded in meeting the December 31, 2013, deadline for installing BACM on two Phase 7a DCA areas due to the unexpected discovery of extensive cultural resources. On February 21, 2012, LADWP notified the APCO in writing of the LADWP Board's Resolution No. 012-170, and proposed a schedule of increments of progress and deadlines for future actions in compliance with Paragraph 6(a) of Order 110317-01. Under paragraph 6(c)(i) of Order 110317-01, if the APCO does not concur with the LADWP Board's resolution, the APCO is required to notify LADWP and the District Governing Board in writing of his finding within 15 days of receipt of the LADWP Board's resolution. The APCO did not provide such notification under paragraph 6(c)(i) of Order 110317-01.

23. On April 3, 2012, in accordance with Paragraphs 5 and 6(a) of Order 110317-01, the LADWP Board adopted Resolution No. 012-210, finding that LADWP had acted in good faith to comply with the terms of Order 110317-01, but had been otherwise impeded in meeting the December 31, 2013, deadline for installing BACM on two Phase 7a DCA areas due to the unexpected discovery of extensive cultural resources. On April 17, 2012, LADWP notified the APCO in writing of the LADWP Board's Resolution No. 012-210, and proposed a schedule of increments of progress and deadlines for future actions in compliance with Paragraph 6(a) of Order 110317-01. Under paragraph 6(c)(i) of Order 110317-01, if the APCO

1 does not concur with the LADWP Board's resolution, the APCO is required to notify LADWP
2 and the District Governing Board in writing of his finding within 15 days of receipt of the
3 LADWP Board's resolution. The APCO did not provide such notification under paragraph
4 6(c)(i) of Order 110317-01.

5 24. On September 5, 2012, in accordance with Paragraphs 5 and 6(a) of Order
6 110317-01, LADWP representatives attended the District Governing Board meeting and
7 presented information about the unanticipated cultural resources discovered in Phase 7a, and
8 the potential effect the discovery of these resources would have on LADWP's ability to
9 complete the Phase 7a EIR and install dust controls on Phase 7a by the December 31, 2013,
10 deadline set forth in Order 110317-01.

11 25. On September 5, 2012, LADWP notified the District Governing Board at its
12 meeting that LADWP had located extensive unanticipated cultural resources that had impacted
13 the construction schedule for the dust controls that LADWP would be returning to the
14 Governing Board with a Petition to modify Order 110317-01. LADWP also sent a letter to the
15 Governing Board Chair on February 14, 2013, informing the District of these issues.

16 26. On January 11, 2013, in accordance with Paragraphs 5 and 6(a) of Order
17 110317-01, the LADWP Board adopted Resolution No. 013-157, finding that LADWP had
18 acted in good faith to comply with the terms of Order 110317-01, but had been otherwise
19 impeded in meeting the December 31, 2013 deadline for installing BACM on DCA T1A-4 and
20 the Transition Areas due to the unexpected discovery of extensive cultural resources and the
21 resulting delay in completing the Phase 7a EIR. Even though significant cultural resources
22 have not been discovered in these areas, LADWP determined that the schedule for installing
23 BACM in these areas is affected by the unexpected discoveries in the other Phase 7a area
24 because CEQA requires one environmental analysis to encompass the entire project. DCA
25 T1A-4 and the Transition Areas cannot be excluded from the project under CEQA. On
26 January 23, 2013, LADWP notified the APCO in writing of the LADWP Board's Resolution
27 No. 013-157 and proposed a schedule of increments of progress and deadlines for future
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actions, in compliance with Paragraph 6(a) of Order 110317-01. Pursuant to paragraph 6(c)(i) of Order 110317-01, the APCO responded on February 4, 2013, stating that he did not concur with the findings of Resolution No. 013-517.

27. Following notification of the APCO's non-concurrence with Resolution No. 013-517, in accordance with Paragraph 6(c)(ii) of Order 110317-01, two members of the LADWP Board (Richard Moss and Jonathan Parfrey) and three members of the District Governing Board (Linda Arcularius, Larry Johnston, and Matthew Kingsley) held several meetings to discuss the APCO's non-concurrence with Resolution No. 013-517.

28. On June 14, 2013, LADWP submitted a Petition to Modify Order 110317-01, with exhibits, to the District Governing Board. LADWP acknowledged in the Petition that the discussions between the District Governing Board and LADWP Board members remained ongoing, and that the modifications to Order 110317-01 requested in the Petition may need to be amended to reflect the terms of any agreement reached between the parties.

Phase 7a Settlement Terms

29. The District and LADWP Board member discussions resulted in an agreement on settlement terms dated June 17, 2013 ("Term Sheet") that was approved by LADWP on June 26, 2013, and the District on June 27, 2013. (*See* Exhibit 3 [Term Sheet]; Exhibit 4 [APCO Board Report, dated June 27, 2013].)

30. Based on the provisions of the approved Term Sheet, the District and LADWP propose to enter into a settlement agreement dated August 19, 2013 ("Settlement Agreement") (*See* Exhibit 5 [Settlement Agreement]). The District approved the Settlement Agreement on August 19, 2013. LADWP is scheduled to approve the Settlement Agreement on August 27, 2013.

31. The District and LADWP agreed in the Term Sheet and Settlement Agreement to, among other things, modify Order 110317-01, to extend the compliance deadlines, and also to address the discovery of cultural resources in the Phase 7a area.

32. LADWP agreed to provide the District with a ten million dollar (\$10,000,000) public-benefit contribution for a dust control project carried out by the District in the Keeler Dunes. LADWP also agreed to support the District's project to control PM₁₀ emissions from the Keeler Dunes. The District agreed to release the LADWP from liability for the Keeler and other dune areas emissions. The details of these agreements are set forth in the Settlement Agreement.

The Settlement Agreement provides as follows:

Extensions of Compliance Deadlines.

33. The District and LADWP agreed to the extension of LADWP's deadline to construct all infrastructure and install fully-compliant BACM in the Phase 7a areas and Transition Areas, except for those areas controlled by Managed Vegetation BACM, as set forth in paragraph 4(a) of Order 110317-01, from December 31, 2013, to December 31, 2015. All infrastructure and plant materials for Managed Vegetation BACM will be installed by December 31, 2015.

34. The District and LADWP agreed to the extension of LADWP's deadline to achieve fully-compliant BACM vegetation cover for areas controlled by Managed Vegetation BACM in the Phase 7a areas and Transition Areas, as set forth in paragraph 4(a) of Order 110317-01, from December 31, 2015, to December 31, 2017.

35. The District and LADWP agreed that extensions of the deadlines in this Order would be contingent upon all of the following:

a) LADWP timely receiving from CSLC and all other agencies all of the required permits, approvals, or leases necessary to allow LADWP to construct BACM within the deadlines required by Order 110317-01.

b) Timely adoption of this Order modifying Order 110317-01 to remove all CRHR-eligible areas plus necessary buffer areas, referred to as the "Eligible Cultural Resource ("ECR") areas." The ECR areas initially consist of 277 acres of the Phase 7a areas identified in the confidential map attached to this Order as Exhibit 6 (the "Initial ECR Areas"). The

1 Initial ECR Areas and any newly discovered CRHR-eligible and necessary buffer areas (the
2 “Additional ECR Areas”) become Phase 7b.

3 c) Adoption of this Order modifying Order 110317-01 to state explicitly
4 that the discovery of any cultural resources in the Phase 7a areas is considered a condition of
5 force majeure under paragraph 5(d) of Order 110317-01.

6 d) If any one of the above contingencies is not met, then LADWP may seek
7 further extensions of time under paragraph 5 of Order 110317-01, as modified by Order
8 130819-01, and paragraphs 6 and 22 of Order 110317-01, which shall not be unreasonably
9 denied by the District.

10 Creation of Phase 7b.

11 36. The District and LADWP agreed to create Phase 7b, which shall consist of the
12 Initial ECR Areas and any Additional ECR Areas. Additional ECR Areas are determined by
13 LADWP’s state-certified archaeologist, and which are confirmed by a second, state-certified
14 archaeologist mutually agreeable to the District, LADWP and CSLC (the “Second
15 Archaeologist”). The District and LADWP agreed that this Order would modify Order
16 110317-01 to remove all areas in Phase 7b.

17 37. The District and LADWP agreed that LADWP will promptly notify and confer
18 with the District if any cultural resources are discovered during the construction of Phase 7a.
19 Upon the discovery of the cultural resources, LADWP will request that its state-certified
20 archeologist fulfill his or her legal obligations relative to assessing and making
21 recommendations for cultural resources. LADWP’s state-certified archaeologist shall be
22 responsible for evaluating whether any of the newly discovered cultural resource areas within
23 Phase 7a are CRHR-eligible, and if so, define the additional buffer areas necessary to prevent
24 disturbance of the CRHR-eligible areas. LADWP’s state-certified archeologist’s
25 recommendations shall be confirmed by the Second Archaeologist. The District and LADWP
26 agreed that once confirmed by the Second Archaeologist, the newly identified CRHR-eligible
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1 areas and necessary buffer areas shall become ECR, will be withdrawn from Order 110317-01
2 and included in Phase 7b.

3 *Cultural Resources Task Force.*

4 38. The City and District agreed to form a Cultural Resources Task Force (“CRTF”)
5 and host its initial meeting within ninety (90) days after the Effective Date of this Order. The
6 CRTF will be an advisory group consisting of representatives from the LADWP, District,
7 CSLC, State Historical Preservation Office, and Local Tribal Representatives. The CRTF may
8 draw upon outside resources and experts, as needed, to aid the CRTF’s process.

9 39. The District and LADWP agreed that the CRTF will initially be charged to
10 make non-binding recommendations to the District and LADWP on or before December 31,
11 2014, as to the best course of action and timing for the treatment of the Initial Phase 7b Areas.

12 40. The District and LADWP agreed that CRTF will be advisory in nature only, and
13 that the District and LADWP will each retain their independent final decision-making authority
14 as to the treatment of ECR areas.

15 *No Fines Imposed.*

16 41. The District agreed not to fine, issue fees or impose any other type of penalty
17 upon LADWP with respect to any Phase 7a areas, provided that the Phase 7a dust controls are
18 put into place within the time frames set forth in paragraphs 33 and 34 above.

19 42. The District agreed not fine LADWP for any areas in the Initial Phase 7b Areas
20 and any Additional Phase 7b Areas pursuant to Order 110317-01 and Order 130819-01.

21 *Other Abatement Order Modifications.*

22 43. The District and LADWP agreed to make every effort to develop, approve and
23 deploy high-confidence, waterless dust control measures in all areas where dust controls are
24 ordered on Owens Lake.

25 44. The District and LADWP agreed that this Order shall not be construed as a
26 waiver by either the District or LADWP of any rights, remedies, legal theories or positions that
27 either the District or LADWP may choose to assert in any hearing, proceeding, tribunal or
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1 action now or in the future, except with respect to the particular subject matter contained in this
2 Order. For example, LADWP disputes the legality of and does not agree to the District's
3 Supplemental Control Requirements Determination ("SCRD") process. The District asserts
4 that LADWP agreed to the SCRD process in Order 110317-01 and elsewhere, and that the
5 SCRD process is now the law. LADWP and the District have a continuing disagreement on
6 this point.

7 BACM Clarifications.

8 45. The District approved Reduced Thickness Gravel BACM, which is defined as
9 two (2) inches of gravel with geotextile fabric underlay. "Reduced Thickness Gravel is
10 defined as per the 2008 Owens Valley PM₁₀ State Implementation Plan except that the gravel
11 thickness is reduced from a minimum of four inches (4") to two inches (2") and all reduced
12 thickness gravel areas shall be underlain with geotextile fabric. All geotextile fabric shall be
13 Class I woven or nonwoven geotextile fabric meeting the minimum specifications set forth in
14 the National Standard Materials Specification "Material Specification 592—Geotextile"
15 (National Engineering Handbook, Chapter 3, Part 642), or equivalent.

16 46. The District approved "Brine Shallow Flooding BACM" as a subcategory of
17 Shallow Flooding BACM. The District and LADWP acknowledged and agreed that LADWP
18 is not liable for maintenance of the existing brine pool on Owens Lake. "Brine Pool" is
19 defined as those areas at Owens Lake below elevation 3,553.55 feet.

20 47. The District agreed to work with LADWP on accelerated testing schedules and
21 BACM approval, if warranted, for Roughness Elements and Tillage in soil type areas where
22 these controls can be applied. Within 30 days of the Effective Date of this Order, the District
23 and LADWP committed to agree upon accelerated testing schedules for the candidate
24 Roughness Elements and Tillage BACMs in soil types where these control can be applied. The
25 schedules shall include the District Governing Board's consideration of BACM approval of
26 these candidate measures within one year of completion of the schedule (within 13 months of
27 the Effective Date of this Order). If the accelerated testing does not result in approved BACM
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1 for the candidate measures, the District's and LADWP's respective Boards shall jointly assess
2 why the accelerated testing did not result in the District Board's BACM approval. The District
3 and LADWP also agreed to work on accelerated testing schedules and BACM approvals for
4 other forms of BACM.

5 **CONCLUSIONS**

6 48. In accordance with Health and Safety Code §42450 and Rule 805 of the Great
7 Basin Unified Air Pollution Control District: Rules and Regulations, entitled "Findings," the
8 Board finds that the findings listed in Order 110317-01 under that portion of the Order entitled
9 "Conclusions" remain extant as of the effective date of this Order.

10 49. The District Governing Board finds that, because this Order is modified
11 pursuant to a stipulation, this Order may be issued without making the finding required under
12 California Health and Safety Code section 42451, subdivision (a). This Order constitutes the
13 written explanation required by California Health and Safety Code section 42451, subdivision
14 (b).

15 50. The District Governing Board finds that LADWP is in compliance with all of
16 the terms of Order 110317-01.

17 51. The District Governing Board finds that there is currently no violation of Order
18 110317-01. Accordingly, no fines or penalties of any type (including those in Order paragraph
19 11 of Order 110317-01 and Order 130819-01) are imposed upon LADWP with respect to any
20 areas of Phase 7a as identified in Order 110317-01, and for any areas in the Initial Phase 7b
21 Areas and Additional Phase 7b Areas, at this time.

22 52. The District Governing Board agrees and, therefore, finds that the deadlines for
23 installing and operating dust controls on Phase 7a Modified Areas and Transition Areas shall
24 be extended.

25 53. The District Governing Board agrees and, therefore, finds that these new
26 deadlines shall be subject to the timely issuance of permits, approvals, and leases; there being
27 no discovery of new cultural resources or CRHR-eligible sites; and the District's timely
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1 acceptance and removal of any new CRHR-eligible sites and associated buffer areas from
2 Phase 7a Modified Areas and Order 110317-01. LADWP shall not be deemed in violation of
3 Order 110317-01 or this Order if LADWP is impeded in its ability to comply due to these
4 circumstances and those identified in paragraph 5 of Order 110317-01. Paragraph 5.e. of
5 Order 110317-01 shall be clarified by this Order to mean that the discovery of any cultural
6 resources that are determined by LADWP's state-certified archeologist to be potentially
7 CRHR-eligible shall be considered a condition of force majeure.

8 54. The District Governing Board finds that a Phase 7b area shall be created for the
9 treatment of Initial ECR Areas and Additional ECR Areas. The Phase 7b areas are not subject
10 to any requirements or deadlines to install dust controls in Order 110317-01 or this Order.
11 This Order does not require the construction and operation of dust controls on Phase 7b areas;
12 new Board Orders would be required after completion of the CRTF process set forth in the
13 Settlement Agreement (Exhibit 5). There is no agreement that dust controls will or will not be
14 ordered.

15 55. The District Governing Board agrees and, therefore, finds that the District and
16 LADWP shall make every effort to develop, approve, and deploy high-confidence waterless
17 dust control measures in all areas where dust controls are ordered.

18 56. The District Governing Board finds that LADWP may implement Reduced
19 Thickness Gravel BACM ("Reduced Thickness Gravel" is defined as per the 2008 Owens
20 Valley PM₁₀ State Implementation Plan except that the gravel thickness is reduced from a
21 minimum of four inches (4") to two inches (2") and all reduced thickness gravel areas shall be
22 underlain with geotextile fabric. All geotextile fabric shall be Class I woven or nonwoven
23 geotextile fabric meeting the minimum specifications set forth in the National Standard
24 Materials Specification "Material Specification 592—Geotextile" (National Engineering
25 Handbook, Chapter 3, Part 642), or equivalent), or Brine Shallow Flooding BACM in Phase 7a
26 Modified Areas and Transition Areas.

57. The District Governing Board agrees and, therefore, finds that LADWP's selection of the Transition Areas as discussed in the Phase 7a EIR is consistent and fully compliant with Paragraphs 7 and 8 of Order 110317-01, which provided that during construction of the Phase 7a project a maximum of 3.0 square miles of Transition Areas may be without BACM during the October 1 through June 30 "dust season."

58. The District Governing Board finds and agrees that the LADWP's stipulation to this Order is not a ratification of or agreement to the SCRD discussion in Order 110317-01 and does not constitute agreement to any previous or any future SCRDs, nor is the District Governing Board's approval of this Order a concession by the District that the LADWP has not agreed to previous of future SCRDs or the SCRD procedure and requirements set forth in the 2008 SIP. Further, the parties' stipulation to and the District Governing Board's issuance of this Order shall not be construed as a waiver by either the District or LADWP of any rights, remedies, legal theories, or positions that either may choose to assert in any hearing, proceeding, tribunal, or action now or in the future except with respect to the matters covered by the Settlement Agreement and this Order.

59. The District Governing Board finds that the effective date of this Order shall be the date upon which the necessary decision makers of the City of Los Angeles and the District Governing Board fully execute the Settlement Agreement.

60. The District Governing Board finds it shall retain jurisdiction over Order 110317-01 and this Order until December 31, 2017.

