

EXHIBIT D
PROPOSED LEASE AMENDMENT PREPARED BY
COMMISSION STAFF

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:
STATE OF CALIFORNIA
State Lands Commission
Attn: Title Unit
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

STATE OF CALIFORNIA
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A.P.N.
County: Inyo

STATE OF CALIFORNIA
STATE LANDS COMMISSION

DRAFT EIGHTH AMENDMENT OF LEASE PRC 8079.9

WHEREAS, the State of California, acting through the State Lands Commission, hereinafter called Lessor, and, the City of Los Angeles Department of Water and Power, hereinafter called the Lessee, have heretofore entered into an agreement designated as Lease PRC 8079.9 (Lease), authorized by the State Lands Commission on June 14, 1999, and executed July 21, 1999, whereby the Lessor granted to said Lessee a General Lease – Public Agency Use covering certain State Land situated in the dry lakebed of Owens Lake, Inyo County; and

WHEREAS, on June 27, 2000, the Lessor amended the Lease in order for the Lessee to 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; and

WHEREAS, on November 26, 2001, the Lessor amended the Lease in order for the Lessee to construct and operate the South Zone Dust Control Project; and

WHEREAS, on May 2, 2002, the Lessee adopted an Addendum for the Mitigated Negative Declaration previously adopted by the Lessee and the Lessee is required to implement the Mitigation Measures outlined in the Mitigated Negative Declaration and Mitigation Monitoring Program; and

WHEREAS, on June 18, 2002, the Lessor amended the Lease in order for the Lessee to construct and operate an additional 154 acres of shallow flooding at the South Zone Dust Control Project on the south end of Owens Lake; and

WHEREAS, on November 13, 2003, the Great Basin Air Pollution Control District certified EIR SCH No. 2002111020, and the Lessee is required to implement the Mitigation Measures outlined in the EIR and Mitigation Monitoring Program; and,

WHEREAS, on September 23, 2005, Lessee adopted Mitigated Negative Declaration SCH No. 2005061068 and Mitigation Monitoring Program and the Lessee is required to implement the Mitigation Measures outlined in the Mitigated Negative Declaration and Mitigation Monitoring Program; and,

WHEREAS, on April 17, 2006, Lessor amended the Lease in order for the Lessee to construct, operate, maintain and monitor additional acreage of shallow flooding, including construction of drain pipeline, conveyance pipelines, control valve facilities, pump stations, and high voltage power cables, and water monitoring wells for Phases IV and V of the Owens Lake Dust Control Project; and,

WHEREAS, on February 1, 2008, the Great Basin Air Pollution Control District approved the 2008 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan (2008 SIP) and certified EIR SCH No. 2007021127 (EIR) and its associated Mitigation Monitoring Program and the Lessee is required to implement the requirements of the 2008 SIP, as well as the Mitigation Measures outlined in the EIR and Mitigation Monitoring Program; and,

WHEREAS, the 2008 SIP contains Board Order #080128-01 Requiring the City of Los Angeles to Undertake Measures to Control PM₁₀ Emissions From the Dried Bed of Owens Lake; and,

WHEREAS, on August 22, 2008, Lessor amended the Lease in order for the Lessee to construct, operate, maintain and monitor additional acreage of shallow flooding improvements, on the dry bed of Owens Lake known as Phase VII of the Owens Lake Dust Control Project; and,

WHEREAS, on June 1, 2009, Lessor amended the Lease in order for the Lessee to construct, operate, maintain and monitor two earthen berms identified as the Channel Improvements, on the drybed of Owens Lake, as a component of the Phase VII Owens Lake Dust Control Project; and,

WHEREAS, on October 22, 2009, Lessor amended the Lease in order for the Lessee to construct, operate, and maintain the T-5 Drip Irrigation components of the Phase VII Owens Lake Dust Control Project; and,

WHEREAS, Section 4, Paragraph 15(e) of the Lease provides that the Lease may be terminated and its terms, covenants and conditions amended, revised or supplemented only by mutual written agreement of the parties; and,

WHEREAS, the Lessee now desires to **amend the Land Use or Purpose, Authorized Improvements, Special Provisions and description of Lease Premises**, of the Lease in order to construct, operate, maintain and monitor the Moat and Row components of the Phase VII Owens Lake Dust Control Project.

