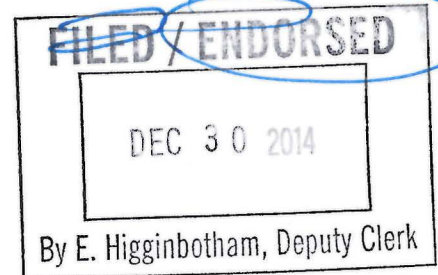


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Exempt from Filing Fees
Government Code § 6103



8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SACRAMENTO
11

12 CITY OF LOS ANGELES, a California
Municipal Corporation, ACTING BY AND
13 THROUGH ITS DEPARTMENT OF WATER
AND POWER,

14 Petitioner and Plaintiff,

15 v.

16 CALIFORNIA AIR RESOURCES BOARD;
EXECUTIVE OFFICER OF THE
17 CALIFORNIA AIR RESOURCES BOARD, in
its official capacity; GREAT BASIN UNIFIED
18 AIR POLLUTION CONTROL DISTRICT; and
DOES 1-100,

19 Respondents and
20 Defendants.
21

22 CALIFORNIA STATE LANDS
COMMISSION; and DOES 101-500,

23 Real Parties in Interest.
24
25
26
27
28

Case No. 34-2013-80001451-CU-WM-GDS

[Assigned for All Purposes to the
Honorable Shelleyanne W.L. Chang]

STIPULATED JUDGMENT FOR
RESPONDENT AND DEFENDANT
GREAT BASIN UNIFIED AIR
POLLUTION CONTROL DISTRICT

Department: 24
Date Action Filed: December 19, 2012

la-1255083

STIPULATED JUDGMENT FOR RESPONDENT AND DEFENDANT
GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

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ACTING BY AND THROUGH ITS DEPARTMENT
15 OF WATER AND POWER
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Petitioner and Plaintiff CITY OF LOS ANGELES, a California Municipal Corporation, ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER (“Petitioner” or “City”) and Respondent and Defendant GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT (“District”) (collectively “Parties”), having agreed and consented to the entry of this stipulated judgment for the Respondents and Defendants (“Stipulated Judgment”) containing the terms specified below, and the Court having been presented with the Stipulated Judgment and reviewed its terms, the Court hereby approves the Stipulated Judgment and these terms, and issues the following orders:

RECITALS BY THE PARTIES

A. The District is a unified air pollution control district as provided by Division 26, Part 3, Chapter 3 of the California Health and Safety Code and consists of all of Inyo, Mono and Alpine counties.

B. The City is a charter city in the State of California, and its Department of Water and Power (“LADWP”) is a proprietary department of the City. The LADWP is responsible for providing water and power to the residents of Los Angeles. Its duties include operating the Los Angeles Aqueduct, which transports water from the Eastern Sierra region to Southern California.

C. The dispute between the parties concerns the control of air pollution from Owens Lake. Owens Lake is located in Inyo County in eastern California, south of the town of Lone Pine and north of the town of Olancha.

D. Large portions of the Owens Lake bed are comprised primarily of dry saline soils and crusts. The City's water diversions from the Owens Valley, including by the use of the Los Angeles Aqueduct, has exposed lake bed areas.

E. The lake bed soils and crusts are a source of wind-borne dust during significant wind events, and contribute to elevated concentrations of particulate matter less than 10 microns in diameter (“PM₁₀”).

F. PM₁₀ is a criteria pollutant regulated by the federal Clean Air Act, 42 U.S.C. Section 7401 *et seq.*, as amended (“CAA”).

1 G. Under the National Ambient Air Quality Standard ("NAAQS") adopted pursuant
2 to the CAA, PM₁₀ levels may not exceed an average concentration of 150 micrograms per cubic
3 meter ("µg/m³") during a 24-hour period more than one time per calendar year averaged over
4 three years.

5 H. The CAA further requires the U.S. Environmental Protection Agency ("EPA") to
6 divide each state into air quality control regions. Each region is characterized as either
7 "attainment" or "non-attainment" for each identified air pollutant, depending on whether the
8 monitored level of that air pollutant in that region is at or below (attainment) or above (non-
9 attainment) the level mandated by the NAAQS.

10 I. Once the EPA establishes the NAAQS, the states have the primary responsibility
11 to prepare a State Implementation Plan ("SIP") for achieving and maintaining the NAAQS within
12 each air quality control region within the state. The SIP must establish "enforceable emission
13 limitations and other control measures" designed to, among other things, achieve attainment in
14 non-attainment regions within the state.

15 J. The California Legislature delegated responsibility and authority to meet the
16 CAA's SIP requirements to Respondent CARB and authorized CARB to implement this
17 requirement through the creation of thirty-five (35) air pollution control districts.

18 K. On August 7, 1987, the EPA designated the Owens Valley Planning Area
19 ("OVPA") as one of the regions in California in violation of the PM₁₀ NAAQS. The EPA
20 designated the OVPA as a "serious nonattainment area" for PM₁₀.

21 L. In addition to the federal NAAQS, the State of California has adopted a PM₁₀
22 standard ("State Standard"). The State Standard is violated when monitors record PM₁₀
23 concentrations greater than 50 µg/m³ averaged over a 24-hour period.

24 M. The District has regulatory authority over air quality issues in the OVPA where
25 Owens Lake is situated.

26 N. Health and Safety Code Section 42316 ("Section 42316"), enacted by the
27 California Legislature in 1983, provides in part that the District has authority to require the City
28 to undertake reasonable measures at Owens Lake in order to address the impacts of its activities

1 that cause or contribute to violations of federal and state air quality standards, including but not
2 limited to the NAAQS and State Standard for PM₁₀.

3 O. In November 1998, the District submitted to EPA its 1998 SIP. In September
4 1999, the EPA approved the 1998 SIP. The District and the City agreed to the provisions in the
5 1998 SIP and requested EPA to extend the attainment deadline for the OVPA. In September
6 1999, the EPA approved the 1998 SIP and extended the attainment deadline by five years, from
7 December 31, 2001 to December 31, 2006.

8 P. The 1998 SIP provides three allowable mitigation control measures that are
9 approved as Best Available Control Measures ("BACM") that the City may select for use at the
10 dried Owens Lake bed: (1) shallow flooding; (2) managed vegetation; or (3) gravel cover.

11 Q. Under the CAA at 42 U.S.C. § 7513(e), for areas receiving extensions of the
12 original attainment date, the SIP shall provide for implementation of "the most stringent measures
13 that are included in the implementation plan of any State or are achieved in practice in any State,
14 and can feasibly be implemented in the [nonattainment] area."

15 R. In 2003, the District revised the 1998 SIP and submitted the 2003 SIP to EPA for
16 approval. The 2003 SIP requires most stringent measures ("MSM") BACM controls. EPA has
17 not taken action on the 2003 SIP.

18 S. In 2005, the City disputed orders issued by the District under Section 42316 for
19 additional air pollution controls at the dried Owens Lake bed. To resolve this dispute, the City
20 and the District entered into a settlement agreement. Pursuant to that agreement, the District
21 agreed to submit revisions to the 2003 SIP. For this purpose, in 2008, the District adopted Board
22 Order No. 080128-01 and submitted the order as the 2008 SIP ("2008 SIP Order"). CARB
23 approved the 2008 SIP Order and submitted it to the EPA for approval, which is pending before
24 EPA. The 2008 SIP also requires MSM BACM controls.

25 T. On or about August 1, 2011, the District issued the 2011 SCRd which ordered the
26 City to install additional dust control measures on approximately 2.86 square miles of the dried
27 Owens Lake bed to meet the NAAQS for PM₁₀. These are known as the Phase 9 dust control
28 areas.

1 U. The City appealed the 2011 SCRD under Section 42316(b). On June 15, 2012, the
2 Executive Officer of the CARB held a hearing on the City's appeal. On November 19, 2012, the
3 CARB issued its written decision denying the City's appeal and affirming the 2011 SCRD
4 ("CARB Decision").

5 V. On or about December 10, 2012, the City filed a Verified Petition for Writ of
6 Mandate in this action entitled *City of Los Angeles, et al. v California Air Resources Board*, Los
7 Angeles County Superior Court, Case No. BS140620 (the "Action"). This Action was transferred
8 to the Sacramento County Superior Court and the City filed a First Amended Verified Petition for
9 Writ of Mandate and Complaint for Declaratory Relief on or about August 30, 2013 ("Amended
10 Petition'). The District filed its Answer to the Amended Petition on September 30, 2013. The
11 Action in part appeals the CARB Decision pursuant to Sections 42316 and Civil Procedure Code
12 Section 1094.5. On September 25, 2014, the Court issued a tentative ruling denying the City's
13 petition for writ of mandate and ordering entry of judgment for Respondents and Defendants. A
14 hearing was held on September 26, 2014 and after oral argument, the Court took the matter under
15 submission pending the issuance of its final ruling and order.

16 W. On November 16, 2012, the District issued the 2012 SCRD which ordered the City
17 to install additional 0.76 square miles of dust control measures on the dried Owens Lake bed to
18 meet the NAAQS for PM₁₀. These are known as the Phase 10 dust control areas.

19 X. The City appealed the 2012 SCRD under Section 42316(b). On April 18, 2014,
20 the Executive Officer of the CARB held a hearing on the City's appeal. A decision on this appeal
21 is pending.

22 Y. On April 4, 2014, the District issued the 2013 SCRD which stated that no
23 additional areas of the lake bed required controls at that time. On August 6, 2014, the District
24 issued its preliminary 2014 SCRD which also stated that no additional areas of the lake bed
25 required controls at that time.

26 Z. Based on data collected, the 2011, 2012, 2013 and 2014 SCRDs, modeling and
27 experience by the District to date, the District estimates that the City's control of dust emissions
28 by applying BACM to 48.6 square miles of the dried Owens Lake bed, and the District's control

1 of dust emissions from the adjacent Keeler Dunes will reduce emissions in the OVPA such that it
2 can attain the NAAQS. Further monitoring and data collection will be needed to confirm the
3 estimates of attainment.

4 AA. The Parties acknowledge the need to control dust from the lakebed caused by the
5 City's water production activities and for additional effective dust control measures that do not
6 rely on water that can be substituted in areas currently under control or applied in areas ordered to
7 be controlled.

8 BB. The Parties further acknowledge the need to balance the requirements to control
9 dust emissions and conserve water with the requirements to minimize impacts to cultural and
10 biological resources.

11 CC. Now, therefore, after extensive negotiations to resolve their disputes, the Parties
12 have reached a settlement with the terms contained herein, and agree to entry of this Stipulated
13 Judgment to resolve this action and their disputes including those stated in the Amended Petition
14 and the District's Answer, and those regarding the 2011 SCRD, 2012 SCRD, 2013 SCRD and
15 2014 SCRD under Section 42316.

16 **STIPULATED JUDGMENT**

17 1. **Entry of Judgment.** The Court orders that final judgment on the Petition and
18 Complaint in this action, including all terms contained herein, be entered for Respondent and
19 Defendant District against Petitioner and Plaintiff on all causes of action in the pending First
20 Amended Petition and Complaint ("Judgment"). The Judgment shall constitute final judgment
21 resolving all claims and defenses alleged in the Amended Petition and the Answer filed by the
22 District. The Parties agree not to appeal or further contest this Judgment. The Judgment shall
23 consist of any final ruling and order by this Court on the City's writ of mandate as referenced in
24 Preamble Paragraph V, which shall be attached as Attachment A to this Stipulated Judgment, and
25 the additional terms contained herein, which the Parties stipulate are consistent with the Court's
26 order.

27 ///

28 ///

1 2. **Phase 9/10 Project to Implement 2011 and 2012 Supplemental Control**
2 **Requirement Determinations**

3 A. By December 31, 2017, the City shall construct a dust control project to
4 complete the Phase 9 and Phase 10 dust controls by selecting and installing BACM on 3.62
5 square miles of areas identified in the 2011 SCRD and 2012 SCRD (collectively referred to as the
6 "Phase 9/10" project). The Phase 9/10 project shall bring the total area of the City's dust controls
7 on the Owens Lake bed to 48.6 square miles. The construction deadline set forth in this
8 paragraph is subject to the Force Majeure and Stipulated Penalties provisions set forth in
9 Paragraphs 14 and 15 below.

10 B. The City may submit an application to the APCO to approve modifications
11 to the City's proposed project or measures on certain areas that are determined to contain
12 significant cultural resources. The District shall consider and decide the City's application under
13 the procedures contained in the 2013 Stipulated Abatement Order No. 130819-01.

14 C. The Phase 9/10 project will use dust control measures that are waterless or
15 "water neutral" by offsetting any new or increased water use with water savings elsewhere on the
16 lakebed.

17 D. Within 60 days of the court's entry of this Stipulated Judgment, the City
18 shall prepare and submit for the APCO's consideration and written approval, which approval
19 shall not be unreasonably withheld, a Remedial Action Plan ("RAP") for the Phase 9/10 project
20 that provides for project completion by December 31, 2017. The plan shall contain intermediate
21 milestones specifying the completion dates for CEQA compliance (and to the extent joint
22 documents are prepared under CEQA and NEPA, for CEQA/NEPA compliance), construction bid
23 award and control measure compliance.

24 E. Upon completion of the Phase 9/10 project, and any additional BACM
25 Contingency Measures as provided in Paragraph 3 below, the City shall permanently operate dust
26 controls with approved BACM on those areas and all other existing areas where the City has
27 installed and operates dust controls on the dried Owens Lake bed, except as provided by a SIP for
28 BACM testing and development.

1 **3. Additional BACM Contingency Measures**

2 A. To provide the emission reductions necessary to meet the NAAQS in the
3 OVPA, the District's Air Pollution Control Officer ("APCO") may order the City on or any time
4 after January 1, 2016 to implement additional BACM contingency measure controls on up to 4.8
5 square miles (which need not be contiguous) of the dried Owens Lake bed ("BACM Contingency
6 Measures"). If the City implements the entire 4.8 square miles of BACM Contingency Measure
7 controls, there will be a total of 53.4 square miles of dust controls on the Owens Lake bed. Any
8 BACM Contingency Measure orders shall be based on evidence presented to the APCO that the
9 area considered for such order has caused or contributed to an exceedance of the NAAQS or State
10 Standard. Areas that are deferred for controls under the procedures in Paragraph 2.B because of
11 the presence of significant cultural resources, then re-ordered for controls per those procedures,
12 shall not be counted as part of the 4.8 square miles allowed for BACM Contingency Measures.
13 Although the City may provide comment on a proposed BACM Contingency Measures order by
14 the APCO, the City shall not appeal or contest the APCO's order for dust controls included in the
15 combined 53.4 square miles now or in the future in any administrative or judicial forum, under
16 any law, statute or legal theory whatsoever including Section 42316.

