

CALENDAR ITEM

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08/11/09
PRC 8079.9
J. Brown
S. Mindt

INFORMATIONAL

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.

SUMMARY:

Based on Commission staff's review of the draft Supplemental Environmental Impact Report (SEIR) for the Owens Lake Revised Moat and Row Dust Control Measures project, the SEIR does not comply with the California Environmental Quality Act (CEQA). The CEQA process to date may have excluded public participation in a key aspect of the analysis of dust control alternatives because the City of Los Angeles (City) declared at the beginning of the planning process that the water supply analysis in the prior 2008 Final Subsequent EIR (2008 FSEIR) certified by the Great Basin Unified Air Pollution Control District (District) was adequate and would not be evaluated further in the City's process.

However, the City did re-evaluate water supply available for dust control measures, which overreaches beyond the stated scope of the SEIR. Additionally, the City used the new water supply analysis to conclude that shallow flooding and managed vegetation dust control measures (DCMs) were not feasible, a conclusion in direct conflict with the 2008 FSEIR. Based on a faulty alternatives analysis, the City selected the Moat and Row DCM as the environmentally superior alternative, also in direct conflict with the 2008 FSEIR.

Commission staff has advised that the City could revise the draft SEIR to eliminate these inconsistencies with the FSEIR to avoid the possibility of delaying consideration by the Commission of the Revised Moat and Row DCM project.

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Alternatively, the City should prepare a subsequent EIR that fully analyzes the water supply issue and presents a new alternatives analysis. Commission staff has concerns about the Revised Moat and Row DCMs impacts on biological resources, visual resources, and air quality. Commission staff is also concerned that the Revised Moat and Row DCM may not be consistent with the Public Trust values associated with Owens Lake.

Commission staff is well aware and understands the human health issues involved with the PM₁₀ emissions on air quality and strongly supports the City's efforts to control dust emissions. There are, however, many unresolved issues and concerns regarding the Moat and Row DCM that warrant a vigorous public discussion. These issues generally relate to whether the Moat and Row DCM is an appropriate way to conserve water despite significant environmental impacts.

BACKGROUND:

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 microns 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 have caused Owens Lake to become dry and the lakebed to be in a condition that produces dust.

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.

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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 December 4, 2006, the City and the District entered into a Settlement Agreement that requires the City to implement 9.2 square miles of shallow flood dust controls and another 3.5 square miles of shallow flood, managed vegetation, gravel cover (all approved Best Available Control Measures (BACM)), or Moat and Row (not approved by the Air District as a BACM) at the City's option. No consultation with Commission staff occurred concerning the requirements of the Settlement Agreement for implementing dust control measures on State property.

In early April 2007, the City submitted an application for a Moat and Row Demonstration Project. On May 1, 2007 the City awarded a contract for construction of the Moat and Row Demonstration Project, even though the City's application remained incomplete and no lease had been authorized. The City insisted that the Commission approve the project immediately.

On May 10, 2007, the Commission authorized Lease No. PRC 8745 for a term of three years, for the construction, operation, maintenance, and monitoring of a Moat and Row Demonstration Project, including installation and maintenance of associated monitoring equipment, and sand fences at two locations. The Lease requires that the City restore the project demonstration sites to the satisfaction of the Commission upon conclusion of the demonstration project, unless the City obtains an amendment to Lease PRC 8079.9 to include one or both of the demonstration areas.

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In February, 2008 the City shared Air Sciences Inc.'s preliminary results of the Moat and Row Demonstration Project that included a three-page informational sheet on Moat and Row Basics, and performance efficiency based on one major wind event on February 13-14, 2008. Air Sciences Inc. prepared a Technical Memorandum dated March 7, 2008, which subsequently concluded that the Moat and Row Demonstration Areas met an overall control efficiency of 99 percent or more, and that the control efficiency was compliant with or greater than the required efficiency values from the 2006 Settlement Agreement between the District and the City. The control efficiency estimates were identified as preliminary and the analysis was to be updated as additional data became available. Since receipt of the Air Sciences Technical Memorandum described above, Commission staff has received no further information on the Moat and Row Demonstration Project performance results.

CURRENT SITUATION:

On August 8, 2007, the City submitted an application to the Commission to amend Lease PRC 8079.9 to allow the City to construct and operate Phase VII of the Owens Lake Dust Control Project. The project included an additional 9.2 square miles of shallow flooding, 3.5 square miles of the experimental Moat and Row DCM, and two new access roads on the west shore of the dry bed of Owens Lake. As agreed between the City and the District in the 2006 Settlement Agreement, the District acted as Lead Agency under the California Environmental Quality Act (CEQA) and prepared a Subsequent Environmental Impact Report (Subsequent EIR). The Commission participated as a Responsible agency (as well as a Trustee agency) in the District's CEQA process because it would need to rely on the Subsequent EIR to consider a lease amendment to the City.

The District certified the Subsequent EIR on February 1, 2008, after issuing three "Supplemental Information" reports to the District's Board with dozens of "clarifications and minor revisions" to the Final Subsequent EIR in the final week before the District Board's consideration. District staff explained that

Most of the revisions clarify the description for the Moat & Row dust control measure, [sic] The District originally received a conceptual description of the Moat & Row measure from the City when EIR preparation began one year ago. However, as the City has continued to develop a design for Moat & Row, their description of the measure has been in a nearly constant state of change. This

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has made it difficult for the District to provide a clear description of the measure for the public and it has been difficult for us to analyze Moat & Row's environmental impacts. The clarifications to the EIR are our best attempt to provide a description of Moat & Row, while allowing the City a certain amount of flexibility to refine their final design. [Supplemental Information for January 28, 2008, Board Meeting, p. 1]

After the District Board certified the Subsequent EIR, the Moat and Row design continued to change. Commission staff received 90 percent design plans in late February 2008 and the Bid Set Drawings in late April 2008, with the provision that the plans were subject to further change. Commission staff expressed concern that the current Moat and Row design did not match that analyzed in the District's Subsequent Final EIR for slope, density, and fencing, and that there were issues related to biological, visual, and construction air quality impacts. The Moat and Row design as originally presented and analyzed in the District's Subsequent Final EIR was a serpentine layout of dunes with a natural appearance. The modified design included straight moats and rows laid out in a grid pattern and the moats had steep slopes and the rows had a five-foot high fence on top.

At a meeting in Sacramento in early August 2008, City staff met with staff from the Commission, Department of Fish and Game (DFG), and the District to discuss the status of the Moat and Row portion of the lease application. Commission staff expressed strong support for controlling dust at Owens Lake but concern that Moat and Row has no public trust benefits and that the adverse visual and biological impacts were not adequately addressed in the District's Final Subsequent EIR. DFG staff expressed concern over the steepness of the slopes of the moats and the sand fencing as an impediment to wildlife movement adjacent to a newly restored wildlife area. The major areas of concern were slope steepness, density of Moat and Row elements, fencing, and the extensive grid pattern.

City staff submitted a proposed addendum to the Subsequent EIR to address the modifications to the Moat and Row design and potential impacts. In a letter dated August 18, 2008, Commission staff informed the City that the addendum was inadequate:

This decision is based on Commission staff's current understanding of the City's construction bid package and the perpendicular

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elements now contained in the City's moat and row design that were not analyzed in the certified EIR. Further, it is Commission staff's opinion that until all of the impacts of the moat and row design elements, including but not limited to, the grid layout, spacing, density, fencing, and slopes of the moats and rows, are fully analyzed and circulated for public review and comment, the moat and row portion of the City's Phase 7 project cannot be recommended to the Commission for consideration. The design of many of these elements was substantially changed in last minute "clarifications" to the EIR that were never publicly circulated. [p. 2]

To avoid unnecessary delay, Commission staff offered to proceed with consideration of a lease amendment for the 9.2 square miles of shallow flooding that had been adequately analyzed in the District's Subsequent EIR. Commission staff suggested that the Moat and Row portion of the project be treated as a separate application and that "a **subsequent EIR or supplement to the EIR** would be necessary as provided by [CEQA] Guidelines sections 15162(c) or 15163 [emphasis added]." (p. 3) The City accepted this suggestion and the lease amendment for the shallow flooding portion was approved on August 22, 2008, by the Commission. Although Commission staff expressed willingness to act as lead agency under CEQA for the revised Moat and Row portion of the project, the City preferred to assume lead agency status and Commission staff agreed.

The City issued a Notice of Preparation (NOP) of a Supplemental Environmental Impact Report [Supplemental EIR or SEIR] for the Owens Lake Revised Moat and Row Dust Control Measures Plan on December 16, 2008, "to evaluate the potentially significant environmental effects related to **minor** additions and changes to dust control measures previously approved for construction within the Owens Lake Planning Area [emphasis added]." (p. 1) The NOP stated that [t]he City "has determined that a **supplemental** EIR is appropriate, based on Section 15163 of the CEQA Guidelines." (p. 6) The NOP and accompanying Initial Study concluded that "with the exception of four resource areas (biological resources, construction-related air quality, construction-related traffic, and visual resources), the project would not result in any new potentially significant environmental impacts that were not sufficiently addressed and mitigated in previous environmental documents [emphasis added]." (p. 6)

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The Initial Study further explained that:

“[t]he project would result in changes to the design of the moat and row elements and a more robust operations and maintenance plan is proposed. These changes were not known at the time the 2008 FSEIR was prepared; therefore, an analysis of their environmental effects is required under CEQA. However, these changes only affect the moat and row dust control areas (DCAs), as opposed to the larger dust control program evaluated in the 2008 FSEIR. In cases where only **minor** additions or changes to a previous EIR are required to make the previous EIR apply to the changed project, CEQA Section 15162 allows the preparation of a **supplement** to a previous certified EIR if any of the conditions that require the preparation of a Subsequent EIR are present. Further, CEQA states that the Supplement to the EIR need only contain the information necessary to make the previous EIR adequate.