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:

A. Board Order No. 120206-07 extended the deadline in Order paragraphs 2 and 4.b. to install BACM in DCA T12-1 from December 31, 2015, to May 1, 2016. This Order modifies Order paragraphs 1 and 4.a. of Order 110317-01 by removing the existing paragraphs and

replacing them with the following new paragraph 1 which reads as follows:

1. Except as provided in Paragraph 2 of this Stipulated Order for Abatement (Order), below, LADWP shall install, operate and maintain Best Available Control Measure (BACM) dust controls on the “Phase 7a Modified Areas” and the “Phase 7a Transition Areas” by December 31, 2015. The Phase 7a Modified Areas are the “Original Phase 7a Areas” identified in Order 110317-01 excluding the “Phase 7b Areas.” Phase 7b includes 277 acres located within the Original Phase 7a Areas that contain California Register of Historical Resources (CRHR)-eligible sites and necessary buffer areas (Initial Phase 7b Areas) plus any newly discovered cultural resources within the Phase 7a Modified Areas that are determined by LADWP’s state certified archaeologist to be CRHR-eligible and necessary buffer areas and whose determination is confirmed by a second, state-certified archaeologist mutually agreeable to the District, LADWP, and California State Lands Commission (Additional Phase 7b Areas). All Phase 7b areas are not subject to Order 110317-01. The areas and BACM dust controls to be constructed, operated and maintained on the Phase 7a Modified Areas and Phase 7a Transition Areas are shown and described in Exhibit 7. For those areas to be controlled by Gravel BACM, LADWP may implement Reduced Thickness Gravel BACM (as defined above). LADWP may also implement Brine Shallow Flooding BACM. Vegetation cover shall meet the requirements of the March 2010 Managed Vegetation BACM Proposal (Exhibit 6 to Order 110317-01) by December 31, 2017. Other eligible 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. LADWP’s selection of approximately 3.4 square miles of the existing Shallow Flooding areas in Phase 7a Transition Areas (Subareas T1A-2, T28N, T28S, T30-1a, T30-1b, and T36-1b) to be transitioned to a hybrid of BACM including Managed Vegetation, Gravel Cover (including Reduced Thickness Gravel Cover) and Shallow Flooding (including Brine Shallow Flooding), is consistent and fully compliant with Paragraphs 7 and 8 of Order 110317-01. During construction of the Phase 7a project a maximum of 3.0 square

1 miles of Transition Areas may be without BACM during the dust season. The schedule of
2 increments of progress and deadlines to install, operate and maintain dust controls on Phase
3 7a Modified Areas and Phase 7a Transition Areas, including the vegetative cover
4 requirements, are contingent upon all of the following circumstances:

5 a) LADWP timely receiving from California State Lands Commission
6 and all other agencies all of the required permits, approvals, or leases (collectively,
7 “required approvals”) necessary to permit LADWP to construct the dust controls
8 within these deadlines. A list of the anticipated required permits, approvals and
9 leases are identified in the Phase 7a EIR. This list is not inclusive of all agencies,
10 and there may be other permits and approvals that are required.

11 b) There being no discovery of new cultural resources or CRHR-
12 eligible sites.

13 c) The District’s timely acceptance and removal of all new CRHR-
14 eligible sites and associated buffer areas from the Phase 7a Modified Areas and
15 Order 110317-01.

16 LADWP shall not be subject to any legal action, nor shall the District impose any
17 fines or penalties of any type (including those in Order paragraph 11 of Order 110317-01 or
18 in Order 130819-01) upon LADWP with respect to any delay in installing dust controls in
19 any areas of Phase 7a as identified in Order 110317-01 that is related to LADWP not
20 timely receiving the required permits, approvals, or leases necessary to permit LADWP to
21 construct the dust controls, or the discovery of new cultural resources or CRHR-eligible
22 sites are discovered, or the District not timely accepting and removing all new CRHR-
23 eligible sites and associated buffer areas from the Phase 7a Modified Areas and Order
24 110317-01. LADWP may petition the District Governing Board pursuant to paragraph 22
25 of Order 110317-01 to modify the timeframes in revised Order paragraph 1. It is the intent
26 of this Order that the District Governing Board will extend the timeframes under these
27 circumstances if they are beyond the control of LADWP.
28

1
2 **B.** The Phase 7a map and coordinates presently included as Exhibit 4 to Order 110317-01
3 shall be removed and replaced with Exhibit 7 in order to accurately reflect the Phase 7a
4 Modified Areas, Transition Areas and the approved dust controls.

5
6 **C.** This Order modifies Order paragraph 3 of Order 110317-01 by removing the existing
7 paragraph and replacing it with the following new paragraph 3 which reads as follows:

8 3. The 277 acres located in the Initial Phase 7b Areas that contain CRHR-
9 eligible sites and necessary buffer areas are identified in Exhibit 6 and hereby removed
10 from Order 110317-01 and added to Phase 7b. Exhibit 6 is strictly confidential because it
11 identifies the location of cultural resources and neither the District nor LADWP shall
12 release or otherwise make the Exhibit available to the public. Additional areas shall be
13 added to Phase 7b and removed from Order 110317-01 in accordance with the following
14 process:

15 a) During the construction of Phase 7a, LADWP shall promptly notify
16 the District of, and confer with the District about, the discovery of any cultural
17 resources.

18 b) LADWP shall request that its state-certified archeologist fulfill their
19 legal obligations relative to assessing and making recommendations for these
20 discovered cultural resources. LADWP's state-certified archaeologist shall be
21 responsible for evaluating whether any newly discovered cultural resource areas
22 within Phase 7a are CRHR-eligible, and if so, the additional buffer areas necessary
23 to address disturbance of the CRHR-eligible areas.

24 c) If LADWP's state-certified archaeologist finds that the newly
25 discovered cultural resource areas are CRHR-eligible, then LADWP will transmit
26 the findings to the District and a second state-certified archaeologist mutually
27 agreeable to the District, LADWP, and California State Lands Commission.
28

d) The second state-certified archaeologist will evaluate LADWP's state certified archaeologist findings to confirm those findings.

e) The second state-certified archaeologist shall send its findings concurrently to LADWP, the District and California State Lands Commission.

f) If the second state-certified archaeologist confirms LADWP's state certified archaeologist findings, the District APCO shall within one week issue an Order removing the new CRHR-eligible area and associated buffer area from Phase 7a and placing it in Phase 7b.

g) If the second state-certified archaeologist does not confirm LADWP's state certified archaeologist findings, then the California State Lands Commission as the landowner shall determine whether the cultural resources shall be preserved in place or, whether California State Lands Commission intends to direct a Phase III data recovery or whether another approach is appropriate.

h) The District APCO shall within one week of receiving a determination from the California State Lands Commission that the cultural resources shall be preserved in place issue an Order removing the new CRHR-eligible area and associated buffer area from Phase 7a and placing it in Phase 7b.

D. This Order modifies Order paragraph 5.e. of Order 110317-01 by removing the existing paragraph and replacing it with the following new paragraph 5.e., which reads as follows:

5.e) A condition of Force Majeure, which is defined to mean an extraordinary event or circumstance beyond the control of the parties, such as a war, labor actions, riot, crime, disruption of utilities, acts of God (such as adverse weather, earthquake, volcanic eruption, or other natural disaster), and the discovery of potential ECRs. Adverse weather is any weather condition, including but not limited to flooding and dust storms, that forces the LADWP to suspend all construction operations or prevents the LADWP from proceeding with 50 percent

or more of the normal labor force and of the equipment engaged on critical path work. Delays shall only be granted for adverse weather days greater than 30 days for each 12 month period from April 1 through March 31.

E. This Order modifies Order paragraph 15 of Order 110317-01 by removing the existing paragraph and replacing it with the following new paragraph 15, which reads as follows:

15. The parties commit to work cooperatively to support LADWP's efforts to develop and implement new PM₁₀ control measures or modify existing measures that are as water-use efficient as possible. The District and LADWP will make every effort to develop, approve and deploy high-confidence waterless dust control measures in all areas where dust controls are ordered. Neither this Order, Order 110317-01, Order 080128-01 or the 2008 SIP shall preclude the transition of areas with existing dust control measures to alternative high-confidence waterless dust control measures.

F. This Order modifies Order paragraph 18 of Order 110317-01 by changing the date of December 31, 2015 to December 31, 2017. Paragraph 18 shall read as follows:

18. Final compliance shall be achieved, and this Order shall terminate when Phase 7a and the Transition Areas are fully operational, but no later than December 31, 2017. LADWP shall notify the Clerk of the Board and the APCO in writing when final compliance is achieved.

G. This Order modifies Order paragraph 21 of Order 110317-01 by changing the date of December 31, 2015 to December 31, 2017. Paragraph 21 shall read as follows:

21. The District Governing Board shall retain jurisdiction over this matter until December 31, 2017, unless the Order is amended or modified.

H. This Order adds the following paragraph 26 to Order 110317-01:

26. LADWP shall pay ten million dollars (\$10,000,000) to the District as a public-benefit contribution in support of the District's Keeler Dunes PM₁₀ control project. One hundred percent (100%) of said payment shall be used by the District to control PM₁₀ emissions from the area known as the Keeler Dunes (generally located above the eastern regulatory shoreline of Owens Lake and north of the community of Keeler). Details and conditions of the Keeler project and said payment are set forth in a separate Settlement Agreement between the District and LADWP. This agreement is attached to this Order as Exhibit 5.

I. The modification of Order 110317-01 by the District and LADWP shall not be construed as a waiver by either party of any rights, remedies, legal theories or positions that either party may choose to assert in any hearing, proceeding, tribunal or action now or in the future except with respect to the particular subject matter contained in this Order the Keeler and Other Dunes Release which is not subject to this Order or Order 110317-01.

J. The APCO and LADWP affirm that their respective signatories below have the authority to represent and bind their respective parties to the terms of this Stipulated Order for Abatement.

K. The effective date of this Order is August 19, 2013.

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Reviewed and Stipulated by:

District Air Pollution Control Officer, Co-Petitioner:

Theodore D. Schade, Air Pollution Control Officer

Date

City of Los Angeles Department of Water and Power, Co-Petitioner

Ronald O. Nichols, General Manager

Date

ORDERED FOR THE BOARD BY:

John Eastman, Chair, District Governing Board

Date

ATTEST:

Tori DeHaven, District Governing Board Clerk

Date: _____

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List of Exhibits

Exhibit 1: District Governing Board Order 110317-01

Exhibit 2: LADWP's Petition and attachments to the District Governing Board to modify Order 110317-01, filed June 14, 2013

Exhibit 3: Term Sheet approved by the LADWP Board of Commissioners on June 26, 2013, and the District Governing Board on June 27, 2013

Exhibit 4: District Governing Board Report for June 27, 2013, special meeting

Exhibit 5: Settlement Agreement and Release between District and LADWP, dated August 19, 2013

Exhibit 6: **CONFIDENTIAL** map of the 277-acre Initial ECR Area

Exhibit 7: Map of Phase 7a Modified Areas and Phase 7a Transition Areas

ATTACHMENT C

Exhibit 1

District Governing Board Order of Abatement 110317-01

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

<p>In the Matter of</p> <p>THEODORE D. SCHADE AIR POLLUTION CONTROL OFFICER GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT,</p> <p>Petitioner,</p> <p>vs.</p> <p>CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER</p> <p>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

A petition from the Great Basin Unified Air Pollution Control District's Air Pollution Control Officer for a Stipulated Order for Abatement ("Order") was heard on March 17, 2011, pursuant to notice and in accordance with the provisions of California Health and Safety Code Section 40823 and District Rule 811. Seven members of the District Governing Board were present: Board Chair, Linda Arcularius, Board members Tom Sweeney, Henry Veatch, Larry Johnston, Tim Hansen, Richard Cervantes and John Eastman. The District Governing Board was represented by George Poppic of the California Air Resources Board. Petitioner, Theodore D. Schade, the Air Pollution Control Officer (APCO), was represented by Randy Keller, District Counsel. Respondent, the City of Los Angeles Department of Water and Power, was represented by Michelle Lyman, Deputy City Attorney for the City of

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

FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

6. The District Governing Board finds it is not reasonable under California Health and Safety Code section 42316 to require Respondent to cease or curtail its water production, diversion, storage and conveyance activities in Inyo County during the non-compliance period, since the water is needed to comply with dust control requirements for 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.

20

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

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

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

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

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

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

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

c. If the APCO does not concur with the Board of Commissioners 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.

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

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

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

where,

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

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

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

13. Eighty-five percent (85%) of the excess air pollution offset/mitigation 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.

ATTACHMENT C - Exhibit 1 - Abatement Order 110317-01

Final: 3/17/2011

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

13

Shirley Ono
Shirley Ono, Acting Board Clerk

14

Date: April 1, 2011

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

ATTACHMENT C

Exhibit 2

LADWP Petition to the District Governing Board to modify Order 110317-01,
filed June 14, 2013

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City Attorney

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General Counsel Water and Power

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Assistant General Counsel

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14 Attorneys for CITY OF LOS ANGELES

15 ACTING BY AND THROUGH ITS

DEPARTMENT OF WATER AND POWER

17 BEFORE THE GOVERNING BOARD OF THE

18 GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

19
20 IN RE STIPULATED ORDER FOR
ABATEMENT (ORDER 110317-01)

**PETITION BY THE CITY OF LOS
ANGELES ACTING BY AND THROUGH
ITS DEPARTMENT OF WATER AND
POWER TO MODIFY ORDER 110317-01**

1 **1. INTRODUCTION.**

2 The City of Los Angeles, acting by and through its Department of Water and Power
3 (LADWP), respectfully submits this Petition to modify Stipulated Order of Abatement 110317-01,
4 dated March 17, 2011, by and between LADWP and the Great Basin Unified Air Pollution Control
5 District (Great Basin), a copy of which is attached as Exhibit 1 (the Order). LADWP is currently in
6 full compliance with the Order. However, due to the unexpected discovery of significant cultural
7 and archaeological resources in the Phase 7a area, LADWP will not be able to complete the
8 construction of the Phase 7a dust controls in the five Phase 7a subareas (T37-1, T37-2, T1A-3,
9 T1A-4, and T32-1) and the transition areas selected from existing Shallow Flooding areas (T1A-2a,
10 T28N, T28S, T30-1a, T30-1b, T35-1, T35-2, and T36-1b) within the time frame specified in the
11 Order. The extent and significance of these cultural resources is unprecedented around Owens
12 Lake. LADWP relied upon the disclosures related to cultural resources set forth in the 2008 State
13 Implementation Plan (2008 SIP) Supplemental Environmental Impact Report (SEIR) in agreeing to
14 the time schedule in the Order. However, when LADWP investigated the presence of cultural
15 resources, which it is required to do under Great Basin Governing Board Order 080128-01 (Order
16 080128-01), ¶ 23, the 2008 State Implementation Plan (SIP), §§ 5.1, 8.1, the SEIR, §§ 3.3.5, and
17 the California Environmental Quality Act (Pub. Resources Code, §§ 21000, et seq.) (CEQA),
18 LADWP discovered the cultural resources were far more extensive than disclosed in the SEIR.
19 Because the consultation, investigation, and analysis of these extensive and unanticipated cultural
20 resources must be completed before engineering design and contracting can begin, the construction
21 of dust controls in the Phase 7a did not commence when it needed to in order to meet the future
22 deadlines in the Order. Thus, the deadlines in the Order no longer provide a reasonable and
23 sufficient time to construct the Phase 7a dust control project.

24 Section 5 of the Order explicitly allows for situations like this where LADWP is acting in
25 good faith to comply with the Order's terms, but is impeded by circumstances beyond its control.
26 LADWP fully satisfied the requirements of Paragraphs 5 and 6 of the Order by adopting three
27 resolutions on February 7, 2012, April 3, 2012, and January 11, 2013, finding that LADWP acted in
28

1 good faith to comply with the terms of the Order, but has otherwise been impeded in meeting the
2 deadlines for installing BACM due to the unexpected discovery of extensive cultural resources.
3 LADWP also briefed the Governing Board at its September 5, 2012, meeting about the impacts of
4 the unexpected discovery of extensive cultural resources in the Phase 7a area. The September 5,
5 2012 meeting is part of the record for these proceedings. The Order provides that after adoption of
6 the resolutions, LADWP may petition the Governing Board to modify the Order.

7 In addition to adjusting the deadlines to construct dust controls, LADWP is also requesting
8 that the Governing Board adjust the boundaries of the Phase 7a dust control area to remove 350
9 acres (Avoided Area). This request is based upon the results of an extensive CEQA analysis
10 conducted by LADWP that included consultation with local tribal representatives. The Avoided
11 Area includes sites that are eligible for inclusion in the California Register of Historical Resources
12 (CRHR) and a small buffer area. As further explained in this petition, there is good cause to
13 support the Governing Board's approval of LADWP's request.

14 **2. SUMMARY OF LADWP'S MODIFICATION REQUEST.**

15 LADWP submits this Petition requesting that the Governing Board modify the Order as
16 follows:

17 First, LADWP requests an extension of time to install dust controls on Phase 7a subareas
18 (T37-1, T37-2, T1A-3, T1A-4, and T32-1), and the transition areas (T1A-2a, T28N, T28S, T30-1a,
19 T30-1b, T35-1, T35-2, and T36-1b). In order to implement BACM as expeditiously as possible,
20 LADWP proposes to implement the BACM project in two Phases.

21 **Phase 1 Schedule**

22 The proposed Phase 1 schedule covers the following areas:

- 23 • Phase 7a: T1A-4 and T37-2 (except for 14 acres)
- 24 • Transition areas: T1A-2a, T28N, T28S, T30-1a, T30-1b, T35-1, T35-2, and T36-1b

25 LADWP requests an extension of time to install controls in these areas until April 2, 2015,
26 and for the areas with managed vegetation (T37-2 (minus 14 acres), T1A-2, T28N, T28S, T30-1a,
27 T30-1b, and T36-1b) to have the vegetation sufficiently established by March 30, 2017.

Phase 2 Schedule

The proposed Phase 2 schedule covers the following areas:

- Phase 7a: T37-1, T1A-3, and T32-1

LADWP requests an extension of time to install controls in these areas until December 30, 2016, and for the areas with managed vegetation (T32-1) to have the vegetation sufficiently established by December 28, 2018.