17 B. Except for the 4.8 square mile BACM Contingency Measure area and any
18 area re-ordered for control under Paragraph 2.B of this Judgment, the District shall not issue any
19 further orders for mitigation measures to the City under Section 42316 or any other law, including
20 but not limited to SCRDS, requiring the City to control windblown dust emissions (including PM
21 10, PM 2.5 or any speciated components or products of PM) from any areas on the dried Owens
22 Lake bed beyond the combined 53.4 square miles. The provisions in this paragraph do not apply
23 to fee orders issued to the City under Section 42316, or any orders for areas that are not on the
24 dried Owens Lake bed.

25 C. The BACM Contingency Measures provided under this paragraph will be
26 limited to the Owens Lake bed below elevation 3,600.00 feet above mean sea level ("amsl") and
27 above the natural brine pool at elevation 3,553.55 feet amsl.

28 D. The BACM Contingency Measures areas will be controlled with waterless

1 or water-neutral dust control measures by offsetting any new or increased water use with water
2 savings elsewhere on the lakebed.

3 E. The BACM Contingency Measures shall be installed by the City and be
4 operational within three years of the date that the APCO orders City to implement the BACM
5 Contingency Measures, except that if the City selects the use of managed vegetation for its
6 BACM for any of the areas ordered for BACM Contingency Measures, the City will be allowed
7 an additional two years to achieve full vegetation-cover compliance for those areas. The
8 implementation deadline set forth in this paragraph is subject to the Force Majeure and Stipulated
9 Penalties provisions set forth in Paragraphs 14 and 15 below. The City shall be solely responsible
10 for all CEQA compliance, and to the extent joint documents are prepared under CEQA and
11 NEPA, for CEQA/NEPA compliance, and all lease and permit requirements associated with any
12 Contingency Measures.

13 F. Within 60 days of the date that the APCO orders City to implement the
14 BACM Contingency Measures, the City shall prepare and submit for the APCO's consideration
15 and written approval, which approval shall not be unreasonably withheld, a RAP that provides for
16 the completion of those measures by the time deadlines provided in Paragraph 3.E above. The
17 plan shall contain intermediate milestones specifying the completion dates for CEQA/NEPA
18 compliance, construction bid award and control measure compliance.

19 **4. Monitoring**

20 A. For PM₁₀ monitoring, the City shall grant an irrevocable right in perpetuity
21 to the District to site air monitors on City-occupied or unoccupied property in communities
22 located in the OVPA at the District's sole discretion, shall provide electric power to those
23 monitors if such power source is under the City's control, and shall not interfere with the
24 operation of those monitors, cut off their power supply (except for planned or emergency system
25 outages), or take any other action to evict or remove the monitors.

26 **5. Tillage with BACM Backup (TwB2)**

27 A. In addition to the approved BACM in the 2008 SIP Order, the City may
28 select a variation on the Shallow Flood BACM called Tillage with BACM Backup ("TwB2").

1 TwB2 is a District-approved variation of the approved Shallow Flood BACM that wets and/or
2 roughens emissive Owens Lake bed surfaces to prevent air emissions. TwB2 consists of soil
3 tilling and/or wetting within all or portions of Shallow Flood BACM PM₁₀ control areas (TwB2
4 Areas) where sufficient shallow flood infrastructure and available water supply exists. The City
5 shall at all times maintain all TwB2 areas in compliance with all conditions and procedures
6 contained in this Stipulated Judgment such that TwB2 areas do not cause or contribute to
7 exceedances of the PM₁₀ Standard. The City shall have the sole duty to obtain all required
8 approvals and permits required by law for TwB2. The District will support the City's efforts to
9 obtain these approvals and permits in compliance with the law.

10 B. The City's selection and implementation of TwB2 shall comply with the
11 "Protocol for Operation and Maintenance of Owens Lake Tillage with BACM Backup" attached
12 hereto and made part of this Stipulated Judgment as Attachment B ("TwB2 Operations
13 Protocol"). The TwB2 Operations Protocol addresses site selection, site dry-down, measures to
14 prevent untilled drying surfaces from becoming emissive during dry-down, tilling, maintenance
15 and rewetting. The City shall have sole discretion to modify the Operations Protocol as necessary
16 to ensure efficient operation of TwB2.

17 C. The District's monitoring and enforcement of TwB2 Areas shall comply
18 with the "Protocol for Monitoring and Enforcing Owens Lake Tillage with BACM Backup"
19 attached hereto and made part of this Stipulated Judgment as Attachment C ("TwB2 Monitoring
20 Protocol"). This protocol describes the data to be collected and methods of analysis to determine
21 if TwB2 areas on the Owens Lake bed need maintenance and/or reflooding in order to maintain or
22 reestablish control efficiency for compliance with the PM₁₀ NAAQS. Based on data and after
23 consulting with the City, the APCO shall have sole discretion to modify the TwB2 Monitoring
24 Protocol in writing as necessary to ensure air quality protection.

25 D. The APCO may order, and the City is required to reflood a TwB2 area as
26 provided in the TwB2 Monitoring Protocol. Within 37 days of notification by the APCO that a
27 TwB2 area must be reflooded, the City shall complete reflooding of that area in accordance with
28 approved Shallow Flooding BACM requirements. The City shall not appeal or contest the TwB2

1 Protocol, any revisions to that protocol that comply with this Paragraph 5, or the APCO's order to
2 reflood a TwB2 area now or in the future in any administrative or judicial forum, under any law,
3 statute or legal theory whatsoever including Section 42316, except the City may contest an APCO
4 order to reflood a TwB2 area on the sole basis that the APCO did not follow the TwB2
5 Monitoring Protocol. Such a challenge shall be brought exclusively to this Court to enforce this
6 Stipulated Judgment, and not by an appeal under Section 42316 or by any challenge in any other
7 administrative or judicial forum.

8 E. The Parties agree to periodic joint inspections of the TwB2 Areas by the
9 District and the City. The Parties shall agree to a standing time for meetings at least every other
10 week after the City commences tillage for TwB2 to discuss the status of the surface conditions,
11 whether re-tilling or re-flooding should be ordered to avoid unlawful dust emissions, and to foster
12 collaboration and cooperation at the staff level. The District will provide the City with at least
13 24-hour notification of the time and location of the District's TwB2 field inspections and testing.
14 Although the presence of City staff is not required during these inspections and testing by the
15 District, this prior notification will give the City the opportunity to observe any TwB2 monitoring
16 that the APCO will use to determine if a TwB2 area should be flooded.

17 F. The City may at its discretion file an application with the District to seek
18 approval of tillage without TwB2 as BACM. The Parties shall follow the process in the 2008 SIP
19 Order for this application.

20 G. The City shall be solely responsible to obtain all required approvals and
21 permits required to implement TwB2. The District will support the City's efforts to obtain such
22 approvals in compliance with the law.

23 **6. New and refined dust control measures**

24 A. The District will review new or refined dust control measures proposed by
25 the City, and will approve a measure as MSM BACM if the District determines that the measure
26 is consistent with the federal EPA's interpretation of the term Best Available Control Measure
27 under the federal Clean Air Act and implementation of MSM as required for the Owens Valley
28 nonattainment area. In assessing whether a dust control measure (including a new measure or

1 extension of a previously identified measure to a new area) is BACM, the District will consider
2 the technological feasibility of the measure, as well as energy, environmental, and economic
3 impacts and other costs.

4 B. The Parties will continue to collaborate on the expedited testing of Tillage,
5 Engineered Roughness Elements, Lake Brine and Dust Palliative Chemicals as candidate
6 BACMs. The Parties further agree to identify additional candidate BACMs, as appropriate. New
7 dust control measures should be waterless, where feasible. Where not feasible, new dust control
8 measures should be water neutral by offsetting any new or increased water use with water savings
9 elsewhere on the lakebed.

10 C. The Parties commit to a minimum of quarterly meetings and field visits to
11 discuss and review BACM testing.

12 **7. Lake-wide efforts to reduce water use**

13 A. The City and the District commit to work together to jointly develop and
14 propose "Dynamic Water Management" actions for incorporation into the 2015 SIP revision
15 referenced in Paragraph 11. These actions may include "early water ramp-down" in non-emissive
16 years. TwB2 is not a Dynamic Water Management concept. The proposed actions shall set forth
17 the conditions upon which the APCO can approve the City's application to undertake these
18 dynamic water management actions.

19 **8. Revision to the 2008 SIP Transition Procedure**

20 A. The District shall amend the 2008 SIP Order to increase the Transition
21 Area project size limitation from 0.5 square miles for Managed Vegetation BACM, or 1.5 square
22 miles for other BACM, as provided in Attachment D, Section 3 to the 2008 SIP Order, to 3.0
23 square mile at one time. The 3.0 square mile Transition Area shall be in addition to the TwB2
24 Areas implemented by the City as provide in Paragraph 5 above.

25 B. The City shall control emissions during Transition Area project
26 construction periods as provided in the 2008 SIP Order at Attachment D, Section 3, and the
27 Stipulated Abatement Order No. 110317-01 at Paragraph 8, dated March 17, 2011.

28 C. The City shall only conduct construction of a Transition Area project

1 between July 1 of year when on-site work on the project begins, through December 31 of the next
2 year when all such work shall be completed and the new controls shall be fully installed and
3 operational. The completion deadline set forth in this paragraph is subject to the Force Majeure
4 and Stipulated Penalties provisions set forth in Paragraphs 14 and 15 below.

5 **9. Cultural and Biological Resources**

6 Cultural and biological resource protection and mitigation shall be incorporated to
7 the extent feasible as required by law into the design of dust control areas.

8 **10. Collaboration with Other Agencies**

9 A. The Parties agree to collaborate in their efforts to secure support for the
10 terms of this agreement, agreement implementation, and obtaining necessary permits, leases and
11 approvals with the California Air Resources Board, California Department of Fish and Wildlife,
12 California State Historic Preservation Office, California State Lands Commission, California
13 Native American Heritage Commission, U.S. Army Corps of Engineers, U.S. Bureau of Land
14 Management, U.S. Environmental Protection Agency and private parties owning land in the areas
15 to be controlled in Phases 9 and 10. The Parties plan to continue to meet with these agencies to
16 prepare them for favorable decisions on future dust control projects and revisions to the SIP.

17 B. The Parties are aware that all final approvals necessary for TwB2 may not
18 be obtained before this Stipulated Judgment is executed and approved, and anticipate obtaining
19 those approvals after the entry of this judgment.

20 **11. 2015 SIP revision and CEQA/NEPA compliance**

21 A. By July 1, 2015, the City shall prepare and consider for certification the
22 environmental impact analysis documents required by the California Environmental Quality Act
23 ("CEQA") and, if applicable, the National Environmental Policy Act ("NEPA") necessary to
24 proceed with Phase 9/10 Project.

25 B. By December 31, 2015, the District shall prepare a SIP revision that
26 consists of the 2008 SIP Order and the provisions of this Stipulated Judgment ("2015 SIP
27 Order"). The City shall support and not challenge the adoption of the 2015 SIP Order by the
28 District Governing Board, CARB and EPA, except that the City may challenge any new term that

1 the City has not agreed to in advance, and that is not contained in the 2008 SIP Order as modified
2 by this Stipulated Judgment.

3 C. The City shall not appeal or contest the 2015 SIP Order that contain the
4 terms of this Stipulated Judgment now or in the future in any administrative or judicial forum,
5 under any law, statute or legal theory whatsoever including CEQA or Section 42316, and agrees
6 that the terms of that 2015 SIP Order are valid and reasonable under Section 42316.

7 D. The District intends to act as a responsible agency and use the City's Phase
8 9/10 CEQA/NEPA documents to act on the SIP revision. If the City's CEQA/NEPA document is
9 not adequate for the District's approval purposes, the District shall have until December 31, 2016
10 to act on the SIP revision.

11 E. The Parties have developed the terms of this Stipulated Judgment with the
12 intention that its provisions will be incorporated into the 2015 SIP Order and are consistent with
13 applicable provisions of federal, state and local law, including Section 42316, including all
14 applicable provisions of federal law regarding attainment of the NAAQS and exceptional events.

15 **12. Owens Lake Scientific Advisory Panel**

16 A. The Parties agree to establish the Owens Lake Scientific Advisory Panel
17 ("OLSAP" or "Panel") under the authority of the California Health and Safety Code Section
18 42316 and the Los Angeles City Charter. The Parties will contract with the National Academy of
19 Sciences ("NAS") to establish, staff and administer the OLSAP pursuant to the NAS study
20 process found at <http://www.nationalacademies.org/studyprocess/index.html>.

21 B. The purpose of OLSAP is to evaluate, assess and provide ongoing advice
22 on the reduction of airborne dust in the Owens Valley. The Panel will review scientific and
23 technical issues related to the research, development and implementation of waterless and low-
24 water use BACM, and other approaches to reduce dust in the Owens Valley. The Parties intend
25 for the Panel to foster communication and understanding on the scientific and technical
26 approaches and become a vehicle for increased cooperation and collaboration between District
27 and the City in balancing the requirement to meet air quality standards and conserve water.

28 C. The Panel will hold meetings, analyze issues, review and compile

1 information, produce reports, make recommendations and undertake other activities necessary to
2 meet its responsibilities. The Panel will initially be assigned the following task:

3 i. Evaluate the effectiveness of alternative dust control methodologies
4 for their degree of PM₁₀ reduction at the Owens Lake bed and reduce use of water in controlling
5 dust emissions from the dried lake beds. The evaluation should consider associated energy,
6 environmental and economic impacts, and assess the durability and reliability of such control
7 methods.

8 Additional issues for the NAS may be submitted to the Panel by the General Manager of
9 the Los Angeles Department of Water and Power ("LADWP"), or the APCO. The OLSAP shall
10 function per the "Study Process: Guidelines of the NAS" found at
11 <http://www.nationalacademies.org/studyprocess/index.html>. The City and the District will
12 promptly respond to requests for information from the Panel.

