

March 16, 2022

Great Basin Unified Air Pollution  
Control District Governing Board  
157 Short Street  
Bishop, California 93514-3537

Subject: Los Angeles Department of Water and Power's Support for the Proper  
Development and Implementation of a Vegetation Enhancement Pilot Project  
at An Eligible Cultural Resource Site

Dear Governing Board Members:

Having spent over \$2.5 billion to reduce windblown dust, the Los Angeles Department of Water and Power (LADWP) has been and continues to be a committed partner in achieving the Clean Air Act goals for protecting human health and the environment in the Owens Valley Planning Area (OVPA). The achievement of those air quality goals, however, cannot come at the expense of disregarding the sovereignty rights of the Owen Valley Tribes in that area. As a result, I am writing to express LADWP's strong support for a recent proposal by the Fort Independence Indian Tribe<sup>1</sup> (Tribe) on how best to move forward with the development and implementation of a vegetation enhancement pilot project at an eligible cultural resource (ECR) area known as Sibi Patsiata-wae-tü.

As explained by the Tribe to the District in a letter dated March 1, 2022 (enclosed in Attachment 1), one essential step of moving forward with this vegetation enhancement pilot project is for the District Governing Board to withdraw Board Order 210701-6 (Board Order) that attempts to require dust mitigation measures in an ECR area that is outside the scope of the 2016 State Implementation Plan (2016 SIP) without the formal approval or consent of the Tribe. Only once the Board Order has been withdrawn, can the Board and LADWP then move forward with a truly collaborative process for

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<sup>1</sup> The Fort Independence Indian Tribe is recognized by the United States under the name "Fort Independence Indian Community of Paiute Indians of Fort Independence Reservation, California," which is a federally recognized sovereign Indian Tribe located in Inyo County, California.

developing a plan that has the consensus support of all five Owens Valley Tribal Governments for removing this ECR area from its current avoidance status under the 2016 SIP while also complying with all other applicable requirements for dust mitigation in the OVPA under the Clean Air Act.

As the Tribe has correctly explained in its March 1 letter and fully acknowledged by the District during the July 1, 2021, Board meeting, one critically important prerequisite for undertaking any dust mitigation measures or other environmental enhancements at Sibi Patsiata-wae-tü is for all five Owens Lake Tribes to agree on the mitigation measures and monitoring protocols conducted in this ECR area. Such agreement by all five Tribes is necessary given that the area is densely covered with sacred cultural artifacts eligible for inclusion in the California Registry for Historical Resources. So far this has clearly not yet occurred. The Tribe's March 1 letter unequivocally states that the Tribe has "significant disagreement" with many of the fundamental elements of the environmental enhancement approach that the District plans to undertake at Sibi Patsiata-wae-tü under the Board Order. Furthermore, the letter underscores that the decision to implement the Board Order not only "hinders the constructive, collaborative, and meaningful dialogue" among the five Owens Lake Tribes but also has "disregarded" and "disenfranchised" the Fort Independence Indian Tribe as "a sovereign nation" because "the Tribe's concern was not addressed or recognized."

LADWP agrees with the Tribe that there is a simple and straight forward solution to correcting the obvious deficiencies in the Board Order. First, the Board must withdraw the current order that improperly imposes environmental enhancement measures that do not have the full support of all five Owens Lake Tribal Governments. In addition to this deficiency and as discussed further in the attached analysis,<sup>2</sup> the Board Order fails to comply with several other requirements and conditions that the 2014 Stipulated Judgment, the 2016 SIP, and the District's own rules have established for undertaking any appropriate dust mitigation measures in ECR areas. Second, the Board should grant the Tribe's request to establish "a formal consultation on dust mitigation" so that all five Owens Lake Tribes can develop "a Tribally sanctioned understanding implementing the vegetation enhancement project at Sibi Patsiata-wae-tü." The Tribe's proposed approach is the only option available for the District to cure this major deficiency in the Board Order.

