

**STAFF REPORT
C80**

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**CONSIDER DELEGATING AUTHORITY TO THE EXECUTIVE OFFICER
TO EXECUTE EXPENDITURES FROM KAPILOFF LAND BANK FUNDS
AND GRANTING AUTHORITY TO SOLICIT BIDS, PROPOSALS FOR
CONSULTANT SERVICES, NEGOTIATE A FAIR AND REASONABLE PRICE,
AND AWARD AND EXECUTE AGREEMENTS FOR THE RETENTION
OF A GROUNDWATER CONSULTANT**

PARTY:

California State Lands Commission

BACKGROUND:

Historical Overview

Owens Lake is located in southwest Inyo County, approximately 200 miles north of Los Angeles. The Lake was a natural and navigable waterway at the time of California's statehood and is thus sovereign land of the State. Wildlife, waterfowl, and the nearby residents depended on and benefited from the Lake, which covered approximately 110 square miles and was up to 50 feet deep in places. Early settlers diverted water from the Owens River to grow crops and irrigate pasture for livestock, and steamboats carried cargo across the Lake. In 1908, the City of Los Angeles Department of Water and Power (City) commenced construction of an aqueduct to divert water from the Owens River north of the Lake. After completion of the Los Angeles Aqueduct in 1913, the Lake's water level rapidly declined. By 1930, the Lake was virtually dry with only a small brine pool remaining.

The diversion of water led to dust storms carrying away as much as 4 million tons (3.6 million metric tons) of dust from the lakebed each year, causing respiratory problems for residents in the Owens Valley. The U.S. Environmental Protection Agency designated the southern part of the Owens Valley as a Serious Non-Attainment Area for PM10. PM10 is an abbreviated reference for suspended particulate matter (dust) less than or equal to 10 microns in mean aerodynamic diameter (approximately 1/10 the diameter of a human hair). The Great Basin Unified Air Pollution Control District (District) subsequently designated the Non-Attainment area as the "Owens Valley PM10 Planning Area." The District determined that dust emissions from the dry lakebed of the Lake are responsible for causing the air in the Owens Valley PM10 Planning Area to exceed the PM10

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national ambient air quality standards and that water diversions by the City caused the Lake to become dry and the lakebed to be in a condition that produces dust. The District has the authority to issue regulatory orders to the City to control dust emissions.

On June 14, 1999 ([Item C06 , June 14, 1999](#)), the Commission authorized Lease No. PRC 8079.9 to the City for the construction of the first phase of dust control on Owens Lake. Since the issuance of the lease, the Commission has authorized 21 amendments to the lease to allow the City to implement various phases of dust control. The lease expires April 30, 2019.

Other Leases

In addition, the Commission leases approximately 15,500 acres of the lakebed to U.S. Borax, Inc., for extraction of a sodium carbonate mineral (trona). Trona is refined into soda ash, which is used to make glass, paper products, and detergents, among other uses.

Other Commission leases on Owens Lake include the use of air monitoring equipment, cattle grazing, a solar demonstration project, and seed collection. In addition, staff routinely coordinates with the California Film Commission on the issuance of film permits.

Owens Lake Groundwater Evaluation Program (OLGEP)

The City, in cooperation with the Inyo County Water Department and District, conducted a groundwater study at Owens Lake to determine the feasibility of using groundwater in the City's Owens Lake dust mitigation program. Specifically, the purpose of this project was to evaluate the groundwater supply under Owens Lake, develop a conceptual hydro-geologic model of the basin, and study the potential impacts of the removal of the groundwater on surrounding wells, seeps, springs, and vegetation. The study began in March 2009 and was completed in November 2012.

Owens Lake Master Project

Staff participated in the Owens Lake Master Project processes starting in March 2010 with the City, the District, other public agencies, Native American Tribes, non-governmental organizations, and other interested stakeholders, to develop a framework to manage the variety of important resources on the lakebed while continuing to control dust. On June 23, 2015, the City released a Notice of Preparation for the Environmental Impact Report (EIR) for the Master Project. The Commission's consideration of the Master Project and a new lease is anticipated to occur following completion of the Master Project EIR and action by the City. The release of the EIR is anticipated in the spring of 2019 and is expected to be considered for certification by the City in the fall of 2019.