13 D. Term and Estimated Number and Frequency of Meetings. Until January 1,
14 2025, the Panel will meet in person at least once annually. When actively working on issues, the
15 Panel shall meet in person at least two times a year. The Panel may meet more often in person,
16 telephonically or by other networked conferencing means as needed. When issues are referred to
17 the Panel, the Panel shall convene to discuss within 60 days, provide an initial work plan within
18 three (3) months and a final report within eighteen (18) months, unless an extension is granted by
19 agreement of both parties.

20 E. The NAS will submit the Panel's reports to the Chair of the District
21 Governing Board and the APCO, and the President of the Board of the LADWP and General
22 Manager of LADWP.

23 F. The duties of OLSAP are solely advisory in nature and in no way alter the
24 authority and responsibility of the District, District Board or the APCO. The City and the District
25 will give due consideration to the Panel's findings and recommendations.

26 G. All financial support for the OLSAP shall be provided by the City pursuant
27 to fee orders from the District under Section 42316. The Parties estimate that the annual costs of
28 the Panel will be approximately \$500,000 to \$750,000, but may vary based on the statement of
1a-1255083

1 work and tasks submitted to the NAS. The City shall be responsible to provide additional
2 funding to the Panel for reporting and analyzing new and relevant testing data up to \$2,000,000
3 annually. The City and the District will make best efforts to jointly seek further funding and in-
4 kind support opportunities from other organizations.

5 **13. Sacramento lawsuit and pending CARB appeals**

6 A. The Parties stipulate and agree that all terms in the Stipulated Judgment are valid
7 and reasonable under Section 42316 and under any and all other laws. The City waives any
8 challenge to the terms of this Stipulated Judgment and shall not now or in the future challenge or
9 oppose the terms of this Stipulated Judgment in any administrative or judicial forum, under any
10 law, statute or legal theory whatsoever including but limited to Section 42316.

11 B. Within three days of entry of this Stipulated Judgment, the City shall dismiss its
12 appeal of the 2012 SCR D by the District if CARB has not yet issued its written decision on that
13 appeal. If CARB has issued that written decision on the 2012 SCR D appeal, that decision shall
14 be deemed final and binding, and the City shall not appeal or otherwise challenge that CARB
15 decision to the Superior Court or in any other judicial or administrative forum. The City shall
16 dismiss its appeal of the 2013 SCR D and not appeal the 2014 SCR D by the District. The City
17 shall not appeal or contest the 2012 SCR D, 2013 SCR D or 2014 SCR D now or in the future in
18 any administrative or judicial forum, under any law, statute or legal theory whatsoever including
19 Section 42316.

20 C. The CARB Decision referenced in Preamble Paragraph U shall be deemed final
21 and binding on the Parties. In addition, if the Court has issued its final ruling on the City's writ of
22 mandate as referenced in Preamble Paragraph V, that ruling shall also be deemed final and
23 binding on the Parties. The City shall not challenge the orders for BACM Contingency Measures
24 referenced in Paragraph 3.A, or the revised 2015 SIP as provided in Paragraph 11, based upon
25 any of the arguments asserted by the City in its appeals of the 2011 SCR D, 2012 SCR D, 2013
26 SCR D or 2014 SCR D, or in the instant case.

27 **14. Force Majeure**

28 A. "Force Majeure" as used in the paragraphs above relating to the Phase 9/10 project

1 (Paragraph 2.A), Contingency Measure projects (Paragraph 3.E), and Transition Area projects
2 (Paragraph 8.C), is defined as one of the following events that prevents the City's performance of
3 the specified act by the deadline set forth in that Paragraph: (a) any act of God, war, fire,
4 earthquake, windstorm, flood, severe drought that is declared as an official state of emergency by
5 the Governor of the State of California, or natural catastrophe; (b) unexpected and unintended
6 accidents (excluding those caused by the City or the negligence of its agents or employees); civil
7 disturbance, vandalism, sabotage or terrorism; (c) restraint by court order or public authority or
8 agency; (d) action or non-action by, or inability to obtain the necessary authorizations or
9 approvals from any governmental agency, provided that the City demonstrates it has made a
10 timely and complete application to the agency and used its best efforts to obtain that approval, or
11 (e) the inability to obtain private property owner access, provided that the City demonstrates it
12 has made a timely and complete request to the owner, and used its best efforts to obtain that
13 access. Force Majeure shall not include normal inclement weather, other asserted shortages of
14 water, economic hardship or inability to pay.

15 B. The City's performance of its duties under Paragraph 14.A will be temporarily
16 postponed only during the condition of Force Majeure, but not excused, and the City will
17 continue to be responsible to recommence performance of its actions to comply with the
18 deadlines at the end of the Force Majeure event. The deadlines for performance shall
19 automatically be extended by the period of interruption caused by the Force Majeure event. The
20 City shall exercise due diligence to resolve and remove any Force Majeure event. Nothing in this
21 paragraph shall be interpreted to relieve the City of its obligations and duties under all applicable
22 laws.

23 C. Any party seeking to rely upon this paragraph to excuse or postpone performance
24 under Paragraph 14.A shall have the burden of establishing each of these elements to this Court
25 with jurisdiction over this Stipulated Judgment, and that it could not reasonably have been
26 expected to avoid the event or circumstance, and which by exercise of due diligence has been
27 unable to overcome the failure of performance.

28 ///

1 **15. Stipulated Penalties**

2 A. The City shall be subject to notices of violation from the APCO and
3 stipulated daily penalties for failure to meet dust control measure completion deadlines set forth
4 in this Stipulated Judgment for the Phase 9/10 project (Paragraph 2.A), Contingency Measure
5 projects (Paragraph 3.E), and Transition Area projects (Paragraph 8.C), except as excused by a
6 condition of Force Majeure as defined in Paragraph 14. The amount of the daily penalty for each
7 missed deadline shall be determined by the following formula:

8 **Stipulated daily penalty (\$/day) = \$10,000 – \$4500 (A_C/A_R),**

9 where

10 A_C = Dust control area required by the APCO that is completed and
11 compliant (square miles), and

12 A_R = Total dust control area required by the APCO (square miles).

13 B. The City shall pay any stipulated daily penalties within 90 days of any
14 notice of violation from the APCO for failure to meet these deadlines. The City shall not
15 challenge or oppose its duty to pay the stipulated daily penalty in any administrative or judicial
16 forum, under any law, statute or legal theory whatsoever including H&S Section 42316(b).

17 C. This Paragraph 15 applies only to the failure to meet dust control measure
18 completion deadlines as set forth in Paragraphs 2.A, 3.E and 8.C and does not apply to any other
19 notice of violation or enforcement of laws by the District or its APCO.

20 **16. Sacramento County Superior Court to Retain Jurisdiction**

21 The Sacramento County Superior Court shall retain jurisdiction over the Stipulated
22 Judgment including the enforcement of its terms. Either Party to this Stipulated Judgment may
23 file an *ex parte* application or noticed motion before this Court to show a violation of the terms of
24 this Stipulated Judgment and/or to enforce its terms. Before either Party files such a motion or
25 application, they agree to meet and confer with the other Party at least seven days before the
26 filing, either in person or by telephone, to attempt to resolve the dispute.

27 **17. Final Resolution of Claims**

28 This Stipulated Judgment is intended to be the full and final resolution of all claims and

1 causes of action raised in this action by the Parties, including those relating to this action, the
2 2011 SCRD, 2012 SCRD, 2013 SCRD and 2014 SCRD.

3 **18. Additional Provisions**

4 A. Execution of Additional Documents. Each of the Parties agrees to
5 promptly do such acts and execute such additional documents as might be necessary to carry out
6 the provisions and effectuate the purposes of this Stipulated Judgment.

7 B. Authority. Each person executing this Stipulated Judgment on behalf of an
8 agency or other entity represents that he or she has the full legal right, power and authority to
9 execute and deliver this Stipulated Judgment and to bind the Party for whom such individual is
10 signing, and to cause such Party to perform its obligations hereunder.

11 C. Exclusive Remedy. By executing this Stipulated Judgment, each of the
12 Parties acknowledges and agrees that the rights and remedies provided in this Stipulated
13 Judgment shall be the sole and exclusive rights and remedies surviving as between and among the
14 Parties hereto relating to the subject matter of this Stipulated Judgment.

15 D. No Reliance on Others. No representations, oral or otherwise, express or
16 implied, other than those contained herein have been made by any Party, or any officer, director,
17 commissioner, agent, affiliate, attorney or employee thereof. By executing this Stipulated
18 Judgment, each of the Parties warrants and represents that this Stipulated Judgment is made and
19 entered into without reliance upon any statements or representations of any other Party, or in
20 reliance upon any statements or representations made by any officers, directors, commissioners,
21 agents, affiliates, insurer, attorneys or employees, of any other Party.

22 E. Independent Investigation. Each of the Parties warrants and represents that
23 he, she or it has made its own independent investigation, in the manner deemed necessary and
24 appropriate by them, of the facts and circumstances surrounding this Stipulated Judgment and the
25 agreements contained herein, and that through such independent investigation, each Party has
26 satisfied itself that the execution of this Stipulated Judgment and entry into the agreements
27 contained herein is in his, her or its best interest and are in compliance with the law. Also, each
28 of the Parties warrants and represents that his, her or its independent investigation has included,

1 but not been limited to, receipt of independent advice by legal counsel on the advisability of
2 entering into this Stipulated Judgment and making the agreements contained herein, and that the
3 Stipulated Judgment is in compliance with the law.

4 F. Litigation Expenses. Upon the entry of the Stipulated Judgment, neither
5 Party shall further seek an award from this Court of the costs of suit and attorneys' fees incurred
6 and/or accrued in connection with this lawsuit.

7 G. Construction of Agreement. Each of the Parties has cooperated in the
8 drafting and preparation of this Stipulated Judgment and, therefore, any construction of the intent
9 of the Parties or language hereof to be made by a court or arbitrator shall not be construed against
10 any of the Parties. This agreement shall be construed in accordance with the laws of the State of
11 California.

12 H. Comprehension of Terms. Each of the Parties warrants and represents that
13 he, she and it has read this Stipulated Judgment in full, consulted with their legal counsel
14 regarding its terms, fully understands each and every provision hereof, and agrees to be bound by
15 all of the terms and provisions set forth herein.

16 I. Severability. Any portion of this Stipulated Judgment found to be invalid,
17 void or unenforceable shall be deemed severable from the remainder of this Stipulated Judgment
18 and shall not invalidate the remainder of the paragraph in which it is located or the remainder of
19 this Stipulated Judgment.

20 J. Merger and Integration. This Stipulated Judgment contains the full and
21 entire agreement between and among the Parties with respect to the entire subject matter hereof
22 and supersedes any and all prior or contemporaneous agreements and discussions, whether
23 written or oral. Any and all prior or contemporaneous discussions, negotiations, writings,
24 commitments and/or undertakings related hereto are merged therein.

25 K. Amendment. This Stipulated Judgment may be amended only by a written
26 agreement signed by all Parties and approved by this Court.

27 L. Counterparts. This Agreement may be executed and delivered by facsimile
28 or emailed in pdf format and in any number of counterparts, each of which shall be deemed an

1 original.

2 M. Notice. Any notice required or permitted to be given under the terms of
3 this Stipulated Judgment shall be in writing and delivered by email and Overnight Mail. Notices
4 shall be sent to the following persons:

5 To: Great Basin Unified Air Pollution Control District

6 Theodore D. Schade

7 Air Pollution Control Officer

8 Great Basin Unified Air Pollution Control District

9 157 Short Street

10 Bishop, CA 93514

11 Telephone: (760) 872-8211

12 Email: tschade@gbuapcd.org

13 With a copy to:

14 Peter Hsiao, Esq.

15 Morrison & Foerster LLP

16 707 Wilshire Boulevard, Suite 6000

17 Los Angeles, CA 90017-3543

18 Telephone: (213) 892-5200

19 Email: phsiao@mofo.com

20
21 To: City of Los Angeles Department of Water and Power

22 Attention: Marcie L. Edwards, General Manager

23 City of Los Angeles Department of Water and Power

24 111 North Hope Street, Room 1550

25 Los Angeles, CA 90012-2607

26 Telephone: (213) 367-1338

27 E-mail: marcie.edwards@ladwp.com

28 ///

1 With copies to:
2 Edward J. Casey, Esq.
3 Alston & Bird LLP
4 333 South Hope Street, 16th Floor
5 Los Angeles, CA 90071
6 Telephone: (213) 576-1000
7 E-mail: ed.casey@alston.com

8 **And**
9 Julie Riley, Deputy City Attorney
10 Los Angeles City Attorney's Office
11 111 North Hope Street, Suite 340
12 Los Angeles, CA 90051
13 Telephone: (213) 250-7357
14 E-mail: julie.riley@ladwp.com

15 Notice shall be deemed given as of the date of transmission of the notice.

16 Any Party may change its addressee(s) for notice by providing written notice of such
17 change in accordance with the requirements of this paragraph of the Stipulated Judgment.

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1 THE UNDERSIGNED SIGNATORIES represent that they have all necessary
2 authority to agree and enter into this Stipulated Judgment on behalf of their respective
3 party.

