SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

DATE/TIME	SEPTEMBER 27, 2022	DEPT. NO	21
JUDGE	HON. SHELLEYANNE W. L. CHANG	CLERK	D. LASHLEY

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 its official capacity; GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT; and DOES 1-100,** **Respondents and Defendants.**	**Case No.: 34-2013-80001451**

Nature of Proceedings:	**RULING ON SUBMITTED MATTER RE: MOTION TO ENFORCE THE 2014 STIPULATED JUDGMENT**

This matter came on for a hearing on the City's Motion to Enforce the 2014 Stipulated Judgment on September 2, 2022. After hearing oral argument, the Court took the matter under submission. The Court now issues its ruling on submitted matter.

I. Factual and Procedural Background

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. 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. 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.

The Great Basin Unified Air Pollution Control District (the "District") has regulatory authority over air quality issues in the Owens Valley Planning Area where Owens Lake is situated, including authority to require the City to undertake reasonable measures at Owens Lake to address the impacts of its activities that cause or contribute to violations of federal and state air quality standards.

In 2012, the City initiated this matter by filing a verified petition for writ of mandate, and while the matter was pending judgment, the parties reached a settlement and agreed to entry of a Stipulated Judgment. Pursuant to this agreement, judgment was entered for Respondent District against the City on all causes of action pending in the First Amended Petition and Complaint.

Under the terms of the Stipulated Judgment,

"By December 31, 2017, the City shall construct a dust control project to complete the Phase 9 and Phase 10 dust controls by selecting and installing BACM on 3.62 square miles of areas identified in the 2011 SCRD and 2012 SCRD...The Phase 9/10 project shall bring the total area of the City's dust controls on the Owns Lake bed to 48.6 square miles." Upon completion of this project, the City "shall permanently operate dust controls with approved BACM on those areas and all other existing areas were the City has installed and operates dust controls on the driest Owens Lake bed, except as provided by a SIP for BACM testing and development."

The District's Air Pollution Control Officer may order the City on or after January 1, 2016 "to implement additional BACM contingency measure controls on up to 4.8 square miles (which need not be contiguous) of the direct Owens Lake bed ("BACM Contingency Measures"). If the City implements the entire 4.8 square miles of BACM Contingency Measure controls, there will be a total of 53.4 square miles of dust controls on the Owens Lake bed." Except for these identified areas, the District "shall not issue any further orders for mitigation measures to the City under Section 42316 or any other law...requiring the City to control windblown dust emissions...from any areas on the dried Owens Lake Bed."

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

The 2014 Stipulated Judgment, Paragraph 15., provides for daily penalties to be calculated for each missed deadline. These stipulated penalties apply only to the failure to meet dust control measure completion deadlines identified in the 2014 Stipulated Judgment and do not "apply to any other notice of violation or enforcement of laws by the District."

In 2016 the District adopted a State Implementation Plan ("2016 SIP"). The purpose of the 2016 SIP is to:

> provide a plan to (1) attain the National Ambient Air Quality Standard (NAAQS) for particulate matter less than 10 microns in diameter (PM10) as required by the Clean Air Act (CAA) and its 1990 Amendments and (2) implement the provisions of the 2014 Stipulated Judgment between the Great Basin Unified Air Pollution Control District (GBUAPCD or "District") and the City of Los Angeles ("City") ("2014 Stipulated Judgment") which provides for the continued operation of existing dust control measures and for the implementation of additional control measures in order to attain and maintain compliance with state and federal air quality standards (City of Los Angeles, et al. v California Air Resources Board, Sacramento County Superior Court, Case No. 34-2013-80001451-CU-WM-GDS).

