

1 **BEFORE THE HEARING BOARD**

2 **OF THE**

3 **GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT**

VARIANCE REQUEST

Petitioner:

City of Los Angeles
Department of Water & Power
111 North Hope Street, Suite 340
Los Angeles, California 90012-2607

Request Received: August 21, 2009

Facility Location:
Owens Lake Dust Mitigation Project
111 Sulfate Road, Keeler, CA 93530

Docket Number: GB09-06

FINDINGS AND ORDER GRANTING

REGULAR VARIANCE FROM

REQUIREMENTS SET FORTH IN

GOVERNING BOARD

ORDER 080128-01

Hearing Date: September 25, 2009

4 **BACKGROUND**

5 The City of Los Angeles Department of Water and Power (Petitioner) submitted a variance
6 petition to the Great Basin Unified Air Pollution Control District (District) Hearing Board on August 21,
7 2009 pursuant to California Health and Safety Code Section 42350 and District Regulation VI (Rules
8 600 *et seq.*) Petitioner requested consideration of a variance to temporarily relieve it from the obligation
9 to comply with District Board Order 080128-01, paragraphs 3, 7 and 10 and for one year of regulatory
10 relief from October 1, 2009 deadline set forth in said order to complete 3.5 square miles of alternative

1 experimental dust control measure (DCM) known as "Moat & Row" on the dried bed of Owens Lake,
2 California.

3 As described in the variance petition, Petitioner contended that delays in securing approvals for
4 their Moat & Row project from State Lands Commission and California Department of Fish and Game
5 will cause the 3.5 square-mile project to be completed one year late, by October 1, 2010. Petitioner
6 contended that the delays were beyond its reasonable control. However in order to offset the excess air
7 pollution emissions caused by the one year delay, Petitioner agreed to two additional dust control
8 projects.

9 PROCEEDINGS

10 Pursuant to District Rule 617, upon receipt of the petition, the Air Pollution Control Officer
11 (APCO) transmitted the Petition together with the APCO's recommendation to grant the regular
12 variance to the Hearing Board. The recommendations were set forth in the Staff Report for this matter,
13 which is on file with the Hearing Board.

14 Pursuant to Government Code 42359.5 and District Rule 16, with notice and hearing, the
15 Hearing Board considered the Petitioner's Regular Variance petition and the District's recommendations
16 on September 25, 2009 in the Town of Mammoth Lakes Council Chambers, 437 Old Mammoth Road,
17 Suite Z, Mammoth Lakes, California 93546, with participation and sworn testimony from Ted Schade,
18 GBUAPCD APCO; Grace McCarley Holder, GBUAPCD Playa Geologist; William VanWagoner,
19 Milad Taghavi, Brian Tillemans and Gene Coufal, City of Los Angeles Department of Water and Power.
20 Tori Jenkins, Clerk of the Board; Julie Conboy Riley and David Hodgekiss, Counsel for the City of Los
21 Angeles Department of Water and Power; George Poppic of the California Air Resources Board,
22 Representing Counsel for the Hearing Board; and Mel Joseph of the Lone Pine Paiute Shoshone
23 Reservation were in attendance. After hearing all testimony and considering all evidence, the Hearing

1 Board made the Findings and granted the issuance of a Regular Variance subject to certain conditions as
2 set forth below.

3 **FINDINGS**

4 The Hearing Board makes the following findings as required by Sections 42352 and 42353 of the
5 California Health and Safety Code:

- 6 1. Petitioner will be in violation of District Board Order 080128-01, Paragraph 3, which requires
7 Petitioner to have any Phase 7 Moat & Row DCM operational by October 1, 2009.
- 8 2. Due to conditions beyond the reasonable control of the Petitioner, it has been prevented it from
9 completing the Moat & Row DCM by the October 1, 2009 deadline specified in the Board Order.
10 There is no practical method to achieve compliance with the Board Order sooner than through a
11 time extension to complete the Dust Mitigation Project, Moat & Row. Closing the Los Angeles
12 Aqueduct would not alleviate the PM10 emission problem. Immediate compliance would impose
13 unreasonable burden upon an essential public service.
- 14 3. There would be no corresponding benefit to the closing or taking of the Los Angeles Aqueduct.
15 Closing the aqueduct would not be an expeditious means of controlling emissions from the 3.5
16 square-mile Moat & Row project area. The 3.5 square-mile Moat & Row project area is made up
17 of seven small sub-areas, none of which have existing water-delivery infrastructure. Controlling
18 the emissions from these widely dispersed areas by closing the Aqueduct and redirecting its
19 waters onto the Owens Lake bed via the Owens River would take the full flow of the Aqueduct
20 for 5 to 20 years.
- 21 4. Applicant has considered curtailing operations, however, such action would not lead to
22 compliance with the Board Order, nor would it provide any immediate control of the emissions

1 associated with the 3.5 square-mile Moat and Row area. Closing the aqueduct would cause
2 considerable hardship to the City of Los Angeles.

- 3 5. Petitioner has committed to control excess emissions from the Owens Lake bed to the maximum
4 extent feasible during the period the variance is in effect. Petitioner proposes two methods during
5 two periods.

6 The first period is the six months from October 1, 2009 until April 1, 2010. Petitioner
7 will be continuing construction of the 9.7 square-mile of Phase 7 Shallow Flooding DCMs during
8 this period. The Board Order requires the additional 9.7 square-miles of Shallow Flooding control
9 to be operational by April 1, 2010. Petitioner is committed to providing at least 3.5 square-miles
10 of temporary dust control within the 9.7 square-mile Phase 7 project by area by October 1, 2009.
11 The temporary control will be provided by tilling 3.5 square-miles of clay soils up into very large
12 clods that will increase the surface roughness of the lake bed and temporarily prevent emissions.
13 Based on various studies conducted, Petitioner believes tilling will provide at least six months of
14 sufficient control. As the Petitioner completes the Shallow Flooding construction in the tilled
15 areas, water will cover the tilled surfaces and permanent control will be established. Petitioner is
16 expediting control via tilling method in areas already scheduled for control by April 2010.

17 The second period for required emission reduction is the six-month period between April
18 1, 2010 and October 1, 2010. Petitioner is unable to provide direct on-lake bed offsets of the
19 emissions from the 3.5 square-mile of Moat & Row are during this six month period because
20 required DCMs will occupy all lake bed areas (39.5 square miles) for which Petitioner has
21 permits and approvals.

22 However, the District's air quality monitoring indicates that there are additional areas on
23 the lake bed, beyond the 43 square miles currently ordered (39.5 square-miles with permits and

1 3.5 square-miles of Moat and Row), that require controls. District and Petitioner staffs have
2 preliminarily identified two square miles that were emissive during the 2007 through 2009 period.
3 However, the 2008 SIP and Board Order prevent the District from ordering controls on much of
4 these areas until possibly well after May 1, 2010.

5 Petitioner has agreed that, as an offset to the emissions that will occur from the 3.5
6 square-mile Moat & Row area, it will immediately begin the regulatory approval process required
7 to construct two additional square miles of BACM dust controls on the lake bed and will
8 complete those controls six months earlier than would ordinarily be required by the 2008 SIP.
9 Because Petitioner is starting the process seven months earlier than the earliest it would normally
10 start under an order from the District and it will complete the DCMs six months earlier than
11 provided in the 2008 SIP, necessary dust controls will be in place on the lake bed more than a
12 year earlier than under the normal procedures. The additional two square miles of expedited dust
13 controls offsets the six months of excess emissions from the 3.5 square-mile Moat & Row area.

14 6. The District has an extensive air and emissions monitoring program at Owens Lake and will
15 continue to operate the program and quantify dust emissions from the lake bed, including areas
16 subject to this variance request. Petitioner provides annual funding through assessments levied by
17 the Governing Board to conduct this monitoring.