The proposed schedules for Phase 1 and Phase 2 are contingent upon no further discovery of significant cultural and archeological resources, sufficient climatic conditions to facilitate the growth of the managed vegetation, and other agencies timely approving a lease amendment and the numerous permits required to implement the Phase 7a Project. These contingencies should be included in the modified Order.

Second, LADWP requests that 350 acres of Phase 7a subareas T1A-3, T32-1, T37-1 and T37-2 identified in the Final EIR certified by LADWP (*see Exhibit 2*) that contain CRHR-eligible sites be removed from the Phase 7a project area to permanently avoid impacts to the cultural resources in these areas. LADWP also requests that the Order be adjusted to comply with LADWP's EIR mitigation measure CR-3 that requires protection of three archaeological sites.

Third, LADWP requests that the Order be modified to clarify and confirm that LADWP's selection of approximately 3.4 square miles of the existing Shallow Flooding areas in Phase 7a subareas T1A-2, T28N, T28S, T30-1a, T30-1b, and T36-1b to be transitioned to a hybrid of BACM including Managed Vegetation, Gravel Cover and Shallow Flooding (Transition Areas), is consistent and fully compliant with Paragraphs 7 and 8 of the Order, which provide that during construction of the Phase 7a project a maximum of 3.0 square miles of Transition Areas may be without BACM at any time. LADWP's transition of the additional 0.4 square miles of dust control areas will be accomplished during the non-dust control season. (Draft EIR, § 3.1.8.1.) Therefore, consistent with the Order, no more than 3.0 square miles of the Transition Areas will be uncontrolled at any one time.

1 Fourth, LADWP requests that the Phase 7a map and coordinates presently included as
2 Exhibit 4 to the Order be removed and replaced with Figure 1-1 of the Final EIR (*see Exhibit 3*) so
3 as to accurately reflect the current Phase 7a Project area, Transition Areas and approved Best
4 Available Control Measures (BACM).

5 Fifth, LADWP requests that the discovery of cultural resources be expressly recognized as
6 one of the conditions beyond LADWP's control and for which LADWP is not deemed to be in
7 violation of the Order. While LADWP believes this circumstance is covered by the Order, the Air
8 Pollution Control Officer (APCO) has expressed some reservations about whether this
9 circumstance is covered. Therefore, this request is necessary.

10 Sixth, LADWP requests that the Governing Board issue a modification to Order 080128-01
11 that is submitted to the California Air Resources Board (CARB) and United States Environmental
12 Protection Agency (EPA) to conform that order to the these modifications.

13 Seventh, LADWP requests the Governing Board retain jurisdiction over the Order until
14 December 31, 2018.

15 Finally, by this request, LADWP is not ratifying the Supplemental Control Requirements
16 Determination (SCRD) discussion in the Order or agreeing to the previous or any future SCRDs.

17 **3. FACTUAL AND PROCEDURAL BACKGROUND.**

18 **A. The Phase 7a Order for Abatement Requirements.**

19 On March 17, 2011, the Governing Board issued the Order requiring LADWP to install
20 BACM on Phase 7a. Phase 7a, a total area of approximately six square miles, consists of six
21 separate and discrete Dust Control Areas (DCAs): T37-1, T37-2, T1A-3, T1A-4, T-32-1 and T12-1
22 (a total of approximately 3.1 square miles), and 3.0 square miles of Transition Areas (identified on
23 Exhibit 4 to the Order).

24 Paragraph 4(a) of the Order provides that approved BACM shall be fully installed and
25 operational on all Phase 7a subareas, except for T12-1, and Transition Areas by December 31,
26 2013, and that Transition Areas controlled by the Managed Vegetation BACM are to achieve fully
27 compliant BACM vegetation cover by December 31, 2015. Paragraph 4(b) of the Order provides

28

1 that BACM shall be installed and operational on the T-12-1 subarea by December 31, 2015.¹ This
2 is a massive undertaking. The 6.5 square miles of individual Phase 7a and Transition Areas are
3 dispersed all over the lakebed. As a basis of comparison, the City of Bishop is approximately 2
4 square miles in size. In order to install BACM in these Phase 7a and Transition Areas, LADWP
5 must also construct a new access road, construct three new turn out facilities and modify four
6 existing turn out facilities, install or reconfigure the berms on areas immediately adjacent to DCAs,
7 and construct new water supply pipelines.

8 Paragraph 5 of the Order provides that LADWP shall not be in violation of the Order if
9 LADWP is acting in good faith to comply with the terms of the Order, but is impeded or prevented
10 from doing so by, among other things, events or circumstances beyond its control. Paragraph 6 of
11 the Order permits the LADWP Board to adopt a resolution to this effect, and requires that LADWP
12 notify Great Basin's APCO of any such resolution within 15 days of its adoption. As discussed
13 below, the LADWP Board fully satisfied the requirements of Paragraph 5 by adopting three
14 resolutions documenting unavoidable delays resulting from unanticipated cultural resources
15 findings and timely notifying the APCO. Paragraph 22 of the Order provides that either LADWP
16 or Great Basin may petition the Governing Board for a modification of the Order with or without a
17 stipulation.

18 The Governing Board expressly retained jurisdiction over the Order until at least May
19 2016, which is the amended deadline to install BACM in the T12-1 subarea. (Order, p. 21 (¶ 21).)
20 The Order also expressly allows for modifications to the Order (¶ 22) and specifically contemplates
21 that LADWP would be able to seek a modification of the Order, for example, in the event LADWP
22 is unable to install BACM in Phase 7a in accordance with the deadlines set forth in the Order. (, p.
23 14 (¶ 6.b.)) The modification provision is not limited to changes caused by conditions beyond
24 LADWP's control. (Order, p. 21 (¶ 21).)

25
26
27 ¹ On February 6, 2012, the Governing Board approved the APCO and LADWP's joint petition to
28 modify the Order to extend the deadline for LADWP to install BACM on the T-12 subarea from
December 31, 2015, to May 1, 2016 (Board Order No. 120206-07).

Board Order 080128-01 recognizes that the exact boundaries of Phase 7a (*i.e.*, the 2006 SDCA) may need to be modified to account for unforeseen project impacts (such as may be discovered during the course of completing CEQA review) or operational/construction issues, and that District approval of any formal request for modification by LADWP or the City “shall not be unreasonably withheld.” Specifically:

Upon written request by the City to the District and written approval by the District’s APCO, minor adjustments may be made to the interior and exterior boundaries of the 2006 SDCA, for example to avoid impacts to existing resources or features, or for constructability reasons, which approval shall not be unreasonably withheld. In the event of such modification, the boundaries of the 2008 TDCA [2008 Total Dust Control Area] shall also be modified to reflect the modified 2006 SDCA boundaries.

(Board Order 080128-01, ¶6.)

B. Phase 7a Cultural Resources Evaluation.

The 2008 SIP required LADWP to be responsible for conducting any CEQA analysis beyond the 2008 SIP SEIR in order to implement the control strategy and to obtain any necessary leases or other approvals from responsible agencies for the project. (*See* 2008 SIP, §§ 8.1, 5.1, 5.2.6). LADWP retained Garcia and Associates (GANDA) to conduct all of the archaeological investigations necessary to comply with CEQA requirements for Phase 7a. Between May and August 2011, GANDA conducted a Phase I pedestrian survey of the subareas within Phase 7a and discovered extensive archaeological and cultural resources throughout the proposed project that necessitated Phase II testing and evaluation. LADWP was required to obtain an Archaeological Investigation Permit from California State Lands Commission (CSLC) before conducting the Phase II testing and evaluation. CSLC approved the permit on September 1, 2011.

Immediately after CSLC approved the permit, GANDA commenced Phase II testing and evaluation of the sites identified during the Phase I pedestrian survey to determine the sites’ eligibility for inclusion in the National Register of Historic Places (NRHP) and CRHR. In October 2011, GANDA completed its Phase II testing and evaluation of the T37-1 and T37-2 subareas. GANDA determined that subarea T37-1 contains four archaeological sites that are CRHR-eligible, and subarea T37-2 contains 12 archaeological sites, two of which are CRHR-eligible. GANDA

1 advised LADWP to avoid any ground disturbing activities in or near the CRHR-eligible sites and, if
2 avoidance was not feasible, LADWP would be required to complete a Phase III recovery before
3 commencing ground disturbing activities in or near the CRHR-eligible sites.

4 In November and December 2011, LADWP evaluated whether it could proceed with the
5 necessary geotechnical work on the T37-1 and T37-2 subareas while avoiding the disturbance of
6 the CRHR-eligible sites. LADWP determined that it was infeasible to avoid disturbance of the four
7 CRHR-eligible sites identified on T37-1 during geotechnical work and, therefore, LADWP did not
8 proceed with geotechnical work on subarea T37-1. In addition, on December 13, 2011, GANDA
9 issued a stop work order to LADWP (*see Exhibit 4*), pursuant to its authority under the CSLC
10 permit, requiring LADWP to stop all geotechnical work or other construction-related ground
11 disturbing activity on T37-1 until after the completion of Phase III archaeological data recovery
12 excavations. LADWP determined that the CRHR-eligible sites on T37-2 could be avoided during
13 geotechnical work. LADWP completed the geotechnical work on T37-2 in December 2011.
14 LADWP, however, could not avoid any of the CRHR-eligible sites on T37-1 or T37-2 if it
15 constructed dust control measures in accordance with the Order.

16 LADWP and the APCO met several times to discuss LADWP's progress on Phase 7a and
17 possible alternatives to the project, including whether a cultural resources recovery effort could be
18 avoided by increasing dust control efficiencies in other areas of Phase 7a that would enable the
19 archaeologically-sensitive areas to remain untouched. In August 2012, GANDA completed its final
20 Phase II Testing Report² and evaluation of historical and archaeological resources in all of the
21 Phase 7a subareas, except for the T12-1 tillage test area. In its January 30, 2012, memorandum (*see*
22 *Exhibit 5*), GANDA informed LADWP that subarea T1A-3 contains 38 archaeological sites, three
23 of which are CRHR-eligible. GANDA further informed LADWP that subarea T32-1 contains 15

24 _____
25 ² The Phase II Testing Report contains sensitive cultural resources information that cannot be
26 disclosed under protection laws. If requested by the Governing Board, LADWP will provide a
27 copy of the Phase II Testing Report to the Governing Board for in-camera review subject to the
28 Phase 7a Confidentiality Agreement between LADWP and Great Basin, dated March 27, 2012. GANDA also issued an additional stop work order on September 17, 2012. If requested by the
Governing Board, LADWP will also provide this document for in-camera review subject to the
Confidentiality Agreement.

1 archaeological sites, two of which are eligible for inclusion in the CRHR. GANDA recommended
2 that the CRHR-eligible sites on subareas T1A-3 and T32-1 be completely avoided and that no
3 geotechnical sampling or other construction-related ground disturbances be performed on T1A-3 or
4 T32-1, since the CRHR-eligible sites encompass much of T1A-3 and T32-1 and cannot otherwise
5 be avoided. GANDA further recommended that if avoidance or preservation in place were
6 determined to be infeasible, then no ground disturbances should occur on T1A-3 or T32-1 until
7 after the completion of Phase III archaeological data recovery excavations.

8 As a result of its investigations GANDA determined there are eleven sites in the Phase 7a
9 project area (portions of T1A-3, T32-1, T37-1 and T37-2) eligible for listing in the CRHR. Three
10 of the eleven sites (CA-NY-7414, CA-INY-7413/H, and CA-INY-7415/H) are locations involving
11 the Owens Valley Indian Wars. These CRHR-sites are within the Avoidance Area. A summary of
12 GANDA's Phase 7a investigations was presented to CARB on June 15, 2012, and is attached as
13 Exhibit 6 [Powerpoint presentation].

14 **A. Phase 7a CEQA Process.**

15 Paragraph 23 of Board Order 080128-01 requires LADWP to comply with applicable
16 CEQA mitigation measures included in the 2008 SIP SEIR. The mitigation measures require
17 among other things, that if the Phase I pedestrian survey identified significant unanticipated cultural
18 and archaeological resources, LADWP must conduct an assessment of potentially impacted cultural
19 sites – both known and undiscovered – for significance under CEQA through the implementation of
20 Phase II investigations. (SEIR § 3.3.5; p. 3.3-24; *see also* Appendix R-E [Final Cultural Resources
21 Technical Report], § 5.3, pp. 5-107-109.).

22 The entire Phase 7a and Transition Areas are considered a single project under CEQA.
23 (Cal. Code Reg., tit. 14, § 15378, subd. (a).) In accordance with CEQA, one environmental
24 evaluation was conducted for the entire project, and no single part of the project could be
25 implemented until CEQA for the entire project was completed. (*Orinda Ass'n v. Bd. of Supervisors*
26 (1986) 182 Cal.App.3d 1145, 1171-72; *Topanga Beach Renters Ass'n v. Department of General*
27 *Services* (1976) 58 Cal.App.3d 188, 195-196.) Therefore, even though some of the Phase 7a and
28

Transition Areas are not known to contain significant cultural resources, design could not be completed, permits from other agencies could not be obtained, construction contracts could not be awarded, and construction of the dust controls could not commence until LADWP had completed the entire CEQA process for Phase 7a.

In May 2011, LADWP prepared a CEQA Initial Study based on State CEQA Guidelines Appendix G, to determine whether construction and operation of the proposed project would result in significant effects on the environment. Since potentially significant effects were identified, LADWP determined that an EIR was needed to analyze those effects. A Notice of Preparation (NOP) of the EIR, along with the Initial Study, was prepared and filed with the State Clearinghouse on May 23, 2011. A public scoping meeting for the Phase 7a project was held on June 7, 2011, at the LADWP office in Keeler, California.

LADWP released the draft EIR in January 2013 for a 45 day public comment period. Over the course of the next several months, LADWP staff considered and responded to public comments, conducted further consultations with Native American groups and others about project impacts and comments on the draft EIR, and revised the draft EIR, as necessary, to incorporate any changes to the project.

CEQA requires that an EIR identify a reasonable range of alternatives to the proposed project (Phase 7a) that “would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project,” and then provide detailed discussion of the comparative merits of each alternative for the decision-making body of the lead agency (LADWP Board of Commissioners) to consider before deciding which form of the project, if any, to ultimately approve. (CEQA Guidelines, §§ 15126.6, 15004, subd. (a).) Alternatives were identified in the EIR that would avoid impacts to cultural resources by excluding CRHR-eligible areas from the Phase 7a dust control project.

The Inyo County General Plan policies were also considered as part of the CEQA decision-making process. The Land Use/Conservation/Open Space element of the Inyo County General Plan

identifies several goals that are related to preserving and promoting the County's historic and prehistoric cultural heritage, including:

- **Policy CUL-1.3, Protection of Cultural Resources:** Preserve and protect key resources that have contributed to the social, political, and economic history and prehistory of the area, unless overriding considerations are warranted.
- **Policy CUL-1.4, Regulatory Compliance:** Development and/or demolition shall be reviewed in accordance with the requirements of CEQA and the National Historic Preservation Act.
- **Policy CUL-1.5, Native American Consultation:** The County and private organizations shall work with appropriate Native American groups when potential Native American resources could be affected by development proposals.

On June 4, 2013, the LADWP Board of Commissioners considered and certified the Final EIR and approved the Avoidance Alternative for the Phase 7a project. (Exhibits 7, 8, 9, 10 [EIR, Board Approval Letter, and Resolution].) The Avoidance Alternative involved construction of the original proposed Phase 7a project in all areas except for 350 acres of Phase 7a subareas T1A-3, T32-1, T37-1 and T37-2 known to contain significant cultural resources. Because the Avoidance Alternative would protect these significant cultural resources, increase vegetated area on the lake, improve the habitat value of the Transition Areas, and achieve the emission reductions originally expected in the 2008 SIP, it was identified as environmentally superior to the originally proposed Phase 7a project and to the other alternatives evaluated in the Phase 7a EIR. The EIR also concluded that a Phase III data investigation and recovery would not be feasible mitigation for these eleven sites because of the tremendous importance of these sites to both the archaeological and local Native American communities for their prehistoric and historic value as unique historical resources. The Board of Commissioners approved the Phase 7a project and certified the Final EIR subject to and contingent upon the Governing Board's approval of this petition to modify the Order to remove these 350 acres from the original Phase 7a area, and to make any other additional changes necessary to ensure consistency between the Order, the Phase 7a project and the Final EIR.

B. LADWP's Board of Commissioners Adopted Resolution No. 012-170 Regarding Phase 7a Subareas T37-1 and T37-2.

On February 7, 2012, in accordance with Paragraphs 5 and 6(a) of the Order, the LADWP Board passed Resolution No. 012-170, finding that LADWP had acted in good faith to comply with the terms of the Order, but had been otherwise impeded in meeting the December 31, 2013, deadline for installing BACM on the T37-1 and T37-2 subareas of Phase 7a due to the unexpected discovery of extensive archaeological resources. On February 21, 2012, LADWP notified the APCO in writing of the LADWP Board's Resolution No. 012-170, and proposed a schedule of increments of progress and deadlines for future actions in compliance with Paragraph 6(a) of the Order. (See Exhibit 11 [resolution and notice].) The APCO did not object to Resolution No. 012-170, and thus, waived any objections to the findings in this resolution.

C. LADWP's Board of Commissioners Adopted Resolution No. 012-210 Regarding Phase 7a Subareas T1A-3 and T32-1.

On April 3, 2012, the LADWP Board adopted Resolution No. 012-210, finding that LADWP had acted in good faith to comply with the terms of the Order, but had been otherwise impeded in meeting the December 31, 2013, deadline for installing BACM on T1A-3 and T32-1 of the Phase 7a project due to the unexpected discovery of extensive archaeological resources. On April 17, 2012, LADWP notified the APCO in writing of the LADWP Board's Resolution No. 012-210, and proposed a schedule of increments of progress and deadlines for future actions in compliance with Paragraph 6(a) of the Order. (See Exhibit 12 [resolution and notice].) The APCO did not object to Resolution No. 012-210 and thus, waived any objections to the findings in this resolution.