On July 21, 2021, the District adopted the 2021 Board Order entitled "Order to Implement Dust Control Mitigation in the Sibi Patsiata-wae-tü Cultural Resource Area at Owens Lake" (the "2021 Order".) The 2021 Order provides that the City is ordered to implement dust control mitigation in the subject area "consistent with the Draft Amended Tribal Recommendations for the Patsiata Cultural Resource Task Force." (Edwards Decl., Exh. F.) The Draft Amended Tribal Recommendations indicate that the task force requests the District "amend the current dust-control orders by issuing an order to the [City] to implement the [redacted] Vegetation Enhancement Project as shared at the PCRTF meeting..." The Vegetation Enhancement Project is described as:

> Portion of Dust Control Area [redacted] where a water line laid on top of the ground would be placed to bring water to the existing vegetation. Critical design elements: (1) ground disturbance will be avoided; (2) a 1000-foot-long water line would be laid on top of ground surface; (3) the water line would have three hose bibs or spigots where hoses can be attached to allow a Tribal crew to water the vegetation; (4) water would be supplied by a trailer parked on the existing berm road. The Tribal crew will monitor any soil movement caused by the watering and inform the Lone Pine Paiute Shoshone Tribal Historic Preservation Officer if any artifacts or features are uncovered.

The City took no action to comply with the 2021 Order.

On December 16, 2021, the District issued a Notice to Comply to the City for its failure to comply with the 2021 Order. The letter accompanying the Notice indicates that in the five months since the 2021 Order was issued; the District had "no record of any LADWP communication or efforts to move the required dust mitigation forward." The Notice directs the City to provide a written response by December 21, 2021 indicating what it would do to comply with the 2021 Order. The Notice indicates that failure to take corrective action:

> may result in further enforcement action by the District. If corrective action is not possible by the due date, an extension or variance may be requested by contacting the District. To appeal the issuance of this Notice to Comply, send a written appeal to the APCO within 10 days of receipt of this notice. Specify in detail why you believe these allegations are incorrect and attach a copy of the Notice to Comply and all supporting documentation. (Edwards Decl., Exh. H.)

On January 7, 2022, the District issued a Notice of Violation to the City for its failure to comply with the 2021 Order. (Edwards Decl., Exh. I.) Pursuant to the cover letter accompanying this notice:

> The District has considered and rejects [the City's] purported arguments for its failure to comply. As the District has repeatedly and unequivocally stated, [the City's] duty to comply with the law, including the District Orders and the Stipulated Judgment is *not* voluntary. The District has ordered [the City] to implement control measures consistent with the *Draft* Tribal Recommendation

> and has not made its Order contingent upon final recommendations of a tribal council. The District does not and cannot delegate [the City's] duty to comply with laws to protect public health and the environment, and the District's responsibility to enforce those laws, to any third-party. Authority to require implementation of dust control requirements resides solely with the District.
>
> In addition, [the City's] actions regarding this matter violate the letter and spirit of the 2014 Stipulated Judgment to; 1) prevent disputes between our agencies and 2) prevent dust control implementation delays. The District hereby provides [the City] with notice that it is in violation of the Stipulated Judgment and subject to all remedies available to address that violation.

The Notice of Violation directed the City to comply by March 8, 2022. On March 3, 2022, the City sent a letter to the District indicating that it believed the 2021 Order, Notice to Comply and Notice of Violation violated the 2014 Stipulated Judgment, 2016 SIP and were not legally enforceable. (Edwards Decl., Exh. K.) "[I]n order to remain in compliance with the 2016 SIP and to avoid impacting sacred cultural resources without direct Tribal approval and participation, [the City] respectfully requests that [the District] withdraw its Order and rescind its NOV." (Edwards Decl., Exh. K.)

On March 9, 2022, the District issued an Order to Pay to the City. The notice stated that the City had failed to comply with its legal requirements to provide "dust control mitigation of vegetation enhancement in 5 acers of the Phase 7b and Phase 9/10b Sibi Patsiata-wae-tü Cultural Resource Area (0.49 square miles) at Owens Lake" and was ordered to pay stipulated penalties pursuant to the formula provided by Paragraph 15.A. of the 2014 Stipulated Judgment. (Edwards Decl., Exh. L.) The District calculated these penalties as beginning to accrue on December 21, 2021 through March 8, 2022 at a rate of $5,545.77 per day. The District calculated the current amount due as being $427,024.29. "Under paragraph 15.B. of the Stipulated Judgment, the City must pay this amount to the District within 90 days of the issuance of this notice (*i.e.,* by June 7, 2022.)