The proposed project would only be a change to one element of the larger dust control program evaluated in the 2008 FSEIR. **The majority of land use-related issues** (e.g., geology, hydrology, land use, hazards, **public services and utilities**, recreation, mineral resources, agricultural resources, and noise) **have been appropriately evaluated in the 2008 FSEIR and the project would not result in any new significant impacts in these areas.** As such, LADWP has determined that a **Supplemental EIR** that focuses on the issues of construction-related air quality, visual resources, biological resources, and construction-related traffic would be appropriate in compliance with CEQA requirements. [Initial Study, p. 1-2)

The Initial Study examined the issues of water facilities and water supply and found that the 2008 FSEIR had adequately analyzed these issues and that any impacts would be less than significant. As a result, the Initial Study declared that water facilities and water supply would not be evaluated further in the Supplemental EIR for the Moat and Row Project. The conclusion that these issues would not be evaluated further is so at odds with the analysis and conclusions reached in the City’s draft Supplemental EIR that it is worth quoting extensively from these sections of the Initial Study.

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In the detailed discussion concerning whether new *water facilities* would be needed, the Initial Study disclosed that:

The 2008 FSEIR identified that all DCMs (i.e., moat and row, shallow flooding) would use an additional 20,000 AF [acre-feet]/yr of water and may use up to 28,000 AF/yr if all DCMs implemented shallow flooding DCMs. The water supply needed for DCMs would be provided by existing entitlements and supplies of the City of Los Angeles which has planned for the water demands of all DCMs and would supply this water via the Los Angeles Aqueduct (Section 3.9.4, Water Supply, pages 3.9-6 and 3.9-7). [Initial Study, p. 3-49 (item b)]

This discussion confirms the analysis in the District's 2008 FSEIR and the Initial Study states this issue will not be evaluated further in the Supplemental EIR.

The detailed discussion in the Initial Study addressing whether sufficient *water supplies* are available also relies on the 2008 FSEIR and found a less-than-significant impact:

The 2008 FSEIR evaluated the water demands of the moat and row DCMs in combination with the water demands of all other proposed DCMs. The 2008 FSEIR identified that DCMs are expected to utilize an additional 20,000 AF/yr of water and may use up to 28,000 AF/yr if **all** DCMs implemented shallow flooding DCMs. This would bring the total water demand associated with all dust control activities on Owens Lake to between 75,120 AF/yr or 83,120 AF/yr, respectively. Projected water demands for DCMs would be provided by existing entitlements and supplies of the City of Los Angeles which has planned for the water demands of all DCMs. See item b above. Furthermore, the project is consistent with the Urban Water Management Plan of the City of Los Angeles, which specifies the current and future demands and sources of water for the City of Los Angeles, (Section 3.9.4, Water Supply, pages 3.9-6 and 3.9-7). Because the project would not change how water is delivered to the DCAs or increase demand for water supplies, the conclusions made in the 2008 FSEIR would apply to the proposed project and the project would not result in any new significant impacts related to inadequate water supplies that were not previously identified. Therefore, less-than-significant

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environmental impacts would occur and **this issue will not be evaluated further in the Supplemental EIR** [emphasis added].
(Initial Study, p. 3-50)

This analysis is repeated from the 2008 FSEIR. It quantifies the amount of water needed for the proposed project as 20,000 AF/yr and states that if the entire project utilized the shallow flood DCM, an additional 8,000 AF of water may be needed. It is not clear whether “entire project” includes the 1.9 sq. mi. of study areas and 0.5 sq. mi. of channel areas that were also part of the 2008 FSEIR proposed project as well as the 3.5 sq. mi. of Moat and Row; if so, then some amount less than 8,000 AF would be required to substitute shallow flood DCM for the Moat and Row DCM. If the study areas and channel area are not included, then the maximum amount required to substitute shallow flood for Moat and Row would be 8,000 AF. Since the Moat and Row DCM is still an experimental control, it is possible that shallow flood or another approved Best Available Control Measure would need to replace Moat and Row if it fails to control PM₁₀ to specified levels. Thus, the maximum amount of water analyzed, 28,000 AF, represented this possibility.

On February 20, 2009, Commission staff received an Administrative Draft Supplemental EIR (Administrative Draft) for a short, ten-day review period. Commission staff reviewed and commented on the document based on the project description and limited scope disclosed in the NOP and Initial Study. The staff comments submitted to the City accepted as axiomatic that the document was a **Supplemental** EIR to the 2008 FSEIR with the limited purpose of adequately analyzing the impacts of the modified moat and row design.

It was in this context that staff comments contained in the March 3, 2009, letter should have been considered. Staff regarded the statements in the Administrative Draft that managed vegetation and shallow flooding were not feasible alternatives as erroneous conclusions derived from a misreading of the 2008 FSEIR. That is what was meant by the statement “[t]he DSEIR needs to be revised to correctly address Managed Vegetation and Shallow Flooding alternatives.” (p. 2, March 3, 2009, comment letter) As pointed out in the comments, Shallow Flooding and All Managed Vegetation were not found infeasible in the 2008 FSEIR at all. They met most of the basic objectives of the proposed project.

It is in this same context that the statement concerning the environmentally superior alternative should have been considered: “Once the Shallow Flooding

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and Managed Vegetation alternatives are reassessed with regard to feasibility, then the environmentally-superior alternative will also need to be reassessed.” (p. 2, March 3, 2009, comment letter) Given the framework established by the NOP and Initial Study for a Supplemental EIR of very limited scope, Commission staff’s comment was intended to ensure that the City’s conclusions in the Supplemental EIR are consistent with the parent 2008 FSEIR.

The District’s *Findings of Fact and Statement of Overriding Considerations* (Findings) determined that the All Shallow Flooding and All Managed Vegetation alternatives were feasible and selected the All Shallow Flooding Alternative as the environmentally superior alternative. All Gravel Cover was found to be infeasible because it:

would not minimize the long-term significant, adverse changes to sensitive resources as it would essentially cover all potential resources. It would not provide a high likelihood of success as it would require large amounts of gravel. Available sources of aggregate are difficult to obtain. Gravel Cover would not conform to adopted plans and policies. This alternative would not minimize the cost per ton of particulate pollution controlled since there are high costs associated with mining, processing, and hauling the aggregate. In addition, this alternative is incompatible with the State of California’s public trust values. [p. V-14, Findings]

PROJECT DESCRIPTION:

As described in the draft Supplemental EIR, Moat and Row is a method of dust control that does not, as initially designed, require the addition of supplemental water to reduce dust emissions from the lake bed. Moat and Row has **not** been approved as a DCM by the District, the California Air Resources Board, or the U.S. Environmental Protection Agency because it has not been shown to meet required performance standards. There are currently three approved DCMs; shallow flooding, managed vegetation, and gravel cover. If Moat and Row does not meet the required performance standards after it is constructed, one or more of the approved measures will be required to replace the Moat and Row design. As discussed above, gravel cover was found infeasible in the District’s 2008 FSEIR.

A Moat and Row element is up to an 89-foot wide corridor that contains an earthen berm (row) approximately five-feet-high with 1.5:1 (horizontal to vertical) sloping sides and a base of up to 19 feet wide, an access road on both sides of

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the row of up to 15 feet wide, flanked on the other side by ditches (moats) approximately 4 to 5.5 feet-deep and up to 20 feet wide at the widest point.

Rows serve as wind breaks to capture sand. Moat and row elements would be arrayed in a grid pattern oriented to be perpendicular with the primary and secondary wind directions. Minimum spacing of the elements would be approximately 100 feet center to center. Rows are proposed to be placed along the length of the dust control area with breaks in the rows at distances determined to be suitable for the habitat requirements for biological species present in the area.

Sand fences would be constructed of a mesh fabric up to five feet tall with 14-inch diameter round or square arsenic-free wood treated posts supporting the fabric. The sand fences would be placed on top of rows or in open playa areas as determined to be appropriate through on-site monitoring of prevailing wind direction and speed.

Moat and Row DCMs may also include the placement of a variety of enhancements within the Moat and Row areas to gain greater dust control efficiencies within the Owens Valley Planning Area, as determined through ongoing monitoring of air quality by the City and the District.

CEQA Process and Procedure Concerns:

Staff reviewed the draft Supplemental Environmental Impact Report (SEIR) (State Clearinghouse # 2008121074) for the Owens Lake Revised Moat and Row Dust Control Measures that was released in June 2009 for public review. A copy of staff's letter to the City, dated July 22, 2009, constitutes Exhibit B. Staff continues to have concerns with the City's CEQA process and with specific content of the draft SEIR.

CEQA Guidelines 15162 and 15163(c) state that a subsequent EIR should be prepared if the previous EIR requires major revisions, whereas a supplemental EIR may be prepared if the revisions include "only minor additions or changes." As described in the Current Situation section above, the NOP and Initial Study established that a Supplemental EIR would be prepared that would examine the potential for increased impacts to visual, biological, and air resources caused by the changed project design. However, the draft SEIR states that water is not available for any new DCMs, which is new information of substantial importance and is in direct conflict with the 2008 FSEIR.

