

**Governing Board of the Great Basin Unified Air Pollution Control District
April 13, 2016**

RESOLUTION NO. 2016-03

EXHIBIT A - FINDINGS OF FACT

**District Board Order #160413-01, District Rule 433 and 2016 Revision to the
Owens Valley PM₁₀ Demonstration of Attainment
State Implementation Plan**

**Findings of Fact Under the Provisions of California Health & Safety Code §42316(a);
Public Resources Code Sections 21000 *et seq.*, and California Code of Regulations, Title 14,
Sections 15091 and 15096; and Other Findings of Fact**

Related Documentation:

2016 revision to the Owens Valley PM₁₀ Planning Area Demonstration of Attainment State
Implementation Plan (2016 SIP)

Environmental Impact Report for the Owens Lake Dust Mitigation Program – Phase 9/10 Project
(May 2015) (EIR)

Staff report on the subject of Board Order #160413-01, District Rule 433 and the 2016 SIP prepared
for the Great Basin Unified Air Pollution Control District Governing Board

Project Files May Be Reviewed at:
Great Basin Unified Air Pollution Control District
157 Short Street, Bishop, California 93514
(760) 872-8211

RESOLUTION NO. 2016-03

Exhibit A - Findings of Fact Relating to:

**District Board Order #160413-01, District Rule 433 and 2016 Revision to the
Owens Valley PM₁₀ Demonstration of Attainment
State Implementation Plan**

Contents

- A. Findings of fact under the provisions of California Health & Safety Code §42316(a)
- B. Findings of fact regarding adoption of the 2016 SIP
- C. Findings of fact regarding the District acting as a Responsible Agency and its use of the City Environmental Impact Report for the Owens Lake Dust Mitigation Program – Phase 9/10 Project (May 2015) (EIR)

A. Findings of fact under the provisions of California Health & Safety Code §42316(a)

Section 42316(a) of the California Health and Safety Code provides the authority for the Great Basin Air Pollution Control District to “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.”

On the basis of substantial evidence in the record, and for the reasons set forth in the staff report prepared for the Governing Board’s April 13, 2016 hearing for adoption and approval of (1) proposed District Board Order #160413-01 authorized by California Health & Safety Code Section 42316 for the City of Los Angeles (City) to install, operate and maintain dust control measures on the Owens Lake bed (2016 SIP Order), (2) a proposed District Rule 433 (Control of Particulate Emissions at Owens Lake), and (3) a proposed final 2016 revision to the previously-adopted Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan (2016 SIP) (collectively Board Actions), which is hereby incorporated herein by reference, the Governing Board of the Great Basin Unified Air Pollution Control District (Governing Board) makes the following findings:

1. The Governing Board finds that there are violations of the state and federal ambient air quality standards for PM₁₀ in the Owens Valley PM₁₀ Planning Area.
2. The Governing Board finds that the dried bed of the Owens Lake causes and is the primary contributor to the violations of the state and federal ambient air quality standards for PM₁₀ in the Owens Valley PM₁₀ Planning Area.
3. The Governing Board finds that the City’s water diversions in the Owens Valley have uncovered essentially all of the dust source areas on the dried bed of Owens Lake, thus causing and contributing to violations of the state and federal ambient air quality standards for PM₁₀ in the Owens Valley PM₁₀ Planning Area.
4. The Governing Board finds that the dust control measures (DCMs) known as Shallow Flooding, Managed Vegetation, and Gravel Blanket, as required and permitted by the Board Actions, have been approved by the U.S. Environmental Protection Agency as Best Available Control Measures (BACM) for the control of PM₁₀ emissions from the dried bed of Owens Lake.
5. The Governing Board finds that the DCMs known as Shallow Flooding, Managed Vegetation, and Gravel Blanket, as required and permitted by the Board Actions, are reasonable and proven control measures for controlling PM₁₀ emissions from the dried bed of Owens Lake.

