

CALENDAR ITEM

02

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09/02/14

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PRC 8079.9

D. Simpkin

AMENDMENT OF LEASE

APPLICANT:

City of Los Angeles
Department of Water and Power
111 North Hope Street
Los Angeles, CA 90012

AREA, LAND TYPE, AND LOCATION:

Sovereign land in the dry lake bed of 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 (OLDCP). 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 OLDCP. Construction, use, and maintenance of two access roads (one access road to cell T37-1, and one access road to cell T37-2). Construction, operation, and maintenance of 2.03 square miles of DCMs associated with Phase VIII of the OLDCP including placement of gravel on top of permeable geotextile fabric, placement of road material to expand an existing roadway, construction of earthen berms, and placement of gravel for maintenance purposes. Placement of above-grade sprinkler systems within the Channel Area and Area T1A-1. The construction, use, and maintenance of 3.1 square miles of dust control in six Dust Control Areas (DCAs) and 3.4 square miles of transitioned dust control in seven DCAs. The use of a stockpile area to store aggregate road base material.

LEASE TERM:

20 years, beginning May 1, 1999.

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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.

PROPOSED AMENDMENT:

Section 1, Land Use or Purpose, of the Lease would be amended to authorize the conversion of 11 shallow-flood areas already under lease totaling approximately 4.12 square miles (approximately 2636.8 acres) into a variation of Shallow Flooding, called Tillage with Best Available Control Measure Backup (TWBB).

Section 2, Special Provisions, of the Lease would be amended, in part, to include requirements to:

- 1) Return any area authorized for TWBB to shallow flood if TWBB is determined to be ineffective by the Great Basin Unified Air Pollution Control District;
- 2) Develop an Adaptive Management Plan that includes a habitat monitoring protocol and a remediation protocol to ensure that existing habitat values are maintained after implementation of TWBB;
- 3) Validate and update the Habitat Suitability Model and Suitability Index Values;
- 4) Provide annual monitoring reports on the Habitat Suitability Model validation effort, parameter values, bird survey results, and recommendations;
- 5) Fund an independent third-party entity to monitor the effects of TWBB on bird habitat in the TWBB areas and to review the validation effort, Adaptive Management Plan, annual reports, and provide recommendations;
- 6) Conduct surveys for birds nesting in tilled areas, and if present, postpone re-tilling or adding water until after the nesting season;
- 7) Include any new DCAs into the Master Project planning process.

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

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BACKGROUND:

The city of Los Angeles (City) has implemented dust control measures (DCMs) on the dry lake bed of Owens Lake under this Lease to comply with regulatory orders imposed by the Great Basin Unified Air Pollution Control District (District). To accommodate the City's dust mitigation program, the Lease has been amended fourteen times since 1999. Three dust control measures are currently approved by the District (Best Available Control Measures or BACM): shallow flood, managed vegetation, and gravel cover. Both shallow flood and managed vegetation use water to control dust. To date, the City has implemented approximately 42 square miles (approximately 26,880 acres) of these BACM, mostly shallow flood. An additional 3.1 square miles of DCMs is currently being constructed under the OLDPCP Phase 7a.

In response to the City's desire to use less water for dust control and concerns by the Commission and other stakeholders about various issues, starting in March 2010, Commission staff participated in a collaborative process with the City, other public agencies, non-governmental organizations, tribes, and other interested stakeholders to develop a "Master Plan" as a framework to manage the variety of important resources on the lake while continuing to control dust. A Planning Committee, Coordinating Committee, five resource-discipline work groups, and an Agency Forum met regularly throughout 2010 and 2011 to develop the Master Plan, and produced an *Owens Lake Master Plan – Planning Committee Review Draft* in December 2011.¹

The key goals of the Master Plan included the following:

- Effectively control dust and improve air quality;
- Protect, create, and/or enhance ecological resources;
- Protect cultural resources;
- Promote water efficiencies and reduce water use;
- Promote economic development in the area through increased tourism, public access, and education;
- Create a viewshed that is in harmony with the surrounding environment; and
- Emphasize sustainability in the Master Plan and adapt to climate change.

While the Draft Master Plan was never finalized, it continues to guide ongoing discussions related to the City's "Master Project" proposal, described below.