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Commission staff has concerns that the scope of the supplemental EIR has over-reached what is allowed under CEQA (see CEQA Guidelines sections 15162 and 15163), and as written, a subsequent EIR should have been prepared instead to allow for adequate public disclosure and participation concerning the water supply issue. Specific areas that over-reach the content of a supplemental EIR include:

- the introduction of new, narrowly-defined Project Objectives;
- the addition of significant new information that was not previously known (insufficient or no water for new DCM's);
- a new Alternatives Analysis based on the new narrowly defined project objectives; and
- changed conclusions from those reached in the 2008 FSEIR based on new information contained in this draft SEIR.

The Environmentally Superior Alternative (p. ES-5) is identified as the proposed project based on the improper alternatives analysis, inadequately noticed objectives, and underlying assumptions. It also contradicts the determination made by the District in its Findings: "Based on the data collected during the analysis and resulting from coordination with the City [of Los Angeles], the EIR does not make the determination that the Moat & Row DCM is the environmentally superior alternative for dust control on Owens Lake." (p. V-7)

The draft SEIR's conclusion that Moat and Row DCM is the environmentally superior alternative overreaches beyond the scope of what is allowed in a supplemental EIR. The limited purpose of this SEIR is to remedy the inadequate environmental analysis of the Moat and Row design in its final configuration as a grid pattern of moats and rows with sand fencing on top of the rows for four impact areas: biological resources, visual resources, and construction-related air quality and traffic (see p. 6 of Notice of Preparation).

The DSEIR concludes that shallow flooding and managed vegetation are infeasible based on the lack of a water supply. Water supply is an issue that was excluded from further analysis at the beginning of the CEQA process for this Supplemental EIR. As a result, members of the public, other agencies, and organizations who may be keenly interested in water supply issues may have disengaged themselves prematurely based on the (inadequate) notice that water supply would not be reconsidered.

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If the water supply is insufficient for new DCMS or enhancements to Moat and Row, then a subsequent EIR should fully analyze the water supply issue. A detailed analysis should examine all possible sources including diverting less water from the Owens Lake watershed to the Los Angeles Aqueduct, the use of brine and groundwater, and alternative sources that could be available by increased efficiency in existing and approved shallow flood areas, as well as by purchase. For example, the District stated in its comment letter dated June 23, 2009, that “[c]urrent water control efficiency improvement efforts on the existing and proposed water-based dust control areas should result in significant water savings.” (see comment 5)

In addition, the faulty alternatives analysis states that a managed vegetation DCM will have the same level of environmental impacts as a Moat and Row DCM (p. ES-4), even though vegetation also provides habitat value, has no entrapment potential, possesses no biological barrier to movement, and the vegetation would have no potential to obstruct views from the lake bed. The draft SEIR states that “[t]he All Shallow Flooding Alternative would have been identified as the environmentally superior alternative, but it had already been considered and rejected in the 2008 FSEIR.” (p. ES-5). Although the All Shallow Flooding Alternative was rejected in the 2008 FSEIR in favor of the proposed mixed project of shallow flooding (9.2 square miles) and Moat and Row (3.5 square miles), it was found to be both feasible and effective. (p. 12-5 and Section 4.0, Alternatives to the Proposed Project); and Shallow Flooding was designated as the “environmentally superior alternative.” (Findings, p. V-7). It is not logical to assume that because the “All Shallow Flooding Alternative” was rejected in the 2008 FSEIR project approval, that shallow flooding does not remain the environmentally superior alternative under CEQA.

Commission staff believes that shallow flooding and managed vegetation are feasible alternatives as described in the 2008 FSEIR and Findings. Therefore, if a subsequent EIR is prepared, an alternative to the proposed project that includes a combination of DCMs should be evaluated. Variations or combinations of the alternatives could be very effective, as evidenced by the suggested use of vegetation and water or brine application as enhancements to the Moat and Row elements.

However, to avoid delaying consideration of the Revised Moat and Row Project, the City could delete or revise the draft SEIR’s alternatives and water supply analyses to be consistent with the 2008 FSEIR. The conclusions about the infeasibility of shallow flooding and managed vegetation should be deleted.

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Additionally, the project objectives should be revised to those identified at the outset in the Initial Study (p. 2-7). These changes would maintain consistency with the 2008 FSEIR project objectives and alternatives analysis and meet CEQA requirements. At some time in the future, a subsequent EIR could be prepared, if necessary, that analyzes the water supply issue.

Draft SEIR Content Concerns:

Throughout the process of this draft SEIR, staff's concerns have consistently centered on three CEQA resource areas: impacts to air quality (Greenhouse Gases (GHG)), visual resources, and wildlife. In addition, staff have consistently noted concern with the City's determination through an improper alternatives analysis that previously approved and feasible dust control measures (shallow flood and managed vegetation) are now infeasible, as well as whether or not Moat and Row is consistent with the Public Trust Doctrine. Of the three resources areas, staff finds the draft SEIR inadequate with regard to both the visual resources analysis and with regard to mitigation for wildlife impacts. A new GHG analysis was not included in the draft SEIR; instead the draft SEIR states that the GHG emissions will be similar to that disclosed in the 2008 FEIR, that it is a significant and unavoidable impact, and that a statement of overriding considerations was previously adopted for this impact.

Specifically, staff is concerned about inconsistencies and conclusions within the Visual Resources section of the document. Staff concurs with the statement, that "the dry, desert character of the historic Owens Lake bed, combined with further expanses of desert landscape immediately surrounding Owens Lake, creates a relatively unique and dramatic visual landscape" and that the visual objective for this area is "management activities may attract attention but should not dominate the view of the casual observer." The presence of many square miles of Moat and Row elements on the lakebed in proximity to SR 395 will add color, texture, and artificial structural elements that will interrupt the unique and dramatic visual landscape that Owens Lake affords the public. The casual observer will easily note these features; therefore, staff believes that the Moat and Row elements will have a "substantial adverse effect on a scenic vista" and that they will "substantially degrade the existing visual character or quality of the site and its surroundings." Staff disagrees that the impacts to the degradation of a scenic vista and the degradation of the visual character of Owens Lake is less than significant, as stated in section 3.3 of the draft SEIR. However, staff does concur with the statement in section 4.2.2 that "the proposed project would result in significant and unavoidable adverse impacts on...visual resources," a conclusion that is inconsistent with the impact analysis in section 3.3.

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Staff is concerned that the mitigation proposed for impacts to wildlife resources incorrectly determines the quantity of lost habitat (as 1,503.8 acres, instead of 2,238 acres), suggests using prior mitigation areas as compensation, defers defining performance standards for any compensatory mitigation for wildlife habitat, and defers mitigation for snowy plover mortality. The draft SEIR states in various locations that mitigation for previous projects will be used to mitigate the new Moat and Row project. Unless these previous mitigation areas are not fully allocated to the previous projects, they are not available for the new Moat and Row project. Without adequate compensation for lost snowy plover habitat, the impact to wildlife resources would not be fully mitigated.

Public Trust Concerns:

Commission staff has expressed concerns about whether the Moat and Row DCM is consistent with the Public Trust values of the Owens Lake from the initial planning stages. The State of California acquired sovereign ownership of all tidelands and submerged lands upon its admission to the United States in 1850. The State holds these lands for the benefit of all people of the State for statewide Public Trust purposes, which include waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation and open space. The State's sovereign interests are under the jurisdiction of the Commission.

The proposed project involves the historic bed of Owens Lake, which is State sovereign land under the jurisdiction of the Commission. Consequently, the Commission is a trustee agency under CEQA, "a state agency that has jurisdiction by law over natural resources affected by a project, that are held in trust for the people of the State of California." (Public Resources Code section 21070) Under the CEQA Guidelines section 15386(b), the Commission is recognized as a trustee agency "with regard to state owned 'sovereign' lands such as the beds of navigable waters and state school lands."

Despite the significant changes to Owens Lake in the nearly one hundred years since the Los Angeles Aqueduct has diverted most of its water, Owens Lake retains important Public Trust assets. The Owens Lake brine pool, shallow flood and managed vegetation DCMS, and dry lake bed provide important habitat for numerous species of birds and other wildlife. Audubon has recently designated Owens Lake as an "Important Bird Area" because it is once again a major stop-over for migrating shorebirds and waterfowl. 50,000 birds at a time may use the lake area and include over 100 different species. Recreational activities that take place at Owens Lake include bird-watching, wildlife viewing, hunting, horseback

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riding, hiking, and sight-seeing. As noted previously and as stated in the SEIR, the Owens Lake area is a “unique and dramatic visual landscape” of expansive open space.

Nearly 2 ½ years ago, Commission staff raised Public Trust concerns in their comments on the District’s NOP and Initial Study for Phase 7:

CSLC staff is interested in Dust Control Measures that restore and enhance the historic public trust and natural resource values of the lands within the jurisdiction of the CSLC. Staff is in agreement that water conservation is important and that attainment of dust control emissions are a high priority. However, the City has re-established the presence of water to mitigate the significant air quality impacts that resulted from the City’s early 20th century water diversion actions. Shallow flooding of the Owens lake bed has provided habitat that is important to the wildlife that depend upon it. Alternative dust control measures other than shallow flooding, such as, but not limited to, gravel and moat and row designs, may not be the best use of sovereign lands to protect, preserve, and restore the public trust resources. [p. 2, March 27, 2007 letter to District]

Staff commented on the District’s draft Subsequent EIR that the Moat and Row “technique may significantly modify the habitat and visual quality of the Owens Lake dry lake bed...” (p. 2, October 29, 2007 letter)

As discussed in previous pages, the Moat and Row portion of Phase 7 was withdrawn from consideration by the Commission because the revised design was not adequately analyzed in the District’s 2008 FSEIR. Commission staff informed the City in its comments on the NOP and Initial Study for the Revised Moat and Row project that “the CSLC has not yet considered the moat and row dust control measure and has not made a determination whether the moat and row measure is or is not consistent with the public trust” and asked that the Supplemental EIR acknowledge that there is a possible conflict. (pp. 2-3, Letter dated January 13, 2009 to City)

In its March 3, 2009, comments on the Administrative Draft SEIR, staff requested that the project objective “Be consistent with the State of California’s obligation to preserve and enhance the public trust values associated with Owens Lake” be included in the draft SEIR and used in the analysis. This project objective was included in the District’s original 2008 FSEIR and staff emphasized to the City

CALENDAR ITEM NO. 52 (CONT'D)

that the project objectives of the draft SEIR needed to be consistent with the FSEIR. Staff asked again that the draft SEIR disclose that there is a possible conflict with the Public Trust Doctrine.

