



# **Great Basin Unified Air Pollution Control District**

## **2014-2015 Fiscal Year SB270 Budget and Fee Assessment**

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# 2014-15 Fiscal Year SB 270 Budget and Fee Assessment

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## **Budget and Fee Assessment Summary**

## **Introduction**

The annual SB 270 fee assessment is the Great Basin Unified Air Pollution Control District's estimate of the reasonable cost of maintaining the level of effort necessary to address violations of state and federal air quality standards due to water-gathering activities by the City of Los Angeles (City) within the District's boundaries (Inyo, Mono and Alpine Counties). The assessment is a reasonable fee as provided for in Section 42316 of the California Health and Safety Code. The fee funds the cost of monitoring air quality impacts caused by the City's water-gathering activities, the development of air quality plans, monitoring the City's implementation of control measures, enforcing control measure performance, and control measure research. The fee includes the costs associated with all District employees working on SB 270 matters, general recurring operating costs, the cost of enforcing air quality requirements, long-term or ongoing project costs, funding for dust source research and consulting (professional services) and material/equipment costs. For 2014-15 the fee continues to include costs for equipment and consulting associated with the implementation of the 2008 SIP Board Order<sup>1</sup> and EIR<sup>2</sup> that were adopted on February 1, 2008 as well as the 2010 Coso Junction Maintenance Plan<sup>3</sup>.

## **SB 270 Fee Components**

The SB 270 fee includes the estimated cost of all District employees (wages and benefits), operating costs (rent, utilities, insurance, supplies, travel and professional services associated with regular budget activities) and equipment costs associated with the City's efforts to control the air pollution caused by its water-gathering activities. The proposed fee total is \$5,098,000. Compared to the 2013-14 fee total of \$5,601,000, the proposed fee total represents an 8.98% decrease (-\$503,000) over fiscal year 2013-14. The 2014-15 budget contains estimates in each category to meet commitments made by the District in the 2008 SIP Board Order & EIR and 2010 Coso Junction Maintenance Plan, including: 1) maintenance and replacement of air monitoring equipment at Owens Lake; 2) consultant fees necessary to carry out committed regulatory and compliance tasks at Owens and Mono Lakes; and 3) legal fees related to the mandatory 2011 and 2012 Supplemental Control Requirements Determination (SCRD) and associated fee orders which have been appealed to the California Air Resources Board by the City of Los Angeles and related lawsuits filed in the Los Angeles County Superior Court and Kern County Superior Court. In addition, the District issued a required 2013 SCRD, the City has evicted three air monitors at Owens Lake, and the District anticipates there may be legal fees associated with these actions as well. The assessment is summarized in Table 2 and details on some of the categories are shown in Table 3. The personnel associated with the SB 270 assessment are summarized in Table 4. A summary of the assessment components is shown in Table 1. A graphic comparison of this year's assessment with previous years is shown in Figure 1. The \$503,000 (8.98%) decrease in the proposed fee from the 2013-2014 fee is due to reduced employee costs (-\$261,000) and operating costs (-\$242,000).

Compared to 19 years ago, in 1995, the proposed FY 2014-15 SB 270 estimated budget and fee assessment has increased a total of \$411,586 (8.783%). Compared to the 1998 assessment of

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<sup>1</sup> 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan (SIP)

<sup>2</sup> 2008 Subsequent Environmental Impact Report (EIR)

<sup>3</sup> See 2010 PM<sub>10</sub> Maintenance Plan and Redesignation Request for the Coso Junction Planning Area (CJPA). Windblown dust from uncontrolled areas at Owens Lake have been found to contribute to exceedances of the federal PM10 standard in the CJPA. Costs associated with air quality monitoring in the CJMP are included in the SB270 budget and fee for operation of the Owens Lake monitoring network.

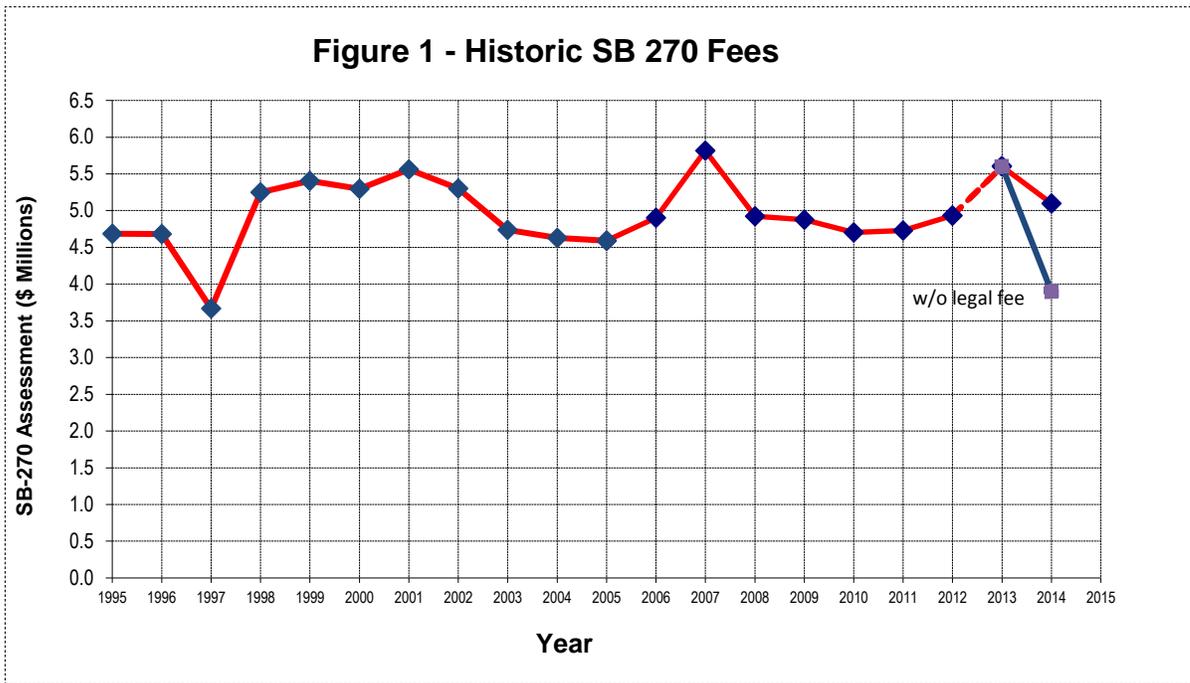
\$5,246,725 when the City litigated the District's first Owens Lake control plan, the FY 2014-15 assessment is \$148,725 less (-2.835 %). A comparison of the FY 2014-15 estimated budget and fee assessment to FY 1995-96, not including the legal fee assessment, shows a decrease of \$788,414 (-16.82%).

TABLE 1

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**FY 2014-15 SB 270 Total Fee Summary**

	2013-14	2014-15	% Change
<b>Assessment Expenses</b>			
I. Employee Costs	2,730,000	2,469,000	-9.56%
II. Operating & Compliance	1,671,000	1,429,000	-14.48%
III. Materials & Equipment	-	0	0.00%
<b>Sub-Total SB 270 Fee</b>	<b>4,401,000</b>	<b>3,898,000</b>	<b>-11.43%</b>
			-503,000
IV. Special Legal Fee Assessment	<b>1,200,000</b>	<b>1,200,000</b>	<b>0.00%</b>
			0
<b>Total SB 270 Fee</b>	<b>5,601,000</b>	<b>5,098,000</b>	<b>-8.98%</b>
			-503,000
<b>Less Reserve Policy Credit</b>	0	0	
<b>SB 270 Fee Due</b>	<b>5,601,000</b>	<b>5,098,000</b>	<b>-8.98%</b>
			-503,000



Year	Amount
1995	4,686,414
1996	4,682,317
1997	3,666,543
1998	5,246,725
1999	5,403,643
2000	5,295,089
2001	5,561,270
2002	5,300,597
2003	4,739,313
2004	4,631,000

Year	Amount
2005	4,591,000
2006	4,903,825
2007	5,816,250
2008	4,922,265
2009	4,876,300
2010	4,703,600
2011	4,730,000
2012	4,934,550
2013	5,601,000
2014	5,098,000

2014                    3,898,000    without legal fee

## **Fee Assessment Details**

## Fee Assessment Details

### Introduction

The 2014-15 proposed SB 270 fee total is \$5,098,000. Compared to the 2013-14 fee total of \$5,601,000, the proposed assessment represents an 8.98% decrease (-503,000). The assessment is summarized in Table 2 and details on some of the categories are shown in Table 3. The 2014-15 budget contains cost estimates in each category to meet commitments made by the District in the 2008 SIP Board Order and EIR as well as the 2010 Coso Junction Maintenance Plan including: 1) maintenance and replacement of air monitoring equipment at Owens Lake; 2) staff and consulting costs necessary to enforce mandatory regulatory and compliance requirements; and 3) legal fees related to the 2011 and 2012 Supplemental Control Requirements Determinations. The Los Angeles Department of Water and Power (LADWP) has appealed a decision by the California Air Resources Board on the 2011 SCR D which is currently being briefed and is set for hearing in Sacramento County Court. LADWP also appealed the District's 2012 SCR D determination and a CARB hearing on the matter was stayed from October 2013 and is pending<sup>4</sup>. The LADWP appealed the District's fee orders for FY 2011-12<sup>5</sup>, FY 2012-13 and FY 2013-14 to the California Air Resources Board (CARB). Administrative hearings were held before CARB in June of 2013 regarding the fee orders issued for FY 2011-12 and FY 2012-13 and a decision is pending. Briefing to CARB on the FY 2013-14 fee order is on hold. The District is also involved in a number of SB 270-related lawsuits. Over the past three years, the LADWP has filed lawsuits in Los Angeles County Superior Court (3 actions, one of which was transferred to Sacramento County Superior Court), and in the U.S. District Court for the Eastern District of California (Fresno) regarding the 2011 SCR D and other Owens Lake dust control requirements. In addition, the District has filed an enforcement action lawsuit in Kern County Superior Court regarding the LADWP's failure to obey District fee orders, and LADWP has filed claims against the District, its Air Pollution Control Officer and the District's Governing Board. See 'Legal Fee Assessment' section for additional information. The personnel associated with the SB 270 assessment are summarized in Table 4.

