

EXHIBIT B

STATE OF CALIFORNIA

ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
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July 22, 2009

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Ref: PRC 8079.9
SCH# 2008121074

Mr. Tom Dailor
City of Los Angeles Department of Water and Power
111 North Hope Street, Room 1044
Los Angeles, CA 90012

SUBJECT: Comments on Draft Supplemental Environmental Impact Report, for the Owens Lake Revised Moat and Row Dust Control Measures, Owens Lake, Inyo County

Dear Mr. Dailor:

California State Lands Commission (Commission) staff has reviewed the draft Supplemental Environmental Impact Report (SEIR) for the Owens Lake Revised Moat and Row Dust Control Measures released in June 2009 for public review. No project can be approved by the Commission unless all of the requirements of CEQA have been met. As the Commission is both a Responsible and Trustee Agency as defined in CEQA, it must review the environmental documentation prepared by the Lead Agency (in this case the city of Los Angeles (City)), and comply with all applicable, substantive and procedural requirements of CEQA.

CEQA Guidelines 15162 and 15163(c) state that a **subsequent** EIR should be prepared if the previous EIR requires major revisions, whereas a **supplemental** EIR may be prepared if the revisions are not considered major. During the meeting with City staff on August 8, 2008, Commission staff stated that a supplemental EIR would be required, as the project design revisions to the *2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan Final Subsequent Environmental Impact Report* (2008 FSEIR) would be minor, and did not rise to the level of "substantial changes" or "new information of substantial importance" (CEQA Guidelines section 15162). Revisions requested by Commission staff centered on an analysis of the potential for increased impacts to visual, biological, and air resources

caused by the changed project design. Accordingly, the inclusion of an alternatives analysis was neither requested nor required in accordance with CEQA Guidelines section 15163(b), which states that “the supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised.” Commission staff believes that the alternatives analysis exceeds the scope of what is permitted under CEQA in a supplemental EIR (see CEQA Guidelines sections 15162 and 15163). Many of our following comments pertain to the inclusion of this new alternatives analysis and the far-reaching implications of feasibility statements regarding those alternatives. As currently written, Commission staff continues to have significant concerns about the adequacy of the CEQA analysis that may result in the inability of the Commission to use this document as the basis for its discretionary action when considering whether or not a lease should be issued for the proposed project.

Throughout the process of this draft SEIR, staffs’ concerns have consistently centered on impacts to aesthetics and wildlife, the City’s determination through an alternatives analysis that previously approved and feasible dust control measures (shallow flood and managed vegetation) are now infeasible, as well as whether or not Moat and Row is consistent with the public trust doctrine. Two aspects of this draft SEIR raise additional concerns, because they may have far-reaching implications for both previously-approved shallow flood and managed vegetation dust control measures, and also for similar measures that may be proposed for future projects. Specifically, the narrowly- defined project objectives constrain the alternatives analyses, and the current draft SEIR conclusion of the lack of a water supply for use as a dust control measure contradicts the 2008 FSEIR, constrains the alternatives analyses, and could restrict current and future projects.

The Project Objectives (pp. 2-9 and 2-10) have been substantially altered from those in the parent 2008 FSEIR certified by the Great Basin Unified Air Pollution Control District (GBUAPCD) and from those identified in Initial Study for this draft SEIR (see the attached Project Objectives from the 2008 FSEIR, the Initial Study for the SEIR, and the draft SEIR). Of particular concern are new, narrowly drawn project objectives that result in an inadequate and faulty alternatives analysis. The previously stated primary goal of the proposed project is to prevent emissions from the lake bed that cause or contribute to violations of PM₁₀ standard. The new objectives “to provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service,” and to “substantially reduce or eliminate the use of water in implementing new dust control projects,” in association with the new reference to water in the objective “to minimize the long-term consumption of natural resources (e.g. water),” significantly alter the setting of the alternatives analysis. CEQA Guideline 15124(b) directly links the importance of objectives in developing a reasonable range of alternatives and in evaluating those alternatives. The changes to the Project Objectives in the draft SEIR also make the notice provided by the Notice Of Preparation/Initial Study inadequate, because it did not disclose that water supply would be reevaluated, and thereby averted public disclosure and participation.

CEQA Guideline section 15126.6(a) provides that “[a]n EIR shall describe a *range of reasonable alternatives to the project...which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the*

significant effects of the project, and evaluate the comparative merits of the alternatives.” Alternatives need only be potentially feasible and should be evaluated even if they do not fulfill all of the project objectives or are more costly. Based on the altered project objectives, the draft SEIR reaches the conclusion that shallow flooding and managed vegetation alternatives are “infeasible” despite the opposite conclusion made by the GBUAPCD in the *Findings of Fact and Statement of Overriding Considerations* based on the analysis in the parent 2008 FSEIR (see pp. V-11 and V-13 of the *Findings*). Furthermore, nearly 10 square miles of shallow flooding approved for the Phase 7 project is currently being implemented as part of Phase 7.