Staff reiterated its concern for the revised Moat and Row project in its April 23, 2009, letter to the City regarding its application to amend the lease. Staff requested the City to elaborate on its statement that it “will assist the State of California in its obligation to preserve the public trust values associated with Owens Lake.” Staff noted that the Commission considers numerous factors when considering a proposed use of Public Trust lands including protection of natural resources and other environmental values, and public access. Staff expressed “strong reservations” about the Moat and Row project’s compatibility with the Public Trust values of Owens Lake. (pp. 2-3, Letter dated April 23, 2009 to City)

Although the City included the Public Trust project objective in the draft SEIR, it failed to disclose the possible conflict with the proposed Moat and Row project. This conflicts with one of the main purposes of the CEQA process to fully disclose the impacts of a proposed project to the public and decision-makers so that better, more informed decisions can be made.

In its most recent comment letter to the City on the draft SEIR, staff emphasized again that the Commission has not made a determination whether the proposed Moat and Row DCM is consistent with the Public Trust values of Owens Lake and that staff continues to have doubts (p. 5, July 22, 2009, letter to City).

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 the Phase VII Moat and Row components as described above.
3. An EIR and Mitigation Monitoring Program were prepared and certified for this project by the District, and a Supplemental Environmental Impact Report and Mitigation Monitoring Program were prepared for this project by the city of Los Angeles. The City is scheduled to consider certification of the SEIR on September 15, 2009.

CALENDAR ITEM NO. 52 (CONT'D)

APPROVALS OBTAINED:

Great Basin Air Pollution Control District

FURTHER APPROVALS REQUIRED:

City of Los Angeles, Department of Water and Power
California State Lands Commission
California Regional Water Quality Control Board
California Department of Fish and Game
United States Army Corps of Engineers

EXHIBITS:

- A. Location and Site Map
- B. July 22, 2009 Letter from Commission staff to the City

PERMIT STREAMLINING ACT DEADLINE:

To be determined (the application is incomplete; CSLC is a responsible agency)

UNRESOLVED ISSUES AND CONCERNS:

Commission staff is well aware and understands the human health issues involved with the PM₁₀ emissions on air quality and strongly supports the City's efforts to control dust emissions. Commission staff was asked to present information on the proposed Moat and Row DCM to more fully disclose its impacts and consequences on Owens Lake. Fully-informed decision-making requires a balancing of all of the issues and concerns associated with a proposed project. Commission staff believes an open and vigorous public discussion concerning the merits of the Moat and Row DCM should occur. This Informational Calendar Item is offered as a step in that direction.

The revised Moat and Row Project design could potentially control PM₁₀ emissions from the Owens Lake dry lake bed without using water; however, Moat and Row is still experimental. If the Moat and Row project is constructed and fails to control dust, several enhancement measures could be tried. Some of these such as managed vegetation and shallow flooding use water; gravel would not. If the enhancements do not work, the City is required under the Settlement Agreement with the District to replace the Moat and Row DCM with one (or more) of the three approved Best Available Control Measures: shallow flooding, managed vegetation, or gravel cover.

Shallow flooding and managed vegetation were found feasible by the District in its 2008 FSEIR. Gravel was found infeasible because it failed to meet most of

CALENDAR ITEM NO. 52 (CONT'D)

the project objectives and is inconsistent with Public Trust values of Owens Lake. The City, in the draft SEIR, has concluded that managed vegetation and shallow flooding are infeasible because insufficient water is available. If Moat and Row does not work, then based on the City's draft SEIR there is no identified feasible alternative. This is an unresolved issue.

CONCLUSION:

In addition to the issues and concerns discussed in this staff report that need to be resolved regarding the City's Moat and Row Project, it is staff's opinion that the following questions should be discussed and answered prior to the Commission's future consideration of the City's application to amend its existing lease:

- Will the Moat and Row DCM meet the required dust control performance standards? To date, the City has spent an estimated \$500 million on dust control measures at Owens Lake. The Moat and Row DCM is estimated to cost about \$105 million. Does it represent good economic value? (Cost estimates from L.A. Times article dated April 19, 2009)
- The City estimates that in fiscal year 2009-10, it will use over 87,000 AF of water for dust control at Owens Lake, and that when Phase 7 is complete, this amount is expected to rise to 95,000 AF per year. The City expects to purchase this water from the Metropolitan Water District for \$46 million. (p. 8, City Memorandum dated May 15, 2009, contained in Appendix D of the draft SEIR.) Why is the amount of water so much higher than the 83,120 AF estimated in the 2008 FSEIR?
- Is the amount of water identified in the District's 2008 FSEIR that would be needed to implement the shallow flooding DCM instead of Moat and Row on 3.5 sq. mi. — 8,000 AF — unavailable from any source or combination of sources?
- Could water used in existing shallow flooding areas be used more efficiently, making the conserved water available for new shallow flooding DCMS or areas of managed vegetation?
- Is the Moat and Row DCM an appropriate way to conserve water, when viewed against the loss of habitat, wildlife entrapment potential, and visual impacts?
- If the Moat and Row DCM is successful, would it set a precedent for converting existing shallow flooding and managed vegetation DCMS to Moat and Row to save additional water?



CALENDAR ITEM NO. **52** (CONT'D)

- Is the Moat and Row DCM consistent with the Public Trust values of Owens Lake?

NO SCALE

SITE

Legend

-  Proposed Phase VII Moat & Row
-  CSLC Approved Phases of Dust Control

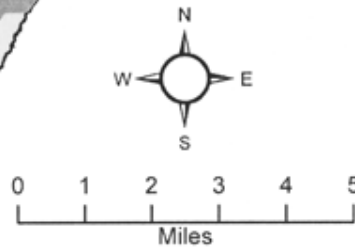
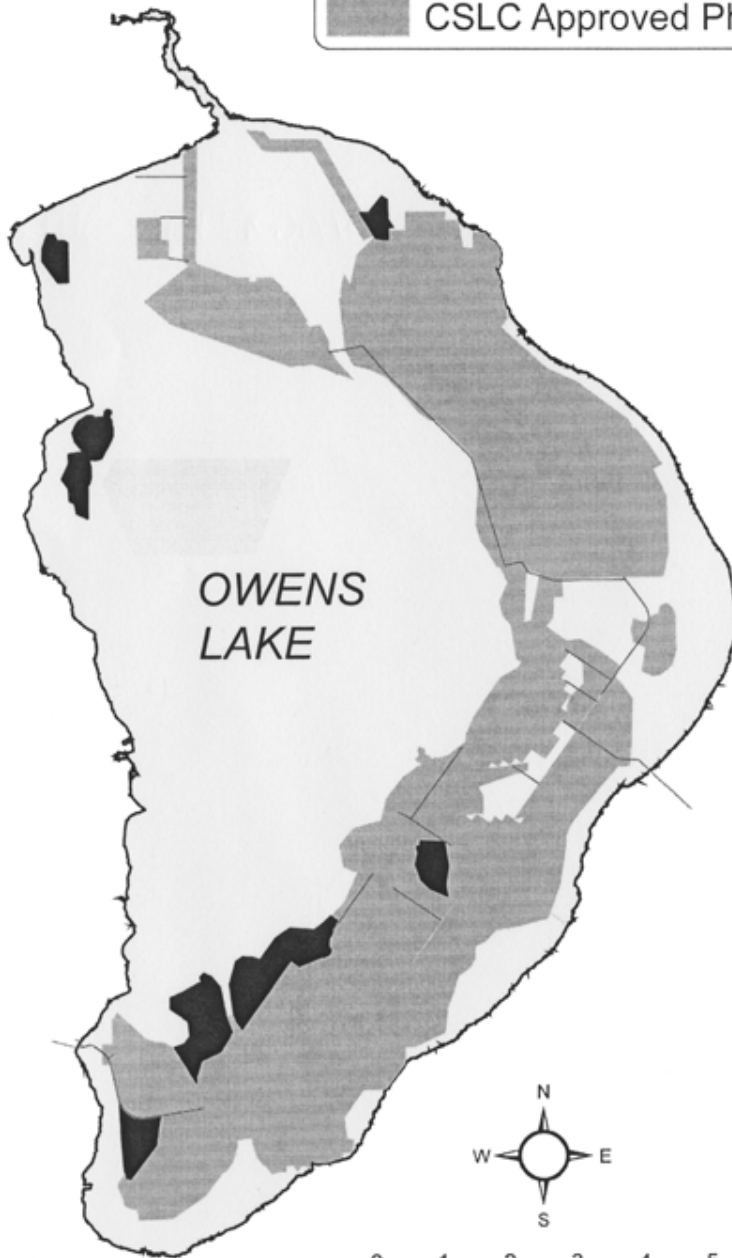


Exhibit A

WP 8079.9

LADWP
Owens Lake Dust Control Project
Phase VII

OWENS LAKE, INYO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property

EXHIBIT B

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



July 22, 2009

PAUL D. THAYER, *Executive Officer*

(916) 574-1800 FAX (916) 574-1810

California Relay Service from TDD Phone **1-800-735-2929**

from Voice Phone **1-800-735-2922**

Contact Phone: (916) 574-1890

Contact FAX: (916) 574-1885

Ref: PRC 8079.9
SCH# 2008121074

Mr. Tom Dailor
City of Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, CA 90012

SUBJECT: Comments on Draft Supplemental Environmental Impact Report, for the Owens Lake Revised Moat and Row Dust Control Measures, Owens Lake, Inyo County

Dear Mr. Dailor:

California State Lands Commission (Commission) staff has reviewed the draft Supplemental Environmental Impact Report (SEIR) for the Owens Lake Revised Moat and Row Dust Control Measures released in June 2009 for public review. No project can be approved by the Commission unless all of the requirements of CEQA have been met. As the Commission is both a Responsible and Trustee Agency as defined in CEQA, it must review the environmental documentation prepared by the Lead Agency (in this case the city of Los Angeles (City)), and comply with all applicable, substantive and procedural requirements of CEQA.