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<sup>2</sup> These other deficiencies are briefly described in an assessment (enclosed in Attachment 2) that LADWP has prepared regarding the Board Order, Notice of Violation 1008, and Order to Pay, dated March 9, 2022. As explained in the enclosed Attachment 2, the Notice of Violation and Order to Pay are premised on a legally deficient Board Order as well as non-compliance with other applicable requirements under the 2016 SIP and the District rules. These deficiencies thereby preclude the District from issuing any rule or order requiring LADWP to implement an environmental enhancement pilot project in the ECR site at Sibi Patsiata-wae-tü and imposing any civil penalties for a failure for complying with that rule or order.

LADWP's support for the Tribe's proposal for the proper development and implementation of the vegetation enhancement project at this ECR site further exemplifies our strong commitment for LADWP to meet its obligations for ensuring the protection of human health and the environment in the OVPA. As the Governing Board is well aware, LADWP has spent in excess of \$2.5 billion dollars over the last two decades to control windblown dust from all manmade sources based on "best available control measures" in the OVPA. These emission control efforts have reduced windblown dust by 99.4 percent and thereby transformed the Owens lakebed into a vital habitat for water birds. LADWP is committed to maintaining indefinitely the current emissions control infrastructure in place in the OVPA and to undertake any additional new measures that may be necessary to ensure the protection of human health and the environment in the OVPA under the Clean Air Act.

However, there are practical and legal limitations to LADWP's efforts to support the development and implementation of dust mitigation measures in the OVPA. All of the costs incurred by LADWP to implement those control measures must be borne by our ratepayers – including low-income communities and communities of color in need of economic relief. Furthermore, it is imperative that the District adhere to all applicable requirements and conditions imposed by law for undertaking any dust mitigation measures in ECR areas. As briefly discussed above and further explained in the attached analysis, the District has failed to do so.

LADWP acknowledges that the proposed vegetation enhancement project, in the light of the scale of projects at Owens Lake, is relatively minor. The size of the project, however, is not the litmus test for the legality of the Board Order. As stated in the July 1, 2021 Board Meeting, the Board Order "does set precedent." That precedent, in this case, is a precedent to ignore the rules and requirements of the 2016 SIP (including District Rule 433) and the language of the District's Board Order. Notably, the District has ignored these rules and requirements despite that fact that LADWP has repeatedly raised concerns regarding this noncompliance during that Board Meeting, asking only that the District postpone its vote on the Board Order to ensure the issues we are dealing with today would not occur. These fundamental concerns are now being further substantiated and validated by the Tribe in its March 1 letter calling for the withdrawal of the Board Order.

For all of these reasons discussed in this letter, LADWP urges the Great Basin Governing Board to rescind the Board Order and require the Air Pollution Control Officer to work with LADWP to achieve concurrence from the five Owens Lake Tribes. Furthermore, once concurrence of all five Tribes has in fact been achieved, LADWP stands ready to work with the District and the Tribes in developing a pilot project at Sibi


Governing Board Members

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Patsiata-wae-tü that does not violate the 2016 SIP and empowers local tribes to be part of achieving airshed attainment of the National Ambient Air Quality Standards for particulate matter under the Clean Air Act.

Sincerely,



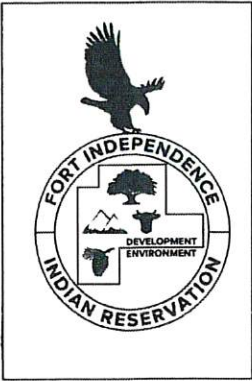
Anselmo G. Collins  
Senior Assistant General Manager – Water System

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Enclosures

c: Mr. Philip Kiddoo, District  
Ms. Ann Logan, District  
Ms. Tori DeHaven, District  
Board of Water and Power Commissioners

Mr. Martin L. Adams  
Mr. Andrew L. Linard  
Mr. Adam Perez



## Fort Independence Indian Community of Paiutes

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**Carl Dahlberg**

Fort Independence Indian Community

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March 1, 2022

Phillip L. Kiddoo  
Air Pollution Control Officer  
Great Basin Unified Air Pollution Control District  
157 Short Street, Bishop, California 93514-3537

Re: Fort Independence Indian Community- "Amended Tribal Recommendation for Dust Control Treatment of [redacted] for the Patsiata Cultural Resources Task Force"  
Vegetation Enhancement Project at Sibi Patsiata-wae-tü Project Concerns

Dear Great Basin Unified Air Pollution Control District,

I am writing on behalf of Fort Independence Indian Community, also recognized by the United States under the name "Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California" (the "Tribe") which is a federally recognized sovereign Indian tribe located in Inyo County, California.

