



GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT

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BOARD REPORT

Mtg. Date: June 27, 2013

To: District Governing Board

From: Theodore D. Schade, Air Pollution Control Officer

Subject: Consideration of an Agreement regarding Settlement Terms with the LADWP regarding Owens Lake Phase 7a and Keeler Dunes dust controls

Background

In 2006, Great Basin and the Los Angeles Department of Water and Power entered into a Settlement agreement regarding additional Owens Lake dust controls. The Agreement required the LADWP to deploy approximately 13 square miles of additional dust controls onto the lakebed, including a 3.1 square-mile area known as "Phase 7a." The original deadline for constructing the Phase 7a controls was October 2009. Due to a number of circumstances, LADWP failed to meet the October 2009 deadline and received a one-year extension, until October 2010, from the District Hearing Board. In return for the one-year extension, LADWP agreed to construct two additional square miles of dust controls known as "Phase 8."

LADWP also did not meet the October 2010 deadline for the Phase 7a controls and in March 2011 it received an extension until December 2013 from the District Governing Board by means of a Stipulated Order for Abatement (SOA). The SOA (#110317-01) is attached to this report. In addition to providing additional time for Phase 7a, LADWP was required to pay \$6.5 million into an "excess air pollution offset fund." The District is using these funds to reduce other sources of air pollution in the District. The SOA provides that, if LADWP fails to meet future deadlines, it agrees to make late payments of up to \$10,000 per day until all 3.1 square miles of Phase 7a controls are in place.

However, once again, due to a number of circumstances, including the purported discovery of a significant quantity of important cultural resources within the Phase 7a area, LADWP asserts it will be unable to meet the December 2013 deadline for Phase 7a controls. The 2011 SOA provides a procedure for LADWP to be granted additional time due to circumstances beyond its control. In January 2013, LADWP initiated the procedure in the SOA (Order Paragraphs 5 and 6) by which two LADWP Board Commissioners could meet with two Great Basin Board members to develop a non-binding recommendation to the full Great Basin Board as to whether, and under what conditions, LADWP should be granted additional time to complete the dust controls.

Over the past two months LADWP Commissioners Jonathan Parfrey and Richard Moss have been meeting with Great Basin Board members Larry Johnston, Matt Kingsley and Linda Arcularius in an

attempt to develop a mutually agreeable path forward. The Air Pollution Control Officer deeply appreciates the time and dedication these five leaders devoted to this difficult task. With the assistance of staff and attorneys from both agencies, on Monday, June 24, agreement was reached on a number of issues related to the Phase 7a dust controls, as well as other issues of concern, including a plan for the protection of cultural resources and control of dust from the Keeler Dunes. A proposed “Agreement of Settlement Terms” (Settlement) has been drafted and is being presented to both the LADWP Board of Commissioners and the Great Basin Governing Board for consideration and approval. The proposed agreement is attached to this report.

Discussion

The proposed Settlement is a framework which will later be developed into a more formal agreement consistent with the terms with the Settlement. The formal agreement will then be incorporated into an amendment to the 2011 SOA that is to be considered by the Board within 30 days (before July 27, 2013).

In addition to considering amending the SOA within 30 days, the Settlement requires the Board to consider amending the 2008 Owens Valley State Implementation Plan (SIP) to incorporate some of the provisions of the Settlement into the SIP. In order to amend the SIP, the District is required to have a 30-day public comment period.

Therefore, a three-step process is required to approve and implement the Settlement: 1) Today’s consideration of the settlement terms, 2) Consideration of a more specific SOA amendment within 30 days (prior to July 27), and 3) Consideration of a SIP amendment after at least 30 days public notice.

The proposed Settlement contains a number of provisions and staff encourages the Board members to carefully read through the document. In summary, the Settlement contains the following major components:

I. Phase 7a Dust Controls

1. The deadline for completion of construction of the Phase 7a infrastructure is extended by two years from December 2013 to December 2015. Any vegetation planted for dust control must be fully compliant (about 20% cover) by December 2017.
2. 328 acres of Phase 7a area that contains sensitive cultural resources is to be removed from the Phase 7a project and will be known as the “Phase 7b” project. Phase 7a contains about 2,000 acres, so Phase 7b is about 17 percent of the total area.
3. Any additional significant cultural resource areas encountered during Phase 7a construction will be moved to Phase 7b.
4. A “Cultural Resource Task Force” (CRTF) will be formed of interested parties, including local Indian Tribes to make recommendations for Phase 7b regarding the balance between protection of cultural resources and air pollution control requirements. The CRTF will make recommendations to LADWP and the District. The District Board, after considering the CRTF’s recommendations, will issue additional orders regarding the Phase 7b areas, if appropriate.

5. As long as all Phase 7a and Phase 7b deadlines are met, LADWP will not be subject to fines.

II. Best Available Control Measures (BACM)

6. The District approves two modified BACMs: “Reduced Thickness Gravel” (2 inches of gravel over a geotextile fabric underlay) and “Brine Shallow Flooding.” The District and LADWP agree that LADWP is not liable for maintenance of the natural brine pool remnant of Owens Lake.
7. The District and LADWP agree to work on accelerated testing of “Tillage” and “Roughness Elements” as candidate BACMs. It is both agencies’ intentions to have the District Board make a BACM decision on these measures within 13 months.

III. Keeler Dunes

8. LADWP will pay the District \$10 million as a public-benefit contribution for and will support the District’s effort to implement a dust control project on the Keeler Dunes. The District will be solely responsible for implementing the Keeler Dunes project. LADWP will make the \$10 million payment within 90 days of: 1) the District releasing LADWP from liability for the Keeler, Swansea and Olancho Dunes and 2) District submittal to the California Air Resources Board of a SIP revision incorporating the agreement provisions into the 2008 SIP.
9. LADWP can audit the District’s records to verify the appropriate expenditure of the \$10 million.
10. The District agrees to release the LADWP from any and all liability under any and all federal, state and local laws that the District can enforce regarding dust emissions from the Keeler, Swansea and Olancho Dunes. The District also agrees not to request, encourage or join in an enforcement action by any other agency related to dust emissions from these three dune areas.
11. The District agrees to hold no further hearings regarding LADWP’s liability or responsibility for dust emissions from the three dune areas.

Staff Recommendation

Staff has been closely involved in the development of the proposed Settlement and recommends the following three actions:

1. That the full Board approve the draft Settlement as presented,
2. That the Board set the date, within 30 days, for a special meeting to consider incorporating the provisions of the Agreement into Stipulated Order for Abatement 110317-01, and
3. That the Board set the date, after a 30-day public review and comment period, for a meeting to consider amending the 2008 Owens Valley PM-10 State Implementation Plan to incorporate the modified Abatement order.

Attachments:

Stipulated Order for Abatement 110317-01

Phase 7a and Keeler Dunes Settlement Terms Agreement dated June 25, 2013

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