### I. Employee Costs

Since SB 270 was incorporated into the California Health & Safety Code in 1983, the District has assessed fees to the LADWP for the cost of employees and employee overhead associated with the development, implementation and enforcement of dust controls associated with the LADWP's water-gathering activities in the District. For FY 2014-15, it is proposed that the SB 270 fee assessment pay for a total of 18.34 full-time-equivalent employees (FTE), including 18.00 regular employees and one part-time (.45 FTE) non-benefited contract employee (see Table 4 - Employee Time Allocation). This is a decrease of 1.47 FTE compared to FY 2013-14 and a reduction of 3.92 FTEs (-17.46%) since FY 2008-09.

Total employee costs are estimated to be \$2,469,000, a decrease of 9.56% (-\$261,000) over FY 2013-14. The decrease is primarily attributable to reduced personnel, reduced healthcare insurance benefits and a transfer of \$60,000 in employee costs to another non-SB 270 budget (Keeler Dunes Project). This category includes an allocation of wages, retirement, medical benefits, taxes, unfunded liability for future retiree medical insurance and workers compensation insurance. The LADWP has been assessed an annual amount since the 2005-06 FY for the cost

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<sup>4</sup> The District issued a preliminary 2013 SCR D and this matter is also pending.

<sup>5</sup> FY 2011-12 fee order for \$250,000 on appeal with CARB (Appeal No. 3).

of the unfunded liability of SB 270 retiree medical costs. A revised draft actuarial valuation was completed regarding the unfunded retiree medical liability (Table 1, Item I.E). Due to higher returns than expected, the actuary recommended that the annual required contribution be zero for a few years with another review in 2016. The three-year period ending November 2013 saw a return rate of 6.79%, as opposed to the 5.5% assumption. In 2016, it is anticipated that a limited contribution may be needed to adjust for increased costs or other factors such as annual normal service costs (present value of benefits accruing in the current year). This price-index-adjusted contribution expense may be funded out of general reserves or expensed to the budget annually. In 2009 the District adopted and partially funded an IRS §115 trust under Governmental Accounting Standards Board (GASB) 45 requirements.

As mentioned above, the assessment shows an overall decrease in FTE of 1.47 employees for the 2014-15 fiscal year. The decrease in staff is attributed to elimination of a full-time temporary contract employee that was proposed for FY 2013-14 but not filled, and a temporary partial shift of time allocations for two employees to a non-SB 270 budget related to the Keeler Dunes project. Other factors reflected in the employee costs section include regular promotion opportunities, regular step increases and adjustments to payroll taxes.

The FY 2014-15 budget proposes 9.95 FTEs to perform air quality monitoring and dust source identification both on and off the exposed beds of Owens Lake and Mono Lake, including design, purchasing, installation, data collection, maintenance, calibration, filter weighing, quality assurance, data review, and supervision. There are 2.95 FTEs to do data processing and analysis, preparation of maps and figures, maintenance of the GIS system, operation of the Owens Lake Health Advisory Network, and purchasing and maintenance of all computer hardware/software. There are 3.10 FTEs to cover all administrative tasks such as policy recommendations to the Board, overall supervision, project design and management, contract management, document preparation, technical supervision, engineering design, compliance enforcement, government agency coordination, budget preparation, technical support to legal consultants, risk manager, personnel manager and public information. There are 2.34 FTEs to act as administrative assistants, receptionist, document copier, mail clerk, file clerk, supply clerk, billing clerk, fiscal supervisor, fiscal clerk/technician, safety clerk, and board clerk.

## **II. Operating Costs**

This category includes a proportional allocation of rent for all offices (two offices in Bishop and the Keeler office), utilities, insurance, office supplies and equipment, travel and professional services. Materials and equipment in this category generally have a cost of less than \$5,000 each and/or a short life. Estimated operating costs are \$1,429,000 which represents an decrease of \$242,000 or 14.48% compared to FY 2013-14. Items in this category that require more explanation are described below.

### **II.C. – Equipment: Scientific, Computer, Software, Furniture, Office, Safety & General (<\$5,000)**

This category encompasses items costing \$5,000 or less and includes new scientific equipment (calibration devices, etc.) and related equipment (electronic test equipment, digital multimeters, etc.), computer equipment (including printers, scanners and parts), software (office upgrades, data logger, GIS, accounting software, anti-virus), furniture, office machines and safety equipment. Monies are budgeted for replacement of wind, humidity, temperature, barometric pressure and precipitation equipment as the sensors in the field age and breakdown. The budget includes funds for Sensits and datalogger upgrades. The current

Dust ID network consists of approximately 160 Sensit sites 19 cameras, and a lakewide wireless broadband communication system. The information collected from the Dust ID network has been highly successful in supplying real time data to the District, LADWP and the public. District staff working out of the Keeler office extensively use this information to make decisions when and where to collect field data during and directly after dust events. For 2014-15, \$9,000 has been budgeted for an audio visual conferencing system and \$18,000 for purchase of equipment and/or services to enable connection to the 'Digital 395' fiber optic network for broadband communications.

The cost to purchase, maintain and upgrade items in this category will be \$120,500. This category shows an increase of \$9,000 or 8.07%.

#### **II.G.2. – Leases and Rents**

Rental and lease costs are up slightly this year (\$200 or 0.19%) due to expected increases in office rents.

#### **II.H. – Maintenance of Equipment – Labor**

Included in this category are: annual certifications of laboratory equipment, including balances and standard weights. These certifications are a requirement for the District to maintain an EPA-certified laboratory for particulate matter filter processing (Title 40 CFR Part 50, App. L, Sec. 8.1; QA Guidance Document 2.12, Nov. 1998, Sec. 7.2 and 7.3). Additionally, all calibration and audit equipment used by the District's air monitoring technicians must be certified annually. These devices (the District owns 12) must be sent out to the manufacturer for certification. These certifications are required by EPA regulations for all entities conducting air quality monitoring (Title 40 CFR Part 50 App. L, Sec. 9.2.2). This category also includes vehicle maintenance, i.e. tires, oil changes, tune-ups, etc. for the District's 15 vehicles allocated to SB270 activities. No change in the amount budgeted for estimated expenses. (\$41,000)

#### **II.I. – Maintenance of Equipment – Materials**

The District operates twenty-one (21) or more (depending on special projects) PM monitors in the Owens Lake and Mono Basin networks. Items included in this category for those monitors include: pumps, filters, solar panels, batteries, air inlets, bearings, rebuild kits, and other associated equipment. This category also includes the cost to maintain 160+ Owens Lake Sensit sand-motion monitoring sites (including solar panels, regulators, batteries, radio communication, camera replacement and other associated equipment), purchase parts for existing ATV's, vehicles, plus monitoring stations (shelters, tubes, rails, pipes). The Sensit network is performing much better than expected in the harsh Owens Lake environment, but because much of the network is close to fifteen years old, it is starting to require more repairs or replacement. An increase in this category of \$27,000 is expected due to the age of Sensit equipment and wind sensors. Further, maintenance items have been included for the 17 meteorological stations with sensors that can be repaired and/or refurbished. \$97,000 has been budgeted for this category (+38.57%).

#### **II.K.12. – EIR Monitoring & Consulting**

Sapphos Environmental, the District's consultant that prepared the EIR for the 2008 SIP Board Order, will continue to assist District staff with ongoing environmental compliance monitoring and special environmental consulting. Sapphos will provide on-call field services

for environmental resource issues and will track compliance with all required environmental impact mitigation measures associated with Owens Lake dust controls. The budget contains \$25,000 for the ongoing environmental services. Additionally, for FY 2014-15, Sapphos will also provide archeological and environmental services related to as the Cultural Resource Task Force per the 2013 Phase 7a and Keeler Dunes Settlement Agreement (\$50,000). A more detailed description of Sapphos Environmental's work efforts is found below.

