

# ***Great Basin Unified Air Pollution Control District***

2013 Amendment to the Owens Valley PM<sub>10</sub> SIP

## **Board Order 130916-01**

Exhibit 5: 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. 110317-01, dated August 13, 2013

**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 19<sup>th</sup> 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 Olancha 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 controls 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: \_\_\_\_\_

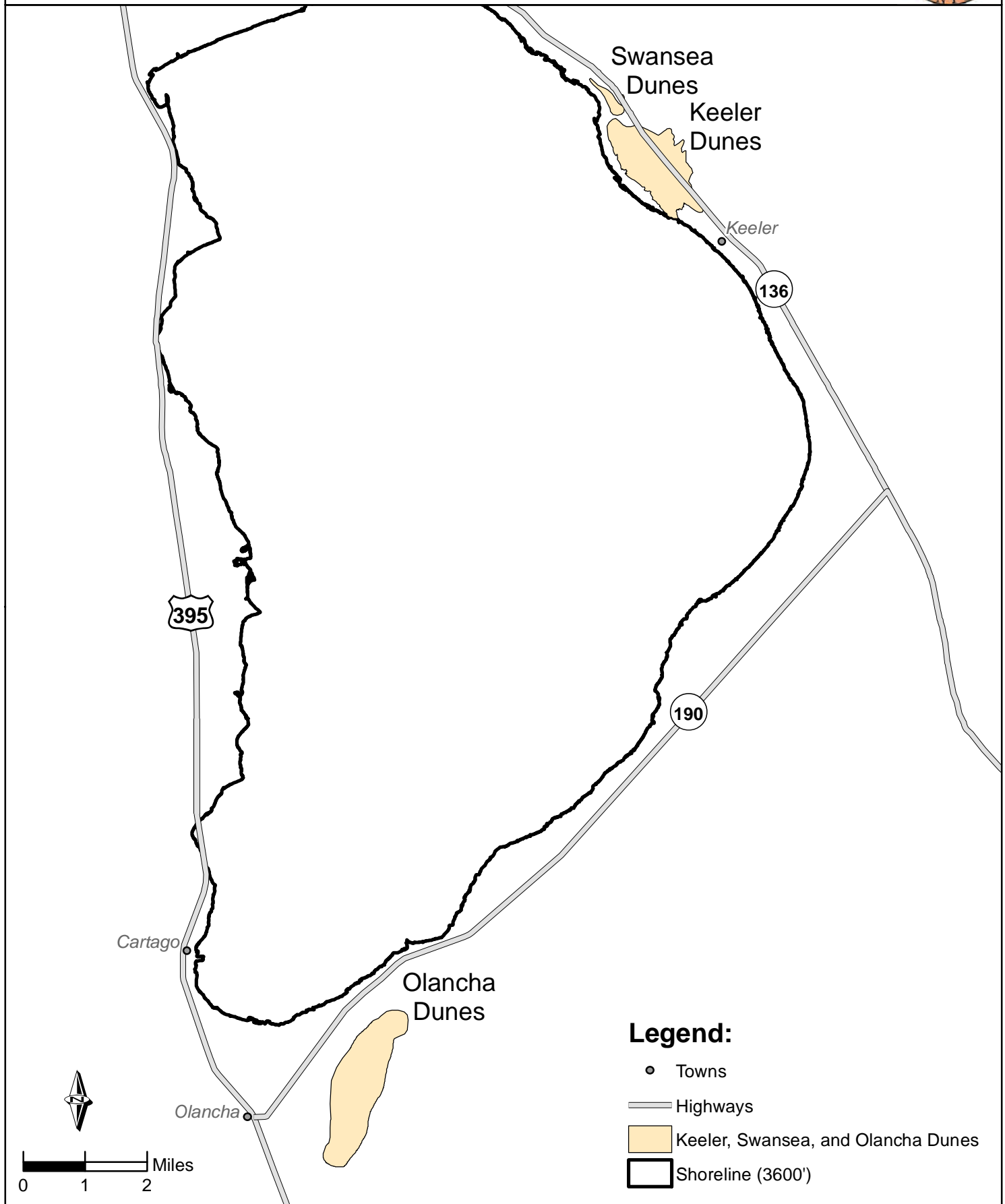
City Attorney

**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





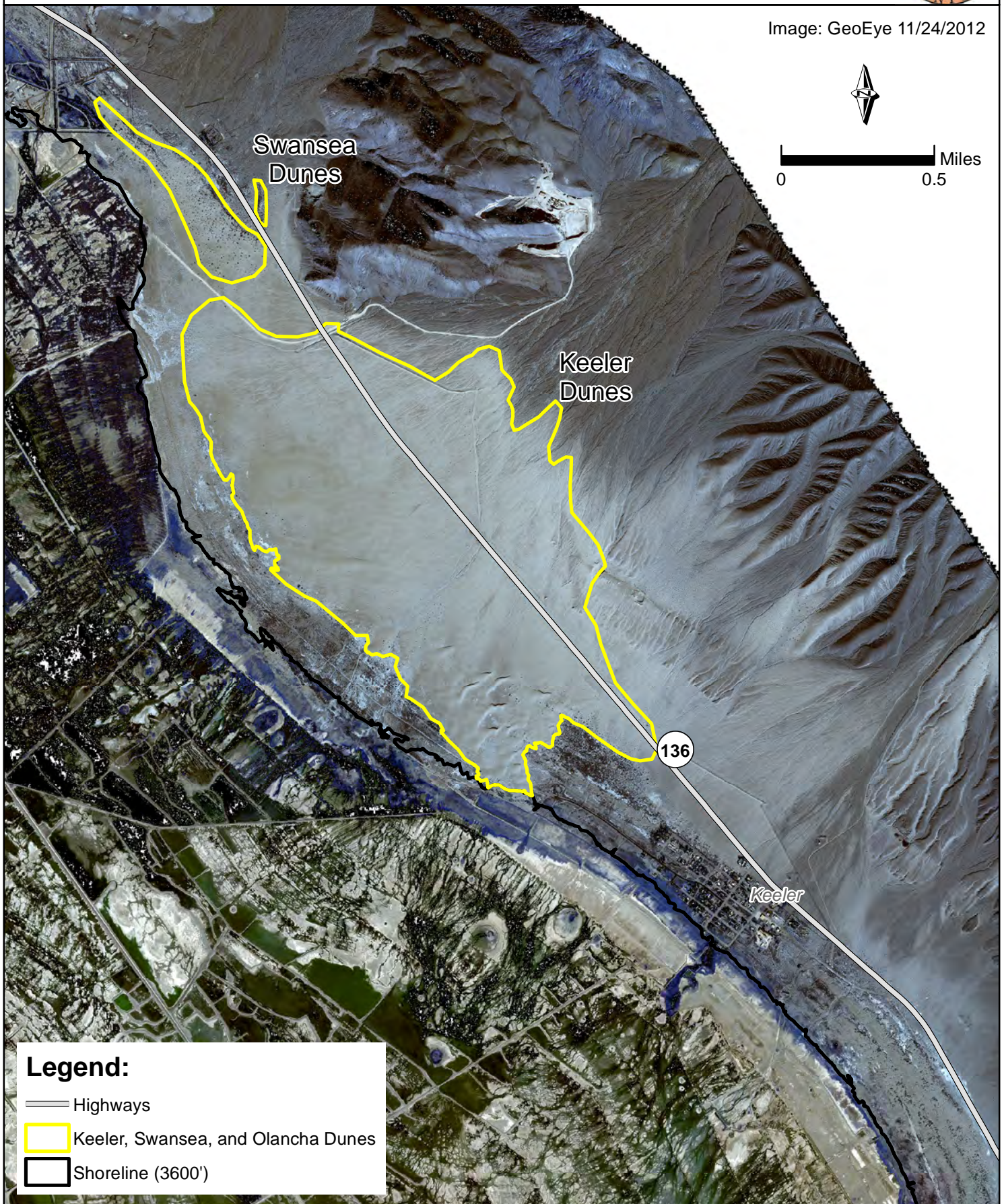