D. The September 5, 2012, Governing Board Meeting.

On September 5, 2012, LADWP representatives attended the Governing Board meeting and presented information about the unanticipated cultural resources discovered in Phase 7a, and the potential effect the discovery of these resources would have on LADWP's ability to complete the Phase 7a EIR under CEQA, and install dust controls on Phase 7a by the December 31, 2013, deadline set forth in the Order. (See Exhibit 13.) LADWP also notified the Governing Board that it

1 would be returning to the Governing Board with the current Petition. LADWP also followed up
2 with a letter to the Governing Board Chair on February 14, 2013. (See Exhibit 14.)

3 **E. LADWP's Board of Commissioners Adopted Resolution No. 013-157**
4 **Regarding Phase 7a Subarea T1A-4 and Transition Areas.**

5 On January 11, 2013, the LADWP Board adopted Resolution No. 013-157, finding that
6 LADWP had acted in good faith to comply with the terms of the Order, but had been otherwise
7 impeded in meeting the December 31, 2013, deadline for installing BACM on T1A-4 and the
8 Transition Areas of the Phase 7a project due to the unexpected discovery of extensive
9 archaeological resources and the resulting delay in completing the Phase 7a EIR. Even though
10 significant cultural resources have not been discovered in these areas, the schedule for installing
11 BACM in these areas is affected by the unexpected discoveries in the other Phase 7a area because
12 CEQA requires one environmental analysis to encompass the entire project. The T1A-4 and the
13 Transition Areas cannot be excluded from the project under CEQA. On January 23, 2013, LADWP
14 notified the APCO in writing of the LADWP Board's Resolution No. 013-157 and proposed a
15 schedule of increments of progress and deadlines for future actions, in compliance with Paragraph
16 6(a) of the Order. (See Exhibit 15 [resolution and notice].) The APCO responded on February 4,
17 2013, stating that he did not concur with the findings of Resolution No. 013-517.³ Thus, the
18 APCO's objections must be limited to this resolution.

19 **F. LADWP's Board of Commissioners and Great Basin Governing Board Meet**
20 **and Confer in Accordance with Paragraph 6(c)(ii) of the Order.**

21 Paragraph 6(c)(ii) of the Order provides that, in the event the APCO does not concur with
22 the Board of Commissioners' resolution, two Great Basin Governing Board members and two
23 LADWP Board of Commissioners members may meet to make a non-binding recommendation to
24 the Governing Board as to whether LADWP has met the requirements of Paragraph 5 of the Order
25 and whether the requested Schedule of Increments should be granted, granted with modifications,
26 or denied. Following notification of the APCO's non-concurrence with Resolution No. 013-517,

27 ³ On February 28, 2013, LADWP responded to the assertions raised in the APCO's February 4,
28 2013, letter regarding his refusal to concur with Resolution No. 013-517. A copy of LADWP's
February 28, 2013, correspondence is attached as Exhibit 16.

two members of the LADWP Board of Commissioners (Richard Moss and Jonathan Parfrey) and two members of the Great Basin Governing Board (Linda Arcularius and Matthew Kingsley) met to discuss the APCO's refusal to concur with Resolution No. 013-517. LADWP and Great Basin have since held several meetings and made significant progress towards resolving this matter. These discussions remain ongoing; consequently, the modifications to the Order requested by this Petition may need to be amended to reflect the terms of any agreement reached between the parties.

4. THE DISCOVERY OF EXTENSIVE CULTURAL RESOURCES NECESSITATED AN EXTENDED CEQA PROCESS.

In the history of LADWP's dust control efforts in Owens Valley, the quality and quantity of archaeological resources discovered during the Phase I and II investigations of the Phase 7a area are unprecedented. LADWP had no reasonable expectation when it stipulated to the Order that it would later discover extensive archaeological resources in the Phase 7a area because it has never discovered resources on this scale in any other dust control areas. Great Basin has represented that the area was submerged under water and exposed only by LADWP's water gathering activities. Further, the SEIR for the 2008 SIP did not disclose the extensive cultural resources that were subsequently discovered when LADWP conducted its analysis. Therefore, LADWP would not expect to discover that the area it was being required to control was not submerged, but actually inhabited in recent times.

In conducting its CEQA assessment, LADWP complied with Paragraph 23 of Board Order 080128-01. This Board Order requires LADWP to comply with applicable CEQA mitigation measures included in the 2008 SIP SEIR. After the Phase I pedestrian survey identified significant unanticipated cultural and archaeological resources, LADWP was required by SEIR Mitigation Measure Cultural-2 to conduct an assessment of potentially impacted cultural sites – both known and undiscovered – for significance under CEQA through the implementation of Phase II investigations. (SEIR § 3.3.5; p. 3.3-24; *see also* Appendix R-E [Final Cultural Resources Technical Report], § 5.3, pp. 5-107-109.) The CEQA analysis was delayed while LADWP's consultant, GANDA, conducted the required Phase II investigations for the Phase 7a EIR. CEQA requires that any project that causes a substantial adverse change in the significance of an historical

1 resource, including archaeological resources, is a “significant effect” requiring the preparation of an
2 EIR. (Pub. Resources Code, §§ 21084.1, 21083.2; 14 Cal. Code Regs., § 15064.5.) Therefore, the
3 preparation of the Phase 7a EIR was delayed while the Phase II investigations were conducted and
4 the subsequent analysis of the results were prepared. A summary of LADWP’s diligent efforts to
5 promptly assess and respond to the cultural resource issues, and the impacts of the cultural resource
6 investigation upon the Phase 7a project schedule is included in Exhibit 17.

7 LADWP was also required to consult with the Native American Heritage Commission
8 (NAHC) as part of the EIR process. (Pub. Res. Code, § 5097.97; *Environmental Protection*
9 *Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 626.) Under Public Resources Code section
10 5097.97, the NAHC may also investigate the effect of proposed actions by a public agency if the
11 proposed action may cause severe or irreparable damage to a Native American sacred site located
12 on public property and may recommend mitigation measures for consideration by the public agency
13 if the NAHC finds, after a public hearing, that the proposed action would result in damage to or
14 interference with access to the sacred site.

15 LADWP also sought the input of the landowner and interested Indian tribes in conducting
16 its CEQA analysis for the Phase 7a project in light of the significant archaeological findings.
17 LADWP received a letter dated February 3, 2012, from Mary Wuester, Chairperson of the Lone
18 Pine Paiute-Shoshone Reservation (Exhibit 18) expressing concern over the fate of the
19 archaeological resources found in the Phase 7a project area and requesting to be included in the
20 decision-making process. Similar correspondence was received as part of the public review and
21 comment process on the EIR. These letters are included in the EIR, Exhibit 7. LADWP
22 understands that the unique historical and archaeological resources discovered in the Phase 7a area,
23 including the CRHR-eligible sites in subareas T37-1, T37-2, T1A-3 and T32-1, hold significant
24 cultural value to Owens Valley residents and local Native American tribes. Given the extent of the
25 archaeological resources in the Phase 7a project that are of direct significance to the culture and
26 history of the local Native American tribes, the tribes were necessarily included in the discussion
27
28

- CRHR laws
- GANDA's stop work order issued on December 13, 2011
- Inyo County Code, § 9.52.050 - Destruction of sites where artifacts or remains have been identified is punishable as a misdemeanor by a fine or by imprisonment
- Cal. Penal Code § 622 ½
- Archaeological Resources Protection Act of 1979 (16 U.S.C.A. §§ 470aa to 470mm; 36 C.F.R. § 800 et seq.)
- Religious Freedom and Restoration Act (RFRA), 42 U.S.C. § 2000bb et seq.
- Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 et seq.)
- California Native American Graves Protection and Repatriation Act of 2001 (Health & Saf. Code, § 8010 et seq.)

These are exactly the kind of circumstances covered by paragraphs 5 and 6 of the Order.

5. REQUEST TO MODIFY THE ORDER.

LADWP satisfied the conditions set forth in Paragraph 5 of the Order by adopting Resolutions 012-170, 012-210, and 013-157 and certifying the Phase 7a EIR contingent upon the Governing Board's approval of this Petition to modify the Order so that it is consistent with the approved Phase 7a project and Final EIR. Pursuant to Paragraph 22 of the Order and Paragraph 6 of Board Order 080128-01 (and all other appropriate authority) and the express direction of LADWP's Board of Commissioners, LADWP submits this Petition and requests that the Governing Board approve the following modifications to the Order:⁴

1. LADWP requests that the Governing Board modify the Order to extend the time for the installation of BACM on Phase 7a subareas: T37-1, T37-2, T1A-3, T1A-4, and T32-1, and the Transition Areas (T1A-2a, T28N, T28S, T30-1a, T30-1b, T35-1, T35-2, and T36-1b).⁵ In order

⁴ In light of the ongoing discussions between representatives of the LADWP Board of Commissioners and Great Basin Governing Board pursuant to Paragraph 6(c)(ii) of the Order, LADWP reserves the right to continue, withdraw and/or modify this Petition at any time prior to the upcoming July 15, 2013, Governing Board meeting.

⁵ For reference, the attached Exhibit 17 provides a comparison of the schedule expected when the Order was adopted with the proposed schedule based on the unanticipated extensive discovery of the cultural and archaeological resources.

to implement the dust controls as expeditiously as possible, LADWP proposes to implement the project in two Phases.

Phase 1 Schedule

The proposed Phase 1 schedule covers the following areas:

- Phase 7a: T1A-4 and T37-2 (except for 14 acres)
- Transition areas: T1A-2a, T28N, T28S, T30-1a, T30-1b, T35-1, T35-2, and T36-1b

In early November 2012, LADWP conducted additional geotechnical work to help complete the design of Transition Areas. The design and construction specifications for the non-culturally sensitive areas of Phase 7a, including the Transition Areas, T1A-4 and T37-2, were completed in May 2013. (See April 30, 2013, Phase 7a Quarterly Report.) LADWP expects to award a construction contract by early August 2013, and start construction in September 2013. LADWP estimates that construction of dust control in these areas can be completed over a period of approximately 20 months after the acquisition of all necessary permits, leases and other approvals discussed above. The discovery of any further cultural resources in these areas will impact the construction schedule. A summary of the proposed schedule is as follows:

Activity	Time Frame
Completion of the design and construction specifications	May 2013
Certification of the Phase 7a EIR and Decision on the Project	June 2013
Great Basin Issuance of an Order to Comport Order to the Phase 7a EIR and Project	July 2013
Issuance of Other Required Permits	August 2013
Award of construction contract	August 2013
Construction of dust controls begins	September 2013
Construction of dust controls completed	April 2015
Vegetation and transition areas compliant (T37-2, T1A-2, T28N, T28S, T30-1a, T30-1b, and T36-1b)	March 2017

This schedule represents a 16-month extension of time.

Phase 2 Schedule

The proposed Phase 2 schedule covers the following areas:

- Phase 7a: T37-1, T1A-3, and T32-1

The design of controls for T37-1, T32-1, and T1A-3 had to be suspended when the significant cultural resources were identified in order to assess the impacts under CEQA and identify mitigation, including avoidance. Now that the LADWP Board has approved a Phase 7a project that requires avoidance of the 350 acres known to contain significant cultural resources, LADWP will proceed to design the project, and award a construction contract. A summary of the estimated schedule for Phase 2 is as follows:

Activity	Time Frame
Certification of the Phase 7a EIR and Decision on the Project	June 2013
Great Basin Issuance of an Order to Comport Order to the Phase 7a EIR and Project	July 2013
Completion of the design and construction specifications	December 2013 (approx. six months after EIR certification)
Issuance of Other Required Permits	June 2014
Award of construction contract	June 2014
Construction of Dust Controls	December 2016 (approx. 30 months after contract awarded)
Areas with managed vegetation established (T32-1)	December 2018 (approx. two years after dust controls installed)

This schedule represents a 2½ year extension of time.

These estimated schedules for Phases 1 and 2 are contingent upon no further discovery of significant cultural and archeological resources, sufficient climatic conditions to facilitate the

1 growth of the managed vegetation, and other agencies timely approving the numerous permits
2 required to implement the Phase 7a project, including but not limited to the following:

- 3 • A lease amendment for use of state lands will be required from the CSLC prior to project
4 construction.
- 5 • Consistent with the previous DCMs installed on Owens Lake, a Lakebed Alteration
6 Agreement pursuant to Section 1602 of the Fish and Game Code will be needed from the
7 California Department of Fish and Wildlife (CDFW).
- 8 • An amendment to existing Clean Water Act Section 404 permit SPL-2008-00582-BAH
9 from the U.S. Army Corps of Engineers for Phase 7 to include construction, operations,
10 and maintenance associated with Phase 7a will be needed.
- 11 • Construction of the Phase 7a project will be completed in compliance with the National
12 Pollutant Discharge Elimination System (NPDES) General Permit for Storm Water
13 Discharges Associated with Construction and Land Disturbance Activities (Order No.
14 2009-0009-DWQ, NPDES NO. CAS000002). Pursuant to the General Permit, a Storm
15 Water Pollution Prevention Plan (SWPPP) incorporating best management practices
16 (BMPs) for erosion control will be developed and implemented during project
17 construction.
- 18 • Discharge of water to the Lake for dust control is currently permitted by the Lahontan
19 Regional Board through Waste Discharge Requirements (WDR) for the Southern Zones
20 Dust Control Project (Board Order No. R6V-2006-0036). It is LADWP's current
21 understanding that the Regional Board has determined that implementation of the Phase
22 7a project does not warrant a revision or amendment to the existing WDR. If the Regional
23 Board decides differently, a WDR will need to be obtained.
- 24 • LADWP will need to use the SR 136 right-of-way for gravel transport. This activity will
25 require approval from the Bureau of Land Management (BLM) and an encroachment
26 permit from the California Department of Transportation (Caltrans). Caltrans
27 encroachment permits will also need to be obtained for access roadways, Dirty Socks
28

Road and other roadways, as necessary. The permits address access, maintenance, legal sized load restrictions and traffic control (*i.e.*, Traffic Work Safety Plan).

- A Dust Control Plan will need to be approved by Great Basin.
- A permit or non-objection letter from Inyo County for the maintenance of the Highway 395/T37-2 access road will also need to be obtained.
- Relevant archaeological investigation and/or excavation permits will need to be obtained from the CSLC.
- Subsequent modifications to the Order, and possibly other Board Orders, to implement the approved Phase 7a project will need to be adopted by the Governing Board.
- The installation of the fuel tank at the construction office to serve the haul trucks will require the following:
 - 1) Permit to Operate (1316-00-06) – An air quality permit from Great Basin related to vapor recovery.
 - 2) Certified Unified Program Agency (CUPA) Facility Permit – A hazardous material/waste permit and associated contingency and business plan from the Inyo County Department of Environmental Health Services.
 - 3) Spill Prevention Control and Countermeasure (SPCC) Plan – For aboveground oil tanks of 1,320 gallons or more, and for fuel trucks when fuel will be left in the truck overnight. The Plan is filed with the Inyo County Department of Environmental Health Services.

2. LADWP requests that 350 acres of Phase 7a subareas T1A-3, T32-1, T37-1 and T37-2 known to contain CRHR-eligible sites be removed from the Phase 7a project area so as to allow for permanent avoidance of impacts to resources in these areas (*see Exhibit 2*). The removal of these 350 acres shall not affect LADWP's ability to proceed with the design and implementation of dust controls on the remaining Phase 7a areas not known to contain cultural resources and/or unrelated to these avoidance areas. LADWP also requests that the Order be adjusted to comply with LADWP's EIR mitigation measure CR-3 that requires protection of three archaeological sites.

1 3. LADWP requests that the Order be modified to clarify that the approximately 3.4
2 square miles of Transition Areas selected by LADWP to be transitioned from Shallow Flooding
3 into a hybrid of BACM, including Managed Vegetation, Gravel Cover and Shallow Flooding, are
4 consistent and fully compliant with Paragraphs 7 and 8 of the Order. Paragraphs 7 and 8 provide
5 that a maximum of 3.0 square miles of Transition Areas may be without BACM at any time during
6 construction of the Phase 7a project. LADWP's transition of the additional 0.4 square miles of dust
7 control areas (above the allowable 3.0 square miles) will be accomplished during the non-dust
8 control season. (Draft EIR, § 3.1.8.1.) Therefore, consistent with the Order, no more than 3.0
9 square miles of the Transition Areas will be uncontrolled at any one time.

10 4. LADWP requests that the Phase 7a map and coordinates presently included as
11 Exhibit 4 to the Order be removed and replaced with Figure 1-1 of the Final EIR (*see Exhibit 3*) in
12 order to accurately reflect the current Phase 7a Project areas, Transition Areas and the approved
13 BACM.

14 5. LADWP requests that the discovery of cultural resources be expressly recognized
15 as one of the conditions beyond LADWP's control and for which LADWP is not deemed to be in
16 violation of the Order.

17 6. LADWP requests that the Governing Board issue a modification to Order 080128-
18 01 that is submitted to CARB and EPA to conform that order to the these modifications.

19 7. LADWP requests the Governing Board retain jurisdiction over the Order until
20 December 31, 2018.

21 LADWP reserves the right to introduce further evidence to support its petition prior to or at
22 the hearing.

23 **6. CONCLUSION.**

24 The unexpected discovery of significant cultural and archaeological resources in the Phase
25 7a area that are beyond LADWP's control will prevent LADWP from installing BACM by the
26 deadlines anticipated in the Order. LADWP has satisfied the requirements of Paragraphs 5 and 6
27 of the Order by adopting the three resolutions and completing the CEQA process for Phase 7a.

28

1 The modifications to the Order sought by this Petition are necessary to ensure consistency between
2 the Order and the Phase 7a project and EIR approved/certified by the LADWP Board of
3 Commissioners. Therefore, LADWP respectfully requests that the Order be modified as requested.