#### **II.K.13 – Owens Lake Air Quality Modeling**

The District has retained the services of Mr. Ken Richmond to conduct Owens and Mono Lake air quality modeling since the 1990's. Mr. Richmond has worked for a number of consulting firms over the years and now works for ENVIRON International Corp. Mr. Richmond has been invaluable in assisting the District with the development of the dust monitoring and modeling program at Owens Lake and Mono Lake. The proposed assessment includes \$250,000 for Mr. Richmond and his team at ENVIRON to assist the District with the preparation and review of particulate matter air quality modeling at Owens and Mono Lakes and to perform air quality model-related investigations needed to support the Owens and Mono Lake PM<sub>10</sub> State Implementation Plans. Air quality modeling is used to help identify areas that cause or contribute to air quality violations at Owens and Mono Lake and is required as part of the Owens Lake Dust ID Program pursuant to District Board Order #080128-01. The budget is the same as last year at \$250,000.

ENVIRON International Corporation and the team led by Mr. Ken Richmond has the unique experience necessary to compile the meteorological, sand flux, PM<sub>10</sub> and source area data from the Owens Lake Dust Identification Program for the purpose of running the Dust ID model. As shown by their past experience listed below, they are highly qualified to perform the air quality model-related work at Owens and Mono Lakes.

- Mr. Richmond first worked with the District in 1991 to model windblown dust at Mono Lake through a competitive bid awarded to TRC Environmental Corp. (contract later awarded to McCulley, Frick & Gilman, Inc. (MFG) when Mr. Richmond and his team left TRC). The Mono Lake PM<sub>10</sub> model was used to support the 1995 Mono Basin PM<sub>10</sub> SIP and to set the Mono Lake level at 6,391 feet to demonstrate compliance with the federal PM<sub>10</sub> standard.
- Mr. Richmond and his team at MFG performed air quality modeling at Owens Lake in 1995. The air quality model was used to support the federally approved 1998 PM<sub>10</sub> SIP for the Owens Valley. Mr. Richmond and his team continued working with the District through contracts issued to Geomatrix, Inc. and ENVIRON International Corp.
- In 1999, in an effort to improve PM<sub>10</sub> modeling at Owens Lake to account for the unique nature of windblown dust emissions and downwind impacts, Mr. Richmond and his team assisted the District in creating the Owens Lake Dust ID Program. They were instrumental in developing and applying the CALPUFF modeling system to model windblown PM<sub>10</sub> at Owens Lake. The CALPUFF modeling system was first approved for use in the 2003 Owens Valley SIP. Since then, it has been used to help identify areas for dust control and has contributed to the successful reduction of about 90% of the PM<sub>10</sub> emissions from the Owens Lake bed. The CALPUFF model is currently required for the implementation of the 2008 Owens Valley SIP Board Order and 2010 Coso Junction PM<sub>10</sub> Maintenance Plan.

#### **II.K.14 – Dust Compliance Measurement & Enforcement Consulting**

Because of the very large areas involved with dust control at Owens Lake, the District uses satellite imagery to evaluate the LADWP's ongoing compliance with the performance requirements associated with the managed vegetation and shallow flooding dust control measures. This component of the assessment is for professional services associated with compliance analysis efforts. District staff conducts much of the compliance analyses in-house as opposed to through a consultant but is still in need of technical assistance by remote sensing professionals in the review, development and evaluation of methodologies and data analysis. In 2013-14, the assessed amount was \$75,000 for professional services from the Desert Research Institute (DRI). For 2014-15, the amount budgeted for professional remote sensing services from DRI is \$100,000.

The work to be completed with these funds includes the following main tasks: Development of a more accurate wetness threshold for the new Landsat-8 satellite data being used to determine compliance of the Shallow Flooding areas with wetness cover requirements; Continue to work on the development of a compliance analysis method for the Hybrid dust control areas; Technical refinement of the Managed Vegetation dust control compliance method; Establishment of a "Gold-Standard" satellite image to be used for all dust control compliance analyses; and General consulting services.

#### **II.K.15 – Dust Compliance Measurement & Enforcement: Satellite Imagery**

\$10,000 is budgeted for purchase of satellite images for compliance monitoring and enforcement of Owens Lake dust control areas. Cost details and a description of work are provided below.

#### **II.K.16 – Owens Lake Scientific and Historic Consulting**

\$25,000 is budgeted for technical support on issues related to science and history of Owens Lake. These funds are budgeted for services to support the District related to the LADWP's continued contention that they are not responsible for control of dust emissions from some portions of the bed of Owens Lake. As this continues to be an issue of concern raised by the LADWP, the budget contains funds for outside technical assistance.

#### **II.L. – Supplies and Tools**

Budgeted items for this category include office supplies, general use supplies, computer supplies and in-field supplies and materials. Items in this category typically have a limited operating life. Backup meteorological and flow rate calibration and audit equipment and miscellaneous tools are required for the District to maintain all of the monitoring equipment in good operating order. Many of the District's meteorological systems are more than 10 years old, as is the equipment used to audit them. It is important to keep the calibration and audit equipment in good working order and to have funds available to procure additional equipment, should the aging equipment in use fail. \$30,000 (no change) has been budgeted for the Supplies and Tools category.

#### **II.N. – Utilities**

This category includes all communications and internet services for the Bishop and Keeler offices. Additional wireless DSL business services for remote monitoring site connections, data acquisition and wireless modem communications with ambient air quality monitoring

sites, and telemetry data lines for remote data collection are also included. Peripheral computing and personal remote device connections are also maintained with these services.

Each District facility that houses electronic equipment must maintain the temperature within certain limits for the equipment to properly function. In the environment in the Eastern Sierra, this results in significant costs for heating in the winter, when night time temperatures regularly fall well below freezing, and for cooling in the summer, when the temperatures frequently exceed 100°F. In the case of the monitoring stations that house EPA monitors, the criteria are very restrictive with regard to station temperatures (EPA Quality Assurance Handbook Volume II, Appendix D, December 2008). Maintaining the station temperatures within the limits for collection of valid data results in high electrical costs. The utilities category budget is estimated at \$61,000.

## **II.O – Project Demonstration: Control Measure Testing**

### **Testing Engineered Roughness to Control Dust Emissions from Owens Lake**

\$300,000 is budgeted for a contract with Desert Research Institute to continue to study and investigate the testing of “engineered roughness elements” as an approach to controlling the lake bed surface and dust emissions (without the use of water). If such control effectiveness can be achieved, it could potentially translate into dust control strategies that are not only cost effective but also water efficient.

During the 2013-14 fiscal year the District and LADWP are working cooperatively on a small-scale pilot project to test the use of roughness elements for dust control with the DRI leading the research. DRI will be testing the roughness elements on a small-scale pilot project located in the T1A-4 area. Testing is schedule to begin in the end of February or beginning of March 2014 and will extend until the end of June 2014. The funds for 2014-15 are budgeted to extend the project past June 2014 either in the current test location or in a new test location and to allow for additional testing, data analysis and control measure development.

## **III. – Materials and Equipment Costs**

This category includes materials and equipment not associated with general support. This equipment has a higher per item cost (more than \$5,000 each or as a whole) and a longer life. Materials and equipment costs in this category for 2012-13 totaled \$10,000 and nothing has been budgeted for FY 2013-14 or 2014-15.

### **III.A. – Equipment: Scientific, Computer, Office, & General (>\$5,000)**

This category encompasses items costing more than \$5,000 and includes new or replacement scientific equipment, air monitors and related parts, certain computer equipment, software (office upgrades, data logger, GIS, accounting, anti-virus), furniture, office machines and safety equipment. (\$0.00)

The air quality monitoring equipment the District currently uses will typically have an operational lifespan of five to seven years, given the harsh environment in which it functions. Some of the older monitors currently in operation were purchased in 1999, are worn out and need replacement. Equipment failures are likely given the age of the monitoring equipment currently in place. In order to address these failures and avoid data loss, which would

jeopardize the District's ability to determine the efficacy of the LADWP mitigation measures, sufficient funds need to be budgeted for replacement equipment each year. During the 2008-2009 fiscal year, the District started capital accrual accounts for equipment replacement. In order to minimize the impact that wholesale equipment replacement would cause in any single budget year, District staff proposed spreading the equipment replacement over several years, thereby reducing the impact in any one year and smoothing out year-to-year budget variations.

Additional accrual account funds were removed from the FY2012-2013 budget due to the fact that the company that produced the TEOM monitors (Rupprecht & Patashnick) was purchased by Thermo Fisher Environmental. Thermo will discontinue support of the R&P model 1400a(AB), which comprises all the monitors in the District's current stock, in 2020. Thermo has produced an upgraded version of the TEOM that collects both PM2.5 and PM10 data that the District is interested in procuring and that instrument recently passed EPA certification for PM10, PM2.5 and PM10-2.5 monitoring. For FY 2012-2013 & FY 2013-14, staff had determined the more prudent course was to postpone accruals for instrument purchase until two upgraded TEOM PM2.5/PM10 monitors can be tested by District staff.

### **III.B. – Vehicles and ATVs**

The District relies daily on off-road vehicles and all-terrain vehicles (ATVs) for transportation from and to monitoring stations at Owens Lake and Mono Lake. The District policy on replacement of vehicles states that field vehicles may be replaced after they have accumulated 110,000 miles, or when staff determines significant maintenance and/or safety issues warrant replacement. Staff may determine that vehicles be kept beyond the 110,000 mile limit but must inspect the vehicles regularly and annually reassess them.

No funding for vehicles or ATVs was anticipated for the 2012-2013 and 2013-14, nor will it be for the 2014-15 fiscal year.

