

EXHIBIT D

Owens Lake Revised Moat and Row Dust Control Measures

STATEMENT OF OVERRIDING CONSIDERATIONS

June 28, 2010

The California State Lands Commission (Commission), acting as a responsible agency, adopts the Statement of Overriding Considerations made by the City of Los Angeles, Department of Water and Power (City), acting as lead agency, as re-stated or modified herein.

The California Environmental Quality Act (CEQA) requires a public agency to balance the benefits of a proposed project against its unavoidable environmental risks in determining whether to approve the project (Public Resources Code section 21081 and CEQA Guidelines section 15093). The *2008 Owens Valley PM₁₀ Planning Area Demonstration of Attainment State Implementation Plan Final Subsequent Environmental Impact Report* (2008 SIP FSEIR) and *2009 Final Supplemental Environmental Impact Report, Owens Lake Revised Moat and Row Dust Control Measures* (2009 Moat and Row FSEIR) identify and discuss unavoidable significant effects that would occur as a result of the proposed Project.

Since certification of the 2009 FSEIR, the City has modified its project description to consist of implementing soil tillage and associated access roads as a temporary measure on 3.12 square miles previously evaluated for moat and row dust control measures (DCMs). In May 2010, the City prepared an addendum to the 2009 Moat and Row FSEIR, "Owens Lake Revised Moat and Row Dust Control Measures Addendum No. 1 to the 2009 Supplemental Environmental Impact Report" (Addendum), to address changes in the project since the 2009 Moat and Row FSEIR was certified.

The environmental analysis contained in the Addendum concluded that the impacts and mitigation requirements identified in the 2009 Moat and Row FSEIR remain substantively unchanged by the modification of the project description to implement tillage. The City found that tillage does not raise any new issues and does not exceed the level of impacts identified in the previous 2009 Moat and Row FSEIR.

The Mitigation Monitoring and Reporting Program (MMPRP) adopted by the Commission at its December 17, 2009, meeting, as part of its approval for sand fences and vegetation enhancement in Cell T1A-1, applies to the proposed project to implement tillage, except for measures identified in section 4.0 of the Addendum pertaining to fences, fence posts, and standing water that will not be part of the tillage project.

With the implementation of the MMPRP adopted by the Commission, which includes changes to the Project to mitigate or avoid significant effects on the environment, most of the significant environmental impacts can be mitigated to less-than-significant levels. The 2009 Moat and Row FSEIR determined that the Project is expected to result in significant unavoidable impacts related to construction-generated emissions of criteria air pollutants and precursors and Project-generated greenhouse gases (GHG).

The Commission proposes to approve the Owens Lake Revised Moat and Row Dust Control Measures as modified to implement tillage as an interim dust control measure despite these significant unavoidable adverse impacts.

SIGNIFICANT UNAVOIDABLE ADVERSE IMPACTS

Air Quality

Project-Generated Emissions of Criteria Air Pollutants and Precursors (Impact 3.2-1) (Project and Cumulative)

The 2009 Moat and Row FSEIR identified and discussed significant effects that would occur as a result of the proposed Project. The proposed Project involves implementation of tillage as an interim measure to reduce dust emissions from the dry Owens Lake bed without the addition of supplemental water and to reduce exceedances of the federal particulate matter (PM₁₀) standard. The 6-month or more delay in implementation of 3.12 square miles of DCMs, due to the revised design and additional CEQA analysis (the 2009 Moat and Row FSEIR and subsequent Addendum) would conflict with implementation of the applicable air quality plan. The Project could contribute to the potential for additional violations of the National Ambient Air Quality Standard (NAAQS) and exposure of sensitive receptors to substantial pollutant concentrations. With the implementation of the mitigation measures described in the 2008 SIP FSEIR and 2009 Moat and Row FSEIR, most significant effects can be mitigated to less-than-significant levels. However, there are no measures reasonably available to reduce the potential impacts resulting from this conflict and it would be a significant and unavoidable impact.

Project-Generated Greenhouse Gas Emissions (Cumulative)

The 2008 SIP FSEIR determined that the Project is expected to result in significant and unavoidable impacts to air quality. Implementation of the adopted 2008 SIP FSEIR mitigation measures would reduce impacts on air quality to below the level of significance, with the exception of GHG emissions, which would have the potential to add to the overall global GHG emissions during construction, thus causing potential impacts on global climate change.

The GHG emissions quantified in the 2008 SIP FSEIR were found to be cumulatively significant and unavoidable. The emissions generated by the proposed revised Project would be the same as the amount generated by the Project evaluated in the 2008 SIP FSEIR. Therefore, although there would be no net change in GHG emissions (from the 2008 SIP FSEIR analysis) as a result of the proposed implementation of tillage as an

interim DCM, this impact would remain the same as described in the 2008 SIP FSEIR: cumulatively significant and unavoidable.

OVERRIDING CONSIDERATIONS

Having reduced the effects of the proposed Project by adopting mitigation measures in the MMPRP, and balanced the benefits of the proposed Project against the Project's potential unavoidable adverse impacts, the Commission hereby determines that the specific overriding economic, legal, social, technological, or other benefits of the proposed Project outweigh the potential unavoidable adverse effects on the environment, and that the unavoidable adverse effects are therefore acceptable, based on the following overriding considerations, which are sufficient to outweigh the Project's unavoidable adverse effects:

- ▶ Achievement of the Project objectives requires construction of DCMs to reduce the largest single source of particulate matter (PM₁₀) in the United States. Such improvements require the use of heavy construction equipment that generates emissions of criteria air pollutants and precursors and GHG emissions. Incorporation of the adopted mitigation measures substantially reduces emissions during construction. The benefit of the reduction of PM₁₀ from the Owens Lake bed outweighs the effects from short-term emissions of criteria air pollutants and precursors and GHG emissions resulting from implementation of the Project.
- ▶ The improvements achieved through the construction of the Project DCMs will provide reduced fugitive dust emissions to over 17,000 Inyo County residents, which overrides the short-term construction impacts on air quality.
- ▶ Achievement of PM₁₀ reduction would have a widespread benefit to property and open space recreational areas and parks in close proximity to Owens Lake. Sites such as the Golden Trout Wilderness within the Inyo National Forest, Sequoia National Park, and Death Valley National Park would have better overall air quality for their recreational users, thereby enhancing the recreational availability and experience of these areas for visitors and nearby residents.
- ▶ Implementation of tillage would allow for the sparing use of water needed for existing municipal and industrial use.
- ▶ In conjunction with approval of this Project, the City has committed to the long-term reduction of PM₁₀ emissions for the entire Owens Valley and will continue to coordinate efforts to ensure that the overall air quality of the area is greatly improved.