# Keeler and Swansea Dunes - Detail




Image: GeoEye 11/24/2012



0 0.5 Miles



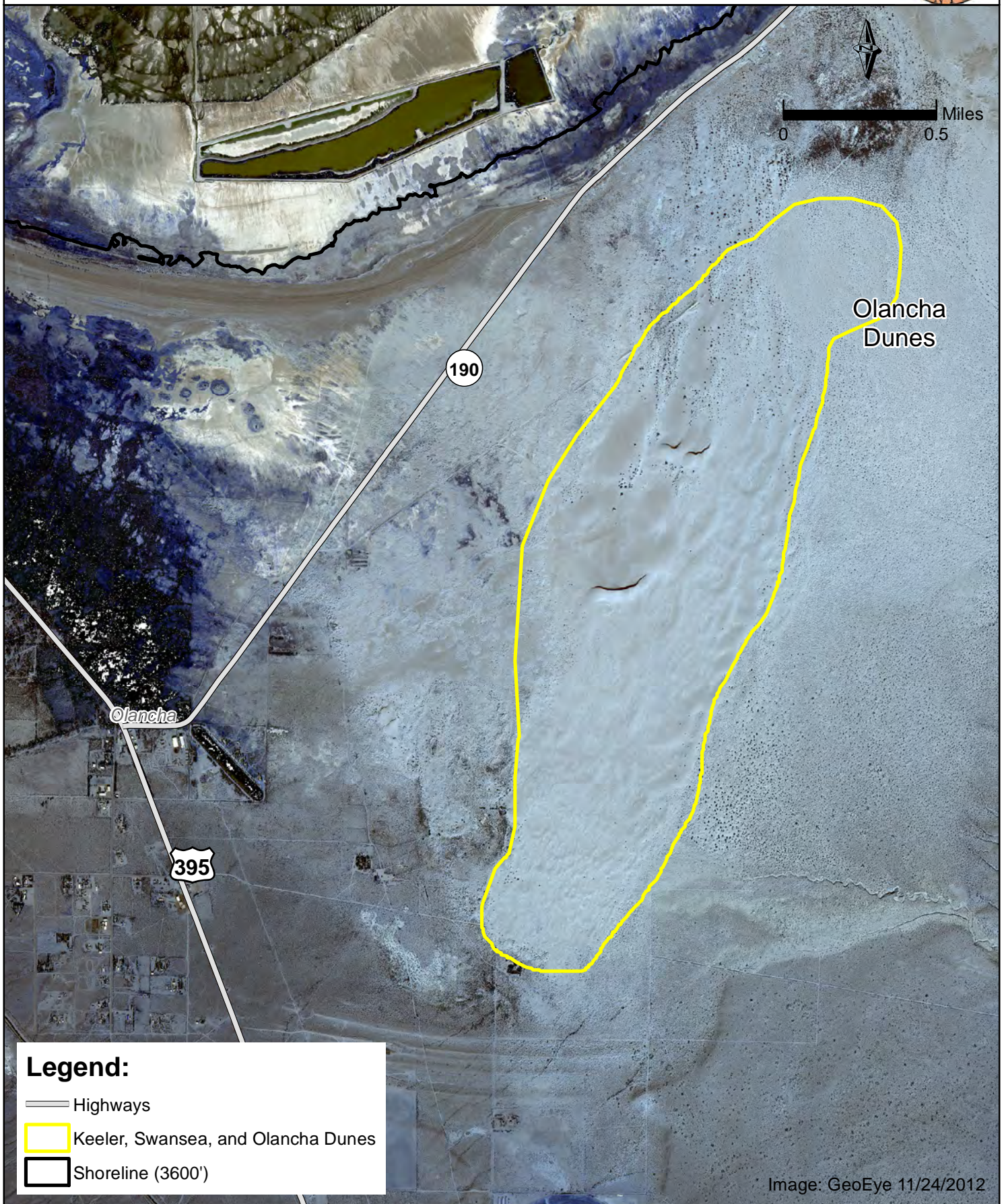
## Legend:

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





# Olancha Dunes - Detail





**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".<sup>1</sup>
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).