The Owens Valley has been home to our people since time immemorial and Owens Lake has sacred cultural and historical sites to our Tribal community. Because of our deep sacred, cultural, and historical roots to the Owens Lake area, our Tribal community possesses unique historical and environmental knowledge.

The Great Basin Unified Air Pollution Control District (GBUAPCD and the "District") has a significant obligation to reduce air pollutants and dust emission by implementing dust control measures in and around Owens Lake. The impacts of reducing the dust emissions to indigenous people are particularly salient. The



Tribal community and is disproportionately impacted by the effect of environmental disasters. The Tribe recognizes GBUAPCD's attempts to include the voices and positions of the indigenous communities surrounding Owens Lake by considering the recommendations of the Cultural Resource Task Force (CRTF), and its successor, Patsiata Cultural Resources Task Force (PCRTF). However, we implore the District to acknowledge that the PCRTF is a collective comprised of many different voices, cultural lenses, and sovereign governmental concerns, and those of the Fort Independence Indian Community have not been recognized.

The Fort Independence Indian Community is a sovereign government that expresses our own views and positions. As a Tribe, we possess our own unique cultural identity and practices. Pursuant to the Articles of Association of the Fort Independence Indian Community, the General Council is the Governing body of the Tribe and the General Council elects from its membership, a Chairperson, Vice-Chairperson and a Secretary/Treasurer who constitute the Business Committee. Our General Council votes on a proposed action and the Business Committee, comprised of duly elected officials, are authorized and empowered to represent the position of the Tribe and tribal community to local, state, and federal agencies in a government-to-government position. The Business Committee is empowered to represent the Tribe in all negotiations, with local, state, and federal governments or agencies. Further, the General Council may delegate any of its authority or responsibilities to the Business Committee.

Although there may be times that all the Tribes in the Owens Valley unify in opinion, the Tribe is a sovereign government with its own position which should be recognized and acknowledged. As duly elected representatives of the Tribe, voiced the Tribe's concerns at the February 22, 2021 PCRTF meeting which was recorded by the PCRTF facilitation team. The Tribe's concerns pertain to the draft document outlining monitoring protocols. As the Tribe's duly elected representatives, we presented the Tribe's position that the Tribe also has significant disagreement with aspects of the protocols. Moreover, it should go without saying that the duly elected officials of the Tribe are the representatives and have the sole authority to make decisions or speak on behalf of the Tribe. Further, the Vice-Chairwoman and I, as Chairman of the Tribe, made expressly clear that the Tribal Historic Preservation Officer (THPO) has *advisory* authority, much like the advisory authority of PCRTF. The Tribe's THPO can contribute valuable input and information but does not possess the authority to make decisions or speak on behalf of the Tribe. However, the actions of the District in ordering Great Basin Unified Air Pollution Control District Governing Board Order 210701-06 ("Governing Board Order 210701-06"), requiring the City of LADWP to implement dust control mitigation in the Sibi Patsiata-wae-tü Cultural Resource Area at Owens Lake consistent with the Draft Amended Tribal Recommendations for the Patsiata Cultural Resource Task Force, ignore our Tribe's stated position regarding the concerns of the of the monitoring protocols in the PCRTF draft recommendation.