4 REVIEWED AND AGREED TO:

5 Dated: 12-3-14, 2014

Dated: December 19, 2014

6 M. Edwards
7 Marcie L. Edwards
8 General Manager, Los Angeles Department
of Water and Power

E. D. Schade
Theodore D. Schade
Air Pollution Control Officer

9 The City of Los Angeles
10 By and Through the
Los Angeles Department of Water and
11 Power

Great Basin Unified Air Pollution Control
District

12 APPROVED AS TO FORM AND LEGALITY:

13 Dated: 19 December, 2014

Dated: December 19, 2014

14 Julie C. Riley
15 Michael N. Feuer, City Attorney
16 Julie C. Riley
Deputy City Attorney

Peter Hsiao
Peter Hsiao
Morrison & Foerster, LLP

17 Attorney for Petitioner and Plaintiff
18 The City of Los Angeles
By and Through the
19 Los Angeles Department of Water and
Power

Attorney for Respondent and Defendant
People of the State of California and the
Great Basin Unified Air Pollution Control
District

20 Attachment A – Court Final Ruling and Order
21 Attachment B – TwB2 Operations Protocol
Attachment C – TwB2 Monitoring Protocol

22 THIS STIPULATED JUDGMENT IS REVIEWED, APPROVED AND ENTERED AS THE
23 JUDGMENT OF THE COURT.

24
25 Dated: December 30, 2014

26
27 Shelleyanne W. Chang
28 Honorable Shelleyanne W. Chang
Sacramento County Superior Court Judge



EXHIBIT A

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

DATE: JUDGE:	December 16, 2014 HON. SHELLEYANNE W. L. CHANG	DEP. NO.: CLERK:	24 E. HIGGINBOTHAM
CITY OF LOS ANGELES, a California Municipal Corporation, ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER, Petitioner and Plaintiff, v. CALIFORNIA AIR RESOURCES BOARD; EXECUTIVE OFFICER OF THE CALIFORNIA AIR RESOURCES BOARD, in his official capacity, GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT; and DOES 1-100, Respondents and Defendants. CALIFORNIA STATE LANDS COMMISSION; and DOES 101-500, Real Parties in Interest.		Case No. 34-2013-80001451	
Nature of Proceedings:		RULING ON SUBMITTED MATTER AND ORDER: PETITION FOR WRIT OF MANDATE	

The Court issued a Tentative Ruling on September 25, 2014, in which it denied the Petition for Writ of Mandate. The parties appeared for oral argument on September 26, 2014, and were represented by counsel as stated on the record. After oral argument, the Court took the matter under submission. The Court rules as follows

The City of Los Angeles (City) petitions for a writ of mandate that (1) declares void the 2011 Supplemental Control Requirements Determination (2011 SCRD) issued by Respondent Great Basin Unified Air Pollution District (District), and (2) invalidates the decision of Respondent California Air Resources Board (CARB) affirming the 2011 SCRD. The Petition is **DENIED**.

I. BACKGROUND

a. Background Facts and Law

This litigation reflects the long-running dispute between the City and agencies such as Respondents, which have jurisdiction over air quality affected by the City's water diversion. The City has been drawing water from the Owens River for over 100 years.

This diversion has dried the Owens Lake Bed, creating large volumes of dust, in particular, the pollutant PM₁₀.¹ (CARB OL A:006453.)²

The instant litigation arises from the District's issuance of an order (2011 SCR D) that requires the City to mitigate PM₁₀ on an additional 2.86³ square miles of the Owens Lakebed.

i. Background Law

Before discussing the facts, the Court provides an overview of the pertinent law to explain the regulatory relationship between the City, the District, and CARB.

Under the federal Clean Air Act, the United States Environmental Protection Agency (EPA) is charged with identifying air pollutants and setting National Ambient Air Quality Standards (NAAQS), identifying areas that do not meet the NAAQS for criteria pollutants, and directing the creation of State Implementation Plans (SIPs) to attain the NAAQS for the pollutants. (*See*, First Amended Petition (FAP), ¶¶ 22-26; *see also* 42 U.S.C. § 7410.) CARB has the responsibility and authority to meet the Clean Air Act's SIP requirements through each of the State's 35 air pollution control districts. (FAP, ¶ 28.) The District is one such air pollution control district.⁴ (FAP, ¶¶ 22-26.)

In 1987, the EPA found that the Owens Valley Planning Area (OVPA) (in which the Owens Lake and District are located) did not meet the NAAQS for PM₁₀, a designated criteria pollutant. (AR: 2g:1769; CARB OL A:006454.) In 1993, the EPA reclassified the OVPA as a "serious non-attainment area" for PM₁₀. (*Id.*) The District manages air quality in the OVPA through SIPs, which are submitted to and approved by "the State" (CARB) and then to the EPA. (*See* 42 U.S.C. § 7410.) The District regulates the PM₁₀ emissions caused by the City's water diversion through SIPs, SCR D orders, and an agreement, as described later in the ruling.

In 1983, Health and Safety Code⁵ section 42316 was enacted to resolve disputes between the City and District regarding water diversion and air quality. Section 42316 provides in pertinent part:

¹ PM₁₀ refers to particulate matter 10 microns or less in diameter. (CARB OL A:006453.)

² Citations to the administrative proceedings before CARB appear as "CARB OL A:____." Other citations to the administrative record appear as "AR volume number, volume letter:bates number" (e.g., AR 2g:1789.)

³ Although the SCR D initially required the City to implement mitigation on 2.93 square miles, the District issued a revised SCR D reducing the new control area from 2.93 to 2.86 square miles. (CARB OL A: 6458.)

⁴ The District is formed pursuant to Health and Safety Code sections 40000 *et seq.*

⁵ Unless otherwise specified, all future references shall be to the Health and Safety Code.

(a) The Great Basin Air Pollution Control District may require the City of Los Angeles to undertake reasonable measures, including studies, to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water and may require the city to pay, on an annual basis, reasonable fees, based on an estimate of the actual costs to the district of its activities associated with the development of the mitigation measures and related air quality analysis with respect to those activities of the city. The mitigation measures shall not affect the right of the city to produce, divert, store, or convey water and, except for studies and monitoring activities, the mitigation measures may only be required or amended on the basis of substantial evidence establishing that water production, diversion, storage, or conveyance by the city causes or contributes to violations of state or federal ambient air quality standards.

(b) *The city may appeal any measures or fees imposed by the district to the state board [CARB] within 30 days of the adoption of the measures or fees. [CARB], on at least 30 days' notice, shall conduct an independent hearing on the validity of the measures or reasonableness of the fees which are the subject of the appeal. The decision of [CARB] shall be in writing and shall be served on both the district and the city. Pending a decision by [CARB], the city shall not be required to comply with any measures which have been appealed. Either the district or the city may bring a judicial action to challenge a decision by [CARB] under this section. The action shall be brought pursuant to Section 1094.5 of the Code of Civil Procedure and shall be filed within 30 days of service of the decision of [CARB]....* (Health & Saf. Code, 42316 (emphasis added).)

Thus, the District may require the City to undertake reasonable mitigation measures to mitigate the air quality impacts of diverting water, which must be supported by substantial evidence establishing that the City's water diversion causes the violations. Section 42316 also sets forth the process by which the City and District resolve disputes about the reasonableness of the mitigation measures. The City may appeal District orders to CARB. CARB then "conduct[s] an independent hearing on the validity of the measures." Either party may then file a petition for writ of mandate pursuant to Code of Civil Procedure, section 1094.5. (Health & Saf. Code, § 42316.)

The parties agree that Section 43216 governs this litigation.

b. Procedural Background

The City implements dust suppression measures on approximately 43 square miles of the Owens Lake Bed. (CARB OL A:6454-6455.) The City implements these measures pursuant to Supplemental Control Requirements Determinations (SCRD) from the District that have been incorporated into various SIPs, and a 2006 Agreement between the City and District. (*Ibid*; see also, AR 2g:1769-1770.)

In late 2006, the City and District entered into an Agreement to settle litigation in which the City challenged a SCRCD issued by the District's Air Pollution Control Officer (APCO). (AR 2g:1769-1770.) The Court refers to this Agreement as the "2006 Agreement." Among other things, the City agreed to:

- **Apply Dust Control Measures on additional areas of the Owens Lakebed,** beyond the 29.8 square miles required by the 2003 SIP. (AR 2g:1770.)
- Work with the District to improve the current "Dust ID Program" used to monitor PM₁₀ emissions. (AR 2g:1774-1775.)
- **Allow the APCO to "recommence" written SCRCDs, under the "revisions to the 2003 SIP."** Pertinent here, the SCRCDs will use Dust ID Data collected after April 1, 2010, and shall be made once every calendar year. (AR 2g:1778.)
- **Abide by a particular dispute resolution process if it did not agree to a SCRCD issued by the APCO.** If the City and District dispute a SCRCD, "the City may appeal future [SCRCDs] to CARB under the provisions of... Section 42316....provided that the Parties expressly intend that this Agreement be the final resolution regarding existing disputes between the Parties that are the subject of this Agreement....*[T]he City stipulates and agrees that all of the provisions and determinations, including the measures and procedures, contained in the 2003 SIP, the provisions of this Agreement to be included in modifications to the 2003 SIP pursuant to this Agreement, and the [SCRCD] dated April 4, 2006, which the City in good faith disputed, shall be deemed to be valid and reasonable, and that the City will not challenge those provisions or determinations by appeal under Section 42316 or in any other proceedings, including any other administrative or judicial forum. Subject to this Paragraph, the City may challenge any future [SCRCD] under Section 42316; however any arguments or challenges must be based on data or information that do not currently exist, but that exist after the execution of this Agreement.* (AR 2g:1779 (emphasis added).)

In 2008, the District issued order #080128-01 (2008 Order). The 2008 Order incorporated the 2006 Agreement and approved the 2008 SIP, which regulated the PM₁₀ emissions caused by the City's water diversion. The 2008 Order has been approved by CARB and the EPA under the 2010 Coso Junction Maintenance Plan, and has not been challenged by the City. (See AR 2a:899-900; CARB OL A: 6457.)

The 2008 Order ordered the City to continue to implement certain PM₁₀ controls (Best Available Control Measures or BACMs) on 29.8 square miles of the Owens Lakebed, and then on other specified portions of the Lakebed for a total of 43.0 square miles of "Total Dust Control Area." (AR 3a:1815-1816.) The 2008 Order specified the BACM mitigation measures that could be used by the City: shallow flooding, managed vegetation, and gravel blanket.⁶ (AR 3a:1820-1842.)

⁶ The 2008 Order also specified that "Moat and Row," an alternative mitigation measure, was not currently approved by the District. (AR 3a:1825-1825.)

The 2008 Order also provided that at least once a year, the District's APCO will make a written determination as to whether any areas, in addition to those required by the 2008 Order require additional mitigation to comply with the NAAQS for PM₁₀. (AR 3a:1817.) The 2008 Order further provided that once the APCO issues such a determination, the City must implement the BACM mitigation and comply with the California Environmental Quality Act (CEQA) and secure any necessary permits to implement the mitigation. (AR 3a:1818.)

On August 1, 2011, the District APCO issued the 2011 SCRD. The 2011 SCRD orders the City to "implement, operate and maintain air pollution control measures on an additional 2.86 square miles" of the Owens Lake Bed. (AR 2a:906.) The 2011 SCRD states that the City may use any combination of the three approved BACM measures: shallow flooding, managed vegetation, or gravel. (Id.; CARB OL A 6457.)

The City appealed the 2011 SCRD to CARB pursuant to Section 42316. Following a June 15, 2012 administrative hearing, CARB issued a decision affirming the District's SCRD on November 19, 2012. (CARB OL A: 006451-006483.)

The City filed a petition for a writ of mandate in the Superior Court for Los Angeles County, which was then transferred to the Superior Court for Sacramento County. The City amended its petition to add claims for declaratory relief. In February 2014, the Court granted Respondents' motion for judgment on the pleadings as to each claim for declaratory relief. This ruling addresses the remaining writ causes of action.

II. DISCUSSION

a. Requests for Judicial Notice

On January 21, 2014, the City submitted a request for judicial notice (RJN) in support of its Reply Briefs. Because the RJN was unopposed by any party, the Court granted the City's request in its tentative ruling.

At the hearing, the District objected to the Court's ruling, because the exhibit attached to the RJN, a statement from Governor's Office "Declar[ing] a Drought State of Emergency," was not in the administrative record. The District had nine months to make this objection. Because it is untimely, the District's objection is **OVERRULED**. In any event, the Court's consideration of the City's Request for Judicial Notice does not alter the outcome of the ruling.

The District also asked the Court at the hearing to disregard other evidence cited by the City in its Reply Brief (to the District) that was stricken from the administrative record. These objections are **OVERRULED**, as they are untimely. In any event the citations do not alter the Court's ruling.

b. California State Lands Commission

Real Party in Interest California State Lands Commission (CSLC) objects to being named as a party, because it did not take any actions subject to mandate. This contention is inapposite. A real party in interest includes any person or entity whose interest will be directly affected by the proceeding, or anyone having a direct interest in the result, which is therefore entitled to notice of the proceedings. (*Sonoma County Nuclear Free Zone v. Superior Court* (1987) 189 Cal.App.3d 167, 173-174.) CSLC owns a portion of the Owens Lakebed upon which the City must implement mitigation measures. As its ownership interests could be affected, it is properly named as a Real Party in Interest.

CSLC clarified at the hearing that it did not object to being named a Real Party in Interest, but objected to the extent that the City was trying to seek mandate relief against it. The City replied that it is not seeking mandate relief against the CSLC, and this contention is apparent from the Petition.

c. Standard of Review

i. The Court Reviews CARB's Decision

As a preliminary matter, the Court rejects the City's argument that because it "appealed" the 2011 SCRD issued by the District, the Court must review the District's decision to issue the 2011 SCRD, not the CARB decision that affirmed it. The plain language of Section 42316 says otherwise: "Either the district or the city may bring a judicial action to challenge a decision by [CARB]" pursuant to Code of Civil Procedure section 1094.5. (Health & Saf. Code, § 42316, subd. (b).) This language indicates that the Court reviews CARB's decision.

The City argues that, by analogy, the Court may review the District's decision because Water Code sections 13320 and 13330 allow courts to review a regional water board's order, which is administratively appealable to the State Water Resources Control Board (State Board). The Court rejects this argument.

Unlike Section 42316, Water Code sections 13330 and 13320 make express reference to the reviewability of regional board decisions for which the State Board denies review. (Water Code, § 13330, subd. (b).) Additionally, the California Supreme Court has interpreted these statutes to reflect that "decisions and orders of the [regional board], including the issuance and renewal of NPDES permits, are reviewable by administrative appeal to the State Water Board, and then by petition for administrative mandamus in the superior court." (*Voices of the Wetlands v. State Water Resources Control Board* (2011) 52 Cal.4th 499, 516.) In contrast to these Water Code provisions, no published appellate authority has construed Section 42316. Thus, procedurally, these statutes are inapposite as Petitioner is not seeking review of a decision by a regional board and this is not a case where the State Board has denied review.

The City also contends that the Court may review the District's decision, because CARB's hearing was an appellate hearing and not a true *de novo* hearing. However, Section 42316 provides that the City may appeal any mitigation measures or fees imposed by the District to CARB, which shall conduct an "independent hearing on the validity of the measures." (Health & Saf. Code, § 42316, subd. (b).) The statute expressly provides that the hearing by CARB is *de novo*.

Accordingly, the Court reviews CARB's decision.

ii. Review of CARB's Decision

The Court reviews CARB's decision to determine "whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence." (Code Civ. Proc., § 1094.5, subd. (b) (emphasis added).) "[A]buse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record." (*Ibid*, § 1094.5, subd. (c).)