Beginning in October 2012, the City filed lawsuits in state and federal court against the District's new orders requiring dust control on previously uncontrolled areas of the lake bed owned by the state and under the jurisdiction of the Commission. The federal lawsuit was dismissed, but the state court case is ongoing. The Commission is named

¹https://owenslakebed.pubspsvr.com/Master%20Plan/Owens_Lake_Master_Plan_Planning_Committee_Review_Draft_December_2011.pdf.

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as a Real Party in Interest. A hearing on the merits of the case is scheduled for September 26, 2014.

In January 2013, the City issued a list of “must have” requirements for any future Owens Lake plan, including:

- Acceptance of Master Plan elements that protect or improve the habitat and public benefit goals within the areas where LADWP dust controls currently exist.
- Reduction in the amount of Los Angeles Aqueduct water applied to Owens Lake for dust mitigation by at least 50 percent to lessen Los Angeles’ need for water from other California sources.
- Lawfully-established limit of 45 square miles of dust controls that Los Angeles is responsible to construct and maintain.
- Approved new waterless dust control methods.
- Allowance to transition sufficient areas of the lakebed without penalties.
- Easement or other indisputable, permanent right to execute and maintain the lakebed according to the plan provisions.
- Allowance to utilize groundwater under the lakebed to achieve the full habitat goals.

The City adopted these requirements for a new planning approach for a “Master Project.” While the Master Plan looked at the entire Owens Lake bed, the Master Project focuses only on areas where the City has already committed to implementing DCMs. This negates the benefits of the Master Plan’s comprehensive approach allowing environmental impacts to be mitigated over the entire lake bed.

DESCRIPTION OF TWBB PROJECT:

The City is proposing to convert 11 shallow-flooding areas into TWBB. The conversion will cover approximately 4.12 square miles. Existing shallow flood areas will be tilled by tractor with a disk, plow or rotary hoe, tilted dozer blades or excavators, creating rows of ridges which will roughen or clod the soil surface. Tilled rows approximately 2 feet deep and up to 4 feet high will be spaced up to 14 feet apart. Tilled cells will be monitored by the City and the District. The cells may be retilled or rewetted and retilled to restore effectiveness. Existing infrastructure will supply water for rewetting. To maintain existing shore bird and waterfowl habitat values, a series of small islands will be created within cells T16 and T2-2. Installation of TWBB may take up to five months. Should TWBB become ineffective, Shallow Flooding may be reinstated via existing infrastructure, pursuant to District orders.

ANALYSIS:

The City believes it has addressed maintenance of habitat values for the TWBB Project using the Habitat Suitability Model (HSM) developed during the Master Planning process. More detailed information on the HSM’s application to the TWBB Project is

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presented below. The HSM was used in planning the Phase 7a Project approved by the Commission in September 2013; however, it likely will be years before it is known whether the HSM is successful as a planning tool for maintaining habitat values, as measured by both the HSM parameters and actual habitat use by each of the six “guilds” subject to study, particularly within the smaller area of the existing DCMs. Until the HSM is validated over time, Commission staff is concerned that existing habitat values may be lost. To address this concern, Commission staff recommends the City be required to do the following:

- Validate and update the HSM, as appropriate, using the additional years of monitoring data that have been collected since the 2010 HSM was developed, in order to determine if the HSM parameters are effectively providing habitat for the target guilds. The validation shall incorporate current bird presence and abundance data as well as an analysis of whether the Suitability Index Values should be adjusted, or if new measurement parameters should be added to the Suitability Index. Any revisions to the Suitability Index Values and/or the HSM that are deemed necessary by Commission staff and the California Department of Fish and Wildlife shall be documented and incorporated into the Adaptive Management Plan.
- Upon completion of the initial tillage of the 11 TWBB cells, develop and submit to Commission staff for approval an Adaptive Management Plan that describes, at a minimum, a proposed habitat monitoring protocol to evaluate post-construction performance, specifically, maintenance of habitat values, of the TWBB DCAs and a remediation protocol to ensure that any deficiencies in expected post-implementation habitat values are corrected. The remediation protocol will be triggered in the event the Habitat Value Acres in the TWBB DCAs are measured to be more than 10 percent below the projected values after 3 years of monitoring (March 2018). The Adaptive Management Plan shall further describe replacement habitat to be provided by Lessee should the TWBB DCAs not meet the identified performance standard (i.e., maintenance of habitat values), as measured by both the Habitat Suitability Model (HSM) and actual habitat use by the target guilds, within 5 years of implementing corrective actions pursuant to the remediation protocol. The Adaptive Management Plan shall incorporate to the maximum extent practicable the monitoring and adaptive management guidelines described in Chapters 6.5 and 6.6 of the *Owens Lake Master Plan – Planning Committee Review Draft* (December 2011).
- Provide Annual Monitoring Reports to the Commission that include the measured HSM parameter values, bird survey results, recommendations for the upcoming year, and the status of the HSM validation effort.
- Fund an independent third-party organization that will monitor the effects of TWBB on bird habitat in the 11 subject DCAs. In addition, the independent monitor will review the City’s HSM validation, the Adaptive Management Plan,