As disclosed in the NOP for the SEIR and the accompanying Initial Study, water supply was **not** an issue that would be reevaluated:

Water Supply. d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlement needed?

Less-than-Significant impact. The 2008 FSEIR evaluated the water demands of the moat and row DCMs in combination with the water demands of all other proposed DCMs. The 2008 FSEIR identified that DCMs are expected to utilize an additional 20,000 AF/yr of water and may use up to 28,000 AF/yr if **all DCMs implemented shallow flooding DCMs**. This would bring the total water demand associated with all dust control activities on Owens Lake to between 75,120 AF/yr or 83,120 AF/yr, respectively. Projected water demands for DCMs **would be provided by existing entitlements and supplies of the City of Los Angeles which has planned for the water demands of all DCMs**. [p. 3-50, emphasis added]

The Initial Study also stated that the water would be supplied via the Los Angeles Aqueduct and referenced the 2008 FSEIR analysis concerning water supply. That analysis concluded that “the proposed project would not be expected to result in significant impacts to utilities related to water supplies.” (p. 3.9-7) The Initial Study concluded that water supply was not an issue that would be evaluated further in the SEIR. Therefore, the draft SEIR cannot analyze water supply issues without violating CEQA requirements for adequate notice and disclosure.

A supplemental EIR is permitted under CEQA when any of the conditions described in section 15162 of the Guidelines applies **and** “[o]nly **minor** changes would be necessary to make the previous EIR adequately apply to the project in the changed situation” (CEQA Guidelines section 15163(a)(2)). If water is not available for dust control abatement, this would constitute “new information of substantial importance” requiring preparation of a *subsequent* EIR. The purported conclusions concerning the feasibility of shallow flooding and managed vegetation due to an inadequate water supply would require full disclosure and analysis in a subsequent EIR, not a supplemental EIR whose noticed purpose is to examine the changes to the design of the Moat and Row DCM (“These refinements [to the Moat and Row DCM] are the subject of this SEIR.” p. 6, NOP).

The "conclusions" regarding water supply would also affect basic assumptions concerning the use of shallow flooding and managed vegetation contained in the 2008 FSEIR, the 2008 State Implementation Plan (SIP), the Settlement Agreement between LADWP and GBUAPCD, and "enhancements" that are a part of the current project. The Moat and Row Dust Control Measure (DCM) is **experimental** and has not been approved by the GBUAPCD. If the Moat and Row DCM is not effective, the 2008 SIP and 2006 Settlement Agreement call for replacing it with an approved DCM, including shallow flooding, managed vegetation, or gravel cover.

The alternatives analysis and the analysis provided in the draft SEIR concerning water supply should be deleted along with the conclusions about the feasibility of shallow flooding and managed vegetation because these determinations far exceed the scope of this supplemental EIR. A subsequent EIR could be prepared later, if necessary, that analyzes water supply. Conclusions that shallow flooding and managed vegetation are infeasible based on the lack of a water supply would require substantial evidence that water supplies are, in fact, unavailable. A detailed analysis would be necessary to include all possible sources including diverting less water from the Owens Lake watershed to the Los Angeles Aqueduct, the use of brine and groundwater, and alternative sources that could be available by increased efficiency in existing and approved shallow flood areas, as well as by purchase. For example, the GBUAPCD stated in its comment letter dated June 23, 2009, that "[c]urrent water control efficiency improvement efforts on the existing and proposed water-based dust control areas should result in significant water savings." (see comment 5)

Further, the Environmentally Superior Alternative (p. ES-5) is identified as the proposed project based on the improper alternatives analysis, inadequately noticed and irrelevant objectives, and underlying assumptions. It also contradicts the determination made by the GBUAPCD in its *Findings of Fact and Statement of Overriding Considerations (Findings)*: "Based on the data collected during the analysis and resulting from coordination with the City [of Los Angeles], the EIR does not make the determination that the Moat & Row DCM is the environmentally superior alternative for dust control on Owens Lake." (p. V-7)

For this SEIR to conclude that Moat and Row DCM is the environmentally superior alternative overreaches beyond the scope of what is allowed in a supplemental EIR. The limited purpose of this SEIR is to remedy the inadequate environmental analysis of the Moat and Row design in its final configuration as a grid pattern of moats and rows with sand fencing on top of the rows for four impact areas: biological resources, visual resources, and construction-related air quality and traffic (see p. 6 of Notice of Preparation).

In addition, this faulty alternatives analysis states that a managed vegetation DCM will have the same level of environmental impacts as a Moat and Row DCM (pg ES-4), even though vegetation also provides habitat value, has no entrapment potential, possesses no biological barrier to movement, and the vegetation would have no potential to obstruct views from the lake bed. The draft SEIR states that "[t]he all Shallow Flooding Alternative would have been identified as the environmentally superior

alternative, but it had already been considered and rejected in the 2008 FSEIR.” (p. ES-5). Although the “all Shallow Flooding Alternative” was rejected in the 2008 FSEIR in favor of the proposed mixed project of shallow flooding (9.2 square miles) and Moat and Row (3.5 square miles), it was found to be both feasible and effective. (p. 12-5 and Section 4.0, Alternatives to the Proposed Project); and Shallow Flooding was designated as the “environmentally superior alternative.” (*Findings*, p. V-7). It is not logical to assume that because the “All Shallow Flooding Alternative” was rejected in the 2008 project approval, that shallow flooding does not remain the environmentally superior alternative.