On March 16, 2022, the City notified the District that it believed all five Owens Lake Tribes must agree on mitigation measures in the subject area before any such measures could be undertaken. (Edwards Decl., Exh. M.) The City recommended the District "grant the Tribe's request to establish 'a formal consultation on dust mitigation' so that all five Owens Lake Tribes can develop 'a Tribally sanctioned understanding implementing the vegetation enhancement project at Sibi Patsiata-wae-tü." The Tribe's proposed approach is the only option available for the District to cure this major deficiency in the Board Order."

The City subsequently filed this Motion to Enforce the Stipulated Judgment. This matter was initially scheduled for a hearing on July 15, 2022, which the Court continued on its own motion to August 12, 2022. After further consideration, the Court determined further briefing was necessary, and directed the parties to respond to certain questions not addressed by the initial briefing. The parties have submitted supplemental briefs in response to those questions, which the Court has considered.

II. Discussion

The City's burden on the instant motion is to demonstrate that the District has violated a term or terms of the 2014 Stipulated Judgment. Numerous arguments are raised that go beyond the issue of whether the District is in violation of the 2014 Stipulated Judgment. The Court will not address these arguments.[1]

A. Enforcement of the 2016 SIP

The City argues the Court should enforce the terms of the 2016 SIP as its terms were incorporated into the 2014 Stipulated Judgment. The City maintains the 2016 SIP is the "implementation and enforcement mechanism for the 2014 Stipulated Judgment." The City refers to statements in District Rule 433 and the 2016 SIP indicating that the purpose of those documents/regulations is to implement the Stipulated Judgment.

Respondent asserts that the terms of the 2014 Stipulated Judgment were incorporated into the 2016 SIP, but the reverse is not true.

"A written agreement may, by reference expressly made thereto, incorporate other written agreements; and in the event such incorporation is made, the original agreement and those referred to must be considered and construed as one." (*Bell Rio Grande Oil Co.* (1937) 23 Cal.App.2d 436, 440.) "The phrase "incorporation by reference" is almost universally understood, both by lawyers and nonlawyers, to mean the inclusion, within a body of a document, of text which, although physically separate from the document, becomes as much a part of the document as if it had been typed in directly." (*Republic Bank v. Marine Nat. Bank* (1996) 45 Cal.App.4th 919, 922.)

"[W]hat is being incorporated must *actually exist at the time of incorporation*, so the parties can know exactly what they are incorporating." (*Gilbert Street Developers, LLC v. La Quinta Homes, LLC* (2009) 174 Cal.App.4th 1185, 1194.) "Put another way, to have a valid incorporation by reference, the terms of the document being incorporated must be known or easily available to the contracting parties." (*Ibid.*; see also *Kleveland v. Chicago Title Ins. Co.* (2006) 141 Cal.App.4th 761, 765 ["Incorporation by reference requires that (1) the reference to another document was clear and unequivocal; (2) the reference was called to the attention of the other party, who consented to that term; and (3) the terms of the incorporated documents were known or easily available to the contracting parties."

The 2016 SIP was drafted after the 2014 Stipulated Judgment was entered. Thus, the 2016 SIP did not actually exist at the time of incorporation, as required for a document to be incorporated by reference. Further, the 2016 SIP is incredibly voluminous at 1,494 pages. There is no evidence before the Court that the terms of this 1,494 page document were known or easily available at the time the parties entered the 2014 Stipulated Judgment.

[1] For example, the Court will not address any of Petitioner's CEQA compliance arguments. These arguments were not included in the original briefing and exceed the scope of the Court's order directing further briefing.

