

**CALENDAR ITEM**

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PRC 8079.9

C. Connor

**AMENDMENT OF LEASE**

**LESSEE:**

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

**AREA, LAND TYPE, AND LOCATION:**

Sovereign lands in Owens Lake, Inyo County.

**AUTHORIZED USE:**

Research and monitoring at the South Sand Sheet, implementation of shallow flooding and monitoring at the North Sand Sheet, and the construction and operation of the South Zone Dust Control Project. Construction, installation, operation, and monitoring of shallow flooding dust control measures (DCMs) associated with Phases IV, V, and VII of the Owens Lake Dust Control Project. Construction, installation, operation, and monitoring of 0.5 square mile of channel area improvements. Construction of sand fence and vegetation enhancement in Cell T1A-1, in support of the Phase VII Owens Lake Dust Control Project. Construction, use, and maintenance of two access roads (one access road to cell T37-1, and one access road to cell T37-2); and, implementation of soil tillage totaling 3.12 square miles on dust control cell areas T1A-3, T1A-4, T12-1, T32-1, T37-1, and T37-2.

**LEASE TERM:**

20 years, beginning May 1, 1999.

**CONSIDERATION:**

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

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**PROPOSED AMENDMENT:**

The **Land Use or Purpose** of Section 1 of the Lease would be amended to authorize the construction, operation, and maintenance of 2.03 square miles of dust control measures associated with Phase 8 of the Owens Lake Dust Control Project (the Project).

The **Authorized Improvements** of Section 1 of the Lease would be amended to authorize the placement of 2.03 square miles of gravel cover as a dust control measure that includes: placement of up to approximately 1.04 million tons of gravel on top of a permeable geotextile fabric in Lease Parcel Areas A and B; placement of up to approximately 6,000 tons of road base material to expand the existing roadway to 30 feet on Corridor 1; and construction of earthen berms three feet high, 12 feet wide, armored with gravel, that will nearly surround Lease Parcel Areas A and B. A maximum of approximately 20,000 tons of additional gravel per year may be placed for maintenance purposes.

**Section 2, Special Provisions** of the lease would be amended to include, but not be limited to, the following:

- a) Specifications (type, size, color, etc.) of the proposed gravel to be placed within the proposed Lease area shall be approved by the Commission's Executive Officer or his designee. It is intended that the gravel cover blend in with the surrounding playa wherever practicable. If the Lessee objects to the determination by the Executive Officer or his designee, then the Lessee may petition the Commission for a review of that determination within 90 days at a regularly-scheduled Commission meeting.
- b) A written maintenance plan for the lease premises shall be submitted for Commission staff's approval.
- c) All permits, authorizations, and plans issued or required by any and all other state, local, or federal agencies as a result of this project shall be submitted to Commission staff.
- d) Wherever and whenever safe, the City of Los Angeles (City or Lessee) shall maintain public access to the Owens Lakebed throughout the estimated 20-month Phase 8 Project construction period, particularly during the public's annual bird counting activities.
- e) The City shall implement and adhere to the environmental impact minimization measures described in Exhibit C - Mitigation Monitoring and Reporting Program, which is part of the Owens Dry Lake Phase 8 Dust Control Measures Mitigated Negative Declaration submitted by the Lessee

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and adopted by Lessor on December 10, 2010, 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 the Lease Amendment, the provisions of the Lease Amendment shall prevail.