6. The Governing Board finds that the DCMs known as Shallow Flooding, Managed Vegetation, and Gravel Blanket, as required and permitted by the Board Actions, will be effective in mitigating the air quality impacts caused by the City of Los Angeles' water diversions.
7. The Governing Board finds that the alternative DCM known as Tillage with BACM Backup is proposed as a reasonable and effective control strategy in the Board Actions.
8. The Governing Board finds that the DCMs and all their associated requirements contained in the Board Actions do not affect the right of the City to produce, divert, store or convey water.
9. The Governing Board finds the DCMs required and provided for by the Board Actions can be completed by the milestones and deadlines set forth in the Board Actions.
10. The Governing Board finds that the time period for implementation contained in the Board Actions is a reasonable period to complete the implementation of the DCMs.
11. The Governing Board finds that the contingency measures contained in the Board Actions are reasonable and adequate to ensure the Owens Valley PM₁₀ Planning Area attains the federal PM₁₀ ambient air quality standard as expeditiously as practicable.
12. The Governing Board finds that there are reasonable and valid mechanisms in place that allow the District to enforce compliance with the requirements contained in the Board Actions.
13. The Governing Board finds that California Health & Safety Code Section 42316(a) provides the District with the authority and resources necessary to insure compliance with the requirements set forth in the Board Actions.
14. The Governing Board finds that the 2016 SIP Order consists of the 2008 SIP Order and the relevant provisions of the Stipulated Judgment entered on December 30, 2014 in the case captioned *City of Los Angeles v. California Air Resources Board, et al.*, Case No. 34-2013-80001451-CU-WM-GDS (Stipulated Judgment), and that the Board Actions are consistent with the Stipulated Judgment.
15. The Governing Board makes each and every of the above findings on the basis of substantial evidence in the record. The District is the custodian of the materials that constitute the record of proceedings upon which the decision to approved the Proposed Project is based. These materials are located at the District's offices at 157 Short Street, Bishop, California 93514.

B. Findings of fact regarding the approval and adoption of the Board Actions

16. Based upon the fact that the Owens Valley PM₁₀ Planning Area (Owens Valley) has been designated a serious non-attainment area by the USEPA, and that the Owens Valley is required by the Clean Air Act Amendments of 1990 to attain the PM₁₀ 24-hour standard as expeditiously and practicable, the GBUAPCD Governing Board finds that the approval and adoption of the Board Actions is necessary.

17. Based upon the fact that California Health and Safety Code Section 42316(a) allows the District to require the City of Los Angeles to undertake reasonable measures to mitigate the air quality impacts of the City's water-gathering activities, the Governing Board finds that the District has the authority to adopt the Board Actions, including the adoption and issuance of District Board Order #160413-01.
18. Based upon public comment on the Plan, the Governing Board finds that the Board Actions and each element of those actions are written clearly so that they can be easily understood by the persons affected.
19. Based upon an examination of the legal and regulatory history of the Owens Valley PM₁₀ Planning Area, and the above findings on the compatibility of the Plan and Order with Health and Safety Code Section 42316, the Governing Board finds that the Board Actions are consistent with existing statutes, court decisions, and state and federal regulations.
20. Based upon the fact that state law delegates to the District the responsibility for control of stationary sources of air pollution, the Governing Board finds that the Board Actions do not duplicate existing state or federal regulations.
21. The Governing Board references the Clean Air Act Amendments of 1990 and State of California Health and Safety Code Section 42316 as the laws that the District implements through the Board Actions.
22. The Governing Board finds that reasonable notice of the Governing Board's intention to hold a public hearing to approve and adopt the Board Actions was given in compliance with the provisions of Title 40 of the Code of Federal Regulations, Section 51.102.
23. The Governing Board finds that notice of the public hearing to approve and adopt the Board Actions was published in the following newspapers more than 30 days in advance of the hearing: the *Inyo Register* (Inyo County), the *Review Herald* (Mono County) and the *Tahoe Daily Tribune* (for Alpine County).
24. The Governing Board finds that the Board Actions were available for public inspection at the District's office in Bishop, California at least 30 days in advance of the public hearing to approve and adopt those actions.
25. The Governing Board finds that the Executive Officer of the California Air Resources Board was given notice of the public hearing and a copy of the Board Actions at least 30 days in advance of the hearing.
26. The Governing Board finds that the Administrator of the U.S. Environmental Protection Agency (through the Regional Administrator) was given notice of the public hearing and a copy of the Board Actions at least 30 days in advance of the hearing.
27. The Governing Board finds that the adjacent Kern County Air Pollution Control District was given notice of the public hearing and a copy of the Board Actions at least 30 days in advance of the hearing.