4
5 DATED: June 14, 2013

Respectfully Submitted,

6 CITY OF LOS ANGELES, DEPARTMENT OF
7 WATER AND POWER

8
9
10 By: 

Michelle M. Lyman

11 Attorneys for CITY OF LOS ANGELES ACTING
12 BY AND THROUGH ITS DEPARTMENT OF
13 WATER AND POWER
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ATTACHMENT C

Exhibit 3

Term Sheet Agreement approved by LADWP Board of Commissioners
on June 26, 2013 and District Governing Board on June 27, 2013

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

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

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

I. MODIFICATION OF SOA

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

1. Deadline Extensions

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

2. Assumptions for Extension of Deadlines

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

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

B. Creation of Phase 7b

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

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

4. Cultural Resource Task Force

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

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

C. No Fines

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

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

D. Modification of SOA

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

E. Clarification on BACM

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

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

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

II. KEELER DUNES

A. Keeler Dunes Dust Control Project

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

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

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

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

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

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

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

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

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

- c) SIP and Board Order Amendment:

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

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

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

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

III. GENERAL SETTLEMENT CONDITIONS

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

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

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

Great Basin Unified
Air Pollution Control District

Los Angeles
Department of Water and Power

By: 

By: 

Name: John Eastman

Name: RONALD O. NICHOLS

Title: Governing Board Chair

Title: General Manager


Date: June 27, 2013

Date: 7/25/13

///////

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

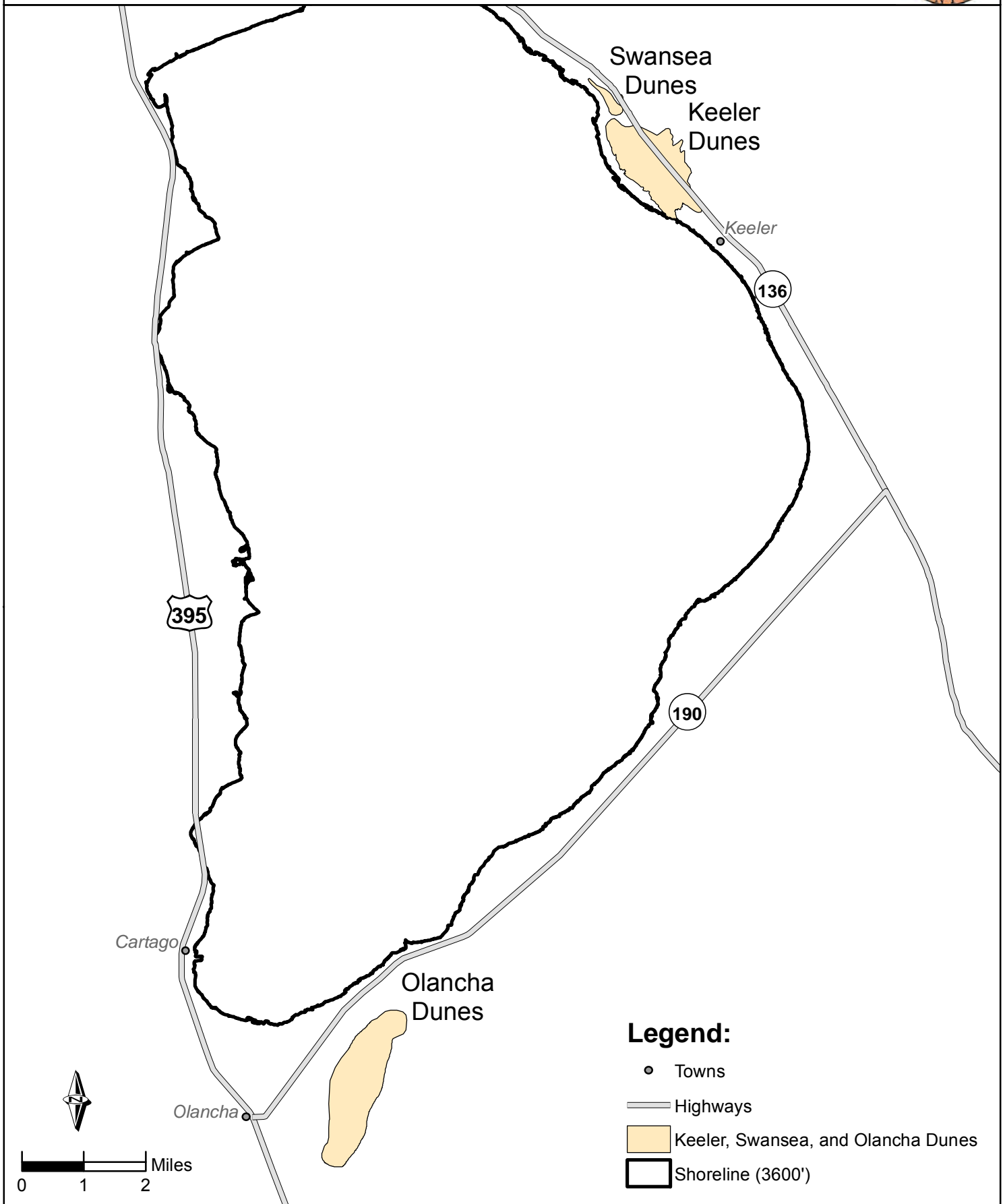
JUL 22 2013


MICHELLE LYMAN
DEPUTY CITY ATTORNEY

Great Basin Unified Air Pollution Control District



Keeler, Swansea, and Olancha Dunes



Great Basin Unified Air Pollution Control District

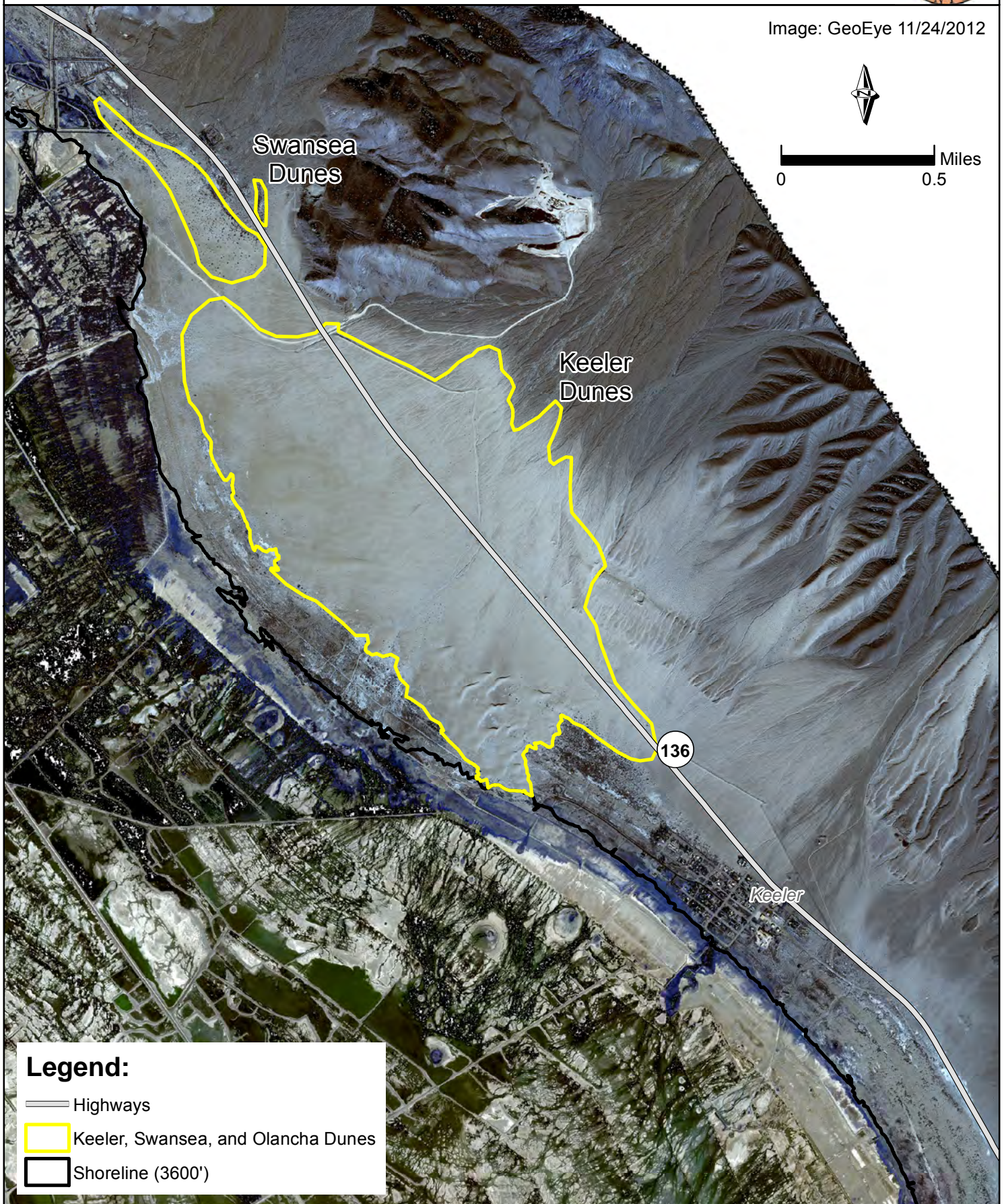


Keeler and Swansea Dunes - Detail

Image: GeoEye 11/24/2012



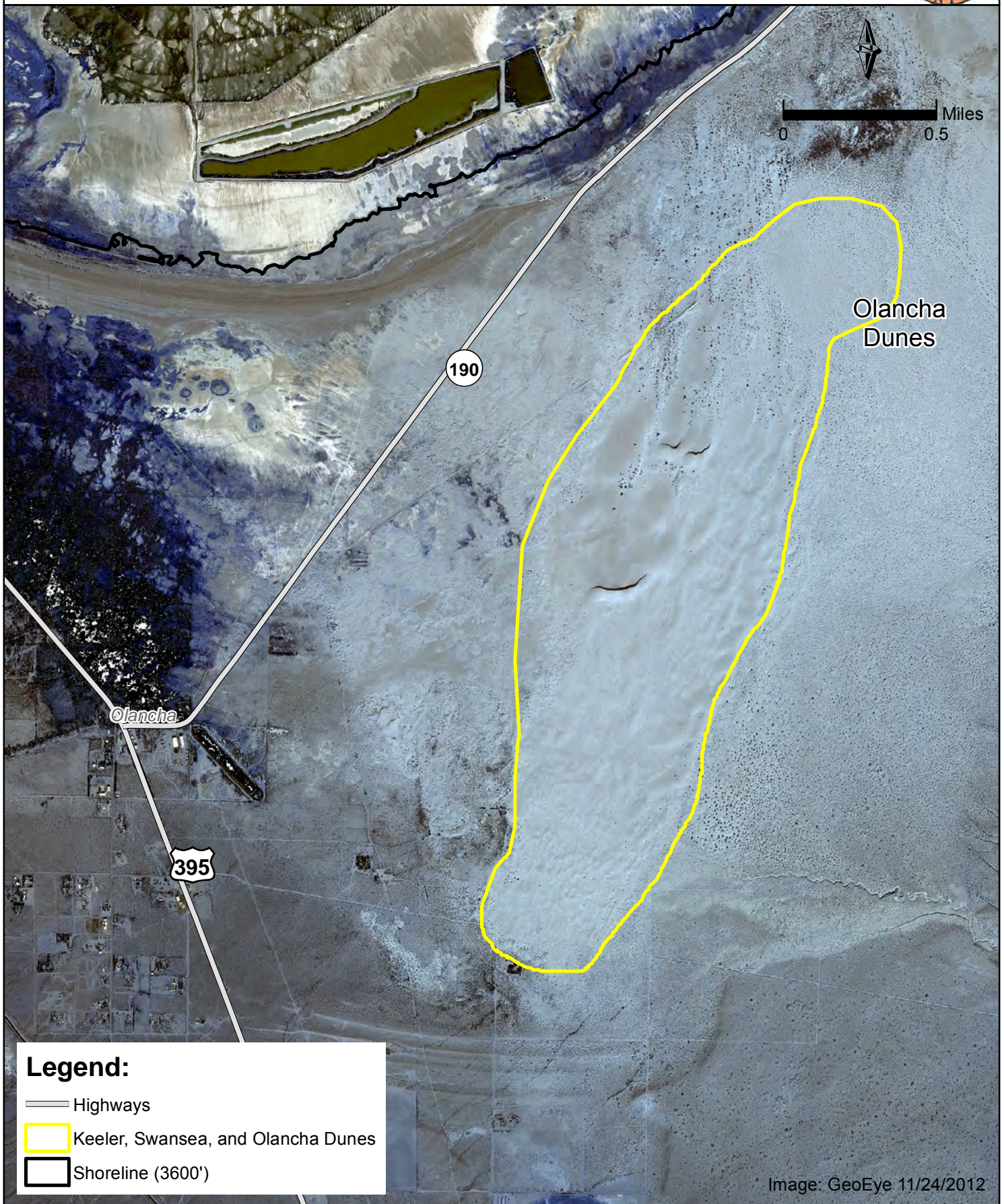
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Great Basin Unified Air Pollution Control District



Olancha Dunes - Detail



ATTACHMENT C

Exhibit 4

Staff Report for June 27, 2013 Special District Governing Board Meeting

ATTACHMENT C - Exhibit 4 - Staff Report - Phase 7a/Keeler Dunes Settlement

Theodore D. Schade
Air Pollution Control Officer



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

157 Short Street, Bishop, California 93514-3537

Tel: 760-872-8211

BOARD REPORT

Mtg. Date: June 27, 2013

To: District Governing Board

From: Theodore D. Schade, Air Pollution Control Officer

Subject: Consideration of an Agreement regarding Settlement Terms with the LADWP regarding Owens Lake Phase 7a and Keeler Dunes dust controls

Background

In 2006, Great Basin and the Los Angeles Department of Water and Power entered into a Settlement agreement regarding additional Owens Lake dust controls. The Agreement required the LADWP to deploy approximately 13 square miles of additional dust controls onto the lakebed, including a 3.1 square-mile area known as "Phase 7a." The original deadline for constructing the Phase 7a controls was October 2009. Due to a number of circumstances, LADWP failed to meet the October 2009 deadline and received a one-year extension, until October 2010, from the District Hearing Board. In return for the one-year extension, LADWP agreed to construct two additional square miles of dust controls known as "Phase 8."

LADWP also did not meet the October 2010 deadline for the Phase 7a controls and in March 2011 it received an extension until December 2013 from the District Governing Board by means of a Stipulated Order for Abatement (SOA). The SOA (#110317-01) is attached to this report. In addition to providing additional time for Phase 7a, LADWP was required to pay \$6.5 million into an "excess air pollution offset fund." The District is using these funds to reduce other sources of air pollution in the District. The SOA provides that, if LADWP fails to meet future deadlines, it agrees to make late payments of up to \$10,000 per day until all 3.1 square miles of Phase 7a controls are in place.

However, once again, due to a number of circumstances, including the purported discovery of a significant quantity of important cultural resources within the Phase 7a area, LADWP asserts it will be unable to meet the December 2013 deadline for Phase 7a controls. The 2011 SOA provides a procedure for LADWP to be granted additional time due to circumstances beyond its control. In January 2013, LADWP initiated the procedure in the SOA (Order Paragraphs 5 and 6) by which two LADWP Board Commissioners could meet with two Great Basin Board members to develop a non-binding recommendation to the full Great Basin Board as to whether, and under what conditions, LADWP should be granted additional time to complete the dust controls.

Over the past two months LADWP Commissioners Jonathan Parfrey and Richard Moss have been meeting with Great Basin Board members Larry Johnston, Matt Kingsley and Linda Arcularius in an

ATTACHMENT C - Exhibit 4 - Staff Report - Phase 7a/Keeler Dunes Settlement

attempt to develop a mutually agreeable path forward. The Air Pollution Control Officer deeply appreciates the time and dedication these five leaders devoted to this difficult task. With the assistance of staff and attorneys from both agencies, on Monday, June 24, agreement was reached on a number of issues related to the Phase 7a dust controls, as well as other issues of concern, including a plan for the protection of cultural resources and control of dust from the Keeler Dunes. A proposed “Agreement of Settlement Terms” (Settlement) has been drafted and is being presented to both the LADWP Board of Commissioners and the Great Basin Governing Board for consideration and approval. The proposed agreement is attached to this report.

Discussion

The proposed Settlement is a framework which will later be developed into a more formal agreement consistent with the terms with the Settlement. The formal agreement will then be incorporated into an amendment to the 2011 SOA that is to be considered by the Board within 30 days (before July 27, 2013).

In addition to considering amending the SOA within 30 days, the Settlement requires the Board to consider amending the 2008 Owens Valley State Implementation Plan (SIP) to incorporate some of the provisions of the Settlement into the SIP. In order to amend the SIP, the District is required to have a 30-day public comment period.

Therefore, a three-step process is required to approve and implement the Settlement: 1) Today’s consideration of the settlement terms, 2) Consideration of a more specific SOA amendment within 30 days (prior to July 27), and 3) Consideration of a SIP amendment after at least 30 days public notice.

The proposed Settlement contains a number of provisions and staff encourages the Board members to carefully read through the document. In summary, the Settlement contains the following major components:

I. Phase 7a Dust Controls

1. The deadline for completion of construction of the Phase 7a infrastructure is extended by two years from December 2013 to December 2015. Any vegetation planted for dust control must be fully compliant (about 20% cover) by December 2017.
2. 328 acres of Phase 7a area that contains sensitive cultural resources is to be removed from the Phase 7a project and will be known as the “Phase 7b” project. Phase 7a contains about 2,000 acres, so Phase 7b is about 17 percent of the total area.
3. Any additional significant cultural resource areas encountered during Phase 7a construction will be moved to Phase 7b.
4. A “Cultural Resource Task Force” (CRTF) will be formed of interested parties, including local Indian Tribes to make recommendations for Phase 7b regarding the balance between protection of cultural resources and air pollution control requirements. The CRTF will make recommendations to LADWP and the District. The District Board, after considering the CRTF’s recommendations, will issue additional orders regarding the Phase 7b areas, if appropriate.