CEQA Guidelines 15162 and 15163(c) state that a **subsequent** EIR should be prepared if the previous EIR requires major revisions, whereas a **supplemental** EIR may be prepared if the revisions are not considered major. During the meeting with City staff on August 8, 2008, Commission staff stated that a supplemental EIR would be required, as the project design revisions to the *2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan Final Subsequent Environmental Impact Report* (2008 FSEIR) would be minor, and did not rise to the level of "substantial changes" or "new information of substantial importance" (CEQA Guidelines section 15162). Revisions requested by Commission staff centered on an analysis of the potential for increased impacts to visual, biological, and air resources

caused by the changed project design. Accordingly, the inclusion of an alternatives analysis was neither requested nor required in accordance with CEQA Guidelines section 15163(b), which states that “the supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.” Commission staff believes that the alternatives analysis exceeds the scope of what is permitted under CEQA in a supplemental EIR (see CEQA Guidelines sections 15162 and 15163). Many of our following comments pertain to the inclusion of this new alternatives analysis and the far-reaching implications of feasibility statements regarding those alternatives. As currently written, Commission staff continues to have significant concerns about the adequacy of the CEQA analysis that may result in the inability of the Commission to use this document as the basis for its discretionary action when considering whether or not a lease should be issued for the proposed project.

Throughout the process of this draft SEIR, staffs’ concerns have consistently centered on impacts to aesthetics and wildlife, the City’s determination through an alternatives analysis that previously approved and feasible dust control measures (shallow flood and managed vegetation) are now infeasible, as well as whether or not Moat and Row is consistent with the public trust doctrine. Two aspects of this draft SEIR raise additional concerns, because they may have far-reaching implications for both previously-approved shallow flood and managed vegetation dust control measures, and also for similar measures that may be proposed for future projects. Specifically, the narrowly- defined project objectives constrain the alternatives analyses, and the current draft SEIR conclusion of the lack of a water supply for use as a dust control measure contradicts the 2008 FSEIR, constrains the alternatives analyses, and could restrict current and future projects.

The Project Objectives (pp. 2-9 and 2-10) have been substantially altered from those in the parent 2008 FSEIR certified by the Great Basin Unified Air Pollution Control District (GBUAPCD) and from those identified in Initial Study for this draft SEIR (see the attached Project Objectives from the 2008 FSEIR, the Initial Study for the SEIR, and the draft SEIR). Of particular concern are new, narrowly drawn project objectives that result in an inadequate and faulty alternatives analysis. The previously stated primary goal of the proposed project is to prevent emissions from the lake bed that cause or contribute to violations of PM₁₀ standard. The new objectives “to provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service,” and to “substantially reduce or eliminate the use of water in implementing new dust control projects,” in association with the new reference to water in the objective “to minimize the long-term consumption of natural resources (e.g. water),” significantly alter the setting of the alternatives analysis. CEQA Guideline 15124(b) directly links the importance of objectives in developing a reasonable range of alternatives and in evaluating those alternatives. The changes to the Project Objectives in the draft SEIR also make the notice provided by the Notice Of Preparation/Initial Study inadequate, because it did not disclose that water supply would be reevaluated, and thereby averted public disclosure and participation.

CEQA Guideline section 15126.6(a) provides that “[a]n EIR shall describe a *range of reasonable alternatives to the project...which 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 evaluate the comparative merits of the alternatives.” Alternatives need only be potentially feasible and should be evaluated even if they do not fulfill all of the project objectives or are more costly. Based on the altered project objectives, the draft SEIR reaches the conclusion that shallow flooding and managed vegetation alternatives are “infeasible” despite the opposite conclusion made by the GBUAPCD in the *Findings of Fact and Statement of Overriding Considerations* based on the analysis in the parent 2008 FSEIR (see pp. V-11 and V-13 of the *Findings*). Furthermore, nearly 10 square miles of shallow flooding approved for the Phase 7 project is currently being implemented as part of Phase 7.

As disclosed in the NOP for the SEIR and the accompanying Initial Study, water supply was **not** an issue that would be reevaluated:

Water Supply. d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlement needed?

Less-than-Significant impact. The 2008 FSEIR evaluated the water demands of the moat and row DCMs in combination with the water demands of all other proposed DCMs. The 2008 FSEIR identified that DCMs are expected to utilize an additional 20,000 AF/yr of water and may use up to 28,000 AF/yr if **all DCMs implemented shallow flooding DCMs**. This would bring the total water demand associated with all dust control activities on Owens Lake to between 75,120 AF/yr or 83,120 AF/yr, respectively. Projected water demands for DCMs **would be provided by existing entitlements and supplies of the City of Los Angeles which has planned for the water demands of all DCMs**. [p. 3-50, emphasis added]

The Initial Study also stated that the water would be supplied via the Los Angeles Aqueduct and referenced the 2008 FSEIR analysis concerning water supply. That analysis concluded that “the proposed project would not be expected to result in significant impacts to utilities related to water supplies.” (p. 3.9-7) The Initial Study concluded that water supply was not an issue that would be evaluated further in the SEIR. Therefore, the draft SEIR cannot analyze water supply issues without violating CEQA requirements for adequate notice and disclosure.

A supplemental EIR is permitted under CEQA when any of the conditions described in section 15162 of the Guidelines applies **and** “[o]nly **minor** changes would be necessary to make the previous EIR adequately apply to the project in the changed situation” (CEQA Guidelines section 15163(a)(2)). If water is not available for dust control abatement, this would constitute “new information of substantial importance” requiring preparation of a *subsequent* EIR. The purported conclusions concerning the feasibility of shallow flooding and managed vegetation due to an inadequate water supply would require full disclosure and analysis in a subsequent EIR, not a supplemental EIR whose noticed purpose is to examine the changes to the design of the Moat and Row DCM (“These refinements [to the Moat and Row DCM] are the subject of this SEIR.” p. 6, NOP).

The "conclusions" regarding water supply would also affect basic assumptions concerning the use of shallow flooding and managed vegetation contained in the 2008 FSEIR, the 2008 State Implementation Plan (SIP), the Settlement Agreement between LADWP and GBUAPCD, and "enhancements" that are a part of the current project. The Moat and Row Dust Control Measure (DCM) is **experimental** and has not been approved by the GBUAPCD. If the Moat and Row DCM is not effective, the 2008 SIP and 2006 Settlement Agreement call for replacing it with an approved DCM, including shallow flooding, managed vegetation, or gravel cover.

The alternatives analysis and the analysis provided in the draft SEIR concerning water supply should be deleted along with the conclusions about the feasibility of shallow flooding and managed vegetation because these determinations far exceed the scope of this supplemental EIR. A subsequent EIR could be prepared later, if necessary, that analyzes water supply. Conclusions that shallow flooding and managed vegetation are infeasible based on the lack of a water supply would require substantial evidence that water supplies are, in fact, unavailable. A detailed analysis would be necessary to include all possible sources including diverting less water from the Owens Lake watershed to the Los Angeles Aqueduct, the use of brine and groundwater, and alternative sources that could be available by increased efficiency in existing and approved shallow flood areas, as well as by purchase. For example, the GBUAPCD stated in its comment letter dated June 23, 2009, that "[c]urrent water control efficiency improvement efforts on the existing and proposed water-based dust control areas should result in significant water savings." (see comment 5)

Further, the Environmentally Superior Alternative (p. ES-5) is identified as the proposed project based on the improper alternatives analysis, inadequately noticed and irrelevant objectives, and underlying assumptions. It also contradicts the determination made by the GBUAPCD in its *Findings of Fact and Statement of Overriding Considerations (Findings)*: "Based on the data collected during the analysis and resulting from coordination with the City [of Los Angeles], the EIR does not make the determination that the Moat & Row DCM is the environmentally superior alternative for dust control on Owens Lake." (p. V-7)

For this SEIR to conclude that Moat and Row DCM is the environmentally superior alternative overreaches beyond the scope of what is allowed in a supplemental EIR. The limited purpose of this SEIR is to remedy the inadequate environmental analysis of the Moat and Row design in its final configuration as a grid pattern of moats and rows with sand fencing on top of the rows for four impact areas: biological resources, visual resources, and construction-related air quality and traffic (see p. 6 of Notice of Preparation).