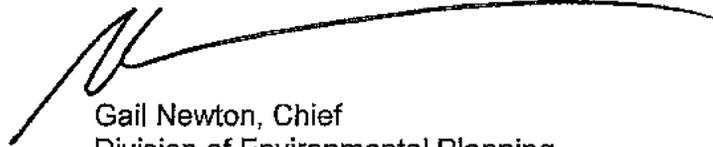
Commission staff believes that shallow flooding and managed vegetation are feasible alternatives as described in the 2008 FSEIR and *Findings*. Therefore, if a subsequent EIR is prepared, an alternative to the proposed project that includes a combination of DCMs should also have been evaluated. Variations or combinations of the alternatives could be very effective, as evidenced by the suggested use of vegetation and water or brine application as enhancements to the Moat and Row elements. However, as stated above, our concerns regarding the alternative analysis and objectives could be resolved by deleting the alternatives and water supply analyses and maintaining the 2008 FSEIR objectives.

Commission staff has found inconsistencies, incorrect information, and incomplete analyses in the draft SEIR. These detailed comments are included in the attached document and are incorporated by reference into this letter. CEQA provides that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects...” (Public Resources Code section 21002.) As both a Responsible and Trustee Agency under the California Environmental Quality Act, the Commission will be required to make this determination before granting a lease for the project. We hope that you will consider our comments and revise the draft SEIR accordingly.

The Commission considers numerous factors in determining whether a proposed use of the State's land is appropriate, including, but not limited to, consistency with the Public Trust under which the Commission holds the State's sovereign lands, protection of natural resources and other environmental values, and preservation or enhancement of the public's access to State lands. As has been discussed repeatedly in prior letters and meetings, the Commission has not made a determination whether the proposed Moat and Row DCM is or is not consistent with the Public Trust values associated with Owens Lake. Further, Commission staff continues to have doubts that the project is consistent with the Public Trust and until the Final SEIR is complete, that determination cannot be made.

If you have questions regarding leasing issues, please contact Judy Brown at (916) 574-1868 or via email at brownj@slc.ca.gov. If you have questions regarding the environmental comments, please contact Steven Mindt at (916) 574-1497 or via email at mindts@slc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to be 'Gail Newton', written over a long horizontal line that extends across the width of the signature area.

Gail Newton, Chief
Division of Environmental Planning
and Management

ATTACHMENTS

cc: Office of Planning and Research
State Clearinghouse

Julie Brown, CSLC
Steve Mindt, CSLC

2.6 STATEMENT OF PROJECT GOAL AND OBJECTIVES

2.6.1 Project Goal

The primary goal of the proposed project is to implement DCMs on the bed of Owens Lake by 2010 sufficient to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS. In addition, the proposed project must be consistent with the State of California's obligation of land and resource stewardship.

2.6.2 Project Objectives

- Implement all Owens Lake bed PM₁₀ control measures by April 1, 2010 pursuant to the revised 2008 SIP to achieve the NAAQS
- Revise the approved 2003 SIP by July 1, 2008 ✓
- Minimize (or compensate for) long-term, significant, adverse changes to sensitive resources within the natural and human environment
- Provide a high technical likelihood of success without substantial delay
- Conform substantially to adopted plans and policies and existing legal requirements
- Minimize the long-term consumption of natural resources
- Minimize the cost per ton of particulate pollution controlled
- ~~Be consistent with the State of California's obligation to preserve and enhance the public trust values associated with Owens Lake~~

2.7 PROPOSED PROJECT

The proposed project includes numerous elements to ensure that adequate DCMs are implemented on the dry Owens Lake bed to ensure attainment of the PM₁₀ standard as mandated in the 2008 SIP.

2.3 PROJECT GOAL AND OBJECTIVES

The primary goal of the project is to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS by the implementation of moat and row DCMs on the bed of Owens Lake by 2010. The dry Owens Lake bed is primarily owned and operated in trust for the people of the State of California by CSLC. Therefore, the project must also be consistent with the State of California's obligation of land and resource stewardship.

Objectives of the project include the following:

- ▶ Implement moat and row DCMs by April 1, 2010, pursuant to the 2008 SIP to achieve the NAAQS,
- ▶ Minimize or compensate for long-term, significant adverse changes to sensitive resources within the natural and human environment,
- ▶ Create a dust control program with a high likelihood of success without substantial delay,
- ▶ Substantially conform to adopted plans and policies and existing legal requirements,
- ▶ Minimize the long-term consumption of natural resources,
- ▶ Minimize the cost per ton of particulate pollution controlled,
- ▶ Implement a DCM that minimizes the use of water to the maximum extent practical.