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<sup>1</sup> 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: John Eastman

By: Ronald O. Nichols

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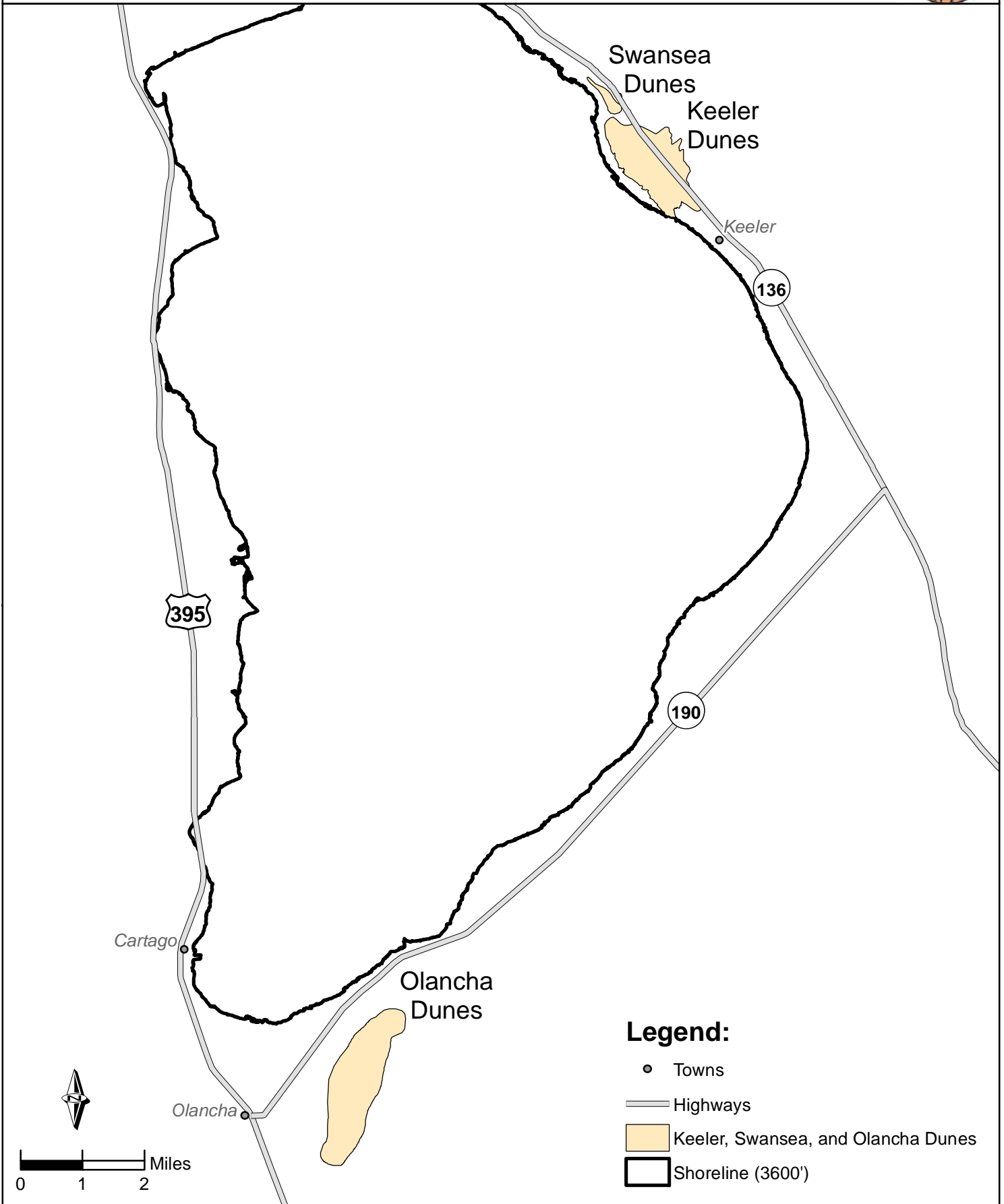
APPROVED AS TO FORM AND LEGALITY  
CARMEN A. TRUTANICH, CITY ATTORNEY