- f) To offset the estimated Greenhouse Gas Emissions from construction and maintenance of the Phase 8 Dust Control Project, the City shall obtain 13,965 metric tons of carbon offsets/Renewable Energy Certificates (RECs) as a one-time obligation, to be purchased prior to construction of the Phase 8 Dust Control Project. The City shall submit proof of acquisition of the carbon offsets/RECs to Commission staff prior to commencement of the Phase 8 Dust Control Project.
- g) The City acknowledges the Commission's approval and issuance of this Lease Amendment for the placement of gravel dust control measures on the Owens Lakebed is no assurance that future use of gravel cover would be allowed on sovereign lands of the Owens Lakebed. Lessee acknowledges that it is Lessor's position that placement of gravel cover on the Owens Lakebed does not protect or promote its Public Trust uses and values and any future requests for the placement of gravel cover on Owens Lake is subject to further evaluation by the Commission on a case-by-case basis, as with any other project, taking into account all relevant factors, including other components of the project that may enhance Public Trust uses and values in determining whether the project is in the best interests of the State: each time the Commission takes action to approve or reject a project it is exercising its authority and responsibility as trustee of the State's Public Trust lands as authorized by law (Public Resources Code sections 6301 and 6216).
- h) The City shall only use the proposed gravel stockpile in Area A during the construction period expected to last approximately 20 months. Gravel shall not be stockpiled on the Lease Premises for maintenance activities.
- i) The Lessee shall be responsible for reimbursing all of Lessor's reasonable staff expenses, not to exceed \$50,000, incurred by Lessor and its staff for ensuring compliance with all terms and conditions of the Lease including but not limited to the Mitigation Monitoring and Reporting Program.
- j) To mitigate for the loss of potential enhancement of Public Trust values on the 2.03 square miles of Owens Lake to be covered by gravel and in consideration for the granting of this Lease Amendment, Lessee shall within 6 months following authorization of this Lease Amendment by Lessor deposit \$500,000 into the Kapiloff Land Bank Fund for the acquisition, management, maintenance and improvement of real property located adjacent or within the

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bed of Owens Lake for the Public Trust purposes of ecological preservation, open space, wildlife habitat and public access.

- k) Within 180 days of Lessee's completion of the placement of the gravel and related Project activities, Lessee will provide copies of as-built plans or drawings for the authorized improvements.
  
- l) Lessee shall reimburse Lessor in full for all reasonable costs and attorneys fees, including, but not limited to, those of the Department of Justice, not to exceed \$1,000,000, 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 is based 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.

**Section 3, Description of Lease Premises**, would be amended to include the lands described in the attached Exhibit "B" and as depicted on the attached Exhibit "A", which by reference are made a part hereof.

All other terms and conditions of Lease No. PRC 8079.9, as amended, would remain in effect.

**OTHER PERTINENT INFORMATION:**

- 1. The City applied to the Commission for authorization of the placement of 2.03 square miles of gravel dust control measures (DCMs) on the dry lakebed of Owens Lake, as the Phase 8 component of the Owens Lake Dust Mitigation Program.
  
- 2. The proposed project would involve the installation of a four-inch layer of coarse gravel screened to greater than ½-inch in diameter to the surface of the Owens Dry Lake playa on two areas of the lake, shown on Exhibit A. Approximately 1.01 million tons of gravel is proposed for placement within Area A and approximately 0.03 million tons of gravel is proposed for placement in Area B. The gravel would be placed on top of a permeable geotextile fabric. The gravel is anticipated to be obtained from local gravel production operations such as the Los Angeles Department of Water and Power (LADWP) shale pit located on Federal Bureau of Land Management lands east of State Route 136, approximately two miles from the lakebed southeast of Keeler and the Federal White Aggregate Dolomite mine located off the lakebed south of Swansea and east of Highway 136 (refer to Exhibit A-3).