2.4 PROJECT CHARACTERISTICS

LADWP proposes to reduce dust emissions in the Owens Lake Planning Area, particularly achieving adopted control efficiencies for fugitive dust (PM₁₀), through the construction of landform features called moats and rows. Moat and row DCMs would be constructed on 3.5 square miles of the Owens Lake bed (Exhibit 2-2).

2.4.1 DUST CONTROL AREAS

In 2006, during settlement negotiations regarding dust control strategies between the GBUAPCD and LADWP, LADWP proposed a new Owens Lake PM₁₀ control measure known as moat and row. It was LADWP's intent to develop a control measure that cost less to implement and uses significantly less water than previously approved DCMs (e.g., shallow flooding, managed vegetation). The Settlement Agreement that resulted from the 2006 negotiations contains provisions for the implementation of up to 3.5 square miles of moat and row DCMs.

2.4.2 PERFORMANCE STANDARDS FOR DUST CONTROL

GBUAPCD has monitored ambient PM₁₀ concentrations within the Owens Valley including the communities of Keeler, Olancho, and Lone Pine for over 20 years. Monitoring data has been used to determine whether compliance with the federal PM₁₀ standard has been achieved. Based on this monitoring data and air quality modeling conducted by GBUAPCD, minimum dust control efficiencies (MDCE) have been established for areas of the Owens Lake bed as shown in Exhibit 2-4. The MDCE standard establishes the minimum level at which the concentration of PM₁₀ emissions must be reduced (through monitoring of the site) in order to achieve federal PM₁₀ standards. MDCE's vary from 30 percent to 99 percent. The control efficiencies reflect the fact that different areas of the lake bed have different emissions rates and that areas closer to the historic shoreline require higher control efficiencies than areas well away from the shoreline. The MDCE for the moat and row DCAs varies from 60 to 99 percent.

Regarding MWD's SWP supplies, with issuance of the new Biological Opinion for Delta Smelt, demands for MWD's SWP water (i.e., 1.05 mafy) would exceed available supplies (i.e., 750,000 afy under normal years) by approximately 430,000 afy. MWD staff has reported that it will be forced to remove water from existing storage reserves to meet demands in 8 out of 10 years. Over the past three years MWD has withdrawn water from storage every year and at the beginning of 2009 MWD had only 1.0 million acre feet (maf) of stored water supplies remaining in its storage accounts with plans to draw 0.35 maf in 2009. Storage in the MWD system is now at critically low levels (i.e., 1 maf of supply is available in MWD's 5 maf capacity system and MWD intends to withdraw approximately 350,000 afy). Based on storage levels and reduced deliveries from the SWP because of the Delta Smelt Biological Opinion, the MWD Board took action on April 14, 2009 to ration water to its member agencies, including LADWP, for the first time since 1991. MWD's allocation calls for a 10% cut in deliveries to all member agencies including LADWP (Appendix D).

This shortfall has prompted the LADWP to recommend water rationing by imposing shortage year water rates and implementing water conservation measures outlined in Phase III of the City's water conservation ordinance. The City approved the adoption of 15% shortage year rates on April 17, 2009. These rates impose a higher Tier 2 water rate on homeowners who exceed 85% of their water allocation (a 15% cutback) for their specific lot (based on lot size, occupancy, and temperature zone). Phase III water conservation restrictions are inclusive of all Phase I and Phase II conservation restrictions (e.g., drinking water, landscape irrigation, washing, leaks, aesthetic uses) with the addition of prohibiting landscape irrigation on days other than Monday or Thursday.

Rationing and water conservation practices alone will not resolve LADWP's existing and projected future shortfall in supplies. LADWP anticipates, based on the body of evidence, that water supplies from MWD and the SWP will be permanently reduced, forcing LADWP to secure alternative water supply sources to meet increased demands in the future. The City of Los Angeles has developed adopted a plan by Mayor Antonio Villaraigosa entitled, "*Securing L.A.'s Water Supply*," (May 2008) which is a blueprint for creating sustainable sources of water for the future of Los Angeles. This plan is an aggressive multi-pronged approach to water conservation that includes: investments in state-of-the-art water conservation technology; issuance of a combination of rebates and incentives; installation of smart irrigation controllers (e.g., controllers sense when adequate moisture is present), efficient commercial and residential washers and urinals; and development of long-term measures including expansion of water recycling and investment in cleaning up the local groundwater supply (Appendix D).

With regard to dust control activities on Owens Lake, all water supplies uses for dust control or other environmental restoration benefits must be supplemented through additional purchases from MWD. As described above, additional water is simply not available from MWD. Based on future projections of growth within LADWP's service area, plans for increased recycling, conservation, and groundwater cleanup activities, adequate water supplies will not be available to meet existing and projected future demand plus expanded water intensive dust control measures at Owens Lake. In light of the current state of water supplies and based upon what is known about future demands, staff of LADWP has determined that future use of water intensive dust control measures are not a feasible strategy and other non-water using controls should be implemented (Appendix D).