28. The Governing Board finds that the City of Los Angeles was given notice of the public hearing and a copy of the Board Actions at least 30 days in advance of the hearing.
29. The Governing Board finds that for the reasons and based on the facts set forth in Resolution 2016-02, that it has considered the environmental effects of the Board Actions as a Responsible Agency under the California Environmental Quality Act (CEQA).
30. The Governing Board makes each and every of the findings in this Exhibit on the basis of substantial evidence in the record. The District is the custodian of the materials that constitute the record of proceedings upon which the decision to approve the Board Actions is based. These materials are located at the District's offices at 157 Short Street, Bishop, California 93514.

C. Findings of fact regarding the District acting as a Responsible Agency and its use of the City Environmental Impact Report for the Owens Lake Dust Mitigation Program – Phase 9/10 Project (May 2015) (EIR) (State Clearinghouse No. 2014071057)

The action authorized and required by the Board Actions is a “project” as defined by the California Environmental Quality Act (CEQA) (Public Resources Code §21000 *et. seq.*). The City is the lead agency for the project. The District is the responsible agency.

On July 2, 1997, the Governing Board of the Great Basin Unified Air Pollution Control District (Governing Board) adopted and certified the Final Environmental Impact Report (1997 EIR) for the 1997 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order (1997 SIP) concurrently with the adoption of that 1997 SIP. The 1997 SIP was revised when the Governing Board adopted the 1998 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order on November 16, 1998 (1998 SIP). The Governing Board, concurrently with the 1998 SIP adoption, certified an addendum to the 1997 EIR entitled Addendum No. 1 to the Final Environmental Impact Report for the 1998 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order (1998 EIR). The 1998 SIP was revised when the Governing Board adopted the 2003 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order on November 13, 2003 (2003 SIP). The Governing Board, concurrently with the 2003 SIP adoption, certified the 2003 EIR entitled Final Environmental Impact Report for the 2003 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan and Incorporated Board Order (2003 EIR).

For consideration of the revisions contained in the 2008 SIP, the District prepared a 2008 Final Subsequent Environmental Impact Report for the 2008 SIP. Pursuant to the requirements of CEQA, the 2008 FSEIR described the 2008 SIP and affected environment; it identifies, analyzes and evaluates the potential significant environmental impacts that may result from the project; it identifies measures to mitigate adverse environmental impacts; and it identifies and compares the merits of project alternatives.

In 2011, a dispute arose between the GBUAPCD and the City regarding the requirements of the 2008 SIP, which were resolved when the Sacramento Superior Court entered a Stipulated Judgment for the GBUAPCD on December 30, 2014 in the case captioned *City of Los Angeles v. California*

Air Resources Board, et al., Case No. 34-2013-80001451-CU-WM-GDS (Stipulated Judgment). Under the Stipulated Judgment, the City served as Lead Agency to prepare and certify the Environmental Impact Report for the Owens Lake Dust Mitigation Program – Phase 9/10 Project (May 2015) (EIR) for the dust control project required by the Board Actions; and filed a Notice of Determination for the project on June 8, 2015 (State Clearinghouse No. 2014071057).