On these bases alone, the 2014 Stipulated Judgment could not incorporate by reference the 2016 SIP. Further, the 2014 Stipulated Judgment does not incorporate by reference the terms of the 2016 SIP or contain any express statement that the 2016 SIP was to be enforceable through the 2014 Stipulated Judgment.

Subsequent to the entry of the 2014 Stipulated Judgment, the 2016 SIP was created. The 2016 SIP provides that it "does not alter or supersede any provision in the Stipulated Judgment, nor does it relieve any party from full compliance with the requirements of the Stipulated Judgment." Thus, consistent with the parties' intent, the 2014 Stipulated Judgment remains a separate document with which the parties must comply, despite any contradictory language contained in the 2016 SIP. There has been ample time between the entry of the 2014 Stipulated Judgment, the drafting of the 2016 SIP, and the issuance of the 2021 Order for the parties to amend the 2014 Stipulated Judgment to incorporate the terms of the 2016 SIP. No such amendment has occurred, despite the parties having amended the Stipulated Judgment in 2015. Further, there is no statement in the 2016 SIP to suggest that the parties intended for it to be enforceable through the 2014 Stipulated Judgment.

In addition to the fact that the 2014 Stipulated Judgment does not explicitly state that it is a mechanism for enforcement of the 2016 SIP, the parties do not agree that they intended the 2016 SIP to be enforceable via the 2014 Stipulated Judgment. This lack of a mutual agreement supports the Court's determination that while the parties intended to draft the 2016 SIP pursuant to the 2014 Stipulated Judgment, they did not intend that a violation of the 2016 SIP would also be considered to be a violation of the 2014 Stipulated Judgment. The only way to determine that a violation of the 2014 Stipulated Judgment has occurred is to look at the language of the 2014 Stipulated Judgment itself.

B. District Rule 433

The City also argues that the 2021 Order violates the 2014 Stipulated Judgment because it directs the City to take action in contradiction of District Rule 433.

District Rule 433 was adopted on April 13, 2016. The purpose of the rule is to:

> effectuate a regulatory mechanism under the federal Clean Air Act to attain the National Ambient Air Quality Standards ("NAAQS") and to implement the Stipulated Judgment between [the District] and [the City]...This regulation does not alter or supersede any provision in the Stipulated Judgment, nor does it relieve any party from full compliance with the requirements of the Stipulated Judgment. This regulation sets the basic requirements for the Best Available Control Measures ("BACM") and defines the areal extent of these controls at Owens Lake, California required in order to meet the NAAQS. This regulation does not preclude the City or the District from implementing more stringing or additional mitigation pursuant to the Stipulated Judgment.

For the same reasons identified above, the Court finds Rule 433 was not incorporated into the 2014 Stipulated Judgment, and is therefore not enforceable through the 2014 Stipulated Judgment.

C. The Sibi Patsiata-wae-tü area

The City argues the District is in violation of the 2014 Stipulated Judgment because the Sibi-Patsiata-wae-tü area received "deferred" designation, and the District has not followed the processes required to take the area out of "deferral." In support of this argument the City cites to the 2016 SIP and Rule 433. The Court has already determined that Rule 433 and the 2016 SIP are not enforceable through the 2014 Stipulated Judgment. Accordingly, the Court will not address these arguments further.

The City further argues the dust control measures provided by the 2021 Order cannot be required under Health & Safety Code section 42316. The City asserts the District has failed to provide "any monitored or modeled exceedance data demonstrating the Sibi Patsiata wae-tü ECR area is causing or contributing to a violation of the PM_{10} NAAQS on the owns Lakebed. Nor has the District provided any such data or other information indicating vegetation enhancement measures are needed to remedy a violation of PM_{10} NAAQS." (MPAs, p. 14.)

In supplemental briefing, the City cites to the 2014 Stipulated Judgment as allowing in Paragraph 2.B for deferral of certain areas "determined to contain significant cultural resources" and to Paragraph 9's statement that "[c]ultural and biological resource protection and mitigation shall be incorporated to the extent feasible by law into the design of dust control areas." (Supp. Op. Br., p. 10.) The City then argues that a 2016 Board Order and the 2016 SIP have established specific processes by which the District must proceed in order to impose dust controls on deferred ERC areas.