2.3 PROJECT GOALS AND OBJECTIVES

The primary goal of the project is to prevent emissions from the lake bed that cause or contribute to violations of the PM₁₀ NAAQS by the implementation of moat and row DCMs on the bed of Owens Lake by 2010. The dry Owens Lake bed is primarily owned and operated in trust for the people of California by CSLC. Therefore, the project must also be consistent with the State of California's obligation of land and resource stewardship. The objectives of the project are to:

- ▶ implement moat and row DCMs by April 1, 2010, pursuant to the 2008 SIP to achieve the NAAQS;
- ▶ provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service;

- ▶ allow for the sparing use of water that would otherwise be delivered for municipal and industrial use and substantially reduce or eliminate the use of water in implementing new dust control projects on the Owens Lake bed;
- ▶ minimize or compensate for long-term, significant adverse changes to sensitive resources in the natural and human environment by implementing mitigation strategies proposed in this SEIR;
- ▶ create a dust control program with a high likelihood of success and without substantial delay;
- ▶ substantially conform to adopted plans and policies and existing legal requirements. These requirements include the National Ambient Air Quality Standards, the 1998, 2003 and 2008 SIPs and their associated EIRs, lease agreements and environmental and administrative permits with other agencies including California State Lands Commission, Lahontan Regional Water Quality Control Board, California Department of Fish and Game, United States Environmental Protection Agency and Great Basin Unified Air Pollution Control District;
- ▶ minimize the long-term consumption of natural resources (e.g., water); and,
- ▶ be consistent with the State of California's obligation to preserve and enhance the public trust values associated with Owens Lake.

2.4 PROJECT CHARACTERISTICS

LADWP proposes to reduce dust emissions on the dry Owens Lake bed, particularly achieving adopted control efficiencies for fugitive dust (PM₁₀), through the construction of landform features called moats and rows. Moat and row DCMs would be constructed on 3.5 square miles of the Owens Lake bed (Exhibit 2-2).

2.4.1 DUST CONTROL AREAS

In 2006, during settlement negotiations regarding dust control strategies between the GBUAPCD and LADWP, LADWP proposed a new Owens Lake PM₁₀ control measure known as moat and row. It was LADWP's intent to develop a control measure that costs less to implement and uses significantly less water than previously approved DCMs (e.g., shallow flooding, managed vegetation). The Settlement Agreement that resulted from the 2006 negotiations contains provisions for the implementation of up to 3.5 square miles of moat and row DCMs.

2.4.2 PERFORMANCE STANDARDS FOR DUST CONTROL

GBUAPCD has monitored ambient PM₁₀ concentrations within the Owens Valley, including in the communities of Keeler, Olancho, and Lone Pine, for more than 20 years. Monitoring data has been used to determine whether compliance with the federal PM₁₀ standard has been achieved. Based on this monitoring data and air quality modeling conducted by GBUAPCD, minimum dust control efficiencies (MDCE) have been established for areas of the Owens Lake bed as shown in Exhibit 2-4. The MDCE standard establishes the minimum level at which the concentration of PM₁₀ emissions must be reduced (through monitoring of the site) to achieve federal PM₁₀ standards. MDCEs vary from 30% to 99%. The control efficiencies reflect the fact that different areas of the lake bed have different emissions rates and that areas closer to the historic shoreline require higher control efficiencies than areas well away from the shoreline. The MDCE for the moat and row DCAs varies from 33% to 99%.

ATTACHMENT

As discussed in our letter, Commission staff believes the alternatives analysis should be deleted, unless the SEIR is revised as a **subsequent** EIR. Any of the following comments regarding alternatives would apply to a subsequent EIR.

Executive Summary:

Page ES-3 & 5-3; **Shallow Flooding Alternative:**

1. This alternative is improperly represented as 15.1 square miles. The project is 3.5 square miles as identified on page ES-1. The majority of the 15.1 square miles referred to have already been approved for Shallow Flooding and construction is well under way. Please correct for consistency.
2. The statement that "the objective to implement a DCM that minimizes the use of water to the minimum extent practical would not be met" lacks foundational details. The water availability information in Appendix D does not take into consideration minimizing the amount of water needed in shallow flooding to wet 75% and obtain the 99% dust control efficiency and the use of brine, both which could make available more water for dust control without increasing the total amount of water used on the dry lake bed.