The parties agree that the standard of review for CARB's factual determinations,⁷ e.g., whether the mitigation measures in the 2011 SCRD are "valid," is whether they are supported by substantial evidence. (*Sierra Club v. California Coastal Comm'n* (1993) 19 Cal.App.4th 547, 556-557; Health & Saf. Code, § 42316, subd. (b).)

CARB's decision is presumed to be supported by substantial evidence, and Petitioner bears the burden of showing that there is no substantial evidence to support the findings of the agency. (*Ross v. California Coastal Comm'n* (2011) 199 Cal.App.4th 900, 921.) Petitioner argues that the Court must "weigh the evidence." This is incorrect. In reviewing CARB's decision, the Court examines the entire administrative record and considers all relevant evidence, including evidence that detracts from the decision. (*Ibid*.) Although this task may involve some weighing to fairly estimate the worth of the evidence, that limited weighing does not constitute independent review where the Court substitutes its own findings and inferences for the agency's. (*Id.* at p. 922.) Rather, it is for CARB to weigh the evidence, and the Court may reverse CARB's decision only if, based on the evidence, a reasonable person could not have reached the conclusion CARB reached. (*Ibid*.)

The parties agree that the Court reviews *de novo* whether CARB has complied with procedural requirements (*see Citizens for East Shore Parks v. California State Lands Comm'n.* (2011) 202 Cal.App.4th 549, 557) and issues of law (*see Pasternak v. Boutris* (2002) 99 Cal.App.4th 907, 918).

⁷ Such factual determinations include disagreements regarding the methodology used for assessing environmental impacts, and reliability or accuracy of data upon which the agency relies. (*North Coast Rivers Alliance v. Marin Mun. Water Distr.* (2013) 216 Cal.App.4th 614, 642-643.)

d. The City Has Failed to Show that CARB Did Not Follow Proper Procedures in Conducting the Hearing

The City argues that CARB abused its discretion by failing to comply with procedures required by law because CARB did not conduct a true “independent” hearing. Namely, the City argues that the CARB Executive Officer admitted some evidence but did not consider the City’s. The City has shown no prejudicial abuse of discretion.

The Executive Officer conducting the hearing on behalf of CARB⁸ declined to conduct a “new unlimited evidentiary hearing.” (CARB OL A:006458-6459.) He interpreted Section 42316’s “independent hearing” requirement to mean that he would apply his independent judgment in reviewing the 2011 SCRD. He also decided to limit the evidence to the “administrative record” before the District, plus any additional evidence admitted to augment the record, and rule *do novo* on this evidence. (*Ibid.*) The Executive Officer outlined these rules in January 17, 2012 First Procedural Order issued at the outset of the administrative process, and after argument and briefing from the parties. (CARB OL A:000915, *et seq.*)

Specifically, the Executive Officer issued a procedural order permitting the administrative record to be augmented only if (1) the evidence was presented to and accepted by the District but was mistakenly omitted from the record, (2) is relevant, but could not, with the exercise of reasonable diligence, have been presented to the District before the 2011 SCRD issued, or (3) the parties stipulated to admit the evidence. (CARB, OL A:000963.)

The City contends that the Executive Officer denied the City’s motions and requests to introduce new evidence into the record. The City has failed to demonstrate how these alleged errors were prejudicial, notably, by not describing what the evidence was and how its omission assisted CARB or how its admission would have assisted the City.

The City argues that CARB erroneously disallowed the City from presenting unidentified new evidence—first on March 7, 2012, and then on November 19, 2012 when the City submitted some “declarations and supporting documents”⁹ with its Opening and Reply briefs in the CARB hearing. (CARB OL A:006459-6460.) The improper exclusion of competent and material evidence may constitute a prejudicial abuse of discretion, particularly if it relates to a defense. (*King v. Board of Med. Examiners* (1944) 65 Cal.App.2d 644, 649.) Here, the City has not even identified what the evidence is and how it is competent and material. Accordingly, the City has not shown that the Executive Officer prejudicially abused his discretion.

Second, the City argues that CARB “re-ran” technical data and allowed its staff to testify as witnesses, but did not allow the City to cross-examine those staff. CARB disputes the accuracy of these statements. The City has not shown that CARB prejudicially abused its

⁸ For the sake of convenience, this ruling may refer to the acts of the Executive Officer as “CARB.”

⁹ The City does not further explain the nature of the evidence it sought to introduce.

discretion. Beyond these vague statements, the City does not describe the technical data that CARB “re-ran” or the statements of staff at the hearing, and explain how they were relevant or critical to the decision.

The City cites to one page of a CARB staff report prepared for the CARB hearing. In the report, staff note that the City argues that the District did not accurately account for background concentrations and emissions for “Lone Violator” and “Watch Areas,” because on certain “exceedance days,” the District did not account for attributing the exceedances from other sources. CARB staff examined the exceedance days cited by the City and concluded that even if those days were omitted, there were a “sufficient number of other [violation] days in the modeling output records to qualify for control in each [2011 SCRD] area.” (CARB OL A: 5814.)

The staff report rather notes that, even assuming that specific dates mentioned by the City were removed, it would not alter the District’s findings. The City argues in a conclusory fashion that it is prejudiced because it could not respond to this conclusion. However, even if the City could “respond” to this conclusion, it would not alter the conclusions regarding the “Lone Violator” and “Watch Areas.” (Id.) The City has shown no prejudice.

The City next avers that CARB improperly allowed three additional documents not before the District—the District’s quality assurance plan for another pollutant; a maintenance plan for a different planning area; and an abatement order to the City. (AR 3b:1964, 5:3629, 4089.) The Court disposes of this argument on two grounds.

CARB responds that Petitioner made no attempt during the hearing to exclude the documents it now objects to. Accordingly, the City did not exhaust its administrative remedies for this argument.

Moreover, the City does not specify how the admission of these documents was improper or objectionable. First, the City does not identify how the documents were relevant to CARB’s decision and to what extent the Executive Officer relied on them. Additionally, Petitioner has not established that the admission of this evidence was in error, namely that the Executive Officer admitted this evidence after a successful motion to augment the administrative record, e.g., he found that it was relevant but was omitted from the administrative record.

Generally, admission of improper evidence is generally not a prejudicial abuse of discretion if there is sufficient competent evidence to support the agency’s decision. (*Southern Cal. Jockey Club, Inc. v. California Horse Racing Bd.* (1950) 36 Cal.2d 167, 175; *Carden v. Board of Prof’l Eng’rs.* (1985) 174 Cal.App.3d 736, 744.) As the City fails to identify how the admitted evidence was improper, it cannot show a prejudicial abuse of discretion.

e. The City's CEQA Challenge is Barred

The City contends that the 2011 SCR D Order (as affirmed by CARB) violates CEQA because it requires the City to implement one of three particular mitigation measures. (CARB OL A:6478-6479.) The gravamen of the City's argument is that it believes that the 2011 SCR D will require it to use additional water to mitigate PM₁₀ emissions, which will create additional environmental impacts that the City must evaluate under CEQA.

The City argues that requiring additional PM₁₀ mitigation is a CEQA "project," but by restricting the mitigation measures, the District has precluded the City, as lead agency, from fully considering the environmental impacts of the 2011 SCR D, considering other alternatives and mitigation measures, and deciding whether to adopt a Statement of Overriding Considerations. The City also argues that the 2011 SCR D violates CEQA because implementing it will likely impact cultural resources in the area.

CARB found no substantial evidence that the 2011 SCR D violates CEQA. (CARB OL A:6480.) Having reviewed the administrative record, the Court agrees.

The City's CEQA challenge is based on its complaint that the 2011 SCR D restricts the City's choice of PM₁₀ mitigation. But the 2008 Order already outlined the types of permissible mitigation measures, which the City did not challenge. In fact, the City agreed not to do so in the 2006 Agreement with the District.

The 2011 SCR D requires the City to use one of three mitigation measures to mitigate dust on an additional 2.86 square miles of the Owens Lakebed: shallow flooding, managed vegetation, or gravel. The District issued the 2011 SCR D pursuant to the 2008 Order, which was approved by CARB and the EPA in the Coso Junction Maintenance Plan, and not challenged by the City. (AR 2a:899-900.) These mitigation measures are also set forth in the District's most recent (2008) SIP, which is confirmed by the District's 2008 Order. The 2008 Order also reflects that the City will assume the role of CEQA lead agency, and prepare any documentation, related to additional mitigation.

Respondents observe that City stipulated in the 2006 Agreement "not to challenge (the 2008 Order) under CEQA to the extent the Order is consistent with [the 2006 Agreement]." This 2006 Stipulation is incorporated into the 2008 Order. (AR 2h:233, para. G.)

The City does not meaningfully dispute these contentions—that it now brings a CEQA challenge to mitigation measures set forth in a 2008 Order which formed the authority for the 2011 SCR D. Moreover, the City does not assert that it may bring a CEQA action now because the mitigation measures reflected in the 2011 SCR D and set forth in the 2008 Order are somehow inconsistent with the provisions of the 2006 Agreement. Rather, the City appears to argue that its 2006 Agreement was invalid: it could not stipulate to forego a CEQA challenge because the public has a right to be informed of decisions under the CEQA process. However, the City should have asserted this in a

timely action to challenge the mitigation measures set forth in the 2008 Order, which it failed to do.

The mitigation measures the City seeks to challenge are contained in the 2008 Order. The statute of limitations for a CEQA action is “within 180 days from the date of the public agency's decision to carry out or approve the project.” (Pub. Resources Code, § 21167, subd. (a).) Accordingly, the statute of limitations bars the City from asserting a CEQA challenge to particular mitigation measures that were the subject of the 2008 Order.

**f. The City Has Not Shown that CARB's Factual Decisions are
Unsupported by Substantial Evidence**

As a preliminary matter, the Court addresses the City's contention that the 2008 Order (incorporating the 2006 Agreement and approving the 2008 SIP) does not bar the City's challenge to the SCRd. The City argues that by entering the 2006 Agreement, it did not waive its statutory right to challenge the mitigation measures in the SCRd, because Section 43216 is a public interest statute.

“Civil Code section 3513 provides: ‘Any one may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.’ Nonetheless, statutory benefit may be waived if (1) the statute does not prohibit waiver, (2) the statute's public purpose is incidental to its primary purpose, and (3) the waiver does not seriously undermine any public purpose the statute was designed to serve.” (*Lanigan v. City of Los Angeles* (2011) 199 Cal.App.4th 1020, 1030.)

The City argues that because it is asserting the violation of “important public rights” (contained in either Section 43216 or the California Constitution), the City, as a public agency, apparently could not enter into the 2006 Agreement, which the 2008 Order incorporated. Were the Court to accept the City's argument, the City could negate any past consent to procedures and methodologies governing issuance future SCRds. Moreover, the City does not meaningfully argue that any waiver in the 2006 Agreement “seriously undermines any public purpose the statute (or any law) was designed to serve.”

The Court concludes that the City's entry into the 2006 Agreement does not allow the City to then challenge procedures and methodologies to which it previously agreed. Additionally, the 2008 Order functions as an independent order barring the City's challenges, regardless of whether the Court finds that the City did not waive any statutory or constitutional claims under the 2006 Agreement.

However, other grounds exist to defeat the City's specific challenges to the 2011 SCRd, which the Court will address.

The City argues the 2011 SCRd is unsupported by “substantial evidence establishing” that the City's water diversion causes the PM₁₀ emissions for which the City must impose additional mitigation. (Health & Saf. Code, § 42316.) CARB decided that the

mitigation measures in the 2011 SCRD were supported by substantial evidence. The Court affirms CARB's decision, and discusses each "substantial evidence" argument.

i. Shoreline

The 2011 SCRD defines the Owens lakebed "regulatory shoreline" at 3,600 feet above sea level (fasl), "below which the City is responsible for air pollution emissions and above which air quality standards are expected to be maintained." (AR 2a:901-902.)

The City argues that the 2011 SCRD's selection of the 3,600 fasl level is not supported by substantial evidence, because, according to modeling done by the Desert Research Institute (DRI), the shoreline would have fluctuated during the 100 years in which the City has been diverting water. The City argues that the regulatory shoreline should be below 3,600 fasl.

The City stipulated in the 2006 Agreement not to challenge future SCRDs, unless the challenges were based on data that existed after the time of the 2006 Agreement. The Executive Officer found that the location of the "historic" or "regulatory" shoreline was data that existed at or before the time of the 2006 Agreement. Additionally, because the studies cited to by the City in support of its argument all predated the 2006 Agreement, the City's challenge was barred. (CARB OL A:006466.)

The SCRD procedure contained in the 2008 Order,¹⁰ attachment B, allows the APCO to regulate the City if the monitored or modeled emissions exceed the NAAQS caused by emissions occurring "at or above the historic shoreline." (AR 1f:6; CARB OL A:006465.) The SCRD procedure definitions define a "shoreline monitor" as one located at the 3,600 feet elevation (historic shoreline) contour" or one in the "non-attainment area." (AR 1f:5.) Moreover, the 2008 Order and District Rule 401.D respectively specify that the historic shoreline is 3,600 fasl, and that 3,600 fasl is the "control to" elevation. (AR 2h:356, 2a:974.)

Thus, the Executive Officer did not abuse his discretion in concluding that the City's challenge to the regulatory shoreline is barred.

The City claims that it may revive this argument, because Section 42316 requires that components of the 2011 SCRD be supported by substantial evidence. Even if the Court accepts this argument, however, the City's citation to another modeling report, indicating that the lake levels could have fluctuated over time, does not establish that the District's choice of a 3,600 fasl "regulatory" shoreline is somehow unsupported by substantial evidence.

ii. Modeling and Methods

In the CARB hearing, the City asserted that the modeling procedure used by the District to identify source areas for mitigation is flawed for several reasons, and does not

¹⁰ The Executive Officer refers to the 2008 Order as "Board Order 080128-01."

constitute substantial evidence establishing that the City caused the PM₁₀ emissions. The Court considers and rejects each argument.

1. Recommendation of Expert Panel

The City first contends that the 2011 SCR D Order is invalid because the District did not adequately implement the recommendations of agreed-on technical experts (Expert Panel) with regard to measurement and monitoring of the PM₁₀ emissions (e.g., DUST ID program).