18 7. Petitioner will continue to operate between 29.8 and 39.5 square-miles of DCMs on the lake bed
19 during the one-year variance period. The existing controls have reduced historic PM10 levels
20 about 90 percent and additional reductions are expected by April 1, 2010, when the current 9.7
21 square-mile Phase 7 Shallow Flooding project areas are completed. The delay in implementing
22 DCMs on 3.5 square-miles of Owens Lake is not expected to result in discharge of "air
23 contaminants or other material which may cause injury, detriment, nuisance or annoyance to any

1 considerable number of persons or to the public, or which endanger the comfort, repose, health or
2 safety of any such persons or the public, or which cause, or have a natural tendency to cause,
3 injury or damage to business or property.”

4 **ORDER**

- 5 1. Now therefore, the Hearing Board orders that the Petitioner, the City of Los Angeles Department
6 of Water and Power, is granted a Regular Variance, subject to the conditions set forth in
7 Paragraphs 3, 4 and 5, below, for a one-year extension of the deadline for the completion of Moat
8 & Row dust control measures on the bed of Owens Lake. The existing deadline of October 1, 2009
9 is required in Paragraph 3 of District Governing Board Order Number 080128-01, which is
10 contained in the “2008 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State
11 Implementation Plan.” The Petitioner is granted regulatory relief from this requirement until
12 October 1, 2010.
- 13 2. Further, the Hearing Board finds that, subject to the conditions set forth in Paragraphs 3, 4 and 5,
14 below, that by granting one year of regulatory relief from the existing October 1, 2009 deadline for
15 the completion of the Moat & Row dust controls contained in Paragraph 3 of Board Order
16 080128-01, the Petitioner does not trigger the provisions in Paragraphs 7 and 10 of said Order,
17 which provide for supplemental control determinations to resume prior to May 1, 2010, due to the
18 non-completion of Moat & Row dust controls.
- 19 3. In order to reduce excess emissions to the maximum extent feasible, the Hearing Board conditions
20 the variance to require the Petitioner to:
- 21 a. Temporarily control at least 3.5 square-miles of Owens Lake within the Shallow Flood
22 portion of the current Phase 7 dust control construction project through surface tillage to

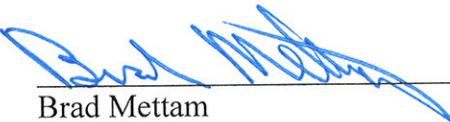
1 increase surface roughness by October 1, 2009. A map showing the locations of the tilled
2 areas and the tilling specifications are attached as Order Exhibit 3.

- 3 b. Construct and operate a new dust control project on at least two square-miles of Owens Lake
4 in the areas shown in Order Exhibit 4. This new dust control project shall be known as
5 "Phase 8" of the Owens Lake Dust Mitigation Program. The Phase 8 project shall be
6 implemented by the Petitioner in lieu of any other areas that would be required for control by
7 the District under the supplemental control determination provisions in Paragraphs 7 and 10
8 of Board Order 080128-01 for the period from July 1, 2006 through April 1, 2010. Thus,
9 other than the determination that the Phase 8 areas require the implementation of DCMs, no
10 supplemental control determination should be issued the Air Pollution Control Officer in
11 2010. A set of geographic coordinates defining the boundaries of the Phase 8 dust control
12 areas shall be developed by the District and provided to the Petitioner by January 1, 2010.
13 The size and location of the Phase 8 areas may be modified upon mutual agreement of the
14 District Governing Board and the Los Angeles Department of Water and Power Board of
15 Commissioners. The type of dust control measures used in the Phase 8 areas will be selected
16 at the Petitioner's sole discretion from the list of Best Available Control Measures approved
17 by the District as of the date construction begins on the Phase 8 project. The Petitioner shall
18 conduct all required site investigations and environmental impact analyses and secure all
19 required regulatory approvals and permits. The Petitioner shall start the regulatory approval
20 and design processes for the Phase 8 project immediately upon receipt of this variance from
21 the Hearing Board. The Petitioner shall complete construction and begin operation of the
22 Phase 8 dust control measures six months earlier than it would have been required to do so

1 under the provisions of Board Order 080128-01. These modified times are set forth in the
2 attached Order Exhibit 2.