## **Workplan**

The following efforts will take place under the SB 270 Assessment:

### **Air Quality Monitoring**

For fiscal year 2014-15 the SB 270 program will operate 21 air quality monitors (17 TEOMS and 4 Partisols in operation; 5 TEOMs ready for deployment) at 14 separate sites at Owens Lake and 2 sites at Mono Lake. These sites have been selected by District staff and approved by the EPA. They were selected in accordance with Title 40 CFR Part 58, Sections 58.3, 58.10, 58.13, 58.14, 58.20, and Appendix D. These stations are operated in accordance with Title 40 CFR Part 58 Appendix A. In addition to the air quality monitors, there are 19 meteorological sites at Owens Lake and one at Mono Lake (many of the meteorological sites are located at air monitoring sites). District personnel are responsible for the operation and maintenance of the monitoring equipment as well as installing and removing filters, weighing filters, validating data, conducting quality control checks, conducting quality assurance audits, and data reporting.

**Dust ID Program**

The District will continue to operate the Owens Lake and Mono Lake Dust Identification Programs. The effort at Owens Lake consists of operating approximately 160 Sensit sand motion sensing devices on the lake bed, and within the Keeler Dunes, mapping the location of dust emissions during dust storms, time-lapse video recording of dust events and GPS mapping the location of emission areas on the lake bed after dust storms.

The Dust ID program at Mono Lake consists of 10 Sensit sites collocated with Cox Sand Catchers (CSCs), and fifteen additional CSC-only sites. The purpose of this network is to characterize the exposed playa source area contribution to the PM<sub>10</sub> impacts on the northeast shore of Mono Lake.

The Dust ID Program at Owens Lake is an ongoing effort to identify dust source areas at the Lake, and to quantify their dust emissions and impacts on air quality. The program was initiated in 1999 and includes an extensive network of erosion monitoring equipment, time lapse cameras, PM<sub>10</sub> monitors, and meteorological towers. The Dust ID Program also provides resources for personnel to map source area boundaries and dust plumes, and to collect and analyze the information.

The Dust ID Program at Owens Lake is a required component of the 2008 SIP Board Order and 2010 Coso Junction Maintenance Plan and is the primary method used to identify dust source areas that cause or contribute to exceedances of the PM<sub>10</sub> standard. These would include new sources of the dust that may need control or controlled areas that are out of compliance with SIP and Maintenance Plan requirements.

**TABLE 2**  
**FY 2014-15 SB 270 Fee**

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<b>EXPENSES</b>	<b>13-14</b>	<b>14-15</b>	<b>% change</b>
<b>I. Employee Costs</b>			
A. Employee Wages	1,549,000	1,480,000	-4.45%
B. Retirement	402,000	405,000	0.75%
C. Insurance Benefits	481,000	300,000	-37.63%
D. Taxes	273,000	264,000	-3.30%
E. Retiree Medical Insurance Unfunded Liability	0	0	0.00%
F. Worker's Compensation Insurance	25,000	20,000	-20.00%
<b>Employee Costs</b>	<b>2,730,000</b>	<b>2,469,000</b>	<b>-9.56%</b>
			-261,000
<b>II. Operating &amp; Compliance</b>			
A. Advertising - Legal Notices & Ads	4,000	4,000	0.00%
B. Dues, Subscriptions, Education, Use Tax & Fees	28,000	26,000	-7.14%
C. Equipment: Computer, Furniture, General, Office, Safety, Scientific, Software (<\$5,000 ea)	111,500	120,500	8.07%
D. Fuel & Gasoline	30,000	31,000	3.33%
E. Health & Safety	4,000	4,000	0.00%
F. Insurance - Liability, Fire & Casualty	50,000	45,000	-10.00%
G. Leases & Rents: Equipment, Office, Site, Storage	105,800	106,000	0.19%
H. Maintenance & Repairs of Equipment - Labor	41,000	41,000	0.00%
I. Maintenance & Repairs of Equipment - Materials	70,000	97,000	38.57%
J. Postage & Shipping	5,000	4,000	-20.00%
K. Professional & Special Services	890,600	541,500	-39.20%
L. Supplies & Tools (In-Field, Office, General Use)	30,000	30,000	0.00%
M. Transportation & Travel	20,000	18,000	-10.00%
N. Utilities	56,100	61,000	8.73%
O. Project Demonstration: Control Measure Testing	65,000	300,000	361.54%
P. Monitor Site Relocation	160,000	0	-100.00%
Q. Keeler Dunes Project (Non-SB 270)	0	0	0.00%
<b>Operating &amp; Compliance Costs</b>	<b>1,671,000</b>	<b>1,429,000</b>	<b>-14.48%</b>
			-242,000
<b>III. Materials &amp; Equipment</b>			
A. Equipment: Computer, Furniture, General, Office, Scientific, Software, Furniture (>\$5,000 ea)	0	0	0.00%
B. Vehicles & ATVs	0	0	0.00%
<b>Materials &amp; Equipment Costs</b>	<b>0</b>	<b>0</b>	<b>0.00%</b>
			0
<b>ExpensesTotal (Parts I, II, III)</b>	<b>4,401,000</b>	<b>3,898,000</b>	<b>-11.43%</b>
			-503,000
<b>IV. Special Legal Fee</b>			
A. LADWP filed appeals with CARB re: FY 11-12 Legal Fee, FY 12-13 Mitigation Fee, FY 12-13 Legal Fee, 2012 SCRCD, and FY 13-14 Fees.			
B. LADWP filed lawsuits against GBUAPCD re: 2011 SCRCD decision by CARB in U.S. District Court and in Superior Court.			
C. LADWP filed two (2) lawsuits in Los Angeles County Superior Court in 2012 over the 2011 SCRCD CARB procedures and the FY 11-12 legal fee. Dismissed without prejudice but can be re-filed at anytime and listed as a related case in the Kern County fee case.			
D. District filed lawsuit against LADWP re: unpaid fees in FY 11-12 and FY 12-13 (Kern County); LADWP files cross-complaint. Legal fees to defend the 2011 SCRCD, 2012 SCRCD and related matters	1,200,000	1,200,000	
<b>Special Legal Fee Assessment</b>	<b>1,200,000</b>	<b>1,200,000</b>	<b>0.00%</b>
			0
<b>SB 270 Total Fee (Part I, II, III, IV)</b>	<b>5,601,000</b>	<b>5,098,000</b>	<b>-8.98%</b>
General Fund Reserves Balance as of March 31, 2013	1,104,552		-503,000
General Fund Reserves*	-	960,816	
Minimum Reserve Policy Amount @ 20% of FY Costs	1,120,200	1,019,600	
Credit to SB 270 Fee	-		
<b>FY 2013-14 SB 270 Fee Due</b>	<b>5,601,000</b>	<b>5,098,000</b>	<b>-8.98%</b>
			-503,000

\*Reserve balance as of Dec. 31, 2013 is \$1,601,824. Pending Governing Board approval of \$641,008 from reserves for employer retirement liabilities during FY 2013-14, the balance will be \$960,816. See separate agenda item for March 3, 2014 meeting. Note: If this liability is expensed to the FY 2014-15 budget and not paid from reserves during FY 2013-14, the resulting credit to the SB 270 fee is \$452,468 but the SB 270 fee due is higher at \$5294,314 (+\$196,314).

## FY 2014-2015 DETAILS

TABLE 3

<b>II.C. - Equipment (&lt;\$5k)</b>		<b>SB270</b>
1	Computers, Printers, Scanners, Parts	29,000
2	Furniture	500
3	General Use & Safety	1,000
4	Office Communications (Digital 395)	18,000
5	Scientific (SB270: Sensits & Datalogger Upgrades; Wind Sensors)	45,000
6	Software	18,000
7	Audio Visual Equipment & Conferencing	9,000
<b>Equipment (&lt;\$5k)</b>		<b>120,500</b>
<b>II.G. - Leases &amp; Rents</b>		<b>SB270</b>
1	Bishop - Main Office	70,600
2	Bishop - Tech Workspace	6,400
3	Bishop / White Mtn Research	-
4	Equipment	3,000
5	Keeler - Office (Owens Lake)	8,500
6	Keeler - Office Portable Trailer (Owens Lake)	6,500
7	Lone Pine - Site	1,000
8	Mammoth Lakes - Site	-
9	Mono Lake - Simis Site + Storage Site	2,000
10	Olancha - Site w/ Utilities	3,000
11	Parking	3,000
12	Storage	2,000
<b>Leases &amp; Rents</b>		<b>106,000</b>
<b>II.H. - Maintenance &amp; Repairs of Equipment - Labor</b>		<b>SB270</b>
1	Scientific: monitor repairs, lab certifications, calibrations	22,000
2	Vehicles: tires, tune-ups, oil changes, repairs, washing	13,000
3	General: offices, equipment, maintenance	1,000
4	Transportation/Installation of short-term monitors	-
5	Safety respiratory screen	5,000
<b>M&amp;R-Labor</b>		<b>41,000</b>
<b>II.I. - Maintenance &amp; Repairs of Equipment - Materials</b>		<b>SB270</b>
1	Scientific: monitors, repair parts, equipment, lab, QA	28,000
2	Vehicles: parts, equipment, tires	4,000
3	General: office equipment parts, batteries, miscellaneous	5,000
4	Sensit Network, camera site upgrades, NRG wind sensors	60,000
<b>M&amp;R-Materials</b>		<b>97,000</b>
<b>II.K. - Professional &amp; Special Services</b>		<b>SB270</b>
1	Board Stipend	4,200
2	Board Stipend - Hearing Board	1,000
3	Payroll & Financial Software Support	5,000
4	Human Resources Consulting	3,000
5	Independent Fiscal Auditor	7,500
6	Inyo Co. Auditor: Fiscal Support	5,100
7	Inyo Co. Counsel: Legal	11,000
8	Janitorial Services	8,000
9	Consulting Services: IT, Data Mgmt, Web	7,700
10	Air Monitoring Consulting Services	4,000
11	Legal Services: General	25,000
12	Environmental Consulting	75,000
13	Owens Lake Air Quality Modeling Consulting	250,000
14	Dust Compliance Measurement & Enforcement Consulting	100,000
15	Dust Compliance Measurement & Enforcement: Satellite Imagery	10,000
16	Owens Lake Science and History	25,000
17		-
<b>Professional &amp; Special Services</b>		<b>541,500</b>