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and the annual reports, and provide recommendations to the Commission and the City that could be incorporated into future adaptive management actions. The selection of the third-party consultant shall be approved by Commission staff.

Habitat Suitability Model Evaluation of the TWBB Project

The City submitted, as part of its application materials, an analysis of the TWBB Project's ability to maintain habitat values, using as comparison the 2010 HSM habitat values. According to the City, implementation of the TWBB Project on the 11 DCAs would maintain and/or increase the calculated habitat value acres. It is important to note, again, the Commission staff's concerns with the application of the HSM on a limited basis, the need for biological survey data to be incorporated into the determination that habitat values are being maintained (i.e., verification), and the need for additional data collection to validate and/or update the HSM. The City's projected habitat value acres compared to existing conditions are shown in the table below.

Table 17. Projected habitat value (value-acres) of the project compared to existing average habitat value for Owens Lake species guilds.

DCA	Post-Project					
	Diving Waterbird Habitat Value	Breeding Waterfowl Habitat Value	Migrating Waterfowl Habitat Value	Breeding Shorebird Habitat Value	Migrating Shorebird Habitat Value	Alkali Meadow Habitat Value
T16	1029	0	193	392	223	0
T3SW	0	0	0	5	0	0
T3SE	0	0	0	4	0	0
T3NE	0	0	0	2	0	0
T2-2	4	0	58	114	100	0
T2-3	0	0	0	1	0	0
T2-4	0	0	0	2	0	0
T5-4	0	0	0	1	0	0
T29-4	0	0	0	2	0	0
T3SE Addition	0	0	0	1	0	0
T24 Addition	0	0	0	1	0	0
Post-Project sum	1033	0	251	525	323	0
	Existing Conditions					
T16	906	0	184	202	223	0
T3SW	0	0	0	46	0	0
T3SE	0	0	0	69	0	0
T3NE	0	0	0	15	0	0
T2-2	43	0	30	33	44	0
T2-3	6	0	13	16	23	0
T2-4	0	0	0	19	0	0
T5-4	0	0	21	6	4	0
T29-4	0	0	0	32	0	0
T3SE Addition	0	0	0	23	0	0
T24 Addition	0	0	0	6	0	0
Pre-project sum	955	0	248	467	294	0
Percent change	8.2%	0.0%	1.2%	12.4%	9.9%	0.0%
Net change	78	0	3	58	29	0

(Source: Application, Appendix C)

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Future Projects

The District has ordered dust controls on an additional 3.62 square miles of the dry lake bed and is monitoring another 1.92 square miles for emissiveness. This requirement to implement additional DCMs is the subject of ongoing litigation as described above. Should the City become responsible to mitigate the dust on these new areas through an agreement or court order, a requirement to add these areas into the Master Project planning process will become effective under this Lease Amendment.

EVALUATION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA):

As part of proposing to transition the above-identified dust control areas (DCAs) from shallow flood BACM to TWBB, the City evaluated whether additional CEQA review was required under Public Resources Code section 21166 and section 15162 of the State CEQA Guidelines. The City determined that construction and operation of the TWBB Project does not involve any new or substantially more severe significant impacts, and prepared an addendum to each of the three prior CEQA documents relating to the DCAs that are the subject of this lease amendment. The addenda describe the changes to the DCAs being proposed and provide explanations, pursuant to CEQA Guidelines section 15164, subdivision (e), supporting the City's decision not to prepare additional environmental analysis in a subsequent document.