JUL 22 2013

Michelle Lyman  
MICHELLE LYMAN  
DEPUTY CITY ATTORNEY



# Keeler, Swansea, and Olancha Dunes





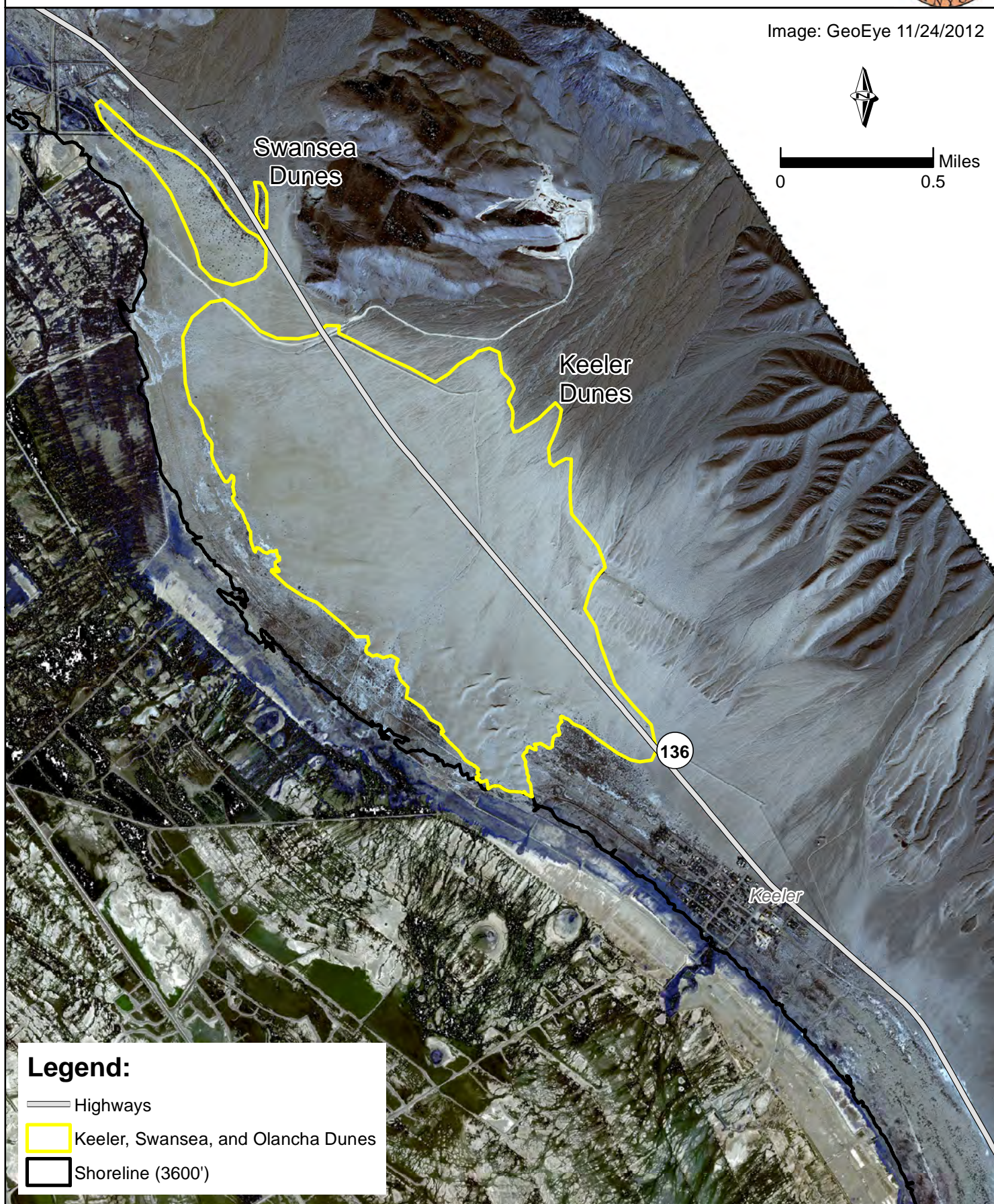


## Keeler and Swansea Dunes - Detail

Image: GeoEye 11/24/2012



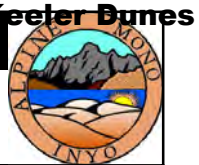
0 0.5 Miles



### Legend:

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





## Olancha Dunes - Detail