FY 2014-2015 DETAILS

TABLE 3

<b>II.N. - Utilities</b>		<b><u>SB270</u></b>
1	Electric/Water/Gas/Trash	22,500
2	Communications/Internet/Telephone	30,500
3	Cell Phones	8,000
	<b>Utilities</b>	<b><u>61,000</u></b>
<b>II.O. - Project Demonstration: Control Measure Testing</b>		<b><u>SB270</u></b>
1	Straw Bales: Permitting, Plants, Equipment	-
2	Straw Bales: Labor, Consulting & Professional Services	-
3	Engineered Roughness Elements: Permitting, Equipment	-
4	Engineered Roughness Elements: Consulting & Prof. Services	300,000
5		-
6		-
	<b>Control Measure Testing</b>	<b><u>300,000</u></b>
<b>II.P. - Monitor Site Relocation</b>		<b><u>SB270</u></b>
1	Permitting	-
2	New power line installation (3 sites)	-
3	Site Costs: Equipment, gravel, fencing	-
	<b>Monitor Site Relocation</b>	<b><u>-</u></b>
<b>III.A. - Equipment: Scientific, Computer, Office, Furniture(&gt;\$5k)</b>		<b><u>SB270</u></b>
1	Replacement PM Filter Monitors, @\$18,000 ea.	-
2	Backup TEOM Replacement, @\$36,000 ea.	-
3	Off-grid TEOM system - Mono Shore	-
4	Mono Network Upgrades	-
5	Owens Lake PM Monitoring Network Upgrades	-
6	Replacement Lab Temp/RH Control System	-
	<b>Equipment (&gt;\$5k)</b>	<b><u>-</u></b>
<b>III.B - Vehicles &amp; ATVs</b>		<b><u>SB270</u></b>
1	Replacement Vehicles (Capital Expenditure Fund)	-
2	Replacement ATVs	-
		<b><u>-</u></b>

TABLE 4

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<b>FY 2014-15 Employee Time Allocation</b>	<b>District</b>	<b>SB-270</b>	<b>FTE</b>	
<b>Regular Employees</b>				
Air Pollution Control Officer	0.10	0.90		
Deputy Air Pollution Cont Officer	0.20	0.80		
Air Quality Specialist II	2.00	-		
Director Technical Services	-	1.00		
Field Services Technician I & II	0.30	1.70		
Sr. Systems & Research Analyst	0.05	0.95		
Systems Research Analyst	-	2.00		
Systems Research Analyst	0.10	0.90		
Senior Scientist [Formerly: Geologist]	0.20	0.80		
Administrave Projects Manager	0.15	0.85		
Admin Asst/ Board & Permit Clerk	0.25	0.75		
Fiscal Services Technician	0.15	0.85		
Air Monitoring Specialist	0.15	0.85		
Air Monitoring Technical Specialist	-	1.00		
Air Monitoring Tech II	-	2.00		
Air Monitoring Tech II	0.35	2.65		
<b>Subtotal Regular Employees</b>	<b>4.00</b>	<b>18.00</b>	<b>22.00</b>	
	0.50	-0.50	0.00	
<b>Contract Employees</b>				
Admin Clerk (PT/No Benefits)	0.11	0.34		
<b>Subtotal Contract Employees</b>	<b>0.11</b>	<b>0.34</b>	<b>0.45</b>	
<b>TOTAL 2014-15 FTE</b>	<b>4.11</b>	<b>18.34</b>	<b>22.45</b>	<b>-0.92</b>
TOTAL 2013-14 FTE	3.56	19.81	23.37	1.00
TOTAL 2012-13 FTE	3.51	18.86	22.37	-1.50
TOTAL 2011-12 FTE	3.58	20.29	23.87	-0.75
TOTAL 2010-11 FTE	3.55	21.07	24.62	-1.75
TOTAL 2009-10 FTE	3.66	22.71	26.37	0.00
TOTAL 2008-09 FTE	3.65	22.72	26.37	-3.92

## **Additional Details Regarding Professional Services Items II.K.12, II.K.14, II.K.15, II.K.16**

The Professional Services sub-budget contains funds for contracts with consultants for technical support in remote sensing techniques for dust control measure compliance enforcement, for science and history of Owens Lake, for modeling of Owens Lake water levels and for environmental services associated with the implementation of the 2008 SIP EIR. Additional details on the scope of work for these contracts are provided below.

### **II.K.12 – Environmental Services Assistance – Sapphos Environmental**

The 2008 Owens Valley SIP and EIR contain a considerable number of mandatory mitigation measures to reduce the environmental impacts caused by the dust control project. The District has implemented an Environmental Quality Assurance Program (EQAP) to ensure objective and timely compliance and reporting pursuant to the Mitigation Monitoring and Reporting Program (MMRP). The MMRP is a mandatory component of the 2008 EIR and is required by the California Environmental Quality Act (CEQA). The efficient implementation of the EQAP and MMRP involves coordination, communication, and reporting among the District, the LADWP, responsible public agencies, interested public agencies, and the public. These other agencies mainly include the California State Lands Commission and the California Department of Fish and Wildlife. This effort involves reviewing the adequacy of compliance plans submitted to the District by the LADWP in fulfillment of mitigation measure requirements to avoid and/or reduce environmental impacts. As the MMRP is implemented, the District will be responsible for ensuring compliance with dozens of subtasks within the MMRP and compliance programs. Where compliance is achieved, the District intends to document it and report it to responsible agencies and the public.

The budget contains a total of \$25,000 for both the compliance monitoring and reporting and for general environmental issues assistance.

For FY 2014-15, Sapphos will also provide archeological and environmental services related to the Cultural Resource Task Force (CRTF) per the 2013 Phase 7a and Keeler Dunes Settlement Agreement. As the District has no archaeological expertise and the CRTF is dealing with complex technical and legal archaeological issues, the District must retain outside assistance. (\$50,000).

### **II.K.14. – Dust Control Measure Compliance and Enforcement – DRI, Inc.**

The FY 2014-2015 budget contains \$100,000 for the continuation of dust control measure compliance enforcement and for technical support by the Desert Research Institute (DRI) of the District's in-house remote sensing efforts. Work tasks provide for consultation services with District staff for operational evaluation of the Shallow Flood compliance, compliance measurements for the existing Managed Vegetation area, development of a new "Gold-Standard" satellite image to be used for all dust control compliance work, and research for determining a compliance measurement method for a Hybrid Shallow Flooding-Managed Vegetation dust control measure. Each task is discussed in more detail below.

#### **Shallow Flood Compliance**

District staff conducts the compliance analyses of Shallow Flooding dust control areas on Owens Lake using LandSat satellite imagery. During 2014-15 evaluations for Shallow Flooding dust control measure compliance will be performed approximately every two

weeks from early October through the end of June. The methodology to be used is the well-established LandSat TM Band 5 technique, when possible, that has proven to be an accurate and reliable method over the last few years. In February 2013, a new LandSat satellite (LandSat8) was launched to replace the LandSat5 satellite that ceased operation in late 2011 (leaving only LandSat7). In 2013 DRI conducted an analysis of the new LandSat8 satellite data in order to determine the appropriate wetness threshold for determining Shallow Flooding compliance. This analysis was conducted on only a small data set such that there is some uncertainty about the exact threshold wetness value. In 2014-15, DRI will be conducting a field study to determine a more accurate and defensible wetness threshold value for data acquired with LandSat8. A portion of the DRI II.K.14 budget will be used to provide technical support in this effort.

#### **Managed Vegetation Compliance**

An evaluation of the saltgrass vegetation cover on the Managed Vegetation dust control measure on the southern portion of Owens Lake will be completed with satellite imagery using the method approved by the District in July 2011. This evaluation of the saltgrass cover will be performed in 2014-15 for the 2014 growing season. Additionally, the LADWP has created a new vegetated area in the northern portion of the lake bed (T30-1). This area was planted in a Shallow Flood dust control area in 2006. The T30-1 area varies substantially from the traditional Managed Vegetation area in that it consists of several different plant species that provide both vertical and horizontal variation. Due to this structural and compositional diversity, the current approved compliance determination method is not capable of accurately evaluating the compliance conditions on the T30-1 area. As a result, the District and LADWP are working together on developing a new vegetation compliance method that can be applied to the T30-1 area and similar varied vegetation sites that are being planned in the future. A portion of the funds budgeted in II.K.14 are to provide the District with technical support from DRI in the development of this proposed new vegetation compliance method as well as conducting a compliance call for the existing Managed Vegetation area on the southern portion of the lake bed..