Page ES-3 & 4 & page 5-3 & 4; **Managed Vegetation Alternative:**

1. (See comment Shallow Flood #1) Project is 3.5 square miles. Please correct.
2. The evaluation lacks a scientific basis for the statement; "implementing this alternative would result in greater biological habitat impacts compared with the proposed project." Commission staff believes that this statement cannot be supported.
3. The conclusion was made that the impacts of vegetation are greater than the proposed project. Please provide a detailed basis for this conclusion.
4. The visual impacts of vegetation are only discussed as a change and presented as a comparable impact to the moat and row impacts.
5. The beneficial impacts of vegetation are not discussed:
 - o Managed vegetation would be similar in appearance to the naturally existing vegetation in the lake area. This would suggest a neutral impact on the current view shed, or an impact less than moat and row.
 - o Vegetation would not obstruct views from the lake bed, but would appear to be a continuation of what currently exists.
 - o The introduction and enhancement of native vegetation would be much less of a visual impact than a grid pattern of trenches and mounds topped with fences.
 - o Vegetation provides habitat to a number of species and may be considered a beneficial impact.
 - o Vegetation does not have an entrapment potential.
 - o Vegetation poses no biological barrier potential.
 - o Vegetation does not provide corvid perch opportunities.

- o Vegetation would substantially reduce water use, compared to shallow flooding.

Page ES-4 & page 5-4; Gravel Application Alternative:

1. (See comment Shallow Flood #1) Please correct.
2. The "All Gravel Cover" alternative was determined "not feasible" in the GBUAPCD *Findings of Fact and Statement of Overriding Consideration*.

Page ES-5 & page 5-5; No-Project Alternative:

1. The introduction in this section incorrectly summarizes the past moat and row approval.
2. The moat and row project described in the 2008 SIP has been evaluated through a certified CEQA document; however, the project design evaluated in the 2008 SIP FSEIR was not the project submitted to the Commission for a lease. That is, if the original serpentine design with two to one (2:1) slopes and without sand fencing had been proposed, then this additional document would have been unnecessary. Deviations from the 2008 FSEIR Moat and Row design were originally proposed by LADWP. Please correct this section of the document.
3. The moat and row project proposed in this supplemental EIR represents a significant change in the design from that approved in the 2008 SIP. Those changes include increased slopes, the addition of fencing and a design change to a grid pattern. Please correct to reflect these points.

Page ES-5 & page 5-5 & 6; Environmentally Superior Alternative:

1. See Shallow Flooding comment #1. Please correct.
2. The Environmentally Superior Alternative, is identified as the current project based on faulty information and assumptions. This needs to be reevaluated in light of the correct information.
3. The second sentence in the last paragraph makes the following statement: "The all Shallow Flooding Alternative would have been identified as the environmentally superior alternative, but it had already been considered and rejected in the 2008 FSEIR." Please correct. See page 12-5, of 2008 FSEIR. **ES.2.1 Dust Control Measures**. Which states; "shallow flood was found to be feasible and effective."
4. 9.2 square miles of Shallow Flood has already been approved and is currently being constructed. The statement made in the Environmentally Superior Alternative section on page ES-5 may be misleading or not entirely correct, that the "...other alternatives were evaluated as part of the 2008 FSEIR, two alternatives (i.e., All Shallow Flooding, All Managed Vegetation) were determined not to be **feasible because and [sic] long-term** use of natural resources (e.g., water)." The 2008 FSEIR found that All Shallow Flood did not meet all of the objectives, but that document did not state that the alternative was infeasible. The *Findings* determined that All Shallow Flood was feasible and designated it as the "environmentally superior alternative." In addition, this document states that "No other alternatives are available that **could feasibly and have been proven** to reduce dust emissions at Owens Lake." Again, "All" or "Nothing" Alternatives

are very narrow in focus and they do not reflect the project. Variations or combinations of the alternatives could be very effective, as evidenced by the suggested use of vegetation and water or brine application in the "enhancements" to the Moat and Row elements as enhancements to control dust. (NOTE: See page 12-5 of FSEIR 2008 for actual feasibility statement.)

5. The last paragraph (page ES-5), incorrectly concludes "No other environmentally superior alternatives are available that would attain most of the proposed project's basic objectives." CEQA Guidelines section 15126.6(a) provides that alternatives meet most of the basic objectives. The document does not support the conclusion that only the proposed project meets most of the objectives. The last sentence (page ES-5) is incorrect and should be removed. As stated previously, the original moat and row design was changed significantly from what was approved in the 2008 SIP. It was those significant design changes that necessitated this Supplemental EIR.
6. The document appears to contradict itself and prior discussions between LADWP and Commission staff. During the scoping discussions and as an enhancement to moat and row, LADWP has suggested that if Moat and Row failed to control the dust to the level required under the SIP, then the Moat and Row elements in question could be converted to shallow flood. However, this SEIR states "All shallow flood is not feasible." Please correct or explain this apparent contradiction.