Both myself and Vice-Chairwoman Lee authorized the attribution of comments made during the Patsiata Cultural Resources Task Force meeting on February 22, 2021. We include the comments here because of their importance:

"Chairman Dahlberg noted that a draft document outlining monitoring protocols had been shared with Fort Independence Indian Community of Paiute Indians and that, although LADWP said that Tribes had participated in development of that document, his Tribe did not agree with many aspects of the protocols. For example, the document stated that LADWP would determine which Tribes a particular project would impact and only notify those Tribes of the work and/or only invite those Tribes to monitor. Vice Chairwoman Alisa Lee of the Fort Independence Indian Community of Paiute Indians said that when noting that Tribes participated in development of a document, it is very important to be clear about whether that participation was from THPOs or

elected Tribal leaders. She said that the THPO for Fort Independence is not authorized to make decisions or speak for the Tribe and must bring any decisions to the Tribal Council for a vote. She also said it is important for Tribal representatives to speak only for their own Tribe and not generalize to other tribes when expressing opinions and making decisions.

Chairman Dahlberg said that all official Consultation and dialogue should be brought to the Tribe's chairperson

Vice Chairwoman Lee said that for Fort Independence, it would be appropriate for the Tribal Liaison to be involved in Tribal Consultation, but not the Tribal Engagement Support person."

To further express our position, a letter to the State Historical Resources Commission dated March 15, 2021, with a copy to the GBUAPCD Governing Board, reinforcing this clarification and our position. Specifically, the letter states: "CRTF's recommendations were limited to dust mitigation measures of specific sites and mention of the lake bed. However, the current boundary map as provided by the Great Basin Nomination of Owens Lake was never approved by our Tribe. We recently revisited this opinion in our 2020 General Council meeting and the Tribe reiterated that they support the designation of Patsiata but the expansion to the historic shoreline has not been contemplated or approved by our Tribe." The District's action to implement Governing Board Order 210701-06 directly disregards the Tribe's position and expressly stated concerns.

The "Amended Tribal Recommendation for Dust Control Treatment of [redacted] for the Patsiata Cultural Resources Task Force" drafted by the Patsiata Tribal Oversight Committee (PTOC), dated May 22, 2021, outlines the request for the implementation of the Vegetation Enhancement Project consisting of an above ground water line laid on a portion of the Dust Control Area. In italics at the top of the page it states: "This recommendation is considered *draft* until the Tribal Councils of the Lone Pine Paiute Shoshone Tribe, the *Fort Independence Tribe*, the Timbisha Shoshone Tribe, the Big Pine Paiute Tribe of the Owens Valley, and the Bishop Paiute Tribe *have concurred*." (Emphasis added) (GBUAPCD July 1, 2021 Regular Board Meeting, Agenda Item No. 6- Attachment 1; Board Packet page 372 of 397).

In a memorandum from Meagan Wylie, Lead Facilitator from the College of Continuing Education, Sacramento State to Phillip Kiddoo, Air Pollution Control Officer, summarizing the PCRTF discussions, Ms. Wylie writes: "Rationale for this recommendation was provided at the meeting and described in a draft Amended Tribal Recommendation for Dust Control Treatment of [redacted] dated May 22, 2021. The recommendation is considered *draft until the Tribal Councils* of the Lone Pine Paiute Shoshone Tribe, the *Fort Independence Tribe*, the Timbisha Shoshone Tribe, the Big Pine Paiute Tribe of the Owens Valley, and the Bishop Paiute Tribe *have concurred*." (Emphasis added) (GBUAPCD July 1, 2021 Regular Board Meeting, Agenda Item No. 6- Attachment 2; Board Packet page 374 of 397). Ms. Wylie later writes "pending approval by each Tribal Council" the recommendation was supported by the Tribal Historic Preservation Officer for Big Pine Paiute Tribe of the Owens Valley, Tribal Historic Preservation Officer for Bishop Paiute Tribe, Tribal Historic Preservation Officer for Lone Pine Paiute Shoshone Tribe, LADWP, GBUAPCD, California State Lands Commission, TEAM Engineering and Management, Inc., and Far Western, along with other tribal representatives, governmental agencies, and participating members. (Emphasis added) (GBUAPCD July 1, 2021 Regular Board Meeting, Agenda Item No. 6- Attachment 2; Board Packet page 374 of 397).