Commission staff has reviewed the prior CEQA documents, the addenda prepared by the City, and made an independent analysis of the anticipated environmental consequences of the requested lease amendment, and recommends the Commission find based on substantial evidence gathered through this examination, that:

- None of the events identified in Public Resources Code section 21166 or CEQA Guidelines section 15162 has occurred or will occur due to the proposed lease amendment allowing transition of the identified DCAs; and
- Approval of the lease amendment would fall under the scope of the three prior CEQA documents relevant to the amendment, as modified by the addenda.

The City is required to implement and comply with all previously applicable mitigation measures and reporting obligations as set forth in the Mitigation Monitoring Programs related to the Commission's original lease amendment approvals for the 11 existing shallow flood areas that will be converted to TWBB.

OTHER PERTINENT INFORMATION:

1. On June 14, 1999, the Commission authorized the issuance of Lease No. PRC 8079.9, a General Lease – Public Agency Use, to the City 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 has authorized numerous amendments to the Lease for the

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construction, operation, and maintenance of additional components of dust control.

2. On September 20, 2013, the Commission authorized an amendment to Lease No. PRC 8079.9, for construction, use, and maintenance of 3.1 square miles of dust control in six DCAs and 3.4 square miles of transitioned dust control in seven DCAs associated with OLDCP Phase 7a.
3. On April 23, 2014, the Commission authorized an amendment to Lease PRC 8079.9 to authorize the inclusion of a stockpile area to store aggregate road base material during Phase 7a construction and include a land description for an access road and modified water supply pipeline previously authorized by the Commission as part of Phase 7a but not included in the previous land description.
4. On July 9, 2014, the City submitted the subject application to amend Lease No. PRC 8079.9 to authorize the conversion of 11 shallow flood areas into TWBB on a total of approximately 4.12 square miles. According to the City, the proposed conversion would save approximately 8,500 acre-feet of water per year while maintaining air quality as mandated by the District.
5. CEQA Information:

Dust Control Areas T3SW, T3SE, T3NE, T24

An EIR, State Clearinghouse No. 2002111020, was prepared for this project by Great Basin Unified Air Pollution Control District and certified on November 13, 2003. Commission staff has reviewed this document, the Mitigation Monitoring Program, and the Addendum adopted by the City.

Dust Control Areas T2-2, T2-3, T2-4, T5-4, T29-4, T3SE Addition

An MND, State Clearinghouse No. 2005061068, was prepared for this project by the City and adopted on September 23, 2005. Commission staff has reviewed such document, the Mitigation Monitoring Program, and the Addendum adopted by the City.

Dust Control Area T16

An EIR, State Clearinghouse No. 2007021127, was prepared for this project by Great Basin Unified Air Pollution Control District and certified on February 1, 2008. Commission staff has reviewed such document, the Mitigation Monitoring Program, and the Addendum adopted by the City.

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Commission staff reviewed the proposed changes from the TWBB Project compared with the projects analyzed in the CEQA documents described above and recommends a finding that none of the events specified in Public Resources Code section 21166 or CEQA Guidelines section 15162 has occurred, and therefore, no additional CEQA analysis is required.

6. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are “significant” by nature of their public ownership (as opposed to “environmentally significant”). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project’s consistency with the use classification as required by California Code of Regulations, Title 2, section 2954 is not applicable.

EXHIBIT:

- A. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that an EIR, State Clearinghouse No. 2002111020, was prepared for this Project by Great Basin Unified Air Pollution Control District and certified on November 13, 2003, and that the Commission has reviewed and considered the information contained therein and in the Addendum prepared by the City.

Find that an MND, State Clearinghouse No. 2005061068, was prepared for this Project by the City of Los Angeles Department of Water and Power and adopted on September 23, 2005, and that the Commission has reviewed and considered the information contained therein and in the Addendum prepared by the City.

Find that an EIR, State Clearinghouse No. 2007021127, was prepared for this Project by Great Basin Unified Air Pollution Control District and certified on February 1, 2008, and that the Commission has reviewed and considered the information contained therein and in the Addendum prepared by the City.

Find that in its independent judgment, none of the events specified in Public Resources Code section 21166 or CEQA Guidelines section 15162 resulting in any new or substantially more severe significant impacts has occurred, and therefore, no additional CEQA analysis is required.

