

**CALENDAR ITEM
C05**

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08/22/2008
PRC 8079.9
J. Brown

AMENDMENT OF LEASE

LESSEE:

City of Los Angeles, Department of Water and Power
William Van Wagoner
111 North Hope Street, Room 1460
Los Angeles, CA 90012

AREA, LAND TYPE, AND LOCATION:

Sovereign lands in Owens Lake, Inyo County.

CURRENT AUTHORIZED USE:

Research and monitoring at the South Sand Sheet, implementation of shallow flooding and monitoring at the North Sand Sheet, and the construction and operation of the South Zone Dust Control Project. Construct, install, operate and monitor additional acreage of shallow flooding dust control measures (DCMs) associated with Phases IV and V of the Owens Lake Dust Control project.

EXISTING IMPROVEMENTS:

Installation of the Owens Lake South Sand Sheet Air Quality and Sand Fence Effectiveness Monitoring System, consisting of air monitoring towers and meteorological instrumentation, and sand trapping devices.

First Lease Amendment: Installation of additional air monitoring towers and pipeline delivery systems; construction of access roads to service the pipeline systems; construct utility infrastructure for shallow flooding; construction of soil berms along the down-slop gradient and side boundaries of each irrigation block, and drain tiles consisting of perforated piping along the side and down-slope gradient boundaries of each irrigation block.

Second Lease Amendment: Installation of managed vegetation with irrigation; install and implement additional acreage for shallow flooding (with support infrastructure previously described in First Lease Amendment); construction of ponds; place gravel in designated areas; construction of mainline pipelines, and installation of additional air/meteorological monitoring towers.

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Third Lease Amendment: Installation of additional shallow flooding areas (with supporting infrastructure previously described in First Lease Amendment) and the construction of an underground electrical system.

Fourth Amendment: Installation of shallow flooding DCMs associated with Phases IV and V of the Owens Lake Dust Control project; construction of drain pipeline, conveyance pipelines, control valve facilities, pump stations, and high voltage power cables, and water monitoring wells.

LEASE TERM:

20 years, beginning May 1, 1999.

CONSIDERATION:

The public health and safety; with the State reserving the right at any time to set a monetary rent if the California State Lands Commission (Commission) finds such action to be in the State's best interest.

PROPOSED AMENDMENT:

1. Amend Section 1 – Basic Provisions of the lease as follows:

a) **Land Use or Purpose**

Construct, install, operate and monitor an additional 9.2 square miles of shallow flooding associated with Phase VII of the Owens Lake Dust Control project on the land as depicted on the attached Exhibit "A" .

b) **Authorized Improvements for Shallow Flooding**

In addition to previously authorized improvements, the following components of Phase VII Shallow Flooding Dust Control as described in the *2008 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan Final Subsequent Environmental Impact Report* (EIR) may include: the construction of three to eight-foot high earthen roads and berms with riprap slopes; grading as necessary to implement the Shallow Flooding described in the EIR; 3.9 miles of 12-inch subsurface perforated drain pipe; 6.0 miles of eight-to-thirty-inch high density polyethylene (HDPE) sub-main conveyance pipe; 2.2 miles of 54-inch diameter steel pipeline along the existing zonal mainline; 40.5 miles of four-to-twelve-inch HDPE shallow flood lateral pipe; seven turnouts or turnout additions from the mainline; 46 control valve facilities; three pumping stations; cathodic protection systems; 4.7 miles of 4,800-volt and 0.7 miles of 480-volt underground power cable; radio telemetry stations, supervisory control and data acquisition control facilities, and dust control efficiency monitoring devices.

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2. Amend Section 2 – Special Provisions of the lease to include the following conditions:
 - a) Submittal to Commission of a Notice of Completion of construction of the Shallow Flooding components of the Phase VII project;
 - b) Submittal of as-built plans of, and compliance and monitoring reports for, all of the Shallow Flooding improvements for Phase VII of the Owens Lake Dust Control Project as described in Section 1 of the Lease Amendment, within 180 days of completion of the Shallow Flooding components of Phase VII.
 - c) Lessee shall not construct or implement any other improvements within the Lease premises except as described in Section 1 of the Lease.
 - d) Lessee has constructed, installed, and operated several fertigation (a combination of fertilizer and irrigation equipment) chemical storage supply yards within the Lease premises without prior authorization of the Commission.
 - i) Within six months of the date of authorization of this Amendment to Lease No. PRC 8079.9, Lessee shall provide evidence for Commission's staff approval indicating that Lessee has received approval from or shall provide satisfactory evidence that Lessee is actively working with the California Regional Water Quality Control Board, the Inyo County Environmental Health Department, and the Inyo County Fire Department to determine that the fertigation improvements in Exhibit "B", attached, have been constructed according to all applicable State, federal and local laws and regulations.
 - ii) Lessee shall provide to Commission an annual report by January 31 of each calendar year detailing the previous year's use and maintenance of the fertigation chemicals and storage improvements, which shall include, but not be limited to, the number, quantity and location of chemical applications and the locations on the lakebed where applications were implemented, and the quantity and time period of individual chemical use, and, the number and quantity of chemical deliveries.
 - iii) If Commission determines that Lessee has not complied with Section 2(d)(i) or Section 2(d)(ii) and concludes that the continued presence of the fertigation chemicals and storage improvements should be removed, Commission staff shall provide written notice to Lessee.