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Groundwater Work Group

Staff has also participated in a Groundwater Work Group, a subgroup of the Owens Lake Master Project Advisory Committee. It is anticipated that the proposed Master Project will include a proposal to use of groundwater to supply a portion of the water demand for dust mitigation. However, the pumping of groundwater from sovereign land will require the submittal of a lease application, review under the California Environmental Quality Act (CEQA), and Commission authorization.

The Commission requires a subject matter expert familiar with groundwater, hydrology, geology, groundwater modeling, and the state's Sustainable Groundwater Management Act. A consultant will assist staff in reviewing technical documents, reports and data, environmental documents, participate in meetings and make recommendations, among other tasks.

Over time, the City has deposited a total of \$1.2 million into the Kapiloff Land Bank Fund, as required by provisions in specific amendments to the lease. In February of this year, the Commission clarified that all of these funds could be used for any lawful purpose related to Owens Lake or adjacent real property, pursuant to the Kapiloff Land Bank Act ([Item C81, February 27, 2018](#)).

PROPOSED ACTIVITY:

The Executive Officer requests delegation of authority to expend a portion of the funds described above to retain a groundwater consultant to assist and support staff with groundwater issues at Owens Lake. Consultant selection shall be conducted consistent with procedures as specified in state law, Commission regulations and in the State Contracting Manual on the basis of demonstrated competence and qualifications for the types of services to be performed and at a fair and reasonable price up to a contract amount of \$249,000.

STAFF ANALYSIS AND RECOMMENDATION:

Public Trust and State's Best Interests Analysis:

Obtaining the advice and assistance from a groundwater consultant will aid staff in analyzing applications and making future recommendations to the Commission regarding the use of groundwater for dust mitigation at Owens Lake, how the use of groundwater may impact Public Trust resources (wildlife habitat, public access, recreation, and aesthetic enjoyment among others), and the impact on local communities and individuals who rely on groundwater. Managing sustainable groundwater use at Owens Lake will be critical to protect the remaining Public Trust uses and values at the lake. Therefore, staff believes hiring a consultant to assist staff and advise the Commission is consistent with the common law Public Trust Doctrine and is in the best interests of the State.

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OTHER PERTINENT INFORMATION:

1. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
2. Authorization to solicit bids, award and execute an agreement, and expend funds for a groundwater consultant is not a project as defined by CEQA because it is an administrative action that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, section 15378, subdivision (b)(5).

AUTHORITY AND OTHER REFERENCES:

- A. Public Resources Code section 6106
- B. State Contracting Manual Volume I, Chapters 3.00 (Additional Requirements), 8.00 (Preference Programs), 11.00 (A & E method)
- C. Public Contract Code sections 6106, 10335.5, subdivision (c), and 10340, subdivision (b)
- D. Government Code section 19130, subdivision (b)3 (Personal Services Contracts)
- E. Government Code sections 4526, 14838.3, and 19130
- F. California Code of Regulations, title 2, article 13, sections 2980.0 – 2990.0

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that authorization to expend Kapiloff Land Bank funds to hire a groundwater consultant for Owens Lake is consistent with the common law Public Trust Doctrine, will not substantially interfere with Public Trust needs and values, and is in the best interests of the State.

AUTHORIZATION:

1. Find that the Commission is acting in its capacity as Land Bank Trustee under the Kapiloff Land Bank Act, Public Resources Code section 8600 et seq.
2. As Trustee of the Kapiloff Land Bank Fund, authorize expenditures from the funds deposited by the City of Los Angeles Department of Water and Power, for the purpose of hiring a groundwater consultant up to an amount of \$249,000.

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3. Authorize the Executive Officer or her designee to solicit proposals, negotiate a fair and reasonable price, and award and execute contracts for retention of a groundwater consultant in accordance with state policies and procedures.