A GBUAPCD Board Report dated July 1, 2021 with the Subject "Order to Implement Dust Control Mitigation in the Sibi Patsiata-wae-tü Cultural Resource Area at Owens Lake (Action)" recommended, and requested Governing Board action, to move forward with the PTOC's "Amended Tribal Recommendation for Dust Control Treatment of [redacted] for the Patsiata Cultural Resources Task Force" and to order LADWP to implement dust control mitigation consistent with the recommendation. (GBUAPCD July 1, 2021 Regular Board Meeting; Board Report to the District Governing Board from Phillip L. Kiddo, Air Pollution Control Officer (July 1, 2021); Board Packet page 371 of 397. Attached to the Board Report was the redacted PTOC's Amended Tribal Recommendation).

The report also details a PCRTF meeting held on June 9, 2021, where the present representatives supported the Amended Recommendation. (GBUAPCD July 1, 2021 Regular Board Meeting; Board Report to the District Governing Board from Phillip L. Kiddo, Air Pollution Control Officer (July 1, 2021); Board Packet page 370 of 397). However, the report acknowledged that Tribal Council approval and support was still pending from the Lone Pine Paiute Shoshone Tribe, the *Fort Independence Tribe*, and the Big Pine Paiute Tribe of the Owens Valley, and the Bishop Paiute Tribe. (Emphasis added) (GBUAPCD July 1, 2021 Regular Board Meeting; Board Report to the District Governing Board from Phillip L. Kiddo, Air Pollution Control Officer (July 1, 2021); Board Packet page 371 of 397). Yet, the GBUAPCD Governing Board ordered the implementation of the requested action without considering the Tribe's concerns or disagreement with the draft recommendation as written.

Although the identified language in italics on the top of the PCRTF recommendation states that the document is a "draft" and conditional upon the agreement of each Tribe's governing body, as also noted by the meeting facilitator, the District's action to implement Governing Board Order 210701-06 is a misrepresentation of the Tribe's consensus on the Vegetation Enhancement Project at Sibi Patsiata-wae-tü and lacks transparency. Implementing Governing Board Order 210701-06 indirectly hinders the constructive, collaborative, and meaningful dialogue of PCRTF members since the Tribe's concern was not addressed or recognized and the Tribe does not support the action contained in the Vegetation Enhancement Project at Sibi Patsiata-wae-tü and Governing Board Order 210701-06. Further, the District's action to implement Governing Board Order 210701-06 undermines the recognized status of the Tribe as a sovereign government because the *draft* document is intended for Tribal government approval. Governing Board Order 210701-06 sent a message that the Tribe does not have a choice and must deal with the outcome of the action that directly impacts the Tribe's sacred cultural sites and the tribally community.

GBUAPCD Governing Board's decision to implement the PCRTF draft recommendation without the consensus of *all* Tribal Councils or authorized Governing body undermines the collaborative spirit of PCRTF and PCRTF recommendations since, at least in our case, our duly elected official representatives of our sovereign nation and government were disregarded and the Tribe's concerns, as a sovereign nation, were disenfranchised.

Moreover, the Tribe questions the legal authority of the District Governing Board to implement Great Basin Unified Air Pollution Control District Governing Board Order 210701-06 requiring the City of LADWP to implement dust control mitigation in the Sibi Patsiata-wae-tü Cultural Resource Area at Owens Lake consistent with the Draft Amended Tribal Recommendations for the Patsiata Cultural Resource Task Force.

In attempting to right the wrongs of historical actions, let us not continue to assume that all the Tribes around Owens Lake share the same history and share the same position. The Tribal community is intertwined with the community of Inyo County and the greater community that is affected by the disproportionate impacts of environmental disasters and consequences. Owens Lake is an example of the ramifications and high cost of environmental degradation.