As part of the 2006 Agreement, the City and District stipulated that they would select an Expert Panel to make recommendations to the DUST ID program, and that the District would “implement all mutually-agreeable changes to the DUST ID program.” (AR 2g:1774.) The City faults the District for not making sufficient changes to the DUST ID program after the Expert Panel concluded that some components of the program should be improved. The City contends that the District adopted “a number of,” but not all of, the Expert Panel’s recommendations.

However, by the City’s own admission, the Settlement Agreement required the District to implement all “mutually-agreeable” changes. Accordingly, the District’s decision not make *all* changes recommended by the Expert Panel does not, in and of itself render the 2011 SCR D invalid.

The City argues that the 2006 Agreement is irrelevant, because under Section 42316, “substantial evidence” must show that the City’s water diversion causes PM₁₀ emissions, and the Executive Officer should not be permitted to “disregard” findings of the Expert Panel that the DUST ID program needs improvement.

However, the Executive Officer *did* consider the Expert Panel’s recommendations. He found that it was impossible for the District to adopt all recommendations, because adoption of all of the Expert Panel recommendations required both the City and District’s agreement, and that the City withheld its agreement by not meeting with the District to discuss implementing those recommendations. (CARB OL A:006470.)

The City does not appear to dispute this, but also argues that it offered its own solution to the potential problems caused by the DUST ID program, which the District rejected.

The Executive Officer further found that despite the City’s lack of cooperation, the District implemented a “majority” of the Expert Panel’s recommendations, that the record had substantial evidence to support the District’s modeling approach, and even if the District could have, but did not, adopt all of the Expert Panel’s recommendations, the SCR D was not invalid, as the City cited no substantial evidence that it tried to change the modeling protocols. (CARL OL A:006470.)

The Court has reviewed the record and concluded that the Expert Panel's statements do not show that the 2011 SCR D and decision affirming it were unsupported by substantial evidence..

The City cites its own technical data contending that the DUST ID model overpredicts PM₁₀ concentrations by a factor of two and is inaccurate, and argues that the District improperly disregarded the recommendations of the Expert Panel. The District responds that the DUST ID program performs well based on comparisons to other air quality models, and that the DUST ID program's results are appropriate because they are conservative to protect public health and do not underestimate PM₁₀ emissions.

While the City has shown that there may be a "battle of the experts" regarding the DUST ID program and that reasonable minds may differ, this is not a basis for finding that the 2011 SCR D was unsupported by substantial evidence to the extent that the District's mitigation measures were at variance with any recommendations of the Expert Panel. (*Association of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1397 (noting that "[w]hen the evidence on an issue conflicts, the decisionmaker is 'permitted to give more weight to some of the evidence and to favor the opinions and estimates of some of the experts over the others.'" (citation omitted).)

g. EPA Recommendations

The City also argues that CARB's decision affirming the 2011 SCR D is invalid because the District did not follow EPA rules and regulations in collecting the monitoring data that is the basis for the SCR D. The Court rejects these arguments.

i. QAPP

The City first argues that the District did not collect certain data pursuant to an EPA-approved Quality Assurance Project Plan (QAPP) to ensure that the District's methodologies are trustworthy. The District concedes that it used a "CARB-approved" QAPP, which it contends is sufficient. The City argues that this method is infirm, and renders the 2011 SCR D defective.

The Executive Officer found that the District was not required to operate under an EPA-approved QAPP. (CARB OL A:006473 (citing AR 5:3874, 4373).) However, other than challenging the QAPP-collected data on the basis that the CARB's approval is insufficient, the City does not identify the (1) specific data gathered under the QAPP, (2) its relationship to the SCR D, and (3) how the methodology or data is invalid. Additionally, the City cites no case law where particular data, *that may otherwise be accurate*, renders an agency enforcement order unsupported by substantial evidence because the EPA did not approve it. The City has not met its burden of showing that CARB's decision on this issue is unsupported by substantial evidence.

ii. CALPUFF

The City contends that the District improperly uses "CALPUFF," an "alternative" modeling tool that has not been approved by the EPA. The City argues that although CALPUFF is approved as a long-range dispersion model, it is not approved by the EPA for "near-field" assessments, that are used here.

The District contends that the EPA has approved CALPUFF for the SCRd modeling process. The Executive Officer found that CARB and the EPA approved the use of CALPUFF. Specifically, he found that the EPA approved the CALPUFF modeling system for the SCRd process when it approved the 2010 Coso Junction Management Plan, and the 2008 Order (#08128-01). (CARB OL A:06468 (citing AR 2f:4994; AR 5:4371.)

The Court rejects the City's claims that CARB's decision is unsupported by substantial evidence for the same reasons as discussed above. Other than challenging the CALPUFF-collected data on the basis that the CARB's approval is insufficient, the City does not identify the (1) specific data gathered by CALPUFF, and why it is "near-field" rather than "long range", (2) its relationship to the SCRd, and (3) how the methodology or data is invalid. Additionally, the City cites no case law where particular data, *that may otherwise be accurate*, renders an agency enforcement order unsupported by substantial evidence because the EPA did not approve it.

iii. Calibration of Data

The City also argues that the District improperly calibrates data from the DUST ID model by comparing model estimates and the actual PM₁₀ measurements, a practice that is disapproved by the EPA. The City contends that the District "adjusts" the modeled K-factors to "force agreement" between the modeled K-factors and the actual observed PM₁₀ concentrations at the shoreline. According to the City, this is improper "calibration."

The District responds that it does not "calibrate" DUST ID data with its own results. Rather, the District argues that it compares a small amount of paired predictions with actual emissions, to develop a K-Factor value for different areas and periods, to capture seasonal variations on the Owens Lakebed that cannot be predicted by independent means.

The Executive Officer found that the DUST ID protocol was not improper calibration, because it did not "change" the inner workings of the model, but used the model with the actual values to "improve" emissions estimates. (CARB OL A:006488.)

The Court defers to the technical expertise of CARB in determining that the District did not engage in "calibration" that is disapproved of by the EPA. Petitioner has not shown that CARB's decision was unsupported by substantial evidence.

iv. Other Federal Regulations

The City contends that the District did not comply with other federal regulations that require the District to account for PM₁₀ emissions from other sources. Thus, the City argues that some amount of PM₁₀ emissions are wrongly attributed to its water diversion. The City avers that off-lake sources cause a background level of dust that renders inaccurate the number of exceedances for a measured air quality level. The City also argues that the District did not properly consider the EPA's "exceptional events" policy.

The Executive Officer reviewed these arguments raised by the City, and found that, in this case, the identified federal regulations do not apply. (CARB OL A:006473-6477.) Additionally, the City has not attempted to quantify the amount of PM₁₀ emissions attributable to other sources. Rather, the City appears to argue that if *any* PM₁₀ emissions could come from other sources, this renders the 2011 SCRD order invalid and unsupported by substantial evidence. The City has not shown that CARB's decision is invalid in this regard.

h. Watch Areas

The City also contests the 2011 SCRD's order that the City to prepare 30 percent designs for dust controls on an additional 1.87 square miles, identified as "Watch Areas." (AR 2:a906; 4g:3544-3545.) The City argues that there is no legal authority for this requirement, because Section 42316 requires that mitigation measures must be supported with substantial evidence. The City argues that the District has *not* determined that Watch Areas cause any NAAQS PM₁₀ violation.

However, the Executive Officer found that the District's use of "Watch Areas" is supported by legal authority—specifically the 2008 Order.

Section 11 of the 2008 Order, titled "CRITERIA FOR DETERMINING THE NEED FOR ADDITIONAL PM₁₀ CONTROLS" states that the APCO will use the criteria, methods, and procedures in the SCRD procedure, incorporated as Attachment B and the "2008 Owens Lake Dust Source Identification Program Protocol" in Attachment C. (CARB OL A:006464; AR 2:h193.)

The SCRD Procedure states that if the DUST ID model predicts that emissions from a source will cause shoreline PM₁₀ concentrations at or greater than 100 µg/m³ but less than 150 µg/m³, with the inclusion of 20 µg/m³ background concentration, the APCO will direct the City to choose the mitigation it wishes to implement in the identified area. The City must then develop a detailed "scope of work" for the "identified potential source areas." The District may deploy monitors upwind and downwind of the area, and will notify the City if "additional controls" are needed. (CARB PL A:006464; AR 2h:271-274.) Although the SCRD Procedure in the 2008 Order does not use the term "Watch Area," the Executive Officer found that "Watch Area" criteria and requirements in the 2011 SCRD match those in the 2008 Order.

Accordingly, by designating a “Watch Area,” the 2011 SCR D implicitly found that DUST ID model predicted that emissions from a source will cause shoreline PM₁₀ concentrations within at or greater than 110 µg/m³ but less than 150 µg/m³, with the inclusion of 20 µg/m³ background concentration. The City does not explain how this finding is not substantial evidence supporting the Order that the city prepare 30 percent design for dust controls on the “Watch Areas.”

Accordingly, the City has not shown that CARB’s decision is unsupported by substantial evidence.

i. The City’s Constitutional Claim

The City contends that the 2011 SCR D (1) permits a “waste” of water prohibited by the California Constitution, and (2) interferes with its right to divert water under Section 42316. The Court rejects these arguments.

Although the City raised them in a slightly different context, the Executive Officer considered and rejected those claims. The Court agrees with CARB’s decision.

First, the City agreed that the specific types of mitigation measures issued by the 2011 SCR D (shallow flooding, managed vegetation, gravel blanket) were valid and reasonable, and it agreed not to challenge them.

Further, the 2011 SCR D does allow the use of a mitigation measure (gravel blanket) that appears to require little or no water. The City discounts this mitigation measure as illusory. It observes that two of the three PM₁₀ mitigation measures require it to use substantial amounts of water, and that CSLC, which owns the land upon which the City must implement mitigation, has opposed and effectively prevented the City from choosing the gravel blanket mitigation measure. Thus, the City argues that the 2011 SCR D will require it to use large amounts of water in violation of the California Constitution, and its right to divert water.

The Executive Officer found that this claim was speculative, because the City had not cited any substantial evidence where it communicated with CSLC about the issuance of leases (for land CSLC owns) for implementing the 2011 SCR D. The City cites other evidence that CSLC has opposed the gravel blanket mitigation measure.

The Court cannot conclude that the 2011 SCR D Order which allows a choice of mitigation measures,¹¹ combined with past statements of CSLC opposing gravel mitigation on *other* areas of the Owens Lakebed, means that the City will necessarily use huge quantities of water for mitigation.

¹¹ Additionally, there may be a water use difference between the two mitigation measures that require water: shallow flooding and managed vegetation. The City does not explain this difference but asks the Court to assume that any use of water is necessarily wasteful.

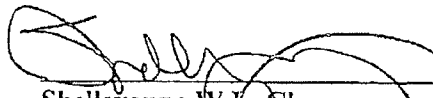
Further, even if the City does use some water, the City has failed to demonstrate that such water use is a prohibited "waste" or constitutes "interference" with its ability to divert water.

III. DISPOSITION

The petition for writ of mandate is **DENIED**.

Counsel for Respondent District or CARB shall prepare a formal order and judgment, incorporating this ruling as an exhibit; submit it to all parties for approval as to form; and thereafter submit it to the Court for signature and entry of judgment in accordance with California Rules of Court, rule 3.1312.

Date: December 16, 2014



Shelleyanne W.L. Chang
Judge of the Superior Court of California
County of Sacramento



Declaration of Mailing

I hereby certify that I am not a party to the within action and that I deposited a copy of this document in sealed envelopes with first class postage prepaid, addressed to each party or the attorney of record in the U.S. Mail at 720 Ninth Street, Sacramento, California.

Dated: December 17, 2014

E. Higginbotham, Deputy Clerk /s/ E. Higginbotham

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EXHIBIT B

Attachment B to the Stipulated Judgment
Protocol for Operation and Maintenance of Owens Lake Tillage with BACM Backup

1.0 SITE SELECTION, OPERATION, AND MAINTENANCE

This report summarizes the methods used by the Los Angeles Department of Water and Power (LADWP) to select, operate, and maintain tilled areas with BACM backup (TwB2) on Owens Lake.

1.1 Site Selection

TwB2 sites will be selected based on the following criteria, shown in order of priority:

1. Sites within existing shallow flood (SF) infrastructure
2. Sites with predominantly deep fine-textured soils
3. Sites with other than predominantly deep fine-textured soils
4. Sites outside of existing SF infrastructure as allowed by GBUAPCD with predominantly deep fine-textured soils, provided an alternate source of water is in place to provide water for soil wetting on an as-needed basis.
5. Sites outside of existing SF infrastructure with other than deep fine-textured soils, provided an alternate source of water is in place to provide water for soil wetting on an as-needed basis.

1.2 Site Operation

Site operations encompass selection of the tillage method, activities to minimize emissions during the tilling operations, and the periodic inspections to ensure that the required site roughness is being maintained, particularly after large wind, rain, or flood events, and to focus maintenance activities where these are indicated. Each activity is discussed below.

1.2.1 Selection of Tillage Method

The method of tillage will be determined predominantly by soil type, texture, and moisture content. Preliminary methods are listed below. Final methods will be determined in the field by LADWP Operations, who will at that point understand site-specific constraints, and employ the tool(s) that confer the greatest, most sustainable degree of roughness.

1. If the soils are too wet for other implements, an excavator (possibly on mats) will be used.

2. If the soils are too wet for other implements but dry enough to use a switch plow, a switch plow will be used.
3. If the soils are also dry enough to run a Towner disk, it may be used as an option to the switch plow.
4. If soils are dry enough to operate a bull plow, a bull plow will be operated after switch plowing or disking.
5. The direction of the final operation will be generally east-west, in a gently curving/wave pattern, to the extent practicable.
6. If roughness conferred by other tools is not sufficiently durable, a Sandfighter or equivalent may be used to rapidly restore roughness.

1.2.2 Minimizing Emissions During Tilling Operations

Primary tillage such as that practiced and planned at Owens Lake generally does not generate excessive emissions because the objective is to avoid soil pulverization. The main approach to minimizing emissions is to minimize the number of passes across a field to achieve the required roughness.

A secondary protection from excessive emissions is soil moisture. Most soils on Owens Lake are naturally moist, further limiting potential emissions. When soils are re-tilled, LADWP will endeavor to take advantage of natural moisture (precipitation) to perform needed maintenance events.