- 3 4. The Hearing Board requires, as a condition of the variance, that the Petitioner agree to a stipulated
4 order from the District Governing Board under the provisions of California Health and Safety
5 Code Section 42316 ordering the Phase 8 project as set forth in Paragraph 3.b, above. This order
6 will be issued by the District Governing Board within 90 days of the certification of the
7 environmental impact analysis by the Petitioner but no later than October 1, 2010, whichever date
8 is later.
- 9 5. The Hearing Board requires, as a condition of the variance, that the Petitioner meet the increments
10 of progress schedule attached as Order Exhibit 1 and submit quarterly progress reports to the
11 Hearing Board.

12 Dated the 25th day of September 2009

13 
14 _____
15 Brad Mettam
Hearing Board Chairman

16 Attest:

17 
18 _____
Tori Jenkins, Board Clerk

19 Order Exhibit List:

- 20 Exhibit 1 –Increments of Progress Schedule
21 Exhibit 2 – Modified Times for Completion of Phase 8 Dust Controls
22 Exhibit 3 – Map and Specifications for 3.5 square-mile Temporary Tilling Dust Controls
23 Exhibit 4 – Map of Phase 8 Dust Control Project

1 **ORDER EXHIBIT 1**

2 **INCREMENTS OF PROGRESS SCHEDULE**

3 **FOR VARIANCE GB09-06**

4 **LOS ANGELES DEPARTMENT OF WATER AND POWER**

5 **MOAT & ROW DUST CONTROL MEASURE DEADLINE EXTENSION**

6 <u>By:</u>	<u>Milestone</u>
7 October 1, 2009	Petitioner shall complete 3.5 square miles of temporary tilling dust control within the Phase 7 dust control area as shown on
8	Order Exhibit 3.
9	
10 October 1, 2009	Start clock for completion of 2 square-mile Phase 8 dust control
11	project (project times shown in Order Exhibit 2).
12 October 1, 2009	Petitioner shall begin preparation of required CEQA
13	documentation for the 2 square-mile Phase 8 dust control project.
14 January 1, 2010	Petitioner shall commence construction of the Moat & Row dust
15	controls.
16 April 1, 2010	Petitioner shall convert 3.5 square miles of temporary tilling dust
17	controls to 3.5 square miles of Shallow Flooding dust controls.
18 October 1, 2010	Petitioner shall select and notify the District of the BACM to be
19	used on the 2 square-mile Phase 8 project.
20 October 1, 2010	District Governing Board shall issue stipulated order under H&S
21	Sec. 42316 requiring the 2 square-mile Phase 8 dust control
22	project (subject to certification of Phase 8 CEQA document by
23	Petitioner).
24 October 1, 2010	Petitioner shall complete 3.5 square miles of Moat & Row dust
25	controls.
26 To be determined	Depending on which BACM Petitioner selects, Petitioner shall
27	complete 2 square-mile Phase 8 dust control project (times for
28	completion are set forth in Order Exhibit 2).

DISTRICT EXHIBIT 2
MODIFIED TIMES FOR COMPLETION OF PHASE 8 DUST CONTROLS
FOR VARIANCE GB09-06
LOS ANGELES DEPARTMENT OF WATER AND POWER
MOAT & ROW DUST CONTROL MEASURE DEADLINE EXTENSION

<u>Activity</u>	<u>Duration (years)</u>
New area of Shallow Flooding DCM	2.4*
New area of Managed Vegetation DCM	5.6*
New area of Gravel Cover DCM	1.7*
Other approved BACM	Determined by District**
Additions to above times:***	
Mainline capacity increase	2.1
New aqueduct turnout	1.4
New power feed	1.0
Expanded CEQA triggered	1.4

* The durations shown for the three existing BACMs are 0.5 years shorter than the times provided in Attachment B, Exhibit 3 of District Board Order 080128-01.