Lastly, the City argues the 2014 Stipulated Judgment authorizes the District to order only BACM on all Phase 9/10 ECR areas, and that while managed vegetation is BACM, the Vegetation Enhancement Project is not BACM. (Supp. Op. Br., p. 15.)

The District argues that Paragraph 3 of the 2014 Stipulated Judgment provides for BACM Contingency Measures, but that these measures are not applicable to the Sibi Patsiata-wae-tü area because it is part of the area addressed in Paragraph 2.B. The District argues that because this area was deferred and reordered under Paragraph 2.B, the District may select "reasonable measures" under Health and Safety Code section 42316.[2]

The City agrees with the District that Paragraph 3 does not apply, but argues that because the Sibi Patsiata-wae-tü area was originally part of the Phase 9/10 area before it was deferred, once it is removed from deferral the provisions of the 2014 Stipulated Judgment concerning measures applicable to the Phase 9/10 area once again apply.

[2] Health and Safety Code section 42316 provides in part, "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..."

At the hearing on this matter, the District argued that the 2014 Stipulated Judgment requires the parties to follow the process in the Stipulated Order of Abatement 130819-01 ("Abatement Order")[3] in both approving an area for deferral as well as issuing an order for dust control mitigation. Specifically, the District repeatedly referred to page 5, sections I.c., subdivisions i, and ii of the Abatement Order. Section I.c. is titled "Cultural Resource Task Force ("CRTF") and provides:

> i. LADWP and District commit to form the CRTF and host its initial meeting within ninety (90) days after the Effective Date of the Modified Order. The CRTF will be an advisory group consisting of representatives from LADWP, the District, CSLC, State Historical Preservation Office, and Local Tribal Representatives. The CRTF may draw upon outside resources and experts, as needed, to aid the CRTF's process. LADWP shall be responsible for paying the CRTF's reasonable costs, including reimbursing CRTF members for reasonable travel expenses. The CRTF shall exist to make recommendations for the Initial Phase 7b Areas and any Additional Phase 7b Areas.
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> ii. The CRTF will be advisory in nature only, and the District and LADWP will each retain its final decision-making authority as to the treatment of ECR areas. The District reserves the right to issue a future order or orders requiring LADWP to install dust controls on Phase 7b areas and LADWP reserves the right to contest any such order or orders.
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> (Kiddoo Decl., Exh. D.)

The District argued at the hearing that this language directs and reflects the parties' intent at the time of drafting that when an area is no longer deferred the District has the authority pursuant to Health and Safety Code section 42316 to order the City to undertake "reasonable measures" to mitigate dust, which measures are not limited to BACM.

The District further argued that Paragraph 3.B of the 2014 Stipulated Judgment clearly denotes that an area taken out of deferral is one "re-ordered for control under Paragraph 2.B" which is consistent with the parties' intent that an area taken out of deferral does *not* return to Paragraph 2.A status, but becomes its own 2.B area, subject only to Health and Safety Code section 42316.[4] Paragraph 3.B provides, in part:

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[3] The Court notes that the Abatement Order was drafted *before* the 2014 Stipulated Order and does *not* refer to any of the geographic areas at issue in the 2014 Stipulated Order, but instead addresses a completely different area referred to as Phase 7. It appears the parties intended the Abatement Order's procedures to apply, while recognizing that the actual geographic locations referred to in the Abatement Order were irrelevant.

[4] The District also acknowledged at the hearing on this matter that its position is that the City would be *unable* to challenge *any order* issued concerning the Sibi Patsiata-wae-tü area, as the City has waived all such rights by signing the 2014 Stipulated Order. The Court has significant concerns about this position, as it would be contrary to the public interest for a Court to determine a regulating body has unfettered authority to order a public agency to take action in a certain geographic area because the public agency has ostensibly waived all rights to argue such an order is illegal. In light of the Court's conclusion on this motion, the Court will not discuss these concerns further.