1.2.3 Periodic Site Inspection

LADWP will inspect all tillage sites on a weekly basis to ensure that there are no visible dust plumes, and that the required site roughness is being maintained. LADWP's site inspection program will consist of a combination of drone inspection, periodic LiDAR flights to quantify site roughness, and ground-truth observations by human inspectors as determined useful by LADWP. Each of these elements is discussed below.

1.2.3.1 Drone Observation

Drones will provide observations because of their ability to travel quickly over large areas of rough terrain, recording videos as they go with GPS waypoint coordinates. If any areas of reduced roughness are observed, which would be most likely after a high wind event, rainstorm, or other type of inundation (e.g., berm breach, flash flooding), the drone would be used to GPS the boundaries of the area for later mapping and maintenance decision-making.

During their weekly flights, the drones will record the following parameters:

- Roughness relative to goal and/or historic levels
- Location and scale of any “blowouts,” where roughness has been locally diminished by deposition and/or erosion.
- Evidence of excessively fine material deposition in areas where this poses a significant risk due to re-suspension.

1.2.3.2 Periodic LiDAR Observations for Use in Mapping and Roughness Calculations

Quantitative characterization of Tillage morphology is essential for accurately mapping, classifying, and evaluating compliance of the Tillage BACM over time.

On tilled areas, terrain analysis will be used to quantify measurements of Tillage elements, such as RH and RS. Several methods are possible for quantifying Tillage roughness through terrain analysis, including LiDAR (Light Detection and Ranging) and a new remote imaging.

At this juncture, LADWP believes that the best available method for quantifying tillage roughness is with aerial LiDAR. The following steps summarize the process for analyzing aerial LiDAR to assess tillage roughness:

1. **Acquire Elevation Data:** The first step in the roughness determination is to acquire digital elevation data with sufficient resolution and accuracy to capture the variability at different spatial scales. At least once a quarter, LADWP will capture high-resolution elevation data with aerial LiDAR and use it to produce a DEM for each tilled area.
2. **Identify Tillage Elements:** The next step in the process is to identify and extract tillage element morphological data from the DEM. Morphometric elements of interest include tillage ridge, inter-ridge, and furrow positions.
3. **Characterize Tillage Elements:** After the DEM data are acquired and quantified, elevation values for each identified Tillage element will then be estimated from the DEM and used to quantify RH and RS. These calculations result in local height and spacing estimates across the Tillage BACM area.
4. **Reporting Scale:** Tillage element characteristics will be aggregated to three spatial grid scales (i.e., 1-acre, 10-acre, and 100-acre grids), similar to the approach used in the Managed Vegetation BACM reporting process. Similar to Managed Vegetation, these reporting scales were chosen to ensure compliance at different spatial scales while also providing operational flexibility. This approach provides meaningful feedback on the Tillage row condition over time. Standard summary statistics (minimum, maximum, mean, median, range, and standard

deviation) will be summarized for row height and row spacing. A ratio of the representative row height and row spacing will then be reported at each grid level.

5. Reporting Frequency and Operational Considerations: Comprehensive coverage of high-resolution elevation data will be collected on a quarterly basis to quantify and report Tillage element characteristics using the methods outlined above. As part of the operational management process, regular evaluation of Tillage will be completed using a variety of tools, including high-resolution optical data (i.e., satellite imagery). It is anticipated that visual changes in texture of the Tillage site will be readily identified in the optical imagery and will provide a prioritization tool, identifying potential blowouts (i.e., highly eroded areas) or problems within the Tillage areas. If blowouts or areas of interest are identified, small-scale acquisition of elevation data may be acquired to further quantify and assess the change in row height and spacing. Elevation data acquisition for these localized areas will be accomplished through survey-grade GPS, terrestrial LIDAR, or other appropriate methods. Once the elevation data are captured, they will be analyzed using the same geomorphometric procedures outlined above. This information, combined with other factors, will be used to determine if operational enhancements to the localized Tillage problem areas are required.

1.2.3.3 Ground-based Observations

Ground observations are usually needed to complement aerial and satellite-based collections:

1. Important features that cannot be evaluated remotely with confidence, such as soil structure.
2. Information needed to calibrate remotely sensed data or interpretations.
3. Tactical, spot observations where remote observations are impractical, inconvenient, or in need of calibration.

Ground based observations will be employed sparingly, and focused on resolving questions and testing hypotheses of the day.

Initially, regular observations are expected to be tied to key features (roughness, loose and fine material deposition), and focused around the perimeter areas of tilled areas.

1.3 Site Maintenance

In this section, maintenance triggers and optional maintenance responses are described.

1.3.1 Maintenance Triggers

Maintenance will be undertaken on that portion of each tilled area that falls below the range of acceptable roughness as described in Section 3.3.2, Evaluating Tillage Control Efficiency Over Large Areas, in the Tillage BACM Application (pp. 39-42). The procedure for determining which portion of each tilled site is sufficient rough is described as follows.

1. Shortly after the initial tillage operation and periodically thereafter, roughness will be assessed by remote sensing on one-acre blocks encompassing the entire tillage area. One-acre blocks with an average RH/RS that exceeds the threshold RH/RS will be considered sufficiently rough to control sand motion and PM10 emissions. One-acre blocks with an average RH/RS that falls below the threshold RH/RS will be assigned a control efficiency (CE) based on the maximum of either Equation 7 (see Appendix B of Application) or a fetch relationship from SWEEP (described below). For mapping purposes, contiguous areas with similar roughness will be merged into larger polygons using remote sensing techniques.
2. Based on the same one-acre remote sensing grid system, the fetch distance for the merged polygons will be assessed along the predominant wind directions, which may vary for different locations on the playa. The CE associated with each fetch distance will be assessed using a set of relationships generated using the Single-event Wind Erosion Evaluation Program, or SWEEP. In this case, the CE is the fetch-limited sand motion relative to that achieved on the open playa with unlimited fetch. A site-appropriate SWEEP curve will be used, representing the unique soil and surface conditions that exist on each tilled site.
3. The CE generated by the SWEEP relationships in step #2 considers fetch effects but assumes a smooth, erodible surface with no aerodynamic sheltering from existing roughness. The CE in step #1 accounts for the aerodynamic sheltering but no fetch. Thus, the CE for each roughness area is the maximum of steps #1 and #2.
4. The CE of the entire tilled site will then be determined using the area-weighted average CE of the various roughness areas. The areas with high roughness ($RH/RS > \text{threshold } RH/RS$) are assumed to have 100 percent control because $u^*_{t} > u^*$ using the methods described in Appendix B of the Application.
5. The overall site will be judged "sufficiently rough" if the adjusted area-weighted average CE is greater than or equal to the District-required CE for a site. Nominally, the control efficiency is 99% but could vary depending on the location, frequency, and magnitude of dust emissions from each tilled site.

Even if the entire site is judged "sufficiently rough," LADWP will have the option to enter tilled areas to re-roughen the surfaces that have degraded over time by a combination of wind and

water erosions. If the entire site is deemed “not sufficiently rough,” then LADWP will have to entire the site to maintain the surfaces using the methods summarized below.

1.3.2 Maintenance Options

When and where monitoring data so indicate, maintenance to re-roughen areas will be undertaken. Areas warranting such activity must (a) approach or fall below the required roughness thresholds, and (b) approach or exceed a scale large enough to produce emissions.

When/where/if, through field inspection or actual tillage, it is determined that no method of re-tillage is likely to restore adequate roughness, or for any other operational reason, LADWP may shift an area to some other method of dust control, or re-flooded. In the event of re-flooding, once soil has been thoroughly wetted, it may be re-drained, and re-tilled to restore roughness.

EXHIBIT C

Attachment C to the Stipulated Judgment
Protocol for Monitoring and Enforcing Owens Lake Tillage with BACM Backup

A. Objective

The Great Basin Unified Air Pollution Control District (District) intends to use this protocol as a basis for monitoring and enforcing the Owens Lake PM₁₀ control method known as "Tillage with Best Available Control Measure (BACM) Backup" (TwB2). The District intends to use the methods set forth in this protocol as a basis for determining if TwB2 areas on the Owens Lake bed need maintenance and/or reflooding in order to maintain or reestablish control efficiency for compliance with the National Ambient Air Quality Standard for particulate matter less than or equal to 10 microns (PM₁₀). The District requires the Los Angeles Department of Water and Power (LADWP) to at all times maintain all TwB2 areas in compliance with all conditions and procedures contained in this document such that TwB2 areas provide the 99 percent PM₁₀ reduction levels associated with the most stringent measure BACM required on Owens Lake.

B. Introduction

1. TwB2 is a District-approved variation of the approved Shallow Flood BACM that wets and/or roughens emissive Owens Lake bed surfaces to prevent air emissions. TwB2 consists of soil tilling and/or wetting within all or portions of Shallow Flood BACM PM₁₀ control areas (TwB2 Areas) where sufficient shallow flood infrastructure and available water supply exists.
2. TwB2 can be used by LADWP throughout the Owens Lake bed where backup Shallow Flood BACM infrastructure exists and can be implemented as set forth in this protocol to ensure that tilled areas do not cause or contribute to PM₁₀ Standard exceedances.
3. LADWP is required to reflood TwB2 Areas as set forth herein upon a written order issued by the District's Air Pollution Control Officer (APCO). LADWP may not appeal an APCO order to reflood a TwB2 Area to the District Governing or Hearing Boards or any other agency.
4. Within 37 calendar days of a written order by the APCO that all or part of a TwB2 Area must be reflooded, LADWP shall reflood so as to reestablish compliant Shallow Flooding in that area in accordance with the Shallow Flooding BACM requirements contained in the latest Owens Valley Planning Area State Implementation Plan (SIP). If feasible, reflooding can be limited to portions of TwB2 Areas that are determined by the APCO to require reflooding and not to the entire TwB2 Area as defined by LADWP.

5. Failure to comply with the Shallow Flooding BACM requirements in any area within 37 days of the APCO's written order to reflood may result in notices of violation from the APCO for each day of non-compliance.
6. Initial TwB2 tillage decisions are at LADWP's sole discretion, but shall follow the "TwB2 Site Selection and Operations & Maintenance Protocols for Owens Lake" prepared by LADWP and dated May, 2014 (O&M Protocol, attached as Attachment B to the Stipulated Judgment). LADWP reserves the right to modify the O&M Protocol based on supporting data and after consultation with the APCO. LADWP's right to modify its O&M Protocol does not extend to the sand flux or PM₁₀ monitoring procedures or thresholds set forth in the O&M Protocol which may conflict with this overriding Monitoring and Enforcement Protocol. Those provisions may only be modified by LADWP with consent of the APCO.
7. LADWP shall also have sole discretion regarding implementing and maintaining TwB2 Areas such that they remain sufficiently non-emissive to maintain the 99 percent control efficiency required for Owens Lake BACM. Implementation and maintenance efforts shall follow the provisions of LADWP's O&M Protocol and can include any combination of retilling, reflooding, sprinkling, flattening, compacting or other measures intended to maintain or restore the PM₁₀ control efficiency of tilled surfaces.
8. The boundaries for each TwB2 Area proposed for tillage will be pre-defined by LADWP prior to implementation. Each TwB2 Area will be monitored separately as specified in Section D, "TwB2 Monitoring Tests," below, in order to limit maintenance operations to the areas that require attention. LADWP shall notify the APCO of all pre-planned tillage activities in writing at least 14 calendar days before any tillage begins in an area. LADWP shall notify the APCO of emergency maintenance activities in writing as soon as practicable, but no later than the start of tillage activities. Failure to provide notifications may result in notices of violation from the APCO for each day on non-compliance.
9. Tillage shall create rows and furrows in roughly east to west directions in order to create maximum surface roughness for winds from the north and south. Additional roughness to protect surfaces from west winds shall be created in tilled areas sufficient to prevent emissions from east and west winds. Failure to protect tilled lakebed surfaces from all wind directions may result in an APCO reflood order. See Section F for requirements to provide protection from west winds.
10. If TwB2 maintenance is indicated by any of the below described TwB2 Monitoring Tests (Section D – Tillage Roughness Test, Sand Flux Test, PM₁₀ Monitor Test, Induced

Particulate Emission Test or Surface Armoring Test) or by Surface Integrity Observations (Section E), LADWP will have 37 calendar days during the dust season (October 15 through June 30) and 74 calendar days during summer season (July 1 through October 14) to select and execute maintenance procedures. Any maintenance under way at the start of the dust season (October 15) shall be completed by November 1. Failure to execute maintenance procedures and reestablish a compliant tilled or flooded surface within specified time limits may result in notices of violation and/or reflood orders from the APCO.

11. TwB2 maintenance options include re-tilling, wetting with sprinkler systems, re-flooding or any other techniques selected at LADWP's discretion in accordance with the O&M Protocol.
12. After the maintenance activities have been performed, re-testing using the tests set forth in Section D will be conducted within 30 calendar days.

C. Dry-Down Period

1. A "dry down" period may be necessary to transition a Shallow Flood Area to TwB2. It is recognized that there is the possibility of dust emissions during the dry-down period after Shallow Flooding is shut off when the surface soils are emissive, but the deeper soils are too wet to allow tilling. To reduce risk of emissions during this time, LADWP will take reasonable precautions to prevent dust emissions during the dust season (October 15 – June 30). Reasonable precautions include installation of temporary controls (*e.g.*, sand fencing, roughness elements, such as straw bales, or other wind barriers and surface protections) and phased drying/tilling as may be required to prevent dust emissions.
2. Failure to adequately control dust emissions during dry-down of TwB2 Areas may result in notices of violation and/or reflood orders from the APCO.

D. TwB2 Monitoring Tests

The District will use the TwB2 monitoring tests set forth below to ensure TwB2 Areas provide the 99 percent emission reduction associated with the most stringent measure BACM required on the Owens Lake bed. The District acknowledges that the performance criteria set forth below may be more stringent than is necessary to meet the 99 percent emission reduction requirement, however, TwB2 did not go through the BACM development process set forth in the District's 2008 Owens Valley PM₁₀ State Implementation Plan. Therefore, in order to provide assurance that TwB2 will provide the high level of public health protection associated with most stringent measure BACM, the District will initially require that TwB2 Areas pass the

following tests. During the first year of TwB2 operation, the District will meet regularly with the LADWP to review and evaluate TwB2 performance. After one year of TwB2 operation experience, the APCO will consider revising the TwB2 performance criteria.