In addition, this faulty alternatives analysis states that a managed vegetation DCM will have the same level of environmental impacts as a Moat and Row DCM (pg ES-4), even though vegetation also provides habitat value, has no entrapment potential, possesses no biological barrier to movement, and the vegetation would have no potential to obstruct views from the lake bed. The draft SEIR states that "[t]he all Shallow Flooding Alternative would have been identified as the environmentally superior

alternative, but it had already been considered and rejected in the 2008 FSEIR.” (p. ES-5). Although the “all Shallow Flooding Alternative” was rejected in the 2008 FSEIR in favor of the proposed mixed project of shallow flooding (9.2 square miles) and Moat and Row (3.5 square miles), it was found to be both feasible and effective. (p. 12-5 and Section 4.0, Alternatives to the Proposed Project); and Shallow Flooding was designated as the “environmentally superior alternative.” (*Findings*, p. V-7). It is not logical to assume that because the “All Shallow Flooding Alternative” was rejected in the 2008 project approval, that shallow flooding does not remain the environmentally superior alternative.

Commission staff believes that shallow flooding and managed vegetation are feasible alternatives as described in the 2008 FSEIR and *Findings*. Therefore, if a subsequent EIR is prepared, an alternative to the proposed project that includes a combination of DCMs should also have been evaluated. Variations or combinations of the alternatives could be very effective, as evidenced by the suggested use of vegetation and water or brine application as enhancements to the Moat and Row elements. However, as stated above, our concerns regarding the alternative analysis and objectives could be resolved by deleting the alternatives and water supply analyses and maintaining the 2008 FSEIR objectives.

Commission staff has found inconsistencies, incorrect information, and incomplete analyses in the draft SEIR. These detailed comments are included in the attached document and are incorporated by reference into this letter. CEQA provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...” (Public Resources Code section 21002.) As both a Responsible and Trustee Agency under the California Environmental Quality Act, the Commission will be required to make this determination before granting a lease for the project. We hope that you will consider our comments and revise the draft SEIR accordingly.

The Commission considers numerous factors in determining whether a proposed use of the State's land is appropriate, including, but not limited to, consistency with the Public Trust under which the Commission holds the State's sovereign lands, protection of natural resources and other environmental values, and preservation or enhancement of the public's access to State lands. As has been discussed repeatedly in prior letters and meetings, the Commission has not made a determination whether the proposed Moat and Row DCM is or is not consistent with the Public Trust values associated with Owens Lake. Further, Commission staff continues to have doubts that the project is consistent with the Public Trust and until the Final SEIR is complete, that determination cannot be made.

If you have questions regarding leasing issues, please contact Judy Brown at (916) 574-1868 or via email at brownj@slc.ca.gov. If you have questions regarding the environmental comments, please contact Steven Mindt at (916) 574-1497 or via email at mindts@slc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gail Newton', written over a long horizontal line that extends across the width of the signature area.

Gail Newton, Chief
Division of Environmental Planning
and Management

ATTACHMENTS

cc: Office of Planning and Research
State Clearinghouse

Julie Brown, CSLC
Steve Mindt, CSLC

2.6 STATEMENT OF PROJECT GOAL AND OBJECTIVES

2.6.1 Project Goal

The primary goal of the proposed project is to implement DCMs on the bed of Owens Lake by 2010 sufficient to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS. In addition, the proposed project must be consistent with the State of California's obligation of land and resource stewardship.

2.6.2 Project Objectives

- Implement all Owens Lake bed PM₁₀ control measures by April 1, 2010 pursuant to the revised 2008 SIP to achieve the NAAQS
- Revise the approved 2003 SIP by July 1, 2008 ✓
- Minimize (or compensate for) long-term, significant, adverse changes to sensitive resources within the natural and human environment
- Provide a high technical likelihood of success without substantial delay
- Conform substantially to adopted plans and policies and existing legal requirements
- Minimize the long-term consumption of natural resources
- Minimize the cost per ton of particulate pollution controlled
- ~~Be consistent with the State of California's obligation to preserve and enhance the public trust values associated with Owens Lake~~

2.7 PROPOSED PROJECT

The proposed project includes numerous elements to ensure that adequate DCMs are implemented on the dry Owens Lake bed to ensure attainment of the PM₁₀ standard as mandated in the 2008 SIP.

2.3 PROJECT GOAL AND OBJECTIVES

The primary goal of the project is to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS by the implementation of moat and row DCMs on the bed of Owens Lake by 2010. The dry Owens Lake bed is primarily owned and operated in trust for the people of the State of California by CSLC. Therefore, the project must also be consistent with the State of California's obligation of land and resource stewardship.

Objectives of the project include the following:

- ▶ Implement moat and row DCMs by April 1, 2010, pursuant to the 2008 SIP to achieve the NAAQS,
- ▶ Minimize or compensate for long-term, significant adverse changes to sensitive resources within the natural and human environment,
- ▶ Create a dust control program with a high likelihood of success without substantial delay,
- ▶ Substantially conform to adopted plans and policies and existing legal requirements,
- ▶ Minimize the long-term consumption of natural resources,
- ▶ Minimize the cost per ton of particulate pollution controlled,
- ▶ Implement a DCM that minimizes the use of water to the maximum extent practical.

2.4 PROJECT CHARACTERISTICS

LADWP proposes to reduce dust emissions in the Owens Lake Planning Area, particularly achieving adopted control efficiencies for fugitive dust (PM₁₀), through the construction of landform features called moats and rows. Moat and row DCMs would be constructed on 3.5 square miles of the Owens Lake bed (Exhibit 2-2).

2.4.1 DUST CONTROL AREAS

In 2006, during settlement negotiations regarding dust control strategies between the GBUAPCD and LADWP, LADWP proposed a new Owens Lake PM₁₀ control measure known as moat and row. It was LADWP's intent to develop a control measure that cost less to implement and uses significantly less water than previously approved DCMs (e.g., shallow flooding, managed vegetation). The Settlement Agreement that resulted from the 2006 negotiations contains provisions for the implementation of up to 3.5 square miles of moat and row DCMs.

2.4.2 PERFORMANCE STANDARDS FOR DUST CONTROL

GBUAPCD has monitored ambient PM₁₀ concentrations within the Owens Valley including the communities of Keeler, Olancho, and Lone Pine for over 20 years. Monitoring data has been used to determine whether compliance with the federal PM₁₀ standard has been achieved. Based on this monitoring data and air quality modeling conducted by GBUAPCD, minimum dust control efficiencies (MDCE) have been established for areas of the Owens Lake bed as shown in Exhibit 2-4. The MDCE standard establishes the minimum level at which the concentration of PM₁₀ emissions must be reduced (through monitoring of the site) in order to achieve federal PM₁₀ standards. MDCE's vary from 30 percent to 99 percent. The control efficiencies reflect the fact that different areas of the lake bed have different emissions rates and that areas closer to the historic shoreline require higher control efficiencies than areas well away from the shoreline. The MDCE for the moat and row DCAs varies from 60 to 99 percent.

Regarding MWD's SWP supplies, with issuance of the new Biological Opinion for Delta Smelt, demands for MWD's SWP water (i.e., 1.05 mafy) would exceed available supplies (i.e., 750,000 afy under normal years) by approximately 430,000 afy. MWD staff has reported that it will be forced to remove water from existing storage reserves to meet demands in 8 out of 10 years. Over the past three years MWD has withdrawn water from storage every year and at the beginning of 2009 MWD had only 1.0 million acre feet (maf) of stored water supplies remaining in its storage accounts with plans to draw 0.35 maf in 2009. Storage in the MWD system is now at critically low levels (i.e., 1 maf of supply is available in MWD's 5 maf capacity system and MWD intends to withdraw approximately 350,000 afy). Based on storage levels and reduced deliveries from the SWP because of the Delta Smelt Biological Opinion, the MWD Board took action on April 14, 2009 to ration water to its member agencies, including LADWP, for the first time since 1991. MWD's allocation calls for a 10% cut in deliveries to all member agencies including LADWP (Appendix D).

This shortfall has prompted the LADWP to recommend water rationing by imposing shortage year water rates and implementing water conservation measures outlined in Phase III of the City's water conservation ordinance. The City approved the adoption of 15% shortage year rates on April 17, 2009. These rates impose a higher Tier 2 water rate on homeowners who exceed 85% of their water allocation (a 15% cutback) for their specific lot (based on lot size, occupancy, and temperature zone). Phase III water conservation restrictions are inclusive of all Phase I and Phase II conservation restrictions (e.g., drinking water, landscape irrigation, washing, leaks, aesthetic uses) with the addition of prohibiting landscape irrigation on days other than Monday or Thursday.

Rationing and water conservation practices alone will not resolve LADWP's existing and projected future shortfall in supplies. LADWP anticipates, based on the body of evidence, that water supplies from MWD and the SWP will be permanently reduced, forcing LADWP to secure alternative water supply sources to meet increased demands in the future. The City of Los Angeles has developed adopted a plan by Mayor Antonio Villaraigosa entitled, "*Securing L.A.'s Water Supply*," (May 2008) which is a blueprint for creating sustainable sources of water for the future of Los Angeles. This plan is an aggressive multi-pronged approach to water conservation that includes: investments in state-of-the-art water conservation technology; issuance of a combination of rebates and incentives; installation of smart irrigation controllers (e.g., controllers sense when adequate moisture is present), efficient commercial and residential washers and urinals; and development of long-term measures including expansion of water recycling and investment in cleaning up the local groundwater supply (Appendix D).

With regard to dust control activities on Owens Lake, all water supplies uses for dust control or other environmental restoration benefits must be supplemented through additional purchases from MWD. As described above, additional water is simply not available from MWD. Based on future projections of growth within LADWP's service area, plans for increased recycling, conservation, and groundwater cleanup activities, adequate water supplies will not be available to meet existing and projected future demand plus expanded water intensive dust control measures at Owens Lake. In light of the current state of water supplies and based upon what is known about future demands, staff of LADWP has determined that future use of water intensive dust control measures are not a feasible strategy and other non-water using controls should be implemented (Appendix D).