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Within six months from receipt by Lessee of such written notice by Commission, Lessee shall remove the fertigation improvements and restore the Lease premises as nearly as possible to the conditions existing prior to their installation or construction.

- e) Prior to April 1, 2010, or prior to operation of the Shallow Flooding improvements of the Phase VII DCMs within the Lease Premises, whichever occurs earlier, Lessee shall submit a draft public access notification process for all areas of the Lease Premises for review and approval by Commission staff.
 - f) Prior to operation of the Shallow Flooding components of the Phase VII DCMs, as described in this Lease Amendment No. PRC 8079.9, Lessee agrees to submit an application to Commission, reimburse all reasonable actual staff costs, and work cooperatively with Commission's staff, for the preparation of a master lease agreement to replace the existing Lease and subsequent Amendments. Lessee agrees to enter into a new reimbursement agreement upon receipt of written notification by Commission of the cost estimate for preparation of the master lease prior to beginning work on the new master lease.
 - g) Lessee acknowledges that future implementation of additional DCMs may be necessary, as determined by the Great Basin Unified Air Pollution Control District (District), that may require amendment to this Lease.
3. The **Land Description** will be modified to include the 9.2 square miles of additional areas for Shallow Flooding.

BACKGROUND INFORMATION:

The United States Environmental Protection Agency (EPA) has designated the southern part of the Owens Valley as a Serious Non-Attainment Area for PM₁₀. PM₁₀ is an abbreviated reference for suspended particulate (dust) less than or equal to ten micros in mean aerodynamic diameter (approximately 1/10 the diameter of a human hair). The District has subsequently designated the Non-Attainment area as the "Owens Valley PM₁₀ Planning Area."

The District has determined that dust emissions from the dry lakebed of Owens Lake are responsible for causing the air in the Owens Valley PM₁₀ Planning Area to exceed the PM₁₀ national ambient air quality standards and that water diversions by the city of Los Angeles, Department of Water and Power (City or Lessee), have caused Owens Lake to become dry and the lakebed to be in a condition that produces dust.

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On July 28, 1998, the District and the City entered into a Memorandum of Agreement (MOA) for the control of the dust from the lakebed of Owens Lake which requires the City to implement specified DCMs, which include shallow flooding, managed vegetation and gravel, to control dust emissions at Owens Lake.

On June 14, 1999, the Commission authorized the issuance of Lease No. PRC 8079 to the City for the installation of the Owens Lake South Sand Sheet Air Quality and Sand Fence Monitoring System. This project provided data for the design and implementation of DCMs as required by the Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan (SIP) dated November 16, 1998.

On June 27, 2000, the Commission amended Lease No. PRC 8079 so that the City could construct and operate a shallow flooding project located on 13.5 square miles on the North Sand Sheet area of the dry lakebed of Owens Lake. On November 26, 2001, the Commission amended Lease No. PRC 8079 so that the City could construct and operate an additional 154 acres of shallow flooding at the south Zone Dust Control Project.

On October 1, 2002, the Commission authorized the issuance of a Sublease to the California Department of Water Resources to access, maintain, and monitor the existing California Irrigation Management and Information System (CIMIS) Weather Station located on the lease premises for the North Sand Sheet Shallow Flooding Project.

On April 17, 2006, the Commission amended Lease No. PRC 8079.9 so that the City could construct and operate additional acreage of shallow flooding for Phases IV and V of the Owens Lake Dust Control Project.

On August 8, 2007, the City submitted an application to the Commission to amend Lease PRC 8079.9 so that the City could construct and operate an additional 9.2 square miles of shallow flooding and construct 3.5 square miles of a new potential DCM called Moat and Row and to construct, use and maintain two access roads on the west shore of the dry bed of Owens Lake known as Phase VII of the Owens Lake Dust Control Project.

Commission staff has expressed concerns both verbally and in writing to the staffs of the District and the city of Los Angeles Department of Water and Power that the Moat and Row DCM design components of the Phase VII dust control project may not be compatible with the public trust values of Owens Lake.