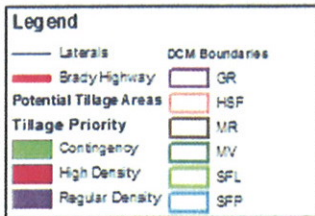
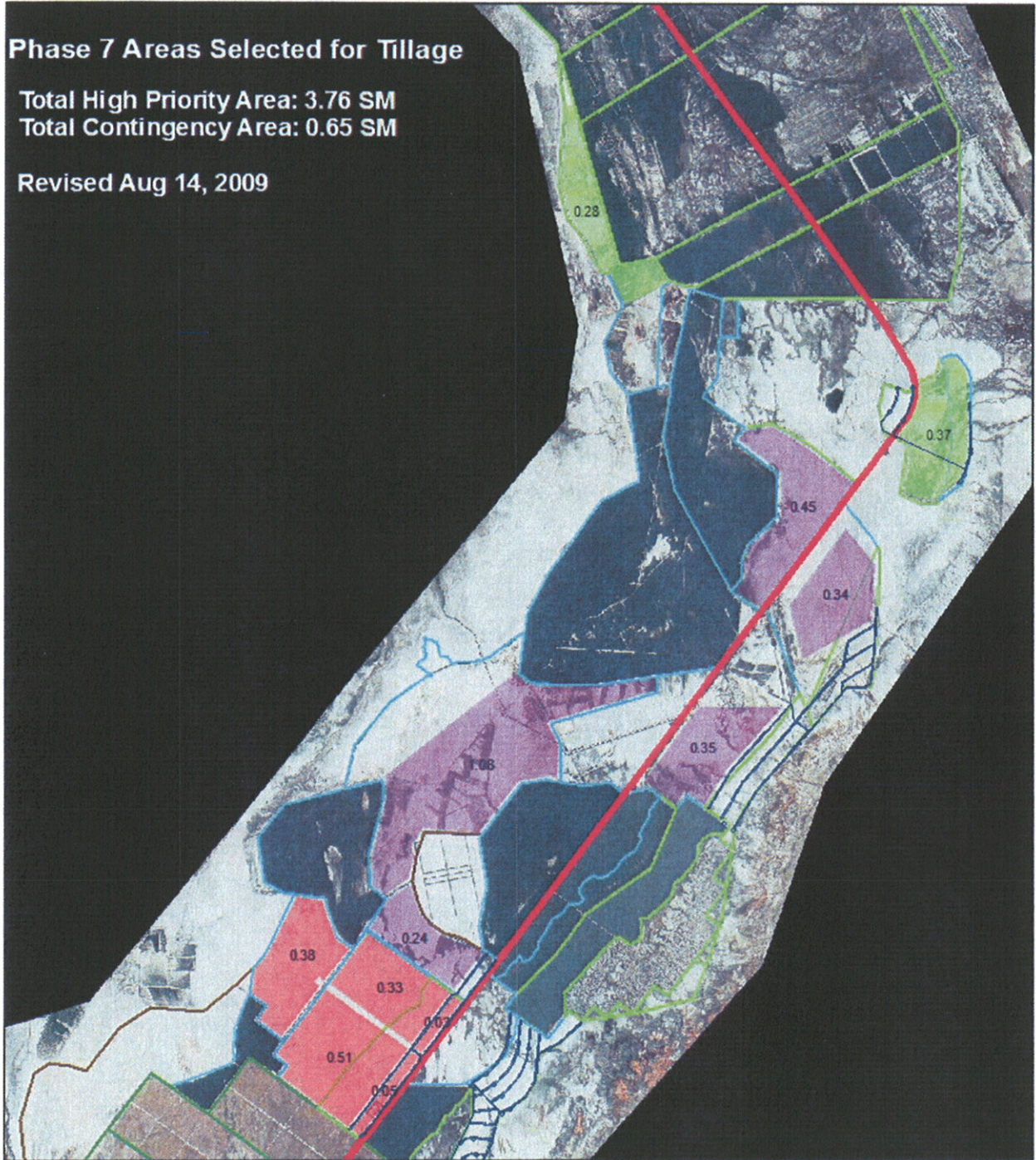
** If the District approves any new BACM prior to the start of the Phase 8 project, implementation durations will be included in the new BACM description. The Phase 8 durations will be 0.5 years shorter than non-Phase 8 durations.

*** Multiple additions to the BACM completion durations are not additive.

Phase 7 Areas Selected for Tillage

Total High Priority Area: 3.76 SM
Total Contingency Area: 0.65 SM

Revised Aug 14, 2009



Order Exhibit 3

Phase 7 Tillage Configurations