#### **Hybrid Shallow Flooding-Managed Vegetation Compliance**

The LADWP has successfully created vegetation areas within the Shallow Flooding dust control measure in several areas on the lake bed. These wetland areas are composed of a mix of vegetation, standing water, and exposed soils. Current dust control compliance determinations are based on whether an area meets either the Shallow Flooding wetness cover or the Managed Vegetation cover requirement with credit only allowed for one measure of the other. This task is to continue to work in the establishment of a method for determining compliance in an area with mixed vegetation and water such that both control techniques are credited and factored into the compliance call. A portion of the DRI II.K.14 budget will be used to provide technical support in this effort.

#### **II.K.15. – Satellite Images**

As discussed above, District staff will be conducting the Shallow Flooding dust control compliance determinations in 2014-15 instead of having an outside consulting company, as in the past. Due to the large areal extent of the dust control areas (currently approximately 42 square miles), the only practical way to conduct the compliance determinations is through analysis of satellite imagery.

The method used for compliance determinations on the Shallow Flooding areas generally uses LandSat8 satellite imagery. This imagery is obtained at no cost from the USGS. However, this free imagery is only available on a regular schedule (every 16 days) and has a horizontal resolution of 30 meters. This frequency and spatial resolution is sufficient most of the time, but restricts the District in its ability to conduct wetness calls in the Shallow Flooding areas during cloudy periods and during certain times of year when higher resolution is needed. .

Fortunately, there is another satellite that provides largely the same information as LandSat called SPOT which can be tasked to collect an image of Owens Lake on a specific date. However, unlike the LandSat images which are free, there is a cost of approximately \$1,500 per image for the SPOT imagery. The District plans to use the LandSat image overpasses as the primary compliance tool for the Shallow Flooding areas in 2014-15. The SPOT images will be used for compliance analyses of the Shallow Flooding areas when needed either due to weather conditions making the use LandSat impossible or “on demand” when there is a concern that certain areas are not meeting the dust control wetness requirements and also in the spring when higher resolution data is needed in order to determine the compliance of sprinkler areas.

There is \$10,000 budgeted in II.K.15 for purchase of satellite imagery for the 2014-15 year so that the District can conduct the required DCM enforcement of the Shallow Flooding areas.

#### **II.K.16. – Owens Lake Scientific and Historic Consulting**

Over the past two years, the LADWP has contested the 3,600 foot above mean sea level regulatory shoreline that the District is required to use for determining responsibility for dust source areas on the bed of Owens Lake. LADWP previously stipulated to this shoreline level for regulatory purposes and the adoption of that definition in the 2008 SIP Board Order, now enforceable as state law. \$25,000 is budgeted in II.K.16 for technical support on issues related to science and history of Owens Lake.

#### **Additional Details Regarding: Project Demonstration: Control Measure Testing, Item II.O.**

FY 2014-15: Engineered Roughness Elements

During the 2013-14 fiscal year, the District and LADWP worked cooperatively on a research project conducted by DRI on the development of a potential new waterless dust control measure. The project, termed the Engineered Roughness Element (ERE) project, involves the placement of solid object (roughness elements) in an array on the lake bed surface to reduce dust emissions from the area. A small-scale pilot test of the measure is schedule to begin at the end of February or early March 2014. The pilot test is being conducted in one of the Phase 7a areas (T1A-4). LADWP is starting construction of this area in February 2014 and is working with the District to coordinate the pilot project and construction activities. The T1A-4 area is scheduled to begin operation as a Shallow Flooding cell in the fall of 2014. The District considers the ERE measure to be promising for effective temporary as well as permanent dust control on the lake bed.

Based on the relatively short testing period for the project, the District anticipates that further testing, data collection and control measure evaluation will be needed in order to determine the effectiveness of EREs for dust control on the lakebed. Currentl,y the pilot project is scheduled to end at the end of June 2014. The District anticipates that the test will need to be extended either

in the present location in T1A-4 or in a different location. The funds budgeted for 2014-15 (\$300,000) are to provide additional data collection and analysis by DRI of the promising ERE measure.

## IV. Legal Fee Assessment

The District estimates that it will continue to incur considerable legal service costs to defend the APCO's 2011 Supplemental Control Requirements Determination (SCRD) in FY 2014-15, the 2012 SCR D appeal currently before CARB, and related court cases. SB 270 fee assessment appeals for the last three fiscal years are also being appealed.

### BACKGROUND

During the 2011-12, 2012-13 and 2013-14 fiscal years, the LADWP took the following actions:

#### Attorneys and Consultants

- LADWP contracted with the law firm of Jackson, DeMarco, Tidus and Peckenpaugh in the amount of \$600,000 on September 6, 2011 to assist with Great Basin legal issues. That contract was increased by \$850,000 on February 7, 2012 for a total of \$1,450,000 for 2011 SCR D matters and other legal matters. On August 6, 2013, another contract amendment was approved for \$350,000 for a total to date of \$1,800,000.
- LADWP contracted with the law firm of Somach Simmons and Dunn for an initial allocation of \$600,000 on March 20, 2012 to assist with Great Basin legal issues and increased the contract by \$800,000 on August 22, 2012 for a total of \$1,400,000.
- LADWP increased a contract with Air Sciences Inc. for science, technology, and air quality regulatory compliance services relative to dust mitigation at Owens Lake on March 20, 2012. The amendment increased the contract by \$3,000,000 for a total contract of \$11,396,802 over 34-months expiring February 2013. The District believes that a contract was recently approved with Air Sciences, Inc. as their staff resumed activity and contact with the District the first week of May, 2013. The District however, is unaware of any public or formal contract approval via the LADWP Board of Commissioners meetings or the amount of the contract.
- LADWP contracted with the law firm of Alston & Bird, LLP in the amount of \$1,000,000 on May 3, 2013 to assist City Attorneys with Great Basin legal issues. On January 21, 2014 this contract was amended and added \$1,150,000 for a total of \$2,150,000. The term of the original May 2013 contract was for 3 years, however the first amendment was made after 8 months.

Total Expended for Attorneys & Consultants: \$8,350,000

#### Appeals to the California Air Resources Board

- LADWP filed an appeal with CARB on October 17, 2011 over the extension of Morrison and Foerster's existing legal services contract (Appeal No. 1).
- LADWP filed an appeal with CARB on December 2, 2011 over the 2011 SCR D (Appeal No. 2).
- LADWP filed an appeal with CARB on January 9, 2012 over the \$250,000 legal fee assessment relative to its appeal of the 2011 Supplemental Control Requirements Determination (Appeal No. 3).
- LADWP filed an appeal with CARB on June 21, 2012 over the FY 2012-13 SB 270 Assessment (Appeal No. 4).

- LADWP filed an appeal with CARB on June 21, 2012 over the FY 2012-13 SB 270 Legal Fee Assessment (Appeal No. 5).
- LADWP filed an appeal with CARB on December 12, 2012 over the 2012 SCR D (Appeal No. 6).
- LADWP filed an appeal with CARB on June 13, 2013 over the FY 2013-14 SB 270 Fee Assessment (Appeal No. 7)

Decisions: A hearing before CARB on the 2011 SCR D (Appeal No. 2) was held on June 15, 2012. CARB issued a decision on November 19, 2012 in favor of the District on all issues, affirming the reasonableness and validity of the 2011 SCR D. The LADWP has appeal this decision to the Superior Court and this matter is pending. The remaining five appeals are pending before CARB.

#### Lawsuits Filed by LADWP

- LADWP filed two (2) lawsuits in Los Angeles County Superior Court on February 14 and 17, 2012 over the CARB procedures for the 2011 SCR D (Case No. BS136095) and over the legal fee assessment (Case No. BS135917) respectively. On February 29, 2012, the LADWP filed an Ex Parte Application in court regarding the 2011 SCR D requiring a response by the District's legal counsel in these matters. On March 19, 2012 LADWP filed a Request for Production of Documents and Things (Set One). The District and the California Attorney General's Office prepared and filed demurrers to dismiss both lawsuits. On or about April 18, 2012, the LADWP was forced to file dismissals of both cases, without prejudice.
- LADWP filed a lawsuit in Los Angeles County Superior Court on December 19, 2012 against CARB and the District to appeal CARB's November 19, 2012 decision affirming the 2011 SCR D (Case No. BS140620). The case was transferred to Sacramento County Superior Court and motions to be heard in February, 2013.
- LADWP filed a lawsuit in Federal court (United States District Court, Eastern District of California, Fresno Division, Case No. 1:12-CV-01683-AWI-DLB) on November 9, 2012 against the District, CARB, State Lands Commission, U.S. Bureau of Land Management and the U.S. Environmental Protection Agency. The suit generally involves: Clean Air Act preemption of Health & Safety Code §42316 (SB 270); the 2008 SIP; voiding of the 2008 SIP; Due Process; NEPA Compliance; District Actions against the LADWP; Dust Control; Historic Preservation; District Authority to Impose Fees; and Quiet Title. The court issued its opinion and order on May 1, 2013 dismissing LADWP's first amended complaint in its entirety.
- LADWP filed a cross-complaint and petition for writ of mandate in Kern County Superior Court, Case No. S-1500-CV-277962, SPC) as related to the District's action on August 31, 2012 (see below).