2.3 PROJECT GOALS AND OBJECTIVES

The primary goal of the project is to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS by the implementation of moat and row DCMs on the bed of Owens Lake by 2010. The dry Owens Lake bed is primarily owned and operated in trust for the people of California by CSLC. Therefore, the project must also be consistent with the State of California's obligation of land and resource stewardship. The objectives of the project are to:

- ▶ implement moat and row DCMs by April 1, 2010, pursuant to the 2008 SIP to achieve the NAAQS;
- ▶ provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service;

- ▶ allow for the sparing use of water that would otherwise be delivered for municipal and industrial use and substantially reduce or eliminate the use of water in implementing new dust control projects on the Owens Lake bed;
- ▶ minimize or compensate for long-term, significant adverse changes to sensitive resources in the natural and human environment by implementing mitigation strategies proposed in this SEIR;
- ▶ create a dust control program with a high likelihood of success and without substantial delay;
- ▶ substantially conform to adopted plans and policies and existing legal requirements. These requirements include the National Ambient Air Quality Standards, the 1998, 2003 and 2008 SIPs and their associated EIRs, lease agreements and environmental and administrative permits with other agencies including California State Lands Commission, Lahontan Regional Water Quality Control Board, California Department of Fish and Game, United States Environmental Protection Agency and Great Basin Unified Air Pollution Control District;
- ▶ minimize the long-term consumption of natural resources (e.g., water); and,
- ▶ be consistent with the State of California's obligation to preserve and enhance the public trust values associated with Owens Lake.

2.4 PROJECT CHARACTERISTICS

LADWP proposes to reduce dust emissions on the dry Owens Lake bed, particularly achieving adopted control efficiencies for fugitive dust (PM₁₀), through the construction of landform features called moats and rows. Moat and row DCMs would be constructed on 3.5 square miles of the Owens Lake bed (Exhibit 2-2).

2.4.1 DUST CONTROL AREAS

In 2006, during settlement negotiations regarding dust control strategies between the GBUAPCD and LADWP, LADWP proposed a new Owens Lake PM₁₀ control measure known as moat and row. It was LADWP's intent to develop a control measure that costs less to implement and uses significantly less water than previously approved DCMs (e.g., shallow flooding, managed vegetation). The Settlement Agreement that resulted from the 2006 negotiations contains provisions for the implementation of up to 3.5 square miles of moat and row DCMs.

2.4.2 PERFORMANCE STANDARDS FOR DUST CONTROL

GBUAPCD has monitored ambient PM₁₀ concentrations within the Owens Valley, including in the communities of Keeler, Olancho, and Lone Pine, for more than 20 years. Monitoring data has been used to determine whether compliance with the federal PM₁₀ standard has been achieved. Based on this monitoring data and air quality modeling conducted by GBUAPCD, minimum dust control efficiencies (MDCE) have been established for areas of the Owens Lake bed as shown in Exhibit 2-4. The MDCE standard establishes the minimum level at which the concentration of PM₁₀ emissions must be reduced (through monitoring of the site) to achieve federal PM₁₀ standards. MDCEs vary from 30% to 99%. The control efficiencies reflect the fact that different areas of the lake bed have different emissions rates and that areas closer to the historic shoreline require higher control efficiencies than areas well away from the shoreline. The MDCE for the moat and row DCAs varies from 33% to 99%.

ATTACHMENT

As discussed in our letter, Commission staff believes the alternatives analysis should be deleted, unless the SEIR is revised as a **subsequent** EIR. Any of the following comments regarding alternatives would apply to a subsequent EIR.

Executive Summary:

Page ES-3 & 5-3; **Shallow Flooding Alternative:**

1. This alternative is improperly represented as 15.1 square miles. The project is 3.5 square miles as identified on page ES-1. The majority of the 15.1 square miles referred to have already been approved for Shallow Flooding and construction is well under way. Please correct for consistency.
2. The statement that "the objective to implement a DCM that minimizes the use of water to the minimum extent practical would not be met" lacks foundational details. The water availability information in Appendix D does not take into consideration minimizing the amount of water needed in shallow flooding to wet 75% and obtain the 99% dust control efficiency and the use of brine, both which could make available more water for dust control without increasing the total amount of water used on the dry lake bed.

Page ES-3 & 4 & page 5-3 & 4; **Managed Vegetation Alternative:**

1. (See comment Shallow Flood #1) Project is 3.5 square miles. Please correct.
2. The evaluation lacks a scientific basis for the statement; "implementing this alternative would result in greater biological habitat impacts compared with the proposed project." Commission staff believes that this statement cannot be supported.
3. The conclusion was made that the impacts of vegetation are greater than the proposed project. Please provide a detailed basis for this conclusion.
4. The visual impacts of vegetation are only discussed as a change and presented as a comparable impact to the moat and row impacts.
5. The beneficial impacts of vegetation are not discussed:
 - o Managed vegetation would be similar in appearance to the naturally existing vegetation in the lake area. This would suggest a neutral impact on the current view shed, or an impact less than moat and row.
 - o Vegetation would not obstruct views from the lake bed, but would appear to be a continuation of what currently exists.
 - o The introduction and enhancement of native vegetation would be much less of a visual impact than a grid pattern of trenches and mounds topped with fences.
 - o Vegetation provides habitat to a number of species and may be considered a beneficial impact.
 - o Vegetation does not have an entrapment potential.
 - o Vegetation poses no biological barrier potential.
 - o Vegetation does not provide corvid perch opportunities.

- o Vegetation would substantially reduce water use, compared to shallow flooding.

Page ES-4 & page 5-4; **Gravel Application Alternative:**

1. (See comment Shallow Flood #1) Please correct.
2. The "All Gravel Cover" alternative was determined "not feasible" in the GBUAPCD *Findings of Fact and Statement of Overriding Consideration*.

Page ES-5 & page 5-5; **No-Project Alternative:**

1. The introduction in this section incorrectly summarizes the past moat and row approval.
2. The moat and row project described in the 2008 SIP has been evaluated through a certified CEQA document; however, the project design evaluated in the 2008 SIP FSEIR was not the project submitted to the Commission for a lease. That is, if the original serpentine design with two to one (2:1) slopes and without sand fencing had been proposed, then this additional document would have been unnecessary. Deviations from the 2008 FSEIR Moat and Row design were originally proposed by LADWP. Please correct this section of the document.
3. The moat and row project proposed in this supplemental EIR represents a significant change in the design from that approved in the 2008 SIP. Those changes include increased slopes, the addition of fencing and a design change to a grid pattern. Please correct to reflect these points.

Page ES-5 & page 5-5 & 6; **Environmentally Superior Alternative:**

1. See Shallow Flooding comment #1. Please correct.
2. The Environmentally Superior Alternative, is identified as the current project based on faulty information and assumptions. This needs to be reevaluated in light of the correct information.
3. The second sentence in the last paragraph makes the following statement: "The all Shallow Flooding Alternative would have been identified as the environmentally superior alternative, but it had already been considered and rejected in the 2008 FSEIR." Please correct. See page 12-5, of 2008 FSEIR. **ES.2.1 Dust Control Measures**. Which states; "shallow flood was found to be feasible and effective."
4. 9.2 square miles of Shallow Flood has already been approved and is currently being constructed. The statement made in the Environmentally Superior Alternative section on page ES-5 may be misleading or not entirely correct, that the "...other alternatives were evaluated as part of the 2008 FSEIR, two alternatives (i.e., All Shallow Flooding, All Managed Vegetation) were determined not to be **feasible because and [sic] long-term** use of natural resources (e.g., water)." The 2008 FSEIR found that All Shallow Flood did not meet all of the objectives, but that document did not state that the alternative was infeasible. The *Findings* determined that All Shallow Flood was feasible and designated it as the "environmentally superior alternative." In addition, this document states that "No other alternatives are available that **could feasibly and have been proven** to reduce dust emissions at Owens Lake." Again, "All" or "Nothing" Alternatives

are very narrow in focus and they do not reflect the project. Variations or combinations of the alternatives could be very effective, as evidenced by the suggested use of vegetation and water or brine application in the "enhancements" to the Moat and Row elements as enhancements to control dust. (NOTE: See page 12-5 of FSEIR 2008 for actual feasibility statement.)

5. The last paragraph (page ES-5), incorrectly concludes "No other environmentally superior alternatives are available that would attain most of the proposed project's basic objectives." CEQA Guidelines section 15126.6(a) provides that alternatives meet most of the basic objectives. The document does not support the conclusion that only the proposed project meets most of the objectives. The last sentence (page ES-5) is incorrect and should be removed. As stated previously, the original moat and row design was changed significantly from what was approved in the 2008 SIP. It was those significant design changes that necessitated this Supplemental EIR.
6. The document appears to contradict itself and prior discussions between LADWP and Commission staff. During the scoping discussions and as an enhancement to moat and row, LADWP has suggested that if Moat and Row failed to control the dust to the level required under the SIP, then the Moat and Row elements in question could be converted to shallow flood. However, this SEIR states "All shallow flood is not feasible." Please correct or explain this apparent contradiction.