ATTACHMENT C - Exhibit 4 - Staff Report - Phase 7a/Keeler Dunes Settlement

5. As long as all Phase 7a and Phase 7b deadlines are met, LADWP will not be subject to fines.

II. Best Available Control Measures (BACM)

6. The District approves two modified BACMs: “Reduced Thickness Gravel” (2 inches of gravel over a geotextile fabric underlay) and “Brine Shallow Flooding.” The District and LADWP agree that LADWP is not liable for maintenance of the natural brine pool remnant of Owens Lake.
7. The District and LADWP agree to work on accelerated testing of “Tillage” and “Roughness Elements” as candidate BACMs. It is both agencies’ intentions to have the District Board make a BACM decision on these measures within 13 months.

III. Keeler Dunes

8. LADWP will pay the District \$10 million as a public-benefit contribution for and will support the District’s effort to implement a dust control project on the Keeler Dunes. The District will be solely responsible for implementing the Keeler Dunes project. LADWP will make the \$10 million payment within 90 days of: 1) the District releasing LADWP from liability for the Keeler, Swansea and Olancha Dunes and 2) District submittal to the California Air Resources Board of a SIP revision incorporating the agreement provisions into the 2008 SIP.
9. LADWP can audit the District’s records to verify the appropriate expenditure of the \$10 million.
10. The District agrees to release the LADWP from any and all liability under any and all federal, state and local laws that the District can enforce regarding dust emissions from the Keeler, Swansea and Olancha Dunes. The District also agrees not to request, encourage or join in an enforcement action by any other agency related to dust emissions from these three dune areas.
11. The District agrees to hold no further hearings regarding LADWP’s liability or responsibility for dust emissions from the three dune areas.

Staff Recommendation

Staff has been closely involved in the development of the proposed Settlement and recommends the following three actions:

1. That the full Board approve the draft Settlement as presented,
2. That the Board set the date, within 30 days, for a special meeting to consider incorporating the provisions of the Agreement into Stipulated Order for Abatement 110317-01, and
3. That the Board set the date, after a 30-day public review and comment period, for a meeting to consider amending the 2008 Owens Valley PM-10 State Implementation Plan to incorporate the modified Abatement order.

ATTACHMENT C - Exhibit 4 - Staff Report - Phase 7a/Keeler Dunes Settlement

Attachments:

Stipulated Order for Abatement 110317-01

Phase 7a and Keeler Dunes Settlement Terms Agreement dated June 25, 2013

13062601

ATTACHMENT C

Exhibit 5

Settlement Agreement between District and LADWP,
approved by District Governing Board August 19, 2013

**STAFF DRAFT – SUBJECT TO REVISION AND NOT REVIEWED OR APPROVED
BY THE LADWP BOARD OF COMMISSIONERS**

**SETTLEMENT AGREEMENT AND RELEASE BETWEEN THE GREAT BASIN UNIFIED AIR
POLLUTION CONTROL DISTRICT AND CITY OF LOS ANGELES ACTING BY AND THROUGH ITS
DEPARTMENT OF WATER AND POWER CONCERNING MODIFICATION TO PHASE 7A
STIPULATED ORDER FOR ABATEMENT NO. 110317 AND KEELER DUNES PROJECT**

August 19, 2013

THIS SETTLEMENT AGREEMENT AND RELEASE ("**Agreement**") is entered into on this 19th day of August, 2013, by and between the **Great Basin Unified Air Pollution Control District**, an agency organized pursuant to Division 16, Part 3, Chapter 3 of the California Health and Safety Code ("**District**"), on one hand, and the **City of Los Angeles acting by and through its Department of Water and Power ("LADWP")**, a municipal corporation organized under the Los Angeles City Charter and the Constitution and laws of the State of California, on the other hand. The District and LADWP may be referred to herein individually as "**Party**" or collectively as the "**Parties.**"

WHEREAS, on March 17, 2011, the District Governing Board issued Stipulated Order for Abatement, Order No. 110317-01 ("**Original Abatement Order**"). The Original Abatement Order requires LADWP to construct a dust control project, known as Phase 7a, on approximately 3.1 square miles of the Owens Lakebed, which includes six Dust Control Areas ("**DCAs**"), T37-1, T37-2, T1A-3, T1A-4, T-32-1 and T12-1 ("**Phase 7a areas**"). The Original Abatement Order allows LADWP to transition approximately 3.0 square miles of existing dust control areas ("**Transition Areas**"). These areas are identified in Exhibit 4 of the Original Abatement Order.

WHEREAS, the Original Abatement Order requires LADWP to install Best Available Control Measures ("**BACM**") in DCAs T37-1, T37-2, T1A-3, T1A-4 and T-32-1 and provides for LADWP to change BACM in the Transition Areas to conserve water, by no later than December 31, 2013, and to install BACM in the T12-1 tillage test area by May 1, 2016. (*See also* Governing Board Order No. 120206-07.) Under the Original Abatement Order, all Phase 7a Areas and Transition Areas controlled by Managed Vegetation BACM are to achieve fully-compliant BACM vegetation cover by December 31, 2015. Installation of BACM on the Phase 7a DCAs and Transition Areas entails ground disturbing activities such as grading, planting, dirt moving, boring, trenching and road, berm, pipeline and other construction.

WHEREAS, LADWP was required under District Governing Board Order No. 080128-01 ("**Board Order 080128-01**"), the enforcement Board order for the 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan ("**2008 SIP**"), to conduct environmental review for the Phase 7a project in compliance with the California Environmental Quality Act ("**CEQA**"). LADWP unexpectedly discovered significant cultural and archaeological resources in the Phase 7a area during the CEQA process that required LADWP to undertake additional investigations under CEQA and to comply with mitigation measures

included in the District supplemental environmental impact report for the 2008 SIP (“SEIR”), both of which resulted in unanticipated CEQA and project design and construction delays that LADWP determined are outside of its control.

WHEREAS, LADWP released the draft Phase 7a EIR for public review and comment in January 2013 for a 45 day public comment period. LADWP staff considered and responded to public comments, conducted further consultations with Native American groups and others about project impacts and comments on the draft EIR, and revised the draft EIR, as necessary, to incorporate any changes to the project. Alternatives were identified in the EIR that would avoid impacts to cultural resources by excluding California Register of Historic Resources (“CRHR”)-eligible areas from the Phase 7a project, including the Avoidance Alternative, which involved construction of the originally proposed Phase 7a project, except for 350 acres of Phase 7a subareas T1A-3, T32-1, T37-1 and T37-2 known to contain significant cultural resources.

WHEREAS, on June 4, 2013, LADWP’s Board of Water and Power Commissioners considered and certified the final Phase 7a EIR and approved the Avoidance Alternative for the Phase 7a project, subject to and contingent upon the District Governing Board’s approval of a petition to modify the Original Abatement Order to remove these 350 acres from the original Phase 7a area, and to make any other additional changes necessary to ensure consistency between the Original Abatement Order, the Phase 7a project and the Final EIR, including, but not limited to, obtaining extensions of time for completing the Phase 7a project necessitated by the unexpected discovery of significant cultural resources in the Phase 7a areas.

WHEREAS, paragraph 5 of the Original Abatement Order outlines circumstances that allow LADWP to seek an extension of time to comply with the Original Abatement Order, without penalty, when it is acting in good faith to comply with the terms of the Original Abatement Order but is impeded by circumstances beyond its control. In compliance with the Original Abatement Order, LADWP’s Board of Water and Power Commissioners adopted three resolutions on February 7, 2012 (Resolution No. 012-170), April 3, 2012 (Resolution No. 012-210), and January 11, 2013 (Resolution No. 013-157), finding that LADWP has acted in good faith to comply with the Original Abatement Order, but has been impeded by the unexpected discovery of significant cultural resources in the Phase 7a areas. In compliance with paragraph 6 of the Original Abatement Order, LADWP notified the District’s Air Pollution Control Officer (“APCO”) of each resolution and proposed schedules of increments of progress. The APCO objected to LADWP’s Resolution No. 013-157 on February 4, 2013. Pursuant to paragraph 5 of the Original Abatement Order, LADWP requested a meeting with District Governing Board members to attempt to resolve the dispute.

WHEREAS, designated members of the LADWP and District Boards have engaged in several meetings (“Settlement Meetings”) in April, May and June 2013 to resolve the dispute related to the Original Abatement Order. During the Settlement Meetings, the Parties also attempted to resolve a separate dispute related to the development and origin of the Keeler Dunes and a possible future District order requiring control of emissions at the Keeler Dunes. The District Governing Board has not made any findings or issued any order concluding that the

Keeler Dunes are anthropogenic in nature and/or caused by LADWP's activities in the production, diversion, storage, or conveyance of water. The District Governing Board has not made any findings or issued any order concluding that LADWP is liable for, or that LADWP's activities in the production, diversion, storage, or conveyance of water has caused or contributed to any violations of state or federal air quality standards in the Keeler Dunes or other dunes areas, including the Swansea and Olancho Dunes, in the vicinity of Owens Lake.

WHEREAS, the Settlement Meetings resulted in an agreement on settlement terms dated June 17, 2013 ("**Term Sheet**") that was approved by LADWP's Water and Power Commissioners on June 26, 2013, and the District's Governing Board on June 27, 2013, and are memorialized in this Agreement. This Agreement does not result in any waiver by the District or LADWP of arguments raised in other proceedings or disputed issues that are not covered under this Agreement, including but not limited to the District's Supplemental Control Requirements Determination ("**SCRD**") process, SB 270 budgets, and fees.

For good and valuable consideration, the Parties agree as follows:

- I. **PHASE 7a DUST CONTROLS.** [*Corresponds to Term Sheet section I.A.*] The District Governing Board shall approve a modification to the Original Abatement Order ("**Modified Abatement Order**") that reflects the following terms:
 - a. **Deadline Extensions.** [*Corresponds to Term Sheet sections I.A.1.-I.A.2.*]
 - i. The deadline for LADWP to construct all infrastructure and install fully-compliant BACM in the Phase 7a areas and Transition Areas, except for those areas controlled by Managed Vegetation BACM, as set forth in paragraphs 1 and 4(a) of the Original Abatement Order, shall be extended from December 31, 2013, to December 31, 2015. All infrastructure and plant materials for Managed Vegetation BACM will be installed by December 31, 2015.
 - ii. The deadline to achieve fully-compliant BACM vegetation cover for areas controlled by Managed Vegetation BACM in the Phase 7a areas and Transition Areas, as set forth in paragraphs 1 and 4(a) of the Original Abatement Order, shall be extended from December 31, 2015, to December 31, 2017.
 - iii. The extensions of the deadlines set forth in section I(a)(i)-(ii) shall be contingent upon all of the following:
 - (1) LADWP timely receiving from California State Lands Commission ("**CSLC**") and all other agencies all of the required permits, approvals, or leases necessary to allow LADWP to construct BACM within the deadlines required by the Modified Abatement Order.
 - (2) The timely removal from the Original Abatement Order of all CRHR-eligible areas plus necessary buffer areas, referred to as the "Eligible Cultural Resource ("**ECR**")"

areas.” The ECR areas initially consist of 328 acres of the Phase 7a areas identified in Exhibit 1 (the “**Initial Phase 7b Areas**”), which is incorporated into this Agreement. Because Exhibit 1 identifies the locations of cultural resources, it is confidential and shall not be made publically available. The Initial ECR areas and any newly discovered CRHR-eligible and necessary buffer areas are considered part of Phase 7b, as set forth in section I(b)(i) below. A confidential map of the initial 328-acre ECR area shall be attached to the Modified Abatement Order.

- (3) The Original Abatement Order being revised to state explicitly that any newly discovered potential ECRs in the Phase 7a areas is considered a condition of force majeure under paragraph 5(d) of the Original Abatement Order.
- iv. If any one of the above contingencies is not met, LADWP may seek further extensions of time under the provisions of paragraph 5 of the Original Abatement Order, as modified by the Modified Abatement Order, and paragraphs 6 and 22 of the Original Abatement Order, which shall not be unreasonably denied by the District.
- b. **Creation of Phase 7b.** *[Corresponds to Term Sheet sections I.B.1.-I.B.3., I.D.1]*
 - i. Phase 7b shall consist of the Initial 328 acres of Phase 7b Areas and any other areas in Phase 7a that LADWP’s state-certified archaeologist has determined, and which are confirmed by a second, state-certified archaeologist mutually agreeable to the District, LADWP and CSLC (the “**Second Archaeologist**”) to be CRHR-eligible and necessary buffer areas (the “**Additional Phase 7b Areas**”). The difference between the 328 acres defined in this Agreement as the Initial Phase 7b areas, and the 350 acres identified in the Avoidance Alternative in the Phase 7a EIR, will also be subject to the Phase 7b process, if necessary, as described in this Agreement. The Additional Phase 7b Areas are not limited to the 350 acres described in the Avoidance Alternative in the Phase 7a EIR. All areas in Phase 7b shall be considered removed from the Original Abatement Order.
 - ii. LADWP shall promptly notify and confer with the District if any cultural resources are discovered during the construction of Phase 7a. The discovery of any cultural resources that are determined by LADWP’s state-certified archeologist to be potentially CRHR-eligible shall be subject to the procedure set forth in paragraph 5 of the Original Abatement Order, as modified by the Modified Abatement Order, and paragraph 6 of the Original Abatement Order. Upon the discovery of the cultural resources, LADWP will request that its state-certified archeologist fulfill his or her legal obligations relative to assessing and making recommendations for cultural resources. LADWP’s state-certified archaeologist shall be responsible for evaluating whether any of the newly discovered cultural resource areas within Phase 7a are CRHR-eligible, and if so, define the additional buffer areas necessary to address disturbance of the CRHR-eligible areas. LADWP’s state-certified

archeologist's recommendations shall be reviewed by the Second Archaeologist. If confirmed by the Second Archaeologist, the newly identified CRHR-eligible areas and necessary buffer areas shall become ECR areas that are withdrawn from the Original Abatement Order and included in Phase 7b.

- c. Cultural Resource Task Force ("**CRTF**") [*Corresponds to Term Sheet sections I.B.4*]
- i. LADWP and District commit to form the CRTF and host its initial meeting within ninety (90) days after the Effective Date of the Modified Order. The CRTF will be an advisory group consisting of representatives from LADWP, the District, CSLC, State Historical Preservation Office, and Local Tribal Representatives. The CRTF may draw upon outside resources and experts, as needed, to aid the CRTF's process. LADWP shall be responsible for paying the CRTF's reasonable costs, including reimbursing CRTF members for reasonable travel expenses. The CRTF shall exist to make recommendations for the Initial Phase 7b Areas and any Additional Phase 7b Areas.
 - ii. The CRTF will be advisory in nature only, and the District and LADWP will each retain its final decision-making authority as to the treatment of ECR areas. The District reserves the right to issue a future order or orders requiring LADWP to install dust controls on Phase 7b areas and LADWP reserves the right to contest any such order or orders.
 - iii. The CRTF will initially make non-binding recommendations to the District Governing Board and LADWP on or before December 31, 2014, as to the best course of action and timing for the treatment of the Initial Phase 7b Areas, which could include whether particular areas should be permanently avoided, subject to Phase III cultural recovery, or subject to some less intensive form of cultural recovery to protect cultural resources in the Initial Phase 7b Areas. In making its recommendations, the CRTF shall give due consideration to the District's and LADWP's shared water saving and air pollution control goals.
 - iv. The CRTF shall also make non-binding recommendations to the District Governing Board and LADWP with respect to the treatment of the Additional Phase 7b Areas. In making its recommendations, the CRTF shall give due consideration to the District's and LADWP's shared water saving and air pollution control goals.
 - v. If, after considering the CRTF's non-binding recommendations and input from LADWP, the District Governing Board exercises its discretion and orders LADWP to install dust controls in either the Initial Phase 7b Areas or in the Additional Phase 7b Areas, the District Governing Board will do so by issuing a new Board order or orders. The new Board order or orders shall include deadlines for constructing dust controls that accommodate project circumstances, including but not limited to, the time to complete a Phase III cultural resources recovery and perform additional environmental work required under CEQA to approve the new project. The new Board order or orders shall incorporate the provisions in paragraph 5 of the Original

Abatement Order as amended by section I(a) and the Modified Abatement Order. In issuing the new Board order or orders, the District Governing Board will determine if any amendment to the 2008 SIP is necessary. LADWP is not waiving its right to contest the new Board order or orders.

- vi. Any future order or orders issued by the District for Phase 7b will give due consideration to the shared goal of the District and LADWP to control air pollution and decrease the use of water as a dust control measure at Owens Lake.
- d. **No Fines Imposed.** *[Corresponds to Term Sheet sections I.C.1.-I.C.2.]*
 - i. The District shall not fine, issue fees or impose any other type of penalty upon LADWP with respect to any Phase 7a areas if LADWP constructs the dust controls in the Phase 7a areas within the modified time frames set forth in sections I(a)(i)-(ii), or any modified time frames resulting from sections I(a)(iii)-(iv).
 - ii. The District shall not fine LADWP for any areas in the Initial Phase 7b Areas and the Additional Phase 7b Areas pursuant to the Original Abatement Order, this Agreement, and the Modified Abatement Order.
- e. **Other Abatement Order Modifications.** *[Corresponds to Term Sheet sections I.D.2.-I.D.4.]*
 - i. The Modified Abatement Order shall reiterate that 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.
 - ii. The Modified Abatement Order shall state that the District's and LADWP's agreement to modify the Original Abatement Order shall not be construed as a waiver by either Party of any rights, remedies, legal theories or positions that either Party may choose to assert in any hearing, proceeding, tribunal or action now or in the future, except with respect to the particular subject matter contained in this Agreement and the Modified Abatement Order.
 - iii. The date the District Governing Board adopts the Modified Abatement Order shall be the effective date upon which the necessary decision makers of LADWP, the City of Los Angeles, and District Governing Board agree to enter into this Agreement to modify the Original Abatement Order, the "**Effective Date.**"
- f. **BACM Clarifications.** *[Corresponds to Term Sheet sections I.E.1.-I.E.4.]*
 - i. District hereby approves Reduced Thickness Gravel as a BACM. "Reduced Thickness Gravel is defined as per the 2008 Owens Valley PM10 State Implementation Plan except that the gravel thickness is reduced from a minimum of four inches (4") to two inches (2") and all reduced thickness gravel areas shall be underlain with

geotextile fabric. All geotextile fabric shall be Class I woven or nonwoven geotextile fabric meeting the minimum specifications set forth in the National Standard Materials Specification "Material Specification 592—Geotextile" (National Engineering Handbook, Chapter 3, Part 642), or equivalent.