I believe we can all collaboratively work together for the betterment of our intertwined communities and as collective citizens of the Earth to aid in the repair of the environmental degradation of the Owens Lake area. I believe there is still hope that innovative minds and courageous thinkers can collaborate to generate a one-of-a-kind environmental project that will endure the changing environmental uncertainty for years to come. I believe disproportionately impacted minority communities will have equal access and equal opportunity to enjoy a healthy environment. Yet, as a duly elected representative of the Tribe, I cannot support actions or decisions that disenfranchise the Tribe or our tribal community.

Accordingly, we respectfully request that Great Basin Unified Air Pollution Control District Governing Board Order 210701-06 is withdrawn until there is a Tribally sanctioned understanding implementing the Vegetation Enhancement Project at Sibi Patsiata-wae-tü. To facilitate a swift resolution, we respectfully request an explanation of your authority to order the implementation of the PCRTF draft recommendation without formal approval from the Tribe's governing body. Moreover, we request a formal consultation on the dust mitigation issues.

Thank you for your attention on this important matter. I look forward to continuing our dialogue. Please contact me directly if you have any questions.

Sincerely,

**Carl Dahlberg**  
Chairman

Cc: Alisa Lee, Vice-Chairwoman  
John Peebles, Peebles Kidder LLP

**LEGAL ASSESSMENT OF  
BOARD ORDER, NOTICE OF VIOLATION, AND ORDER TO PAY**

The Los Angeles Department of Water and Power (LADWP) is in receipt of the Great Basin Unified Air Pollution Control District's (District) Notice of Violation (NOV) 1008 dated January 7, 2022 and Order to Pay dated March 9, 2022. The District's NOV and the Order to Pay are premised on the District's allegation that LADWP stands in violation of the court-ordered 2014 Stipulated Judgment (2014 SJ) and the District's Governing Board Order 210701-6 (Board Order) adopted on July 1, 2021. However, both the NOV and the Order to Pay fail to establish any actual violation by LADWP. Instead, as explained in detail below as well as in a letter that LADWP previously submitted to the District Governing Board on March 3, 2022 (attached hereto), the alleged violations of the Board Order upon which the NOV and Order to Pay are premised expressly violate the established regulatory rules and requirements of the 2014 SJ, the 2016 State Implementation Plan (2016 SIP), and the District's rules that govern LADWP's operations at the site. The District's failure to follow the court-ordered 2014 SJ as well as its own rules and requirements thereby invalidates any effort to enforce the Board Order, including the imposition of stipulated penalties under the Order to Pay issued on March 9 against LADWP.

**I. The District Cannot Compel LADWP to Act in Violation of the 2014 SJ and 2016 SIP.**

The District alleges that its "Order to Pay" is premised on LADWP's failure to "comply with its legal requirements under District Board Order 210710-6 and the [2014 SJ] ...." Neither of those documents provide support for the District's effort to compel LADWP to pay the cost of implementing a vegetation enhancement pilot project at an eligible cultural resource (ECR) area. To the contrary, both of those documents, restrict and prohibit LADWP from complying with the District's Board Order because to follow the District's order would mean violating the 2016 SIP.

Specifically, the 2014 SJ compelled the District to develop the 2016 SIP, which would act as the regulatory legal framework to implement the parties' agreement. Specifically, the 2014 SJ stated that:

The Parties have developed the terms of this Stipulated Judgment with the intention that its provisions will be incorporated into the 2015 SIP Order and are consistent with the applicable provisions of federal, state and local law, including Section 42316, including all applicable provisions of federal law regarding attainment of the NAAQS and exceptional events.

Therefore, by and through the parties' agreement to enter into the 2014 SJ, the 2016 SIP became the intended framework for all future regulatory action.

## **II. The Penalties Sought by the District Are Not Authorized under the 2014 SJ.**

Even if the framework of the 2016 SIP is not considered (which it should be), the District's NOV, particularly its Order to Pay, is based on a clear misstatement and misinterpretation of certain provisions in the 2014 SJ. According to Paragraph 15(c) of the 2014 SJ, stipulated penalties "only apply to the failure to meet dust control measure completion deadlines as set forth in Paragraphs 2.A, 3.E and 8.C and do not apply to any other notice of violation or enforcement of laws by the District or its APCO." (Emphasis added.)