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4. It is anticipated that no maintenance will be required in the first few years of operation. Sand and dust accumulation, washouts, or inundation may require additional gravel placement. Up to approximately 20,000 tons of gravel per year may be placed for ongoing maintenance.
5. Gravel is a dust control measure approved by the Great Basin Unified Air Pollution Control District (Great Basin) as a BACM to reduce the emissions of PM<sub>10</sub> leaving the property. Other currently accepted BACM measures include shallow flooding and managed vegetation. The City, in coordination with Commission staff and other responsible agencies and interested parties, is engaged in a lake-wide master planning process to identify additional DCMs, locations of wildlife habitat areas, public access and recreation areas, and sites for potential solar energy development. The master plan is expected to be available for public review sometime in 2011.
6. The proposed project also includes the widening of the Corridor 1 roadway, located in an area authorized by the Commission in a previous lease amendment, from 12 feet to 30 feet, requiring the addition of approximately 6,000 tons of road base material to be obtained from LADWP's Shale Pit.
7. An earthen berm, approximately three feet high and approximately 12 feet wide, armored with gravel, would be constructed to nearly surround both dust control areas A and B. The berms are proposed to be constructed with a 2:1 slope. The berms are proposed for wind protection and to prevent gravel washout during high storm water flows.
8. A Mitigated Negative Declaration (MND), SCH# 2010071044, and accompanying Mitigation Monitoring and Reporting Program were prepared and adopted for this project by the City on September 7, 2010. Commission staff has reviewed and considered such documents.
9. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370, et seq. However, the Commission declared that all lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significant is not based upon the requirements and criteria of Public Resources Code Sections 6370, et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the

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use classification as required by Title 2, California Code of Regulations, Section 2954 is not applicable.

**BACKGROUND**

One hundred twenty-five years ago, the water of Owens Lake covered 110 square miles and was over 50 feet deep. A steamboat carried cargo across its broad expanse. Early settlers diverted water from the Owens River to grow crops and irrigate pasture for livestock. Wildlife, waterfowl, and local residents depended on and benefitted from Owens Lake. This lake was an important feeding and resting stop for millions of waterfowl each year. After the City began operating the Los Angeles Aqueduct in 1913, the lake level rapidly declined. Within approximately 25 years, only a small brine pool remained of the original 110-square mile lake. Today, high winds may carry away as much as four million tons (3.6 million metric tons) of dust from the lakebed each year, causing respiratory problems for residents in the Owens Valley.

The United States Environmental Protection Agency (U.S. EPA) designated the southern part of the Owens Valley as a Serious Non-Attainment Area for PM<sub>10</sub>. PM<sub>10</sub> is an abbreviated reference for suspended particulate matter (dust) less than or equal to 10 microns in mean aerodynamic diameter (approximately 1/10 the diameter of a human hair). Great Basin subsequently designated the Non-Attainment area as the "Owens Valley PM<sub>10</sub> Planning Area."

Great Basin determined that dust emissions from the dry lakebed of Owens Lake are responsible for causing the air in the Owens Valley PM<sub>10</sub> Planning Area to exceed the PM<sub>10</sub> national ambient air quality standards and water diversions by the City caused Owens Lake to become dry and the lakebed to be in a condition producing dust.

On June 14, 1999, the Commission authorized the issuance of Lease No. PRC 8079.9 to the City of Los Angeles for a period of 20 years, for the Owens Lake South Sand Sheet Air Quality and Sand Fence Effectiveness Monitoring System. Since that time, the Commission authorized nine amendments to this lease for the construction, operation, and maintenance of additional components of dust control. These components include 35.2 square miles of shallow flooding, 3.7 square miles of managed vegetation, 3.12 square miles of tillage, 0.4 square miles of sand fencing, and 0.14 square miles of gravel.

On April 6, 2010, the Commission denied an application by the City for a lease amendment to allow the construction of the moat and row dust control design on the remaining Phase VII emissive sites. The moat and row design was denied

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because it was found to be inconsistent with the Public Trust needs, resources, and values of Owens Lake, and was not in the best interests of the State.

Great Basin subsequently granted a variance to the City, allowing the City more time to implement DCMs on the areas proposed for the moat and row. As a condition for granting the variance, Great Basin required the City to construct two additional square miles of BACM dust controls a year earlier than compared with normal procedures. These two square miles make up the Phase 8 Project.

Commission staff commented on the City's proposed MND by letter dated August 17, 2010, for the proposed Project. Commission staff expressed numerous concerns with the project description, environmental analysis, and impacts to Public Trust values.