> [e]xcept for the 4.8 square mile BACM Contingency Measure area and any area re-ordered for control under Paragraph 2.B of this Judgment, the District shall not issue any further orders for mitigation measures to the City under section 42316 or any other law...

The District maintains this language "re-ordered for control" refers to the process of taking an area out of deferral and issuing a new order for dust control mitigation. In all of its briefing, the District did not include any documentation such as contemporaneous communications between the parties or a declaration by the document drafter which would support its interpretation of, or clarify the terms "re-ordered for control."

At the hearing, the City argued that Paragraph 2.B *only* refers to the process for deferring a particular geographic area, and does not address the District's authority once an area is removed from deferral. The City noted that the Abatement Order does not specifically refer to any authority to order "reasonable measures" that are not BACM, and asserted that the Abatement Order never contemplated that removing an area from deferral would give the District the authority to order dust control measures that would have been unauthorized had the area never been deferred.

Based upon the oral arguments, it became apparent to the Court that the parties have vastly divergent interpretations of what the 2014 Stipulated Judgment directs should occur to the Sibi Patsiata wae-tü ECR area that was deferred and is now to be ordered for dust control measures. Although the District referred the Court to the Abatement Order, it was apparent that the City did not agree that the Abatement Order granted the District the broad authority over the disputed area, and the Court agrees, as stated above. In other words, the hearing revealed that there was no common understanding or mutual agreement as to the treatment of this area. The Court further expressed its concern that it may not be within its authority to enforce the Stipulated Judgment when the parties had no agreement and could not articulate the parties' mutual intent as to this area when they drafted the language of the Stipulated Judgment.

As to extrinsic evidence to assist the Court in its interpretation of the Stipulated Judgment, the District has attached to witness Kiddoo's declaration a letter that purports to show the City acknowledging that the District can order non-BACM on the Sibi Patsiata-wae-tü area. This letter was drafted several months after the 2014 Stipulated Judgment was entered, and is signed by the Manager of Owens Lake Planning. There is no evidence before the Court that this individual was involved in the drafting of the 2014 Stipulated Judgment, or that this individual's opinion as to the meaning of the 2014 Stipulated Judgment represents the City's official position, and is therefore, representative of the City's intent at the time of signing the 2014 Stipulated Judgment.

The Court is also aware of terms in the 2016 SIP and Rule 433 that if monitoring demonstrates BACM is needed in an ECR area, the District shall order the City to select and implement BACM control measures. While the Court has already determined these terms were not incorporated by reference into the 2014 Stipulated Judgment, the Court did consider whether these terms could be considered extrinsic evidence of the parties' intent in drafting the language of the 2014 Stipulated Judgment and therefore, aid in its interpretation. However, it remains that

the 2016 SIP was entered over a year after the 2014 Stipulated Judgment was finalized, and the 2014 Stipulated Judgment is markedly silent as to what should occur to an area once it is removed from deferred status.

Ordinarily, the objective intent of the contracting parties is a legal question determined solely by reference to the contract's terms. (Civ. Code, § 1639 ["[w]hen a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible ..."]; Civ. Code, § 1638 [the "language of a contract is to govern its interpretation ..."].) Extrinsic evidence is admissible, however, to interpret an agreement when a material term is ambiguous. (Code Civ. Proc., § 1856, subd. (g); Pacific Gas & Electric Co v. G. W. Thomas Drayage etc. Co. (1968) 69 Cal.2d 33, 37 [if extrinsic evidence reveals that apparently clear language in the contract is, in fact, susceptible to more than one reasonable interpretation, then extrinsic evidence may be used to determine the contracting parties' objective intent]; Los Angeles City Employees Union v. City of El Monte (1985) 177 Cal. App. 3d 615, 622.