1. Tillage Roughness Test

- a) The Tillage Roughness Test will use remote sensing and/or direct field measurements to determine Ridge Spacing (RS) and Ridge Height (RH) in order to calculate inverse roughness (RS divided by RH or RS/RH). The T-12 Tillage Test site (heavy clay soils) was tilled with a ridge spacing of approximately 12 to 14 feet and a furrow bottom to ridge top difference of between 3.2 and 4 feet (ridge height = 1.6 to 2 feet). This yields inverse roughness values of 6.00 to 8.75 and has, as of September 2014, been shown to provide sufficient PM₁₀ control efficiency. Assuming that ridge tops will weather and lower, the inverse roughness value in TwB2 areas will be maintained at or below 10.0 (14/1.4) and the average ridge height will be at or above 1.25 feet (furrow depth to ridge top difference at least 2.5 feet). Averages will be calculated on 40-acre blocks as described in LADWP's O&M Protocol.
- b) Lidar, aerial photography or other APCO-approved methods with comparable accuracies will be used by LADWP to measure inverse roughness and ridge height. Roughness measurements will be made in the north-to-south direction—the direction of the primary dust producing winds. Roughness measurements may also be made in other directions. See Section F for requirements to provide protection from west winds. Roughness measurements will be reported to the APCO within 30 days of measurement.
- c) Inverse roughness and ridge height measurements will be made at 6 month, or more frequent, intervals. Inverse roughness and ridge height for a TwB2 Area will be tracked and plotted as a function of time. Where feasible, field measurements may also be taken to confirm lidar or other remotely sensed results. LADWP will conduct regular roughness measurements and report the measurements within 30 days to the APCO. The District reserves the right to conduct its own roughness measurements at any time.
- d) Tillage maintenance will be performed by LADWP if average inverse roughness is between 10.1 and 12.0 or if average ridge height is less than 1.3 feet in a tilled area.

- e) The APCO may issue a full or partial TwB2 Area reflood order if inverse roughness exceeds 12.0 (12/1) or ridge height falls below 1.0 foot for any defined 40-acre averaging area.
- f) The APCO reserves the right to adjust the above criteria based on supporting data and after consultation with LADWP.

2. Sand Flux Test

- a) Each tilled area, as defined in Section B.8, will be instrumented by LADWP with at least four Sensits and Cox sand catchers (CSCs) on untilled surfaces (circular pads with 3 m radius) in the general northern, southern, eastern and western portions of a tillage area. The APCO may require proportionally more sand catchers in tilled areas greater than 320 acres such that there is approximately one Sensitive per 80 acres of TwB2 Area.
- b) LADWP will pair CSCs with Sensits, radio equipment and dataloggers programmed to record 5-minute sand motion data. All Sensitive data will be reported to the District via the District's radio data collection network. Sand motion data from the CSCs and Sensits will be processed to calculate the sand flux history of a site.
- c) All sand flux monitoring equipment will be placed by LADWP as soon as practicable as Shallow Flood areas dry, but no later than the start of tillage activities. Failure to deploy monitoring equipment may result in notices of violation and/or reflood orders from the APCO.
- d) High sand flux values recorded during maintenance activities and non-tillage sand flux sources shall be excluded from the sand flux data. Maintenance activities and non-tillage sand flux sources may include, but are not limited to, rain-splatters, bugs, adjacent grading and road construction activities, as well as vehicle traffic. Sensits should be placed so as to minimize impacts from non-tillage sand flux sources. The APCO shall have sole authority to determine if Sensits have been impacted by non-tillage area sand flux sources or activities.
- e) When (other than during maintenance activities taking place in the tillage area) the sand flux exceeds $0.50 \text{ g/cm}^2/\text{day}$, LADWP will perform maintenance in the tillage area.
- f) The APCO may issue a partial or full TwB2 Area reflood order if sand flux exceeds $1.0 \text{ g/cm}^2/\text{day}$ at any sand flux site within a TwB2 Area.

- g) The APCO acknowledges that these sand flux triggers may be conservative for TwB2 areas located away from the regulatory shoreline. The APCO may adjust the sand flux trigger value on a case-by-case basis for each TwB2 area based on its distance from the regulatory shoreline.
- h) The APCO reserves the right to adjust the above criteria based on supporting data and after consultation with LADWP.

3. PM₁₀ Monitor Test

- a) Each TwB2 area will be assigned upwind and downwind PM₁₀ monitors (not necessarily at the TwB2 Area boundary) to monitor PM₁₀ emissions from the tillage area. For a given wind direction, the downwind monitors shall be within 22 degrees ($\pm 11.5^\circ$) of the upwind monitors. Upwind/downwind monitor assignments will be requested by LADWP and approved by the APCO. Existing monitors operated by the District may be used as upwind/downwind monitors. Additional EPA-approved monitors shall be operated by LADWP, unless mutually agreed otherwise. If a monitor is operated by LADWP, its operation and maintenance must follow District procedures and data collection must be incorporated into the District communications network. The District reserves the right to audit monitors and monitoring data collected by LADWP. The District also reserves the right to install and operate or require the LADWP to install and operate additional PM₁₀ monitors to adequately monitor the PM₁₀ emissions coming from tilled areas.
- b) All PM₁₀ monitoring equipment will be in place as soon as practicable as Shallow Flood areas dry, but no later than the start of tillage activities. Failure to deploy PM₁₀ monitoring equipment may result in notices of violation and/or reflood orders from the APCO.
- c) Impacts caused by maintenance activities and non-tillage sources shall be excluded from the PM₁₀ data. Maintenance activities and non-tillage PM₁₀ sources may include, but are not limited to, adjacent grading and road construction activities, as well as vehicle traffic. PM₁₀ monitors should be placed so as to minimize impacts from non-tillage sources. The APCO shall have sole authority to determine if monitors have been impacted by maintenance activities and/or non-tillage area sources.
- d) When the daily downwind to upwind PM₁₀ concentration difference for any dust event (other than during maintenance activities in the tillage area) exceeds 50

$\mu\text{g}/\text{m}^3$ and there is no evidence to show that the additional downwind PM_{10} did not come from the TwB2 Area, maintenance will be performed in the tillage area.

- e) The APCO may issue a reflood order if the daily PM_{10} difference between the downwind and upwind monitors exceeds $100 \mu\text{g}/\text{m}^3$.
- f) The APCO reserves the right to adjust the above criteria based on supporting data and after consultation with LADWP.

4. Induced Particulate Emission Test

- a) The District will utilize the Induced Particulate Erosion Test (IPET) method to determine if tilled area surfaces are starting to become emissive and to advise LADWP with erosion potential alerts. The method described below may be modified based on the results of a study being conducted by the Desert Research Institute for the District. The District will discuss the results of the IPET study with LADWP.
- b) The IPET method proposes to use a small radio-controlled helicopter-type craft (Radio-Controlled Wind Induction Device or RCWInD) to create wind on the surface. Because the winds created by the RCWInD will vary with differing craft designs, each craft will be pre-tested to determine the test height above the surface (H_t) at which the craft creates a target maximum horizontal wind speed (TWS) measured at 1 centimeter ($U_{0.01}$) above a flat surface. The initial TWS is 11.3 meters per second (m/s). The TWS may be modified by the APCO based on supporting data and after consultation with LADWP. If the payload on a craft is changed, *e.g.* a different camera is used, then H_t must be re-determined for the new payload since it will affect the amount of thrust needed to keep the RCWInD aloft. Testing to determine H_t and TWS will be done on a smooth flat surface, *e.g.* concrete or asphalt pavement or plywood test platform with calm ambient winds ($< 2 \text{ m/s}$). The maximum wind speed for any flight height is taken at a height one centimeter above the surface at a point that is one rotor blade length away from the point beneath the center of the fastest rotor blade taken on a line extending outward from the rotor arm. The wind speed measurement is taken with a pitot tube pointing toward the center of the rotor blade. The RCWInD must be flown in a stationary position to get a sustained measurement from the anemometer. When the craft is flown over a ridged surface, the flight height is measured from the bottom of the craft's rotor blades to the highest surface projection anywhere directly below the craft.

- c) The District will give LADWP field operations staff at least 24 hour notice of the time and place for RCWInD runs in order to allow LADWP staff an opportunity to observe those tests. LADWP staff does not need to be present for RCWInD testing to be used to call erosion alerts.
- d) Three erosion alert levels are set using the IPET method: 1) an early warning of possible clod and surface stability deterioration, 2) a warning level to alert LADWP of a potential breakdown of the surface stability and to advise voluntary maintenance efforts, and 3) a mitigation action level to require retilling and/or reflooding of all or part of a TwB2 Area. The IPET method will be used to determine erosion alert levels as follows:
 - i. Level 1 – An erosion early warning is indicated when any visible dust is observed to be emitted from a surface or particles are dislodged when the RCWInD is flown at a height below one half of H_t . Voluntary mitigation may be appropriate to prevent further surface degradation.
 - ii. Level 2 – An erosion warning is indicated when any visible dust is observed to be emitted from a surface when the RCWInD is flown at a height below H_t and above one half of H_t . Voluntary mitigation is advised to prevent further surface degradation.
 - iii. Level 3 – Mitigation action is required if visible dust is observed to be emitted from a surface when the RCWInD is flown at a height of H_t or higher. If ordered by the APCO, LADWP must retill and/or reflood all or part of a TwB2 Area that triggers a Level 3 alert.

The APCO acknowledges that warning and mitigation triggers may be conservative for TwB2 areas located away from the regulatory shoreline. The warning and mitigation trigger values may be adjusted on a case-by-case basis by the APCO for each TwB2 area based on its distance from the regulatory shoreline. After one year of experience with TwB2 and the IPET test, LADWP and the District will meet to discuss the results of the testing and consider adjustments to the triggers.

- e) The APCO reserves the right to adjust these criteria based on supporting data and after consultation with LADWP.

5. Surface Armoring Test

- a) Previous studies indicate surface armoring with clods is essential to creating a tilled surface that prevents dust emissions. The District intends to review existing studies and conduct tests to develop a technique to measure the surface armoring or “cloddiness” of a tilled area and set a minimum required level of surface armoring.
- b) In order to assure TwB2 areas do not cause or contribute to exceedances of the PM₁₀ standard, an initial target clod cover of 60 percent will be used. Soil clods must be 1/2 inch diameter or larger. The APCO may issue a reflood order if the clod cover in a tilled area is less than 60 percent. This value will be reevaluated by the APCO after one year of TwB2 implementation and as appropriate thereafter.
- c) Clod coverage will be measured concurrently with roughness measurements by LADWP and/or the District. Lidar, aerial photography, point-frame, or other APCO-approved methods with comparable accuracies will be used by LADWP to measure clod coverage. Clod cover measurements will be reported to the APCO within 30 days of measurement. The APCO shall approve the clod cover measurement method.
- d) Upon completion of any additional testing or observation of TwB2 Areas, and after consultation with LADWP, the APCO reserves the right to adjust these criteria.

E. Surface Integrity Observations

- 1. The District will notify LADWP’s designated representatives on monthly basis or as otherwise required during the dust season (October 15 through June 30) of District field observations to evaluate the overall erosion stability of the tillage areas based on surface observations, soil conditions, and the results of the above described TwB2 monitoring tests.
- 2. The District will use on-site visual observations, as well as photography, video or other remote sensing techniques to document the condition and potential emissivity of tilled areas. Conditions including, but not limited to, the presence or absence of ridge-top and furrow-bottom clods, loose soil deposits, efflorescence and ridge erosion will be used to evaluate the overall integrity of tilled areas. These observations will be used in conjunction with the above described tests to recommend that LADWP undertake maintenance activities or as a basis for an APCO reflood order.

F. Protection from Winds Parallel to Tillage Rows

1. Paragraph B.9., above, requires tillage rows and furrows in roughly east to west directions in order to create maximum surface roughness for winds from the north and south.
2. In order to ensure that tillage areas are protected from all wind directions, tilled areas will be jointly evaluated by District and LADWP staffs within 5 calendar days after initial tillage activities to determine if the tillage configuration and clodding will provide sufficient protection. If the District determines that the tilled areas will not provide protection from all wind directions the APCO will notify LADWP that additional protection measures will be required.
3. Upon such notification by the APCO, LADWP will take further actions to create additional protection from winds parallel to the initial rows and furrows, it will deploy other protection measures (*e.g.*, additional tillage ridges oriented perpendicular to the original tillage or creation of clod clover greater than 60%), or it may abandon tillage in the area of concern and reestablish compliant Shallow Flooding. The DWP must implement the additional protection measures within 15 days of being notified by the APCO.
4. Failure to protect tilled lakebed surfaces from all wind directions may result in an APCO reflood order.

1 **PROOF OF SERVICE**

2 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address
3 is 707 Wilshire Boulevard, Los Angeles, California 90017-3543. I am not a party to the within
4 cause, and I am over the age of eighteen years.

5 I further declare that on December 19, 2014, I served a copy of:

6 **STIPULATED JUDGMENT FOR RESPONDENT AND
7 DEFENDANT GREAT BASIN UNIFIED AIR POLLUTION
8 CONTROL DISTRICT**

9 ☒ **BY U.S. MAIL [Code Civ. Proc sec. 1013(a)]** by placing a true copy thereof
10 enclosed in a sealed envelope with postage thereon fully prepaid, addressed as
11 follows, for collection and mailing at Morrison & Foerster LLP, 707 Wilshire
12 Boulevard, Los Angeles, California 90017-3543 in accordance with Morrison &
13 Foerster LLP's ordinary business practices.

14 I am readily familiar with Morrison & Foerster LLP's practice for collection and
15 processing of correspondence for mailing with the United States Postal Service, and
16 know that in the ordinary course of Morrison & Foerster LLP's business practice the
17 document(s) described above will be deposited with the United States Postal
18 Service on the same date that it (they) is (are) placed at Morrison & Foerster LLP
19 with postage thereon fully prepaid for collection and mailing.

20 ☒ **BY ELECTRONIC SERVICE [Code Civ. Proc sec. 1010.6; CRC 2.251]** by
21 electronically mailing a true and correct copy through Morrison & Foerster LLP's
22 electronic mail system to the email address(es) set forth below, or as stated on the
23 attached service list per agreement in accordance with Code of Civil Procedure
24 section 1010.6 and CRC Rule 2.251.

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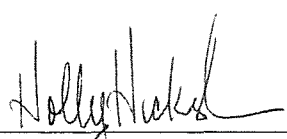
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*Attorney for California State
Lands Commission*

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California, December 19, 2014.

Holly Hickish
(typed)


(signature)