#### Lawsuit Filed by District

- In 2012, the LADWP refused to pay \$1,141,164 in SB270 fees ordered by the District. The District was forced to file a lawsuit in Inyo County Superior Court on August 31, 2012 (which was transferred to Kern County Superior Court, Case No. S-1500-CV-277962, SPC) to compel LADWP to pay. The Court ordered the LADWP to make the payment and it did so on January 24, 2013. The case will now move into the penalty phase in which LADWP may be liable for penalties of up to \$10,000 per day or a total of

\$7,980,000. A trial on this issue was scheduled for October 21, 2013 but was moved to February 10, 2014.

In FY 2013-14, the LADWP and District entered into a 2013 Phase 7a and Keeler Dunes Settlement Agreement. A \$10,000,000 public benefit contribution was made by LADWP to mitigate emissions at the Keeler Dunes and a modification was made (No. 130819-01) to the 2010 Stipulated Order for Abatement (No. 110317-01)

#### Previous CARB Guidance and Determinations

The CARB has determined that outside legal counsel fees necessary for the District to implement, defend and enforce SIP requirement are a permissible category of fees under H&S §42316 (SB 270).

In 1997 the LADWP appealed a District fee assessment to the CARB. Among the fees disputed by the LADWP were costs associated with legal counsel retained by the District. In a decision dated June 25, 1998, the CARB found that:

The outside legal counsel fees at issue in this appeal are a permissible category of fees under Health & Safety Code section 42316.

In support of this finding, the CARB stated:

The language of Health & Safety Code section 42316 is sufficiently broad to permit an interpretation allowing the District to defend its orders on appeal to the [C]ARB. This interpretation is supported both by the strong fee-shifting concerns that motivated passage of section 42316, and by the larger statutory scheme, promoting self-supported District operations, in which it operates.

Thus, CARB has determined that the cost of legal counsel is a permissible category of fees. The District has prepared significant legal briefs on these topics to respond to the City's appeal of the 2012 District Fee Orders. Those briefs are incorporated by reference into this discussion and are available for review as part of this record.

#### **Supplemental Control Requirements Determination Process (SCRD)**

##### 2011 SCR D

Both the District's 2008 SIP Order and 2010 Coso Junction Maintenance Plan contain a requirement for an annual SCR D. These plans require the District to continue to monitor air quality at Owens Lake and, under state law and as a mandatory contingency measure required by the federal Clean Air Act, determine if additional controls are required beyond those directly ordered in 2008. The LADWP must control all additional areas on the lake bed necessary to attain the air quality standards "as expeditiously as practicable" (Sections 172(a)(2) and 172(c)(9) of the Clean Air Act). In addition, under state law, Health and Safety Code section 42316 (Section 42316) authorizes the District to require the LADWP to undertake reasonable measures to mitigate the air quality impacts of its activities in the production, diversion, storage, or conveyance of water, if there is substantial evidence that these activities cause or contribute to violations of state or federal ambient air quality standards. The SCR D Procedure is incorporated into District Board Order # 0802128-01, which was adopted pursuant to Section 42316. The

District Board Order is currently in effect under State law and is federally enforceable through the 2010 Coso Junction Maintenance Plan.

After carefully analyzing data collected during the four-year period from July 2006 through June 2010, the District determined that exceedances of the PM<sub>10</sub> National Ambient Air Quality Standard (NAAQS) were caused by air pollution emitted from areas on the Owens Lake bed beyond those directly ordered for control in the 2008 SIP. Therefore, as required by law, on April 7, 2011, the APCO issued a preliminary SCRd to the Los Angeles Department of Water and Power (LADWP) requiring air pollution controls on an additional 2.93 square miles of the dried Owens Lake bed. There is strong evidence that these controls are needed in order to meet the PM<sub>10</sub> NAAQS in the southern Owens Valley.

As provided in the District's 2008 SIP Board Order and 2010 Coso Junction Maintenance Plans, on June 3, 2011, the LADWP submitted an alternative analysis of the District's data and argued that no additional controls were required at this time. In addition to responding to the District's determination, the LADWP raised a number of legal and policy issues unrelated or only peripherally related to the SCRd. In addition, the LADWP raised issues that were barred under the 2006 Settlement Agreement between the District and the LADWP, or barred because they were not raised at the time of the adoption of District Board Order (# 0802128-01) or in the 2008 SIP Board Order – indeed, the LADWP stipulated to all terms contained in those orders at the time of their adoption, including the SCRd procedures. On August 1, 2011, after carefully reviewing and responding to the LADWP's alternative analysis, the Air Pollution Control Officer issued a final 2011 SCRd. The final SCRd confirmed the preliminary determination. The District responded to all the LADWP's issues.

On August 8, 2011, the LADWP responded to the final SCRd by initiating the dispute resolution process provided for in the 2008 SIP and 2010 Coso Junction Maintenance Plan. These plans provide for a 60-day mediation process that was extended by mutual consent until November 11, 2011. The parties agreed upon a mediator, prepared and filed briefs and met one time with the mediator during the 95-day mediation period. The mediation did not result in agreement on the SCRd. The District subsequently reduced the control area by 0.07 square miles to 2.86 square miles in a revised final SCRd on November 18, 2011.

Section 42316 provides for the LADWP to appeal the final SCRd to the CARB. LADWP appealed the final SCRd to CARB on December 4, 2011. Upon completion of the CARB appeal process, Section 42316 allows either party to appeal the CARB decision to a California Superior Court. After a hearing before CARB on June 15, 2012, CARB issued a decision on the 2011 SCRd in favor of the District on November 19, 2012. LADWP filed a lawsuit in Los Angeles County Superior Court against CARB and the District on December 19, 2012. That matter has been transferred to the Sacramento Superior Court, where it is pending.

### 2012 SCRd

As the APCO is required by the 2008 SIP Board Order and 2010 Coso Junction Maintenance Plan to issue SCRd determinations at least once per year, on November 16, 2012, the APCO issued the 2012 SCRd which requires an additional 0.76 square miles of controls. These are in addition to the 2.86 square miles of controls required by the 2011 SCRd. The APCO followed the same process for the 2012 SCRd as he did for the 2011 SCRd. This process was fully

supported and confirmed by the CARB during the 2011 SCR D appeal proceedings. The LADWP appealed the 2012 SCR D on December 12, 2012.

### 2013 SCR D

The APCO is required by the 2008 SIP Board Order and 2010 Coso Junction Maintenance Plan to issue SCR D determinations at least once per year. A preliminary 2013 SCR D was issued on August 16, 2013 and a response received from the LADWP. The preliminary 2013 SCR D showed no additional dust control areas beyond the 2011 and 2012 SCR Ds. If a final 2013 SCR D is issued and appealed by the LADWP, additional legal costs will be incurred by the District in FY 2014-15 to defend the 2013 SCR D.

### SCR D-Related Legal Fees

In support of the lengthy and complicated SCR D process, the District has engaged the services of its long-time outside legal counsel, Morrison and Foerster, LLP. Morrison and Foerster and its primary attorney on this matter are uniquely qualified to provide legal advice on these matters because there are the only outside legal counsel with prior continuous expertise in Section 42316 and the many prior agreements between the LADWP and the District. They have worked extensively with the District since 1998. Their expertise, knowledge and professional legal services on a vast number of Owens Lake issues, including federal and state air pollution law, the Clean Air Act, Section 42316, and the California Environmental Quality Act, have been invaluable in helping to develop the necessary agreements, language and documentation to control the air pollution due to the LADWP's water diversions from Owens Lake. They have prevailed in all legal disputes and litigation with the LADWP to date, including the dismissal of three LADWP lawsuits against the District and the ruling from CARB rejecting all of the LADWP's arguments to appeal the reasonableness and validity of the 2011 SCR D. They have developed experience with the District that is unmatched by any other law firm, and there would be substantial cost to the District to replace them with other counsel who would lack the base of knowledge and expertise to effectively represent the District.

The District budgeted and originally contracted with Morrison and Foerster for outside legal services in the amount of \$25,000 for the 2011-12 fiscal year. In a typical year, this amount is generally sufficient, as long as no significant special legal services are required. However, the legal issues and proceedings initiated by the LADWP over the 2011 SCR D represented additional needs for outside legal services. At subsequent Governing Board meetings in FY 2011-12, the Board increased Morrison and Foerster's contract limit to \$825,000. These additional funds came from the District's SB 270 general reserves. The LADWP was assessed \$250,000 in December 2011 for some of these costs but did not pay the District order (#111205-01a) until the District filed suit and LADWP was mandated by the Court to pay. Payment was finally received on January 24, 2013. The FY 2012-13 Special Legal Fee Assessment was \$1,000,000. Again, the LADWP refused to pay that Board Order (#120524-01b) until mandated by the Court. Payment was received on January 24, 2013.

During the SCR D process, legal services and fees are being incurred by the District in order to enforce and defend both the 2011 and 2012 SCR Ds and other provisions of the 2008 SIP Board Order. An additional legal fee assessment is needed to meet these current and anticipated expenses brought on by the LADWP's actions.