Due to these public trust concerns and those expressed by Commission staff and the Department of Fish and Game on potentially significant impacts that were not

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addressed in the EIR, the City has requested that the Commission consider amending the lease to include only the additional 9.2 square miles of Shallow Flooding DCM. Therefore, Commission staff is recommending that the Commission consider only the Shallow Flooding components of the city's lease amendment application. The City has indicated it plans to submit a new lease application for implementation of Moat and Row DCMs on Owens Lake.

The Moat and Row DCM as specified in the City's construction bid package will require additional environmental analysis to address potentially significant impacts from revised design features including, but not limited to, a grid pattern with perpendicular elements, spacing and density of moat and row arrays, steepness of slopes, and sand fencing.

OTHER PERTINENT INFORMATION:

1. The City owns/has the permission to use the lands adjoining the lease premises.
2. The City has submitted an application to amend the lease to construct, implement and monitor DCMs for Phase VII, described above.
3. An EIR and Mitigation Monitoring Program were prepared and certified for this project by the District. Commission staff has reviewed the document and Mitigation Monitoring Program adopted by the lead agency.
4. Findings were made by the District in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, section 15901 and 15096) are contained on file in the Sacramento office of the Commission. The Findings and Mitigation Monitoring Program adopted by the Commission exclude those specifically related to the Moat and Row DCM since only the Shallow Flooding DCM is being considered.
5. A Statement of Overriding Considerations made in conformance with the State CEQA Guidelines (Title 14, California Code of Regulations, Section 15093) is contained on file in the Sacramento office of the Commission.
6. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission has declared that all state school lands and submerged lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370, et seq., use classifications for such lands have not been designated. Therefore, the

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finding of the project's consistency with the use classification as required by Title 2, California Code of Regulations, section 2954 is not applicable.

APPROVALS OBTAINED:

Great Basin Air Pollution Control District

FURTHER APPROVALS REQUIRED:

California Regional Water Quality Control Board
California Department of Fish and Game
United States Army Corps of Engineers

EXHIBITS:

- A. Location and Site Map - Phase VII
- B. Typical Fertigation Facility Site Plan

PERMIT STREAMLINING ACT DEADLINE:

As to the Shallow Flooding Components – the PSA Deadline is February 4, 2009 (CSLC as a responsible agency)

RECOMMENDED ACTION:

IT IS RECOMMENDED THAT THE COMMISSION:

CEQA FINDING:

FIND THAT AN EIR AND MITIGATION MONITORING PROGRAM WERE PREPARED AND CERTIFIED FOR THIS PROJECT BY THE GREAT BASIN AIR POLLUTION CONTROL DISTRICT AND THAT THE COMMISSION HAS REVIEWED AND CONSIDERED THE INFORMATION CONTAINED THEREIN.

ADOPT THE FINDINGS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15901 AND 15096 (h), AS CONTAINED ON FILE IN THE SACRAMENTO OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION, EXCLUDING THOSE SPECIFICALLY RELATED TO THE MOAT AND ROW DUST CONTROL MEASURE.

ADOPT THE MITIGATION MONITORING PROGRAM ON FILE IN THE SACRAMENTO OFFICE OF THE CALIFORNIA STATE LANDS COMMISSION, EXCLUDING THOSE SPECIFICALLY RELATED TO THE MOAT AND ROW DUST CONTROL MEASURE.

ADOPT THE STATEMENT OF OVERRIDING CONSIDERATIONS MADE IN CONFORMANCE WITH TITLE 14, CALIFORNIA CODE OF REGULATIONS, SECTION 15903, AS CONTAINED ON FILE IN THE

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SACRAMENTO OFFICE OF THE CALIFORNIA STATE LANDS
COMMISSION.

AUTHORIZATION:

AUTHORIZE THE AMENDMENT OF LEASE NO. PRC 8079.9, A GENERAL LEASE – PUBLIC AGENCY USE, OF LANDS AS SHOWN ON EXHIBITS “A” AND “B” ATTACHED AND BY THIS REFERENCE MADE A PART HEREOF, EFFECTIVE AUGUST 22, 2008: TO AMEND THE LAND USE OR PURPOSE TO AUTHORIZE THE CONSTRUCTION, INSTALLATION, OPERATION AND MONITORING OF SHALLOW FLOODING DUST CONTROL MEASURES ON THE LAND DEPICTED ON THE ATTACHED EXHIBIT “A”; TO AMEND THE AUTHORIZED IMPROVEMENTS, SPECIAL PROVISIONS AND LEASE DESCRIPTION; TO AUTHORIZE AN ADDITIONAL 9.2 SQUARE MILES OF SHALLOW FLOODING DUST CONTROL MEASURES FOR THE PHASE VII PROJECT AS DESCRIBED IN EIR SCH#2007021127 AND DEPICTED ON THE ATTACHED EXHIBIT A; ALL OTHER TERMS AND CONDITIONS OF THE LEASE AS PREVIOUSLY AMENDED WILL REMAIN IN FULL FORCE AND EFFECT.