The City's EIR covers the actions required by the Board Actions, requiring the Los Angeles Department of Water and Power (LADWP) to install Best Available Control Measures (BACM) to mitigate dust on areas known as Phase 9/10. The Phase 9/10 Project (Project) consists of seventeen separate and discrete Dust Control Areas (DCAs): Duck Pond-L1, C2-L1, T10-1-L1, T17-2-L1, T21-L1, T21-L2, T37-2-L4, T37-2-L3, T37-2-L2, T37-2-L1, T35-2-L1, T37-1-L1, T32-1-L1, Duck Pond-L2, T10-3-L1, T21-L3, T21-L4, as well as 1.82 sq miles of Transition Areas that currently contain DCMs, but will be transitioned to less water-intensive methods (Transition Area). Other areas may be the subject of contingency measures. The Project will expand the existing system of DCMs on Owens Lake by construction and operation of an additional 3.61 sq miles of dust control in seventeen DCAs, as identified above, and 1.82 sq miles of Transition Area dust controls in one existing DCA. Installation of BACM on Project DCAs and Transition Area entails ground disturbing activities such as grading, dirt moving, boring, trenching and road, berm, pipeline and other construction.

The City EIR also analyzed the potential environmental impacts associated with the construction and operation of the proposed Project and sets forth the applicable facts supporting the Board's findings. Significant impacts were identified for cultural resources for the originally proposed Project that could not be mitigated to less than significant levels. All other impacts including air quality, biological resources, and transportation, were found to be less than significant as mitigated. Based on the analysis presented in the City EIR and public comments received, the Avoidance Alternative has been identified as the environmentally superior alternative. The Avoidance Alternative avoids significant impacts to cultural resources. Mitigation measures have been identified to reduce all other impacts to less than significant levels.

The City also developed a Mitigation Monitoring and Reporting Program to ensure implementation of the mitigation measures for the Environmentally Superior Alternative outlined in the City EIR. The Mitigation Monitoring and Reporting Program was prepared by LADWP as the lead agency for Project under CEQA, in conformance with Public Resources Code Section 21081.6 and CEQA Guidelines Section 15097. Adoption of a Mitigation Monitoring and Reporting Program is required for projects in which the lead agency has required changes or adopted mitigation to avoid significant environmental effects. LADWP shall have primary responsibility for administering the Mitigation Monitoring and Reporting Program activities to staff, consultants, or contractors. LADWP has the responsibility of ensuring that monitoring is documented through periodic reports and that deficiencies are promptly corrected. LADWP's designated environmental monitor will track and document compliance with mitigation measures, note any problems that may result, and take appropriate action to remedy problems. Specific responsibilities of LADWP include coordination of all mitigation monitoring activities, management of the preparation, approval, and filing of monitoring or permit compliance reports, maintenance of records concerning the status of all approved mitigation measures, and coordination with other agencies.

The City concluded that its EIR identifies impacts that are potentially significant unless mitigation is incorporated, and proposes mitigation measures and a program for implementation, over which

LADWP will maintain oversight and act as monitoring agent. The City found that with the implementation of the above noted mitigation measures for the environmentally superior alternative, potential impacts to cultural resources, air quality, biological resources, and transportation will be less than significant.

The CEQA Guidelines require the District Governing Board, with the District as a responsible agency, to consider the information in the City EIR along with other information that may be presented to the District when deciding whether to approve the Proposed Project. The EIR sets forth the information to be considered in the Governing Board's evaluation of benefits and potential impacts to the environment resulting from the implementation of the Board Actions. The Governing Board has reviewed and considered the information in City EIR and applied its independent judgment and analysis to consider that information in taking the Board Actions. The Governing Board concurs with the City's analysis, findings and conclusions, and specifically that:

- Changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effects as identified in the City EIR.
- The mitigation measures identified in the City EIR are feasible and will be required as conditions of approval.
- All significant effects on the environment due to the project have been eliminated or substantially lessened where feasible.
- Changes or alterations have been required in, or incorporated into the project which mitigate or avoid many of the significant environmental effects thereof as identified in the City EIR.
- There is no new information, changes in the project or changes in circumstances or conditions since the preparation and certification of the City EIR that would require further revision or addendum to that EIR, or that would require further environmental review before taking the Board Actions

Further findings by the Governing Board are contained in Resolution 2016-02 and which are incorporated and made part of these findings by reference.