NOW THEREFORE, the parties hereto agree as follows:

1) **Section 1** of the Lease is amended as follows:

- a) The “**Land Use or Purpose**” provision is hereby amended to include authorization of the following activities: Construct, install, operate and maintain, and monitor 3.5 square miles of Moat and Row dust control measures associated with Phase VII of the Owens Lake Dust Control project on the land as depicted on the attached Exhibit “A”.
- b) The “**Authorized Improvements**” provision of Section 1 of the Lease is hereby amended to include the following:

In addition to previously authorized improvements, the following components of Phase VII Moat and Row Dust Control as described in the *2008 Owens Valley PM₁₀ Planning Area Demonstration Of Attainment State Implementation Plan Final Subsequent Environmental Impact Report* (EIR) and FSEIR Owens Lake Revised Moat And Row Dust Control Measures, September 2009, may include: moat & row with sand fences: 20.8 miles of earthen berms (rows) five feet high with 1.5:1 side slopes. Three inches of base course will be applied to the tops of the berms to prevent erosion. A moat measuring 17 feet wide across the top with 1.5:1 side slopes will be constructed on each side of the berm. Sand fence five feet high will be mounted on wooden fence posts measuring 8 inches or 10 inches square; moat and row without sand fences: 42.3 miles of earthen berms five feet high with 1.5:1 side slopes. Six inches of base course will be applied to the tops of the berms to prevent erosion. A moat measuring 16 feet across the top with 1.5:1 side slopes will be constructed on each side of the berm; sand fence only: 3.8 miles of sand fence five feet high will be installed in area T1A-1 using wooden fence posts measuring eight inches or ten inches square; maintenance access: up to 190,673 cubic yards of crushed rock will be applied between the moats and rows for maintenance vehicle access to the moats, rows, and fences; culvert crossing: one culvert crossing will be constructed in T37-2 using 14 high density polyethylene (HDPE) culvert pipes measuring 24 inches in diameter and approximately 60 feet long; barrier gate: one galvanized steel barrier gate (cattle guard) measuring 40 feet will be installed in T32-1; outlets: three irrigation outlets will be installed in T1A-1. Each outlet will consist of a HDPE riser, with diameters ranging from eight to 12 inches, surrounded by a 40-foot square area of riprap; riprap berms: two berms made of riprap, each measuring approximately 1,000 feet long, 1.5 feet high, and 6.5 feet wide will be installed adjacent to T1A-1 and T1A-3 cell areas; T1A-1 submains: 2,015 feet of 16-inch, 415 feet of 12-inch, 2,540 feet of 10-inch, and 1,410 feet of eight-inch HDPE submain pipe will be installed along with various valves for control of irrigation water; T1A-1 turnout facility: a concrete equipment pad measuring 30 feet by six feet by two feet thick will be poured to support various valves (flow control, pressure control, and air release valves), a flow meter, stainless steel piping, and various appurtenances; irrigation extensions: two irrigation extensions, each 12-inch diameter HDPE pipe and approximately 700 feet in length will connect to 12-inch butterfly valves each surrounded by two cubic yards of riprap; temporary construction fencing: approximately 2,550 feet of temporary construction sand fencing will be installed at T32-1 and T37-1 prior to start of other construction activities;