The LADWP has retained a large number of attorneys in its efforts to avoid its obligations under SB 270. Legal counsel for the LADWP includes the Los Angeles City Attorney's Office and at least five Assistant City Attorneys dedicated to this project, and three outside law firms with eight attorneys, totaling at least 13 attorneys. The LADWP has historically contracted with outside counsel to assist with matters involving the District. In February 2006, during similar circumstances, the LADWP approved an initial \$600,000 contract with the Los Angeles-based law firm of Manatt, Phelps & Phillips, LLP for legal services pertaining to the 2005-2006 SCR and associated lawsuits.

On May 18, 2011, the Office of the City Attorney for the LADWP solicited proposals from law firms to assist the City Attorney with Owens Lake air quality issues. On September 6, 2011 the LADWP Board approved a contract with the law firm of Jackson, DeMarco, Tidus and Peckenpaugh with an initial allocation, once again, of \$600,000. On February 7, 2012, the LADWP Board approved an increase in this contract by \$850,000 for a total of \$1,450,000. As detailed in the LADWP's Board Letter dated August 24, 2011, the City Attorney's Office recognizes that retention of outside legal counsel with particular air quality experience and an expertise in administrative proceedings before State regulatory agencies is critical to the LADWP's efforts. It also states that the City Attorney's office, while regularly handling air quality compliance and environmental legal matters, does not currently have sufficient attorneys with the necessary level of expertise to adequately represent the LADWP on critical air quality issues. On August 6, 2013 wherein another \$350,000 was allocated to this law firm for a current total of \$1,800,000.

On March 20, 2012, the LADWP Board approved a contract with the law firm of Somach Simmons and Dunn for an initial allocation of \$600,000 for outside counsel services for air quality and land use, plus an increase on August 22, 2012 of \$800,000 for a total of \$1,400,000. On March 20, 2012, the LADWP also increased a contract with Air Sciences Inc. for science, technology, and air quality regulatory compliance services relative to dust mitigation at Owens Lake. The amendment increased the contract by \$3,000,000 for a total contract of \$11,396,802 over 34-months expiring February 2013. The District believes another contract or extension was approved sometime after February 2013 with its consultant due to a recent resumption of work and activity that had mostly ceased after February, 2013. However, it is unclear if the LADWP Board took public action to approve such a contract and if so, in what amount.

On May 3, 2013, the LADWP Board approved a contract with the law firm of Alston & Bird, LLP in an initial allocation of \$1,000,000 for outside counsel services regarding air quality and land use issues with the District. On January 21, 2014 this contract was amended and added \$1,150,000 for a total of \$2,150,000. The term of the original May 2013 contract was for 3 years, however the first amendment was made after 8 months.

Unlike the LADWP, which has extensive in-house legal resources available through its City Attorney's office, the District does not have any in-house legal counsel. While the District utilizes the Inyo County Counsel's office for routine legal matters (personnel issues, labor law, administrative and procedural questions), the County Counsel does not have sufficient time or expertise in air quality and related issues that are required for this case. The District's current contract with Inyo County Counsel office is for \$12,500.

Section 42316 allows the District to assess reasonable fees to the City based upon an estimate of the actual costs to the District of its activities associated with the development of the air pollution control measures described above. Regarding legal expenses, it is difficult to accurately estimate the actual costs for the next year, in part because of the uncertainties associated with litigation and the lack of predictability of the LADWP's legal actions. However, the LADWP's actions in the past year demonstrate that a significant increase in the anticipated legal costs should be expected. Moreover, the LADWP's continued refusal to comply with a valid District fee order compels an increase in the assessed amount to protect the District from LADWP's potential efforts to cut-off the District's legal services by refusing to pay such orders. The LADWP's position also allows it to expend millions of dollars of legal fees in multiple actions against the District, without limitation to amending its own budgets to add more resources, and simply exhaust the District's legal budget, at whatever amount the District estimated.

District Legal Counsel: Peter Hsiao, Morrison & Foerster

Based on the recent expenditures made by the LADWP's Board of Commissioners (\$8,350,000 for outside legal services and consultants), current and anticipated legal proceedings before CARB and lawsuits filed in Superior Court, the District proposes to assess a fee to the LADWP in the amount of \$1,200,000 for legal fees and services during FY 2014-15, in addition to the traditional \$25,000 general assessment. This is the same amount as for FY 2013-14. This amount will enable the District to defend and enforce its 2011 SCRd, the 2012 SCRd, the upcoming 2013 SCRd, its fee orders and other orders, agreements and related matters, as well as respond to other legal actions initiated by or regarding the LADWP. Based upon the LADWP's budgeting for legal challenges, its past and proposed future actions to challenge the District's orders and the current status of pending CARB proceedings, this amount is an estimate of a reasonable fee to allow the District to respond to those challenges with necessary and appropriately qualified legal counsel. The budgeted amount anticipates a high amount of legal activity by the LADWP's attorneys, including but not limited to a series of hearings before the CARB on the LADWP's further appeals, a trial in Kern County Superior Court regarding the LADWP's prior refusals to pay the fee orders, and a trial or hearing in the LADWP's appeal of the CARB decision affirming the 2011 SCRd currently pending in Sacramento County Superior Court. District's outside counsel expects the cost of pre-trial discovery and a trial in the Kern County matter, and the court proceedings on the LADWP's appeal of the CARB decision to be substantially greater than the cost of the 2012 hearing before the CARB on the 2011 SCRd.

Much of this increase in cost is driven by the LADWP's actions in these cases. The total cost of legal services is the result of the hourly rate multiplied by the number of hours expended on a matter. The LADWP, while objecting to the hourly rate of the District's outside counsel, has failed to properly acknowledge the increased efficiency in work performed at a lower number of hours where the District's counsel has a vast background and expertise in the legal matters raised by the LADWP. Perhaps equally or more importantly, the LADWP's actions with its own attorneys have dramatically driven up the legal costs to the District.

Several examples both large and small demonstrate this point. In 2006, the LADWP signed a settlement agreement agreeing to the procedures for the 2011 SCRd and the historic shoreline for which its dust control measures would be implemented. In 2011-12, the LADWP breached its agreement and repudiated its promises to support and never challenge those procedures. A majority of the District's legal costs can be traced back to the LADWP's decision to break its

promises and instead use its lawyers in an attempt to avoid its promises and the legal requirements that it control its air pollution.

In early 2012, the LADWP filed two lawsuits against the District in Los Angeles Superior Court. In one action, the LADWP filed an emergency motion seeking a temporary restraining order against the further proceedings pending before the CARB on the 2011 SCR. Both lawsuits were found to lack merit and were dismissed, but only after the District was required to expend substantial legal fees to file the required motions to compel the LADWP to dismiss those actions.

In the Kern County lawsuit, the LADWP refused to pay the FY 2011-12 and 2012-13 fee orders, despite court orders obtained by the District in 1998 that required immediate payment. The District was required to return to court, where the LADWP refused to agree to hearing the matter before the same court that issued the original orders. Further legal costs were expended to overcome the LADWP's opposition, and to obtain an affirmation of the same order that was already issued to the City in 1998. In planning for the future proceedings in the Kern County court, the District proposed a streamlined procedure where both parties would make an initial disclosure of their witnesses and evidence, to save the costs of unnecessary court proceedings. The LADWP has refused, insisting on a course of litigation that will multiply the legal costs for both parties by many multiples of the District's proposal. The LADWP's actions, which are beyond the control of the District, portend a more expensive and unnecessary legal fight.

Another example is the LADWP's actions to force the removal of air monitors at the dried Owens Lake bed. This action was taken to obstruct the collection of data regarding the LADWP's compliance and enforcement of the federal and state air quality standards.

It is difficult to anticipate the total estimated budget for these legal actions in part because of the LADWP's unpredictable actions and its past actions to drive up the cost of these cases. The District cannot be placed in a position of underestimating the total cost to respond to the LADWP's legal actions, and the LADWP's budget of over \$5.35 million is a threat to the District's ability to carry out its legal duties under California law to protect the environment and public health. The estimated legal fees are attributable to the need to respond to the LADWP's claims and costly trial preparation relating to the fee suit in Kern County Superior Court, and the City's litigation and appeal of the 2011 SCR to be heard in Sacramento County Superior Court.

In 2012, as discussed above, the District issued two fee orders to LADWP and the LADWP refused to pay a portion totaling \$1,141,164 (primarily legal fee assessments). LADWP refused to pay, despite the court orders obtained by the District in 1998 holding that LADWP has a mandatory, ministerial, non-discretionary duty to immediately pay the District fee orders in full, pending the LADWP's appeal of those fees to the CARB. In January 2013, the Kern County Superior Court order LADWP to immediately pay the entire amount. Accordingly, the fee assessment proposed by District Staff in this budget, while it may be appealed by LADWP to CARB, will in all likelihood be immediately paid in full by LADWP because of the Kern County Superior Court orders. The LADWP is anticipated to file an appeal of the reasonableness of those fees to CARB under Health and Safety Code Section 42316. District staff believes CARB will approve these fee orders, and strongly recommends the District Board approve them to protect the District's ability to function and perform its duties as required by the law.