**PUBLIC TRUST**

Owens Lake is State sovereign land held in trust for the people of the State under the Public Trust Doctrine. This common law doctrine ensures the public's right to use California's waterways for navigation, fishing, boating, and other water-oriented activities. Preservation of lands in their natural state to protect scenic and wildlife habitat values is also an appropriate Public Trust use (*Marks v. Whitney* (1971) 6 Cal.3d 251). Uses that do not protect or promote Public Trust values, are not water dependent or oriented, and exclude rather than facilitate public access and use, are not consistent with the trust. The Commission has the responsibility to manage Owens Lake on behalf of the public to protect these rights and values.

For years, the City diverted water from Owens Lake, which has forever changed the Public Trust values at Owens Lake. Continuing Public Trust uses on the lakebed include public access, recreation, wildlife habitat, open space, and aesthetic enjoyment, among others. The currently proposed gravel cover project on two square miles of the lakebed would not enhance but rather diminish its Public Trust values. Commission staff opposed the widespread application of gravel on the lakebed for nearly 20 years because of its impacts to Public Trust values.

Nevertheless, the City proposed gravel cover because it does not require the application of water and it meets Great Basin's requirements for dust control. Unlike the City's earlier moat and row design, gravel cover would not entrap wildlife, although it would eliminate wildlife habitat. Gravel cover would not block or restrict the viewshed, and the visual impact would be minimized by blending gravel to approximate the same color as the existing lakebed.

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In order to work toward the goal of reducing the PM<sub>10</sub> emissions from the Owens Lakebed, Commission staff proposed a special lease provision requiring the City to preserve and enhance the Public Trust values of Owens Lake elsewhere in order to offset the loss of Public Trust values resulting from the proposed Project. This provision calls for the acquisition of another property with habitat value located along the side of the lakebed. Authorization for approval of the acquisition of the real property would be brought to the Commission for consideration.

The discretionary action to be taken by the Commission is ultimately a policy decision taking into account all relevant factors, including consistency with the Public Trust, in determining whether the project is in the best interests of the State. Each time the Commission takes action to approve or reject a project, it is exercising its authority and responsibility as trustee of the State's Public Trust lands as authorized by law (Public Resources Code sections 6301 and 6216). Application of the Public Trust Doctrine may require a balancing of competing uses and needs (National Audubon Society v. Superior Court of Alpine County (1983) 33 Cal. 3d 419, 496-497.)

Commission staff believes the benefits to the State resulting from the required lease provision – the acquisition of additional real property with habitat value – would offset the loss of Public Trust values from implementation of the Phase 8 Project and therefore recommends approval of the lease amendment.

**APPROVALS OBTAINED:**

City of Los Angeles Department of Water and Power

**FURTHER APPROVALS REQUIRED:**

California Department of Fish and Game  
California Department of Transportation  
Lahontan Regional Water Quality Control Board  
Bureau of Land Management  
U.S. Army Corps of Engineers

**EXHIBITS:**

A.1 – A.3 Site/Location Map  
B. Land Description  
C. Mitigation Monitoring and Reporting Program  
D. Lease Amendment (Not available at this time.)

**PERMIT STREAMLINING ACT DEADLINE:**

April 4, 2011



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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that a Mitigated Negative Declaration and a Mitigation Monitoring and Reporting Program were prepared and adopted for this project on September 7, 2010, by the City of Los Angeles Department of Water and Power and that the Commission reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring and Reporting Program, as contained in Exhibit C, attached hereto.

**AUTHORIZATION:**

Authorize the Amendment of Lease No. PRC 8079.9, a General Lease – Public Agency Use, to amend the Land Use or Purpose, the Authorized Improvements, the Special Provisions, and the Land Description as described herein to authorize the construction, operation, and maintenance of gravel dust control measures on 2.03 square miles of lands shown on Exhibit A (for reference purposes only) and described on Exhibit B attached and by this reference made a part hereof; consideration being the public health and safety, together with a deposit of \$500,000 into the Kapiloff Land Bank Fund for the acquisition, management, maintenance and improvement of real property located adjacent or within the bed of Owens Lake for the Public Trust purposes of ecological preservation, open space, wildlife habitat and public access, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests; all other terms and conditions of the lease as previously amended will remain in effect without amendment.