Page ES-7-22: **Table ES-1:**

1. Page ES-10; The document sites a Gary Page conversation that estimates a 1 foot gap for every 10 feet along the fence rows, to potentially allow unimpeded movements. But then, changes to a gap no more than 100 feet apart. Provide data or source for this change.
2. Page ES-12; mitigation 2nd to the last paragraph. The necessity to inspect and maintain the corvid perching should not be conditional; therefore, please remove the "if necessary" at the end of the inserted text.
3. Page ES-14; #3: Once again, please remove the conditional statement "if necessary" from mitigation measures.
4. Page ES-15; Implementation Schedule: Please provide the scientific basis for the frequency of monitoring.
5. Monitoring should report all species trapped in moats.
6. Page ES-19; last paragraph: If actions are not feasible, then they should not be considered as potential mitigation measures and should be removed.
7. Page ES-19. For consistency, notification should be within 48 hours not three days of incident.
8. Page ES-20; 3.1-2; This statement seems to be inconsistent with the document. If potential breeding sites are up to a mile from water, and rows and fences are installed, then access to breeding sites is affected.
9. Page ES-21; 3.3 Visual Resources: Views from the lake bed were not included in the evaluation; and therefore, the potential degradation of a scenic vista has not be adequately evaluated.

2.4.1 Dust Control Areas:

Page 2-10; The second sentence, states that LADWP intends to develop a control measure that costs less to implement; however, no cost analysis is included in the document. Provide a cost estimate for all dust control alternatives or remove this statement from the document and the objectives.

2.4.3 Moat and Row Characteristics:

1. Page 2-15; Please provide a description of the gravel, which includes the size and amount that will be applied to the access roads and roads within the moat and row elements.
2. Page 2-15; Provide information on the underground facilities to be installed in the moat and row DCMs. (first bullet)
3. Provide an estimate of the amount of material that is expected to be excavated from the moat features in the 118 miles of proposed moats.

2.4.8 Row Armoring Enhancements:

1. Page 2-26; Please provide the size and estimated amount of gravel to be applied and the method proposed to place the material.

2.6 Construction Schedule:

1. Page 2-35, This section states that construction is to begin spring of 2009 and should be changed to reflect current status.

Operation and Maintenance:

2.7.1 Moats page 2-38:

1. To adequately evaluate this project, please provide an estimate of the amount of material to be removed from the moats every five years and the number of truck trips.
2. Provide an estimate of the amount of fuel used, per year, to maintain the function of the moats and rows, especially in light of objective # 7, which is to minimize the long-term consumption of natural resources (which would include fuel).

2.7.3 Sand Fences:

1. The sand fence is designed to break free at winds over 71 mph. Please estimate how long it would take and the number of persons (or person-hours) to reattach the 20.6 miles of fence in the project after a wind event and the fuel consumed during this activity.
2. Please provide an estimate, in years, that it is anticipated to take for the sand to reach the 2.5 foot height.

3.1.2 Environmental Setting

The moat picture of Existing Cell T32-1 on Page 3.1-11 shows substantial erosion and slope sloughing after only two to three years. Please address these reoccurring issues in maintenance section.

Project Impacts:

1. Page 3.1-33; Habitat loss within Moat and row cells: Please coordinate with CDFG to identify appropriate mitigation for the +1,503.8 acres of lost nesting habitat.
2. Page 3.1-35; The discussion on cell T1A-1 states that snowy plover would likely nest in this area because only fencing will be used, but then (#5) inserts "and snowy plover habitat would not be affected by moat and row development here." Please clarify, in the light of the statement in #5 that no moats or rows are expected to be constructed in this location.
3. Page 3.1-37; The third paragraph, incorrectly states "...59.1 linear miles of moats..." which should read "Approximately 118.2 linear miles of moats..." Please note that a Moat and Row element contain two moats and one row. Therefore, 59.1 miles of Moat and Row elements contain twice that distance in moats.
4. Page 3.1-37; The statement "Any occurrences of plovers within moats are expected to be infrequent and limited to cell perimeters" lacks supporting evidence.
5. Pg 3.1-37, 38 & 39; The information on slopes and entrapment tend to support the conclusion that entrapment of snowy plover chicks is likely, yet the mitigation measures are deferred until a threshold of fatalities is reached, and then qualifies the mitigations with "if feasible." This mitigation measure defers the quantification of the impact as well as the mitigation measure, and is not consistent with CEQA and with recent court cases.
6. Pg 3.1-38; several statements on this page are not supported by scientific studies or observation. Instead they seem to reflect only speculation (as stated). The third bullet states "If a snowy plover walks or falls into a moat, (1) the combination of slope angle (1.5:1, 33.37 degrees) and surface roughness would likely be sufficient to allow plovers to walk out (**in the absence of monitoring data or observations, conclusions beyond this would be too speculative**); and (2) because snowy plover are specifically adapted to moving in muddy conditions, although possible, mud entrapment would be infrequent." These two statements are made even though information contained within this document (pg. 3.1-37) states plovers are expected to navigate a slope of 1.7:1 or 30 degrees. There is no information on a 1.5:1 or 33.7 degree slope. This statement appears to be contradictory to other statements in the document, as the only slope documented to have been traversed by a brood was 20 degrees (2.7:1). This internal inconsistency on slopes would suggest that some studies need to be done.
7. Page 3.1-38; The second to the last paragraph states that entrapment is expected to be "rare" and then admits that there is no data to accurately predict entrapment. This statement appears to be speculative and without scientific basis.
8. Page 3.1-38; last bullet, last sentence: This sentence states mud entrapment would be infrequent; however, this document (on the same page) contains an account of two plover chicks being fatally trapped in a dewatering trench. This

contradiction would suggest that the mud in combination with a trench has the potential to be a lethal combination for plover chicks and is likely to occur.