- ii. The District hereby approves Brine Shallow Flooding BACM as a subcategory of Shallow Flooding BACM. District and LADWP acknowledge and agree that the foregoing approval of Brine Shallow Flooding BACM shall not make LADWP liable for maintenance of the natural Brine Pool on Owens Lake. The existing "Brine Pool" is defined as those areas at Owens Lake below elevation 3,553.55 feet.
- iii. The District shall work with LADWP on accelerated testing schedules and BACM approval, if warranted, for Roughness Elements and Tillage in soil type areas where these controls can be applied. Within 30 days of the Effective Date of the Modified Abatement Order, the District and LADWP shall agree upon accelerated testing schedules for the candidate Roughness Elements and Tillage BACMs in soil types where these control can be applied. The schedules shall include the District Governing Board's consideration of BACM approval of these candidate measures within one year of completion of the schedule (within 13 months of the Effective Date of the Modified Abatement Order). If the accelerated testing does not result in approved BACM for the candidate measures, the District's and LADWP's respective Boards shall jointly assess why the accelerated testing did not result in the District Board's BACM approval. The District and LADWP shall also work on accelerated testing schedules and BACM approvals for other forms of BACM.
- iv. The District shall memorialize its approvals set forth in sections I(f)(i)-(ii), and any future approvals pursuant to section I(f)(iii), in formal District Board resolutions and orders, including but not limited to, modifications to the 2008 SIP and Board Order 080128-01. The District and LADWP shall jointly apply to CSLC for approval to use new BACMs promptly upon their approval by the District and, with respect to the approvals set forth in Sections I(f)(i)-(ii), within 90 days of the Effective Date of the Modified Abatement Order.

II. KEELER DUNES.

a. Keeler Dunes Dust Control Project. *[Corresponds to Term Sheet sections II.A.1.-II.A.4.]*

- i. LADWP shall provide ten million dollars (\$10,000,000) to the District as a public benefit contribution to support the District's "**Keeler Project**" (as defined in section II(a)(ii)) to control PM10 emissions from the Keeler Dunes. LADWP shall tender the \$10,000,000 in one single payment to the District within 90 days after: (1) the date of approval of the Modified Abatement Order, which is also the Effective Date of this Agreement that includes the "**Keeler and Other Dunes Release**" defined in section II(b); and (2) the District Governing Board approves amendments to the 2008 SIP and Board Order 080128-01, and such amendments are submitted to the California

Air Resources Board ("**CARB**") pursuant to section II(b)(iii). The Keeler and Other Dunes Release in this Agreement shall not be effective until the District receives the \$10,000,000 contribution.

- ii. 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 at Keeler Dunes (the "**Keeler Project**"), including work previously conducted by the District in connection with the Keeler Project that was funded by Owens Lake Trust Fund monies. The District shall not seek from LADWP any reimbursement of Owens Lake Trust Fund monies used to pay for work conducted in connection with the Keeler Project through future SB 270 assessments or otherwise. No portion of the \$10,000,000 shall be used to pay for the District's attorneys' fees, public affairs or governmental relations (collectively, "**Public Affairs**") or contractors or subcontractors for Public Affairs. The Keeler Project includes all those portions of the Keeler Dunes owned by LADWP and the United States Bureau of Land Management ("**BLM**"). 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.
- iii. Upon the effective date of the Keeler and Other Dunes Release pursuant to section II(b) of this Agreement, and the 2008 SIP and Board Order 080128-01 amendments submittal to CARB as described in section II(b)(iii) of this Agreement, LADWP will immediately provide the District access to its property in the Keeler Dunes area in order for the District to complete the environmental impact analyses and for all design, permitting, construction, operation, maintenance, management, monitoring and activities directly and exclusively related to the Keeler Project. So long as access is provided by LADWP, the District shall indemnify in perpetuity, defend and hold the City of Los Angeles and LADWP harmless for personal injuries caused by the negligence or willful misconduct of the District with respect to all activities undertaken by the District and its employees, agents and contractors on LADWP's property, except that the District shall not be required to repair any alteration of the property that is part of or related to the design or implementation of the dust control measures for the Keeler Project. Any dust monitoring undertaken by the District on LADWP's Keeler Dunes property shall exclusively be for the Keeler Project and shall not be used for any other purpose.
- iv. LADWP, at its sole cost and expense, shall have the right (without obligation) to audit the District's books and records on an annual basis to verify that the \$10,000,000 contributed by LADWP has been exclusively used to fund the Keeler Project in accordance with this Agreement, which includes the Keeler Dunes and Other Dunes Release, the Modified Abatement Order, the amended 2008 SIP and

Board Order 080128-01, and any other document memorializing Term Sheet, and for no other purpose. The District shall fully co-operate with any annual audit of the Keeler Project initiated by LADWP.

- b. **District's Release of the City/LADWP for Keeler and Other Dunes Areas.** [*Corresponds to Term Sheet sections II.B.1.-II.B.4.*] The following Keeler and Other Dunes Release shall apply to the City of Los Angeles and LADWP and shall become effective upon the date the Modified Abatement Order is adopted and after the District has received the \$10,000,000 contribution from LADWP:
- i. Release for Keeler Dunes: 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. The District forever agrees not to request, encourage, or join in an enforcement action by any other agency against LADWP related to dust emissions from the Keeler Dunes, regardless of origin, including but not limited to portions of the Keeler Dunes owned by LADWP. A map defining the geographical boundaries of the Keeler Dunes is attached as Exhibit 2 and incorporated into this Agreement.
 - ii. Release for Swansea and Olancho Dunes (collectively these dunes are defined as the **"Other Dunes Areas"**): 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 from the Other Dunes Areas in the vicinity of Owens Lake, regardless of origin, including but not limited to portions of the Other Dunes Areas that may be owned by LADWP. The District forever agrees not to request, encourage, or join in an enforcement action by any other agency against LADWP related to dust emissions from the Other Dunes Areas in the vicinity of Owens Lake, regardless of origin. This Agreement does not release LADWP from liability for dust emissions resulting from any future groundwater pumping by LADWP at or below the 3600-foot contour in the Owens Lake area. Maps defining the geographical boundaries of the Other Dunes Areas is attached as Exhibit 2 and incorporated into this Agreement.
 - iii. 2008 SIP and Board Order 080128-01 Amendments: 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), and shall request the United States Environmental Protection Agency ("**EPA**") and CARB to approve the amended SIP.
 - iv. LADWP reserves the right to contest and defend any alleged violations not encompassed in the Keeler and Other Dunes Release, including but not limited to,

the right to contest and defend any alleged violations of Rule 401, or alleged liability or violations of Health and Safety Code section 42316 below the 3600-foot elevation and above the 3600-foot elevation in those areas outside the Keeler Dunes and Other Dunes Areas. The District reserves the right to assert that any such defenses are barred or otherwise not legally supported.

- v. Upon the Effective Date of this Agreement, the District shall hold no hearings regarding LADWP's liability/responsibility for dust emissions from the Keeler Dunes or from the Other Dunes Areas.

III. **GENERAL SETTLEMENT CONDITIONS.** *[Corresponds to Term Sheet sections III.A.-III.E.]*

a. **Approval by District Board, LADWP Board, and City of Los Angeles.**

- i. All settlement terms and other matters contained in this Agreement (which includes the Keeler and Other Dunes Release) and the Modified Abatement Order shall be subject to final approval by the LADWP Board of Water and Power Commissioners and all other necessary decision makers at the City of Los Angeles.
- ii. All settlement terms and other matters contained in this Agreement (which includes the Keeler and Other Dunes Release) and the Modified Abatement Order shall be subject to approval of the District Governing Board and shall be memorialized in the District Governing Board's approval of the Modified Abatement Order and other appropriate District Board resolutions and orders, including modifications to the 2008 SIP, if required, and Board orders, including Order 080128-01.

b. **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties. There are no third-party beneficiaries to this Agreement.

c. **Representations.** The Parties represent that on and as of the date of this Agreement, they have full capacity, right, power and authority to execute, deliver and perform under this Agreement. The individuals signing this Agreement are duly authorized to sign the same on the Parties' behalves and to bind the Parties thereto. This Agreement is and shall be binding upon and enforceable against the Parties in accordance with its respective terms.

d. **Integration.** This Agreement is intended by the Parties to memorialize the terms in the Term Sheet, which is attached as Exhibit 3 to this Agreement, and to be the final expression of their agreement with respect to the subject matter of this Agreement and the complete and exclusive statement of the terms of this Agreement between the Parties, and supersedes any prior understandings between the Parties, whether oral or written.

e. **Interpretation.** In all cases, the language in all parts of this Agreement shall be construed simply, according to its fair meaning and not strictly for or against any Party,

with the view of preserving and protecting the intent and purposes of the Agreement, it being agreed that the Parties or their agents have all participated in the preparation of this Agreement.

- f. **Governing Law.** The Parties agree that this Agreement is made, executed and entered into, and is intended to be formed within the State of California and that this Agreement is to be interpreted and enforced under the laws of the State of California. Any federal law claims shall be interpreted and enforced under federal law.
- g. **Counterparts.** This Agreement may be executed in two or more identical counterparts, each of which shall be deemed to be an original and each of which shall be deemed to be one and the same instrument when each Party signs each such counterpart.
- h. **Recitals.** Each of the Recitals is incorporated into this Agreement.
- i. **Definitions; Attachments.** Capitalized terms used herein shall have the respective meanings specified in the text of this Agreement. Unless otherwise indicated, references in this Agreement to sections, paragraphs, clauses, exhibits, attachments and schedules are those contained in or attached to this Agreement and all exhibits and schedules referenced herein are incorporated herein by this reference as though fully set forth in this Agreement.
- j. **Parties.** All references to the Parties shall include all officials, officers, personnel, employees, agents, assigns, and subcontractors of the Parties.

"Great Basin Unified Air Pollution Control District"

Dated: _____

By: _____

Governing Board Chair

APPROVED AS TO LEGAL FORM:

By: _____

District Counsel

“Los Angeles Department of Water and Power”

*Dated:*_____

*By:*_____

Board of Commissioners Chair

APPROVED AS TO LEGAL FORM:

By: _____

City Attorney

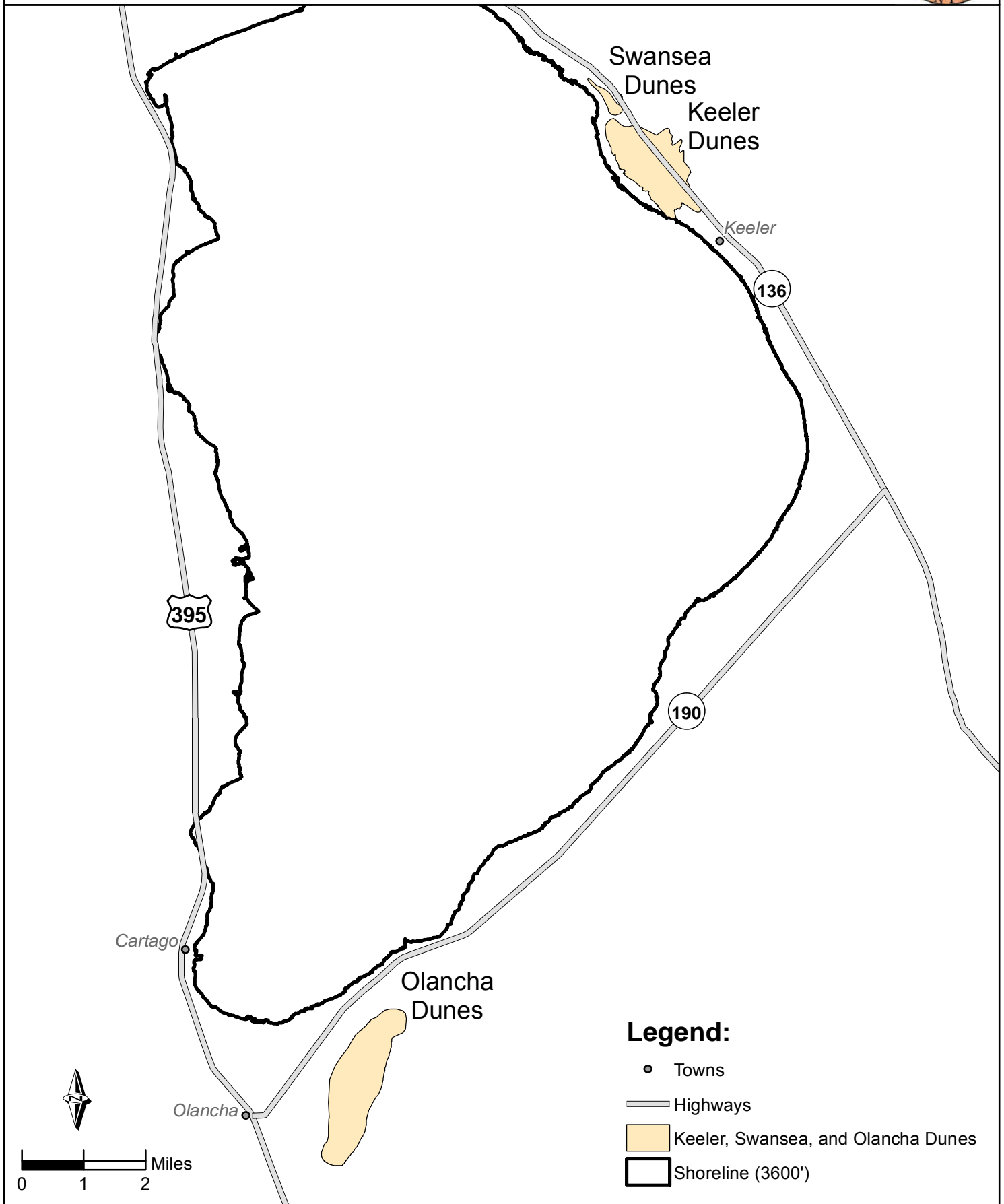
ATTACHMENT C - Exhibit 5 - Phase 7a/Keeler Dunes Settlement Agreement

List of Exhibits

- Exhibit 1 **CONFIDENTIAL** – Maps of Initial Phase 7b areas (X Pages)
- Exhibit 2 Maps of the Keeler and Other Dunes Areas (3 pages)
- Exhibit 3 Term Sheet Term Sheet approved by the LADWP Board of Commissioners on June 26, 2013, and the District Governing Board on June 27, 2013