- 2) **Section 2 “Special Provisions”** of the Lease is hereby amended to include the following:
- a) Prior to construction of the Moat and Row dust control design within the Lease Premises, Lessee shall provide to Lessor for Lessor’s staff approval:
 - i. a detailed written program for the maintenance of the Moat and Row design that will minimize impacts to public trust lands and wildlife resources;
 - ii. 1:1 mitigation within Owens Lake for impacts to biological resources resulting from Moat and Row, and agreement to participate in a long-term conservation plan with legally binding requirements to designate an appropriate acreage of shallow flood in perpetuity;
 - iii. a survey of the existing dry lake bed conditions that includes, but is not limited to, ground and aerial photography, and topographical survey data sufficient to restore the site to pre-existing elevations.
 - b) During the period that Lessee occupies lands presently a part of Lease PRC 5464.1 (issued by Lessor to US Borax), Lessee agrees to insure, indemnify and hold US Borax harmless to the same extent that it insures, indemnifies and holds Lessor harmless as stated in Paragraphs 7 and 8 of Section 4 of Lease PRC 8079.9. This provision is for the benefit of U S Borax as third party beneficiary.
 - c) Should the Moat and Row dust control measure design be determined to be ineffective by the Great Basin Unified Air Pollution Control District, and should the remedy involve more than 33% of the disturbed area for all Moat and Row areas, Lessee shall submit an application to Lessor to amend Lease No. PRC 8079.9 to consider implementation of an alternative dust control measure that is compatible with the Public Trust values of Owens Lake (e.g., Shallow Flooding or Managed Vegetation) as will be determined by the Lessor. Depending on the proposed alternative dust control measure, restoration of the lease area to pre-moat and row topography may be required at the sole discretion of Lessor.
 - d) Lessee shall submit as-builts of, and compliance and monitoring reports for all of the improvements for Phase VII of the Owens Lake Dust Control Project as described in Section 1 of this Lease Amendment, within 180 days upon completion of Phase VII.
 - e) Lessee shall execute with the California Department of Fish and Game an Agreement Regarding Proposed Stream or Lake Alteration, Notification Number 1600-2009-0039-R6, and provide to Lessor copies of all monitoring reports resulting therefrom.
 - f) Lessee shall comply with the Mitigation Monitoring and Reporting Program for the Owens Lake Revised Moat and Row Dust Control Measures adopted by Lessor except as modified by specific provision of this Lease Amendment. In the event of any conflict between the provisions of the Mitigation Monitoring and Reporting Program and this Lease Amendment, the provisions of the Lease Amendment shall prevail.

- g) All structures that are constructed on the Lease Premises that can be used as a perch by predators shall require the installation of Nixalite or equivalent perch prevention measures.
- h) Lessee shall provide a written and electronic copy of all Mitigation Monitoring and Reporting documents for this component of the Phase VII Owens Lake Dust Control Project.
- i) Lessee shall not construct or implement any other improvements or modifications to the design or location of the Moat and Row components within the Lease Premises except as described in Section 1 and 2(c) of the Lease Amendment.
- j) Lessee acknowledges that future implementation of additional dust control measures may be necessary, as determined by the Great Basin Unified Air Pollution Control District, which may require amendment to this Lease.
- k) Lessee is responsible for ensuring that any abandoned structure(s) within the Lease Premises are properly and completely removed, transported and disposed of in accordance with all applicable federal, state and local rules and regulations. In removing any abandoned structure(s), the Lessee is required to obtain any permits or other governmental approvals as may then be required. Lessee shall be responsible for all past and any future costs associated with the study, analysis, environmental review for compliance with the California Environmental Quality Act (as required), removal, transportation and disposal of any abandoned structure(s) within the Lease Premises.
- l) Lessee acknowledges that Lessor's approval and issuance of this lease amendment for the Moat and Row project is no assurance that the future use of Moat and Row as a dust control measure will be allowed on sovereign lands at Owens Lake.
- m) Lessee shall ensure that public access and public safety are maintained at all times within the Lease Premises.
- n) Lessee agrees to reimburse Lessor's staff costs for all monitoring and compliance of this Lease and its Amendments, and shall submit a deposit of \$25,000 for such expenses.
- o) Lessee shall reimburse Lessor in full for all reasonable costs and attorneys fees, including, but not limited to, those charged it by the Department of Justice, that Lessor incurs in connection with the defense of any action brought against Lessor challenging the issuance of this Lease, any provision of this Lease, the environmental review upon which the issuance of this Lease or any other matter related to this Lease or its issuance. In addition, Lessee shall reimburse Lessor for any court costs and reasonable attorney fees that Lessor may be required by a court to pay as the result of such action.

3) **Section 3 – “Description of Lease Premises”** is hereby amended to include 3.5 square miles of moat and row dust control measures on the lands described in the attached Exhibit B; all other terms and conditions of the Lease, as amended, shall remain in full force and effect.

The effective date of this Amendment to the Lease shall be December 17, 2009.

This Amendment is a portion of a lease document number PRC 8079.9, with a beginning date of May 1, 1999.

All other terms and conditions of the Lease shall remain in full force and effect.

This Amendment will become binding on the Lessor only when duly executed on behalf of the State Lands Commission of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Amendment as of the dates indicated.

LESSEE:
CITY OF LOS ANGELES
DEPARTMENT OF WATER AND POWER

LESSOR:
STATE OF CALIFORNIA
STATE LANDS COMMISSION

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

(Please attach Notary Acknowledgement)

Execution of this document was authorized
By the State Lands Commission on _____.