Replacement Mitigation Measures:

1. Page 3.1-40; (See Comment #1 Table ES-1) A one foot gap every ten feet (10%) cannot be extrapolated into a gap every 100 feet. Please provide data or supporting documentation.
2. Page 3.1-41; last sentence of the second to the last paragraph: Remove the words "if necessary," as inspection and maintenance are necessary.

New Mitigation Measures:

1. Page 3.1-45; The middle paragraph, first sentence states "...or if actions are determined to not be feasible..." Mitigation measures, especially those that are proposed for "Adaptive management" must be feasible.
2. Page 3.1-42 to 45; Adaptive Management for Moat Entrapment of Snowy Plover. Monitoring and withholding mitigation until a mortality threshold is reached is not mitigation. Many of the adaptive measures contain the phrases "if possible", "if feasible" or "to the extent feasible without substantially compromising overall dust control effectiveness." If the impact cannot be mitigated the draft SEIR should state that. If the DCM cannot meet dust control requirements than it should not be allowed. These should be separate issues and not tied together as a reason to not to mitigate for impacts.
3. The report identifies a slope of 1.7:1 (30 degrees) as navigable by chicks of all ages, why is this not the mitigation slope proposed for the project, at least on the outer slope of the perimeter moats?

3.3 Visual Resources:

The Commission staff is concerned about inconsistencies within the Visual Resources section of the document. The Commission staff concurs with the statement, "the dry, desert character of the historic Owens Lake bed, combined with further expanses of desert landscape immediately surrounding Owens Lake, creates a relatively **unique** and **dramatic** visual landscape." The uniqueness of this Public Trust resource was not granted the appropriate rating in Table 3.3-1 for "scarcity," which should have been 5. Staff also concurs that the visual objective for this area is "management activities may attract attention but should not dominate the view of the casual observer." The presence of many square miles of moat and row elements on the lakebed in close proximity to SR 395 will add color, texture, and man-made structural elements that will interrupt the unique and dramatic visual landscape that Owens Lake affords the public. The casual observer will easily note these features, especially T37-1, T37-2, and T1A-1, from SR 395. Therefore, Commission staff believes that the moat and row elements will have a "substantial adverse effect on a scenic vista" and that they will "substantially degrade the existing visual character or quality of the site and its surroundings." Therefore we concur with the statement in section 4.2.2 that "the proposed project would result in significant and unavoidable adverse impacts on...visual resources."

1. Page 3.3-20; view from the lake bed. See Exhibits 3.1-4a & 3.1-4b (pages 3.1-10 & 3.1-11). There is not a simulation of a lake bed view; therefore, this analysis is inadequate. As members of the public have and do access the lake bed frequently, please provide reference points on the lake bed and provide a simulated view, and then incorporate the lake bed analysis in the final document.
2. Please modify the language to note that moat and row, if approved, will be a permanent view change, whereas, mining activities are temporary.

4.2.2 Significant and Unavoidable Impacts of the Proposed Project

The statement that "the proposed project would result in significant and unavoidable adverse impacts on...visual resources" contradicts the analysis in section 3.3 Visual Resources. However, Commission staff concurs with this summary statement.

5.0 Alternatives to the Project

Objectives:

Page 5-1 & 2-9; The objectives have been changed since the NOP was released and are not consistent with the previous SEIR. The current objectives are so narrowly defined as to eliminate all but the proposed project.

1. The "Goal" is to reduce dust. The objectives are generally used in evaluating the alternatives against the proposed project's goal.
2. Objective 2; "provide clean, reliable water in a safe, environmentally responsible and cost-effective manner with excellent customer service;" The SEIR should analyze each alternative in light of the objectives. None of the alternative evaluations include a cost-effective analysis, an environmentally responsible determination, etc., or how each alternative does or does not meet each objective and subcomponent.
3. Objective 3; "allow for the sparing use of water that would otherwise be diverted for municipal and industrial use and substantially reduce or eliminate the use of water in implementing new dust control projects on the Owens Lake bed;" Objective 3 was added after the NOP was released and was not an objective in the 2008 SEIR. Objective 4; "minimize or compensate for the long term, significant adverse changes to sensitive resources in the natural and human environment by implementing mitigation strategies proposed in this SEIR;" It appears that this is the exception to being too narrow. Instead this is so general that it has no focused meaning and seems to have no analytical value.
4. Objective 7, is poorly written; "minimize the long-term consumption of natural resources (e.g. water);" Provide evaluation of all natural resources, including fuel.