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AUTHORIZATION:

1. Authorize the amendment of Lease No. PRC 8079.9, a General Lease – Public Agency Use, to authorize the conversion of 11 shallow-flood areas totaling approximately 4.12 square miles into Tillage with Best Available Control Measures Backup as shown on Exhibit A (for reference purposes only) attached and by this reference made a part hereof; all other terms and conditions of the Lease will remain in effect without amendment.

2. Delegate to the Commission's Executive Officer the authority to review and approve: 1) the Adaptive Management Plan and any subsequent revisions; and 2) Lessee's selection of a third party monitoring consultant.

NO SCALE

SITE

- Areas being Converted from Shallow Flooding to Tillage with BACM Backup
- CSLC Approved Phases of Dust Control

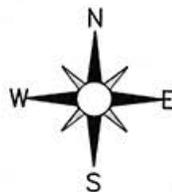
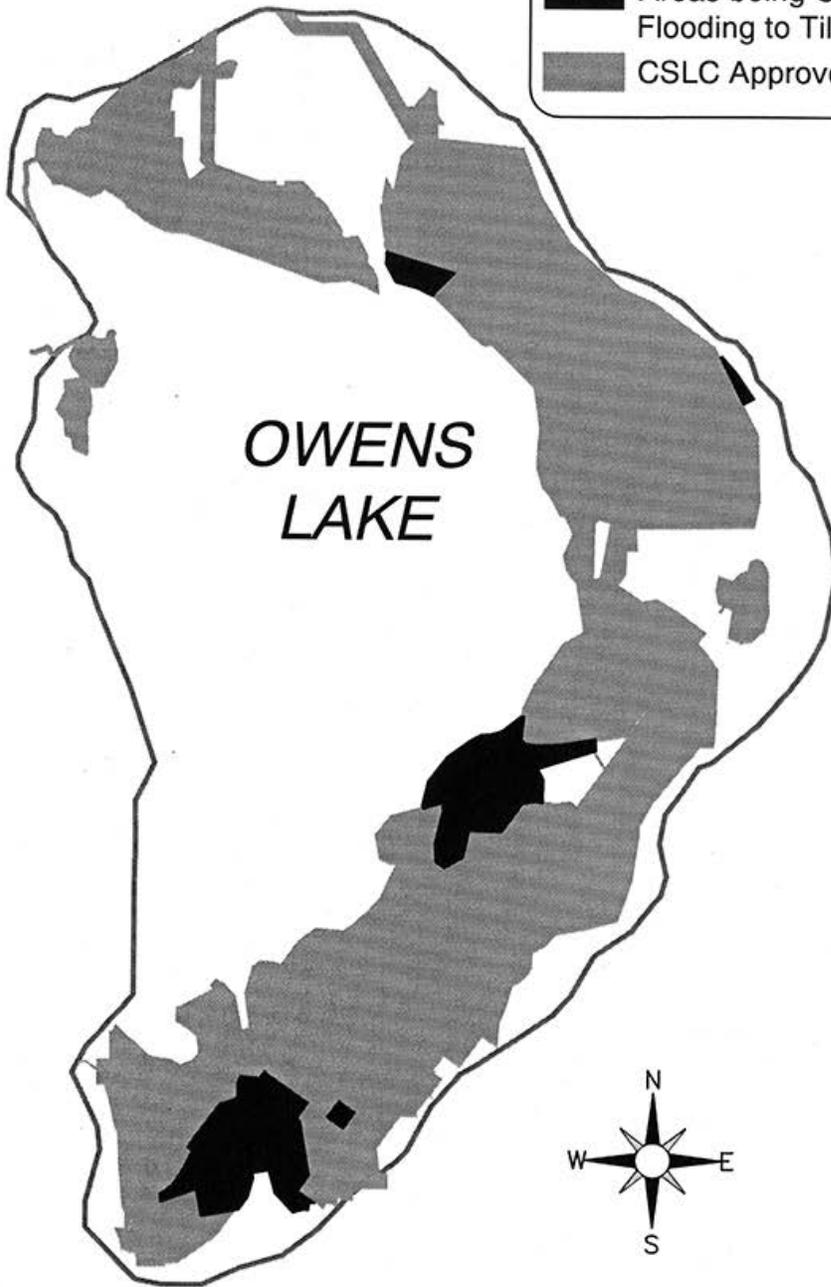


Exhibit A
PRC 8079.9
LADWP
GENERAL LEASE -
PUBLIC AGENCY USE
INYO COUNTY



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.