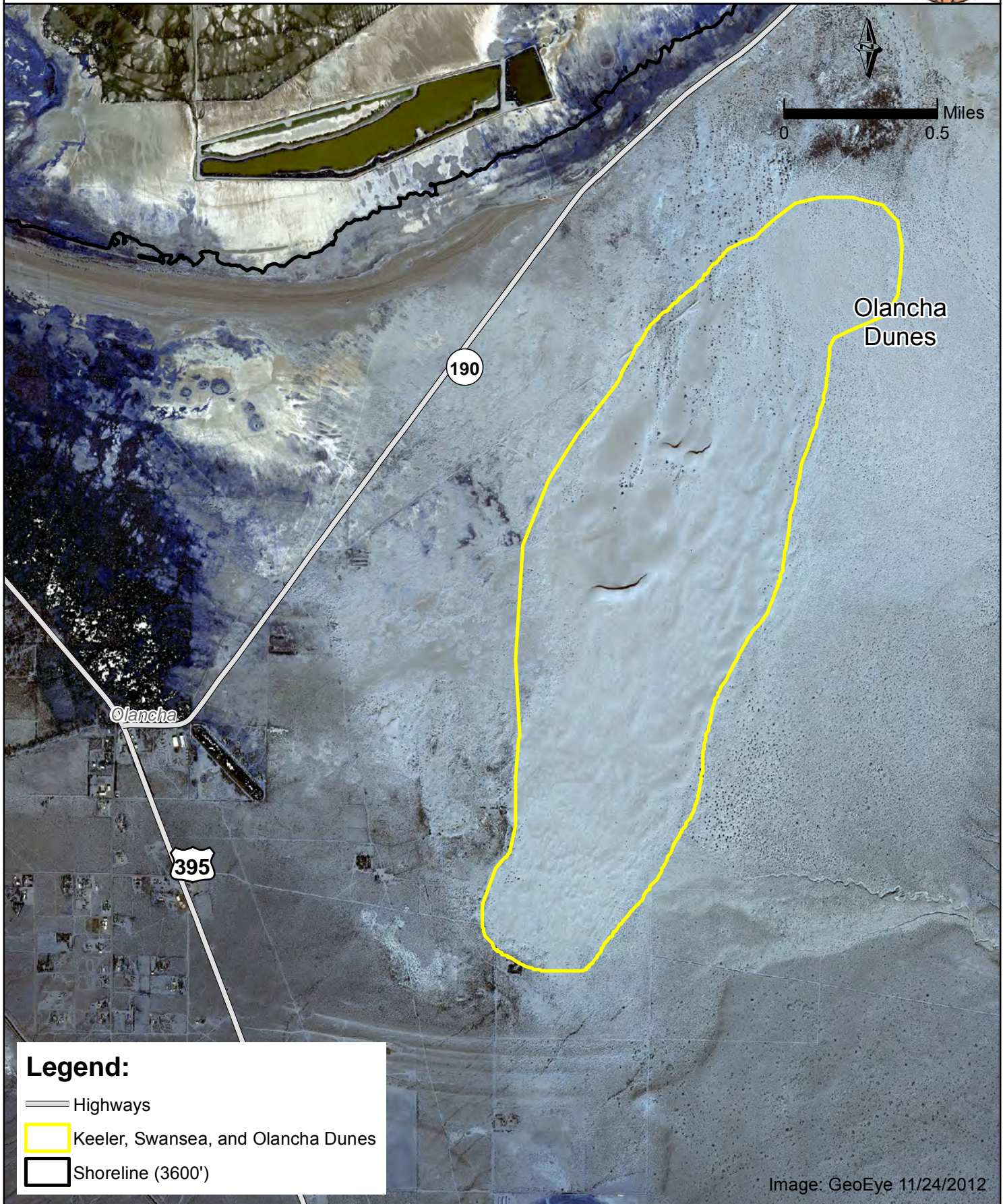


Keeler, Swansea, and Olancha Dunes





Olancha Dunes - Detail



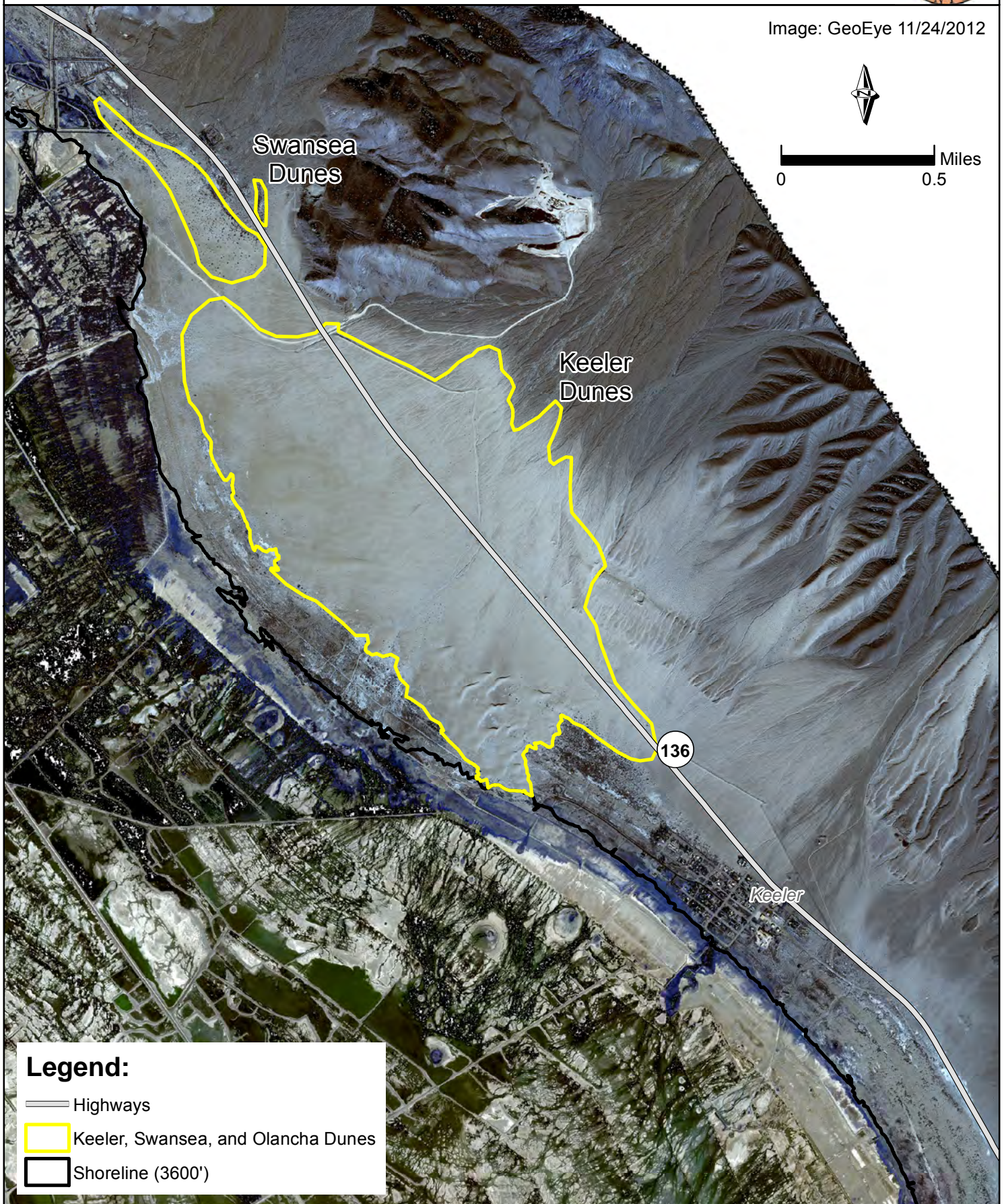


Keeler and Swansea Dunes - Detail

Image: GeoEye 11/24/2012



0 0.5 Miles



Legend:

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

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

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

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

I. MODIFICATION OF SOA

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

1. Deadline Extensions

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

2. Assumptions for Extension of Deadlines

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

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

B. Creation of Phase 7b

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

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

4. Cultural Resource Task Force

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

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

C. No Fines

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

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

D. Modification of SOA

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

E. Clarification on BACM

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

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

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

II. KEELER DUNES

A. Keeler Dunes Dust Control Project

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

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

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

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

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

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

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

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

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

- c) SIP and Board Order Amendment:

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

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

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

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

III. GENERAL SETTLEMENT CONDITIONS

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

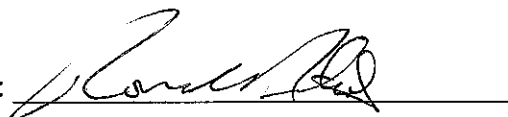
- E. The parties to the SOA Mediation shall each execute a copy of this document to evidence that it contains the final and complete statement of the Terms resulting from the SOA Mediation that will be submitted for approval to the LADWP Board of Commissioners and all other necessary decision makers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

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

Great Basin Unified
Air Pollution Control District

Los Angeles
Department of Water and Power

By: 

By: 

Name: John Eastman

Name: RONALD O. NICHOLS

Title: Governing Board Chair


Title: General Manager

Date: June 27, 2013

Date: 7/25/13

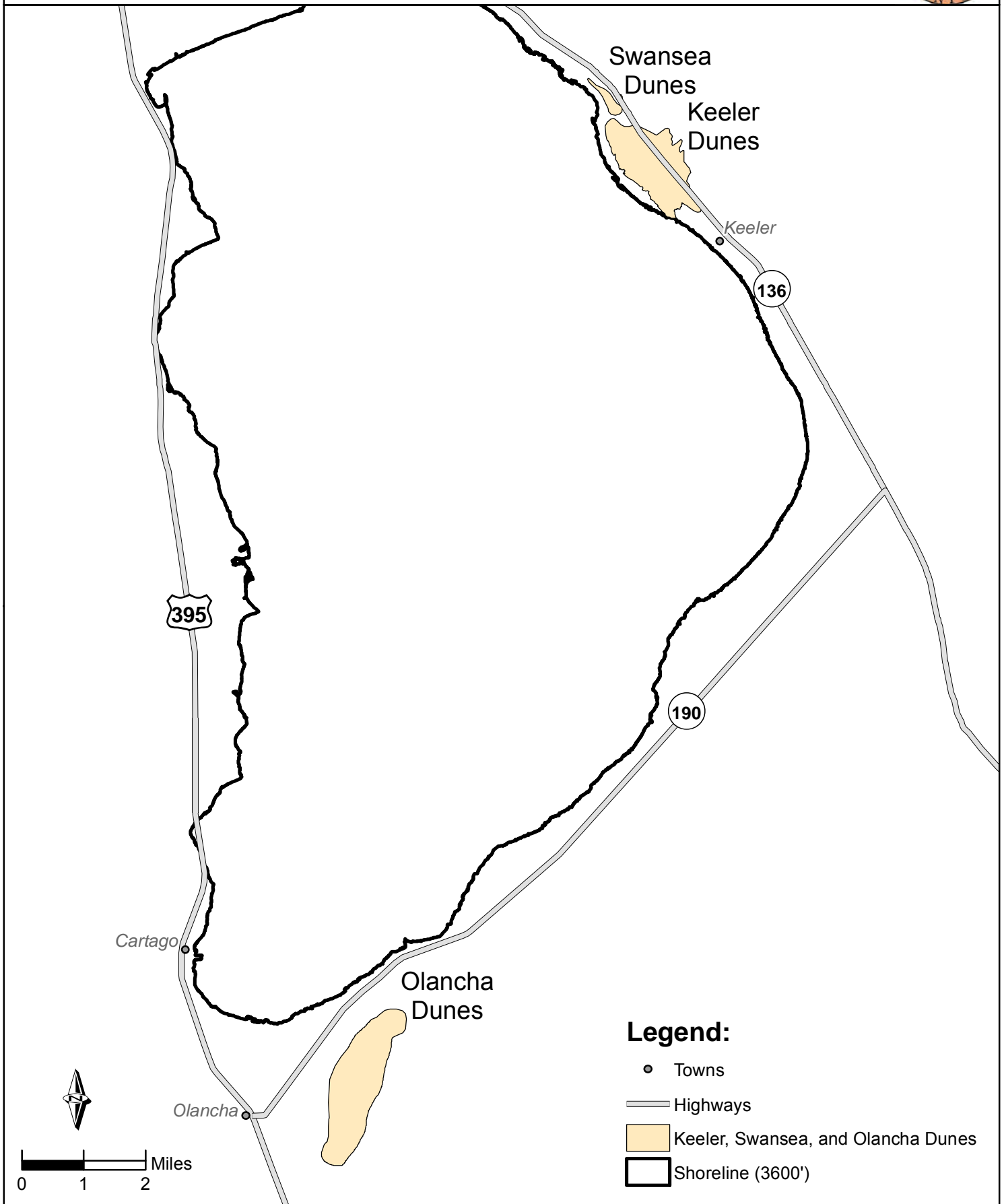
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APPROVED AS TO FORM AND LEGALITY
CARMEN A. TRUTANICH, CITY ATTORNEY

JUL 22 2013

MICHELLE LYMAN
DEPUTY CITY ATTORNEY



Keeler, Swansea, and Olancha Dunes



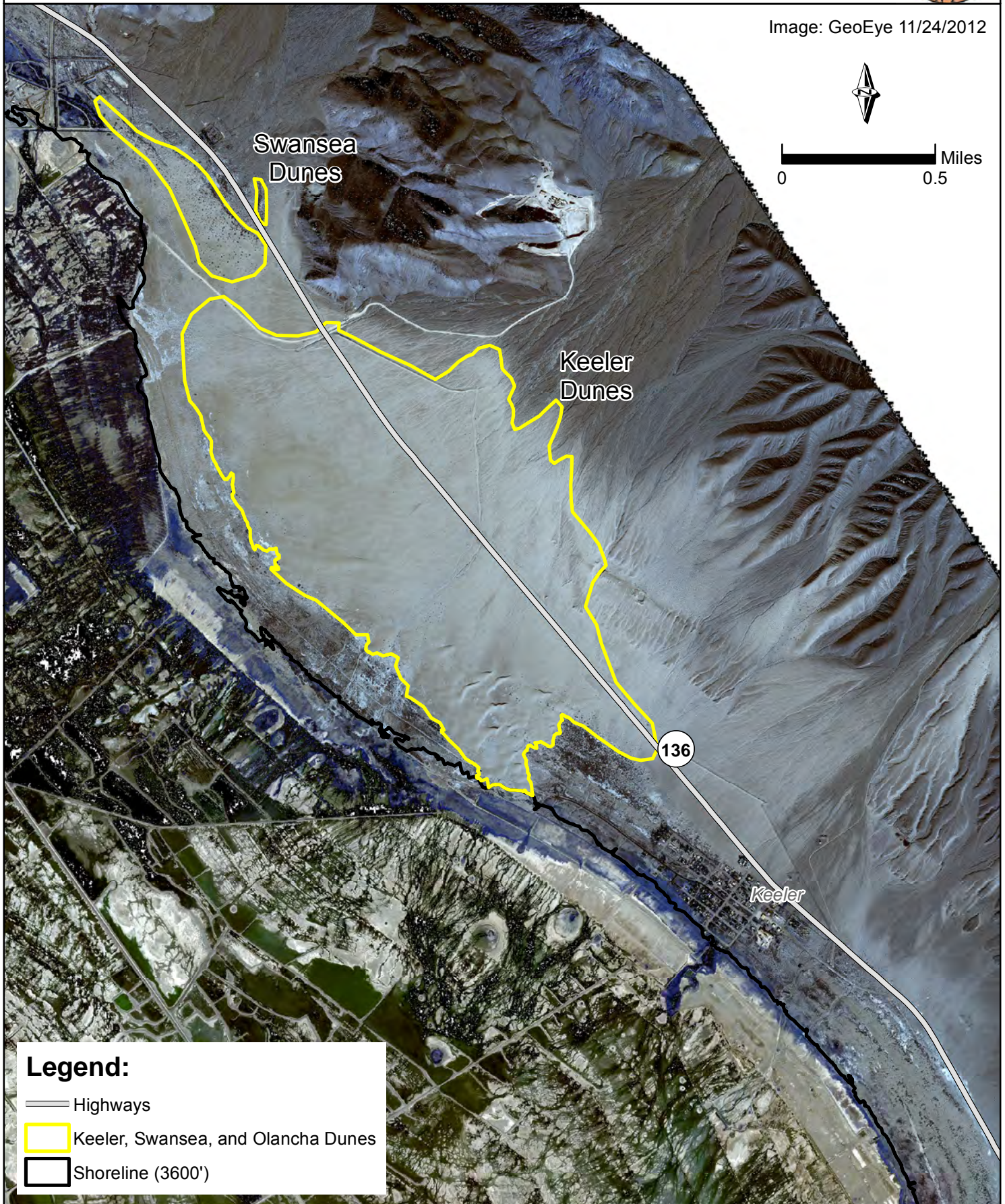


Keeler and Swansea Dunes - Detail

Image: GeoEye 11/24/2012



0 0.5 Miles

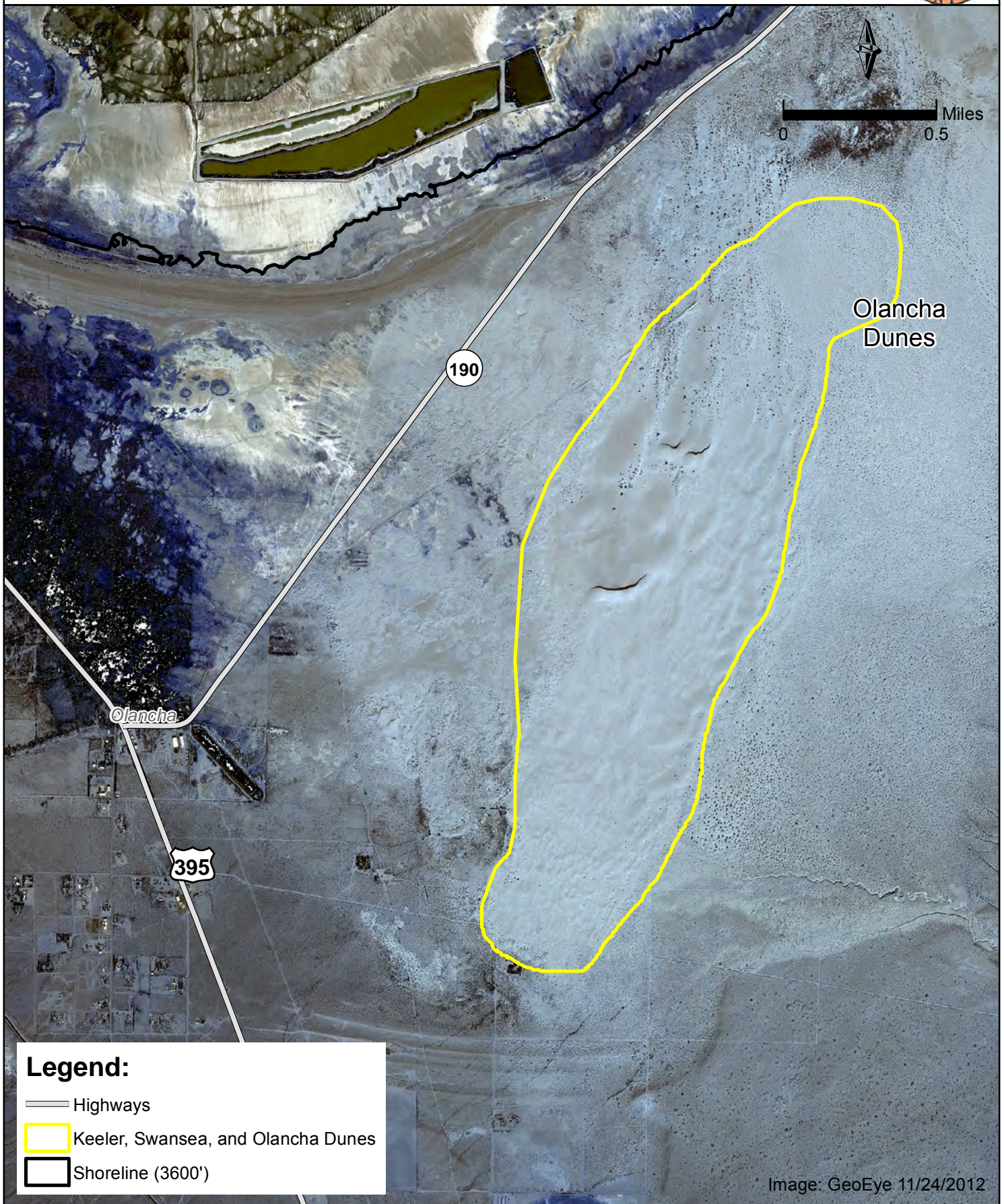


Legend:

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



Olancha Dunes - Detail



ATTACHMENT C

Exhibit 6

CONFIDENTIAL Map of 328-Acre

Initial Eligible Cultural Resource Areas (Phase 7b Areas)

This map contains sensitive cultural resources information that cannot be
publicly disclosed under protection laws.

ATTACHMENT C

Exhibit 7

Map of Phase 7a Modified Areas and Phase 7a Transition Areas

(Map to be provided by the LADWP prior to
August 19, 2013 Special District Governing Board meeting)