"The test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." (*Pacific Gas & E. Co. v. G.W. Thomas Drayage etc. Co.* (1968) 69 Cal.2d 33, 37.) Thus, even considering the documents referenced above, the Court finds that 2014 Stipulated Judgment is *silent* as to what dust control measures the District may order when a portion of the Phase 9/10 area is deferred and then removed from deferral. As the 2014 Stipulated Judgment has no language for which the Court could utilize to interpret its "reasonably susceptible" meaning, extrinsic evidence cannot aid, as the Court cannot interpret the parties' intent when the document is absolutely silent.

"Without mutual assent, there is no [agreement]." (*Merced County Sheriff's Employees' Ass'n v. County of Merced* (1987) 188 Cal.App.3d 662, 670.) "There is no manifestation of mutual assent to an exchange if the parties attach materially different meanings to their manifestations and [para.] (a) neither party knows or has reason to know the meaning attached by the other; or [para.] (b) each party knows or each party has reason to know the meaning attached by the other. Under these rules no contract is formed if neither party is at fault or if both parties are equally at fault." (*Ibid.*)(citations omitted.) Stated another way, if there is no meeting of the minds as to essential terms of an agreement which can be "traced to ambiguity for which neither party is to blame" then there is no enforceable agreement. (*Tex-Cal Land Management, Inc. v. Agricultural Labor Relations Bd.* (1982) 135 Cal.App.3d 906, 916.)

Based upon the record before it, the Court finds there was no mutual agreement as to how a Phase 9/10 area deferred pursuant to Paragraph 2.B was to be treated once deferral is no longer necessary and the area is ready to be ordered for dust control measures. The 2014 Stipulated Judgment does not appear to the Court to directly address such a situation, and the parties' recollections and minimal evidence of their intent is so disparate the Court cannot find that they ever actually "agreed" on the treatment of this area at the time the 2014 Stipulated Judgment was entered. This ambiguity as to what should occur under these circumstances does not appear to be the "fault" of either party, but the Court cannot enforce the mutual intent of the parties through this Motion when there appears to be none.

Paragraph 18.I of the 2014 Stipulated Judgment provides a severability clause, such that if any portion of the Stipulated Judgment is "found to be invalid, void or unenforceable" such portion shall be "deemed severable from the remainder of this Stipulated Judgment and shall not invalidate the remainder" of the judgment. As such, the Court finds that the 2014 Stipulated Judgment is unenforceable as to the Sibi Patsiata-wae-tü area because of its status as an area that was deferred pursuant to Paragraph 2.B.[5] The remainder of the 2014 Stipulated Judgment is not impacted by this determination, and the Court makes no findings as to the legality or enforceability of those provisions as such a determination would exceed the scope of the instant motion.

The Court further finds that it need not address the City's arguments concerning the Order to Pay. The Order to Pay stems from the 2021 Order, which was issued pursuant to the District's purported authority under the 2014 Stipulated Judgment to order dust control measures in the Sibi Patsiata-wae-tü area. The Court has found unenforceable the 2014 Stipulated Judgment as it applies to the Sibi Patsiata-wae-tü area given its status as an area that was deferred pursuant to Paragraph 2.B. Because the Order to Pay relies on the District's ability to seek stipulated penalties for violations of the 2014 Stipulated Judgment, the Order to Pay is now unenforceable. The Court issues no opinion as to whether the City may be subject to civil penalties pursuant to the Health and Safety Code for failing to comply with a valid order. Such a determination would exceed the limited scope of the present motion.

III. Conclusion

The motion to enforce the Stipulated Judgment is **DENIED** as the Court cannot enforce portions of the Stipulated Judgment found to be unenforceable because the parties never had a mutual agreement as to the treatment of the deferred area.

DATED: September 27, 2022

Judge SHELLEYANNE W.L. CHANG
Superior Court of California,
County of Sacramento

[5] In light of the Court's ruling, it does not address the City's argument that all five Owens Lake Tribes must agree on mitigation measures in the subject area before the District can Order the City to undertake any such measures.