Page ES-7-22: **Table ES-1:**

1. Page ES-10; The document sites a Gary Page conversation that estimates a 1 foot gap for every 10 feet along the fence rows, to potentially allow unimpeded movements. But then, changes to a gap no more than 100 feet apart. Provide data or source for this change.
2. Page ES-12; mitigation 2nd to the last paragraph. The necessity to inspect and maintain the corvid perching should not be conditional; therefore, please remove the "if necessary" at the end of the inserted text.
3. Page ES-14; #3: Once again, please remove the conditional statement "if necessary" from mitigation measures.
4. Page ES-15; Implementation Schedule: Please provide the scientific basis for the frequency of monitoring.
5. Monitoring should report all species trapped in moats.
6. Page ES-19; last paragraph: If actions are not feasible, then they should not be considered as potential mitigation measures and should be removed.
7. Page ES-19. For consistency, notification should be within 48 hours not three days of incident.
8. Page ES-20; 3.1-2; This statement seems to be inconsistent with the document. If potential breeding sites are up to a mile from water, and rows and fences are installed, then access to breeding sites is affected.
9. Page ES-21; 3.3 Visual Resources: Views from the lake bed were not included in the evaluation; and therefore, the potential degradation of a scenic vista has not be adequately evaluated.

2.4.1 Dust Control Areas:

Page 2-10; The second sentence, states that LADWP intends to develop a control measure that costs less to implement; however, no cost analysis is included in the document. Provide a cost estimate for all dust control alternatives or remove this statement from the document and the objectives.

2.4.3 Moat and Row Characteristics:

1. Page 2-15; Please provide a description of the gravel, which includes the size and amount that will be applied to the access roads and roads within the moat and row elements.
2. Page 2-15; Provide information on the underground facilities to be installed in the moat and row DCMs. (first bullet)
3. Provide an estimate of the amount of material that is expected to be excavated from the moat features in the 118 miles of proposed moats.

2.4.8 Row Armoring Enhancements:

1. Page 2-26; Please provide the size and estimated amount of gravel to be applied and the method proposed to place the material.

2.6 Construction Schedule:

1. Page 2-35, This section states that construction is to begin spring of 2009 and should be changed to reflect current status.

Operation and Maintenance:

2.7.1 Moats page 2-38:

1. To adequately evaluate this project, please provide an estimate of the amount of material to be removed from the moats every five years and the number of truck trips.
2. Provide an estimate of the amount of fuel used, per year, to maintain the function of the moats and rows, especially in light of objective # 7, which is to minimize the long-term consumption of natural resources (which would include fuel).

2.7.3 Sand Fences:

1. The sand fence is designed to break free at winds over 71 mph. Please estimate how long it would take and the number of persons (or person-hours) to reattach the 20.6 miles of fence in the project after a wind event and the fuel consumed during this activity.
2. Please provide an estimate, in years, that it is anticipated to take for the sand to reach the 2.5 foot height.

3.1.2 Environmental Setting

The moat picture of Existing Cell T32-1 on Page 3.1-11 shows substantial erosion and slope sloughing after only two to three years. Please address these reoccurring issues in maintenance section.

Project Impacts:

1. Page 3.1-33; Habitat loss within Moat and row cells: Please coordinate with CDFG to identify appropriate mitigation for the +1,503.8 acres of lost nesting habitat.
2. Page 3.1-35; The discussion on cell T1A-1 states that snowy plover would likely nest in this area because only fencing will be used, but then (#5) inserts "and snowy plover habitat would not be affected by moat and row development here." Please clarify, in the light of the statement in #5 that no moats or rows are expected to be constructed in this location.
3. Page 3.1-37; The third paragraph, incorrectly states "...59.1 linear miles of moats..." which should read "Approximately 118.2 linear miles of moats..." Please note that a Moat and Row element contain two moats and one row. Therefore, 59.1 miles of Moat and Row elements contain twice that distance in moats.
4. Page 3.1-37; The statement "Any occurrences of plovers within moats are expected to be infrequent and limited to cell perimeters" lacks supporting evidence.
5. Pg 3.1-37, 38 & 39; The information on slopes and entrapment tend to support the conclusion that entrapment of snowy plover chicks is likely, yet the mitigation measures are deferred until a threshold of fatalities is reached, and then qualifies the mitigations with "if feasible." This mitigation measure defers the quantification of the impact as well as the mitigation measure, and is not consistent with CEQA and with recent court cases.
6. Pg 3.1-38; several statements on this page are not supported by scientific studies or observation. Instead they seem to reflect only speculation (as stated). The third bullet states "If a snowy plover walks or falls into a moat, (1) the combination of slope angle (1.5:1, 33.37 degrees) and surface roughness would likely be sufficient to allow plovers to walk out (**in the absence of monitoring data or observations, conclusions beyond this would be too speculative**); and (2) because snowy plover are specifically adapted to moving in muddy conditions, although possible, mud entrapment would be infrequent." These two statements are made even though information contained within this document (pg. 3.1-37) states plovers are expected to navigate a slope of 1.7:1 or 30 degrees. There is no information on a 1.5:1 or 33.7 degree slope. This statement appears to be contradictory to other statements in the document, as the only slope documented to have been traversed by a brood was 20 degrees (2.7:1). This internal inconsistency on slopes would suggest that some studies need to be done.
7. Page 3.1-38; The second to the last paragraph states that entrapment is expected to be "rare" and then admits that there is no data to accurately predict entrapment. This statement appears to be speculative and without scientific basis.
8. Page 3.1-38; last bullet, last sentence: This sentence states mud entrapment would be infrequent; however, this document (on the same page) contains an account of two plover chicks being fatally trapped in a dewatering trench. This

contradiction would suggest that the mud in combination with a trench has the potential to be a lethal combination for plover chicks and is likely to occur.

Replacement Mitigation Measures:

1. Page 3.1-40; (See Comment #1 Table ES-1) A one foot gap every ten feet (10%) cannot be extrapolated into a gap every 100 feet. Please provide data or supporting documentation.
2. Page 3.1-41; last sentence of the second to the last paragraph: Remove the words "if necessary," as inspection and maintenance are necessary.

New Mitigation Measures:

1. Page 3.1-45; The middle paragraph, first sentence states "...or if actions are determined to not be feasible..." Mitigation measures, especially those that are proposed for "Adaptive management" must be feasible.
2. Page 3.1-42 to 45; Adaptive Management for Moat Entrapment of Snowy Plover. Monitoring and withholding mitigation until a mortality threshold is reached is not mitigation. Many of the adaptive measures contain the phrases "if possible", "if feasible" or "to the extent feasible without substantially compromising overall dust control effectiveness." If the impact cannot be mitigated the draft SEIR should state that. If the DCM cannot meet dust control requirements than it should not be allowed. These should be separate issues and not tied together as a reason to not to mitigate for impacts.
3. The report identifies a slope of 1.7:1 (30 degrees) as navigable by chicks of all ages, why is this not the mitigation slope proposed for the project, at least on the outer slope of the perimeter moats?

3.3 Visual Resources:

The Commission staff is concerned about inconsistencies within the Visual Resources section of the document. The Commission staff concurs with the statement, "the dry, desert character of the historic Owens Lake bed, combined with further expanses of desert landscape immediately surrounding Owens Lake, creates a relatively **unique** and **dramatic** visual landscape." The uniqueness of this Public Trust resource was not granted the appropriate rating in Table 3.3-1 for "scarcity," which should have been 5. Staff also concurs that the visual objective for this area is "management activities may attract attention but should not dominate the view of the casual observer." The presence of many square miles of moat and row elements on the lakebed in close proximity to SR 395 will add color, texture, and man-made structural elements that will interrupt the unique and dramatic visual landscape that Owens Lake affords the public. The casual observer will easily note these features, especially T37-1, T37-2, and T1A-1, from SR 395. Therefore, Commission staff believes that the moat and row elements will have a "substantial adverse effect on a scenic vista" and that they will "substantially degrade the existing visual character or quality of the site and its surroundings." Therefore we concur with the statement in section 4.2.2 that "the proposed project would result in significant and unavoidable adverse impacts on...visual resources."

1. Page 3.3-20; view from the lake bed. See Exhibits 3.1-4a & 3.1-4b (pages 3.1-10 & 3.1-11). There is not a simulation of a lake bed view; therefore, this analysis is inadequate. As members of the public have and do access the lake bed frequently, please provide reference points on the lake bed and provide a simulated view, and then incorporate the lake bed analysis in the final document.
2. Please modify the language to note that moat and row, if approved, will be a permanent view change, whereas, mining activities are temporary.

4.2.2 Significant and Unavoidable Impacts of the Proposed Project

The statement that "the proposed project would result in significant and unavoidable adverse impacts on...visual resources" contradicts the analysis in section 3.3 Visual Resources. However, Commission staff concurs with this summary statement.

5.0 Alternatives to the Project

Objectives:

Page 5-1 & 2-9; The objectives have been changed since the NOP was released and are not consistent with the previous SEIR. The current objectives are so narrowly defined as to eliminate all but the proposed project.

1. The "Goal" is to reduce dust. The objectives are generally used in evaluating the alternatives against the proposed project's goal.
2. Objective 2; "provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service;" The SEIR should analyze each alternative in light of the objectives. None of the alternative evaluations include a cost-effective analysis, an environmentally responsible determination, etc., or how each alternative does or does not meet each objective and subcomponent.
3. Objective 3; "allow for the sparing use of water that would otherwise be diverted for municipal and industrial use and substantially reduce or eliminate the use of water in implementing new dust control projects on the Owens Lake bed;" Objective 3 was added after the NOP was released and was not an objective in the 2008 SEIR. Objective 4; "minimize or compensate for the long term, significant adverse changes to sensitive resources in the natural and human environment by implementing mitigation strategies proposed in this SEIR;" It appears that this is the exception to being too narrow. Instead this is so general that it has no focused meaning and seems to have no analytical value.
4. Objective 7, is poorly written; "minimize the long-term consumption of natural resources (e.g. water);" Provide evaluation of all natural resources, including fuel.