Here, stipulated penalties sought pursuant to the Board Order are not premised on any of the particular paragraphs specified in the 2014 SJ. It is not a violation of 2.A because Phase 9/10 were completed by 2017.<sup>1</sup> It is not a violation of 3.E because the Board Order is not a BACM Contingency Measure, as defined by the 2014 SJ and the 2016 SIP. It is not a violation of 8.C because it is not a violation relating to a Transition Area. Therefore, none of the specified deadlines for completing dust control measures apply.

The District's attempt to seek stipulated penalties pursuant to the Board Order is further undermined by the plain language of the 2016 SIP, which provides:

[I]f any [Eligible Cultural Resource] area is determined to have caused or contributed to an exceedance of the standard after dust controls are implemented in adjacent areas, it will be ordered for dust control under the contingency measure provisions in the SIP.  
2016 SIP Section 6.3.1, page 54.

If monitoring and/or modeling demonstrates BACM PM<sub>10</sub> control measures are needed in an ECR area to attain or maintain the PM<sub>10</sub> NAAQS after BACM PM<sub>10</sub> control measures are implemented in adjacent areas, the District will order the City of Los Angeles to select and implement BACM PM<sub>10</sub> control measures on those areas.  
2016 SIP Section 9.3, pages 85-86.

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<sup>1</sup> In NOV and Order to Pay dated March 9, 2022, the District incorrectly refers to the ECR sites in Phase 7 and Phase 9/10, as areas that must be "mitigated on a deferred schedule due to the presence of significant cultural resource[s]." This statement is misleading and leads to the erroneous conclusion that dust control measures must – as a matter of law – be implemented on all ECR areas at some point in time in the future. This is an incorrect interpretation of the current rules on the treatment of ECR areas. As discussed in this analysis, the 2016 SIP and District Rule 433 only authorizes the District to require dust control measures on these ECR areas that are determined to be emissive and only "if monitoring and/or modeling demonstrates BACM PM<sub>10</sub> control measures are needed in an ECR Area(s) to attain or maintain the PM<sub>10</sub> NAAQS after BACM dust control measures are implemented in adjacent areas," nearby to the ECR sites. Paragraph C.3 of District Rule 433. *See also* 2016 SIP Section 9.3 (authorizing dust control measures in a deferred ECR area under the contingency measures in District Rule 433 only "if any [such] area is determined to have caused or contributed to an exceedance of the standard after dust controls are implemented in adjacent areas").

### **III. The Board Order Conflicts with the 2014 SJ Requirement for Imposing Dust Control Measures in ECR Areas.**

Furthermore, District Rule 433 identifies the steps the District must take if an ECR area contributed to air quality violations after implementation of the Phase 9/10 Project. In particular, Rule 433, C.3 states:

If monitoring and/or modeling demonstrates BACM PM<sub>10</sub> Control Measures are needed in an ECR Area(s) to attain or maintain the PM<sub>10</sub> NAAQS after BACM PM<sub>10</sub> Control Measures are implemented in adjacent areas, the District shall order the City to select and implement BACM PM<sub>10</sub> Control Measures set form in Paragraph A.2.

Here, the District has provided no evidence (modeled or otherwise) that the areas in question are, or have been, emissive. Even if such evidence exists (which is not the case), the District is constrained by the 2016 SIP to order LADWP perform BACM dust control, and the Board Order does not call for BACM, and in fact the Board Order calls for “vegetation enhancement” not dust or emissions control. Consequently, the Board Order stands as a direct violation of the terms of the 2014 SJ and District Rule 433 and thereby violates the 2016 SIP rules.

### **IV. The Conditions Precent for Issuance of the Board Order Were Not Met so the Board Order is Not Valid.**

Most significantly, even if the District were legally permitted to issue an order consistent with the current Board Order, the conditions precedent for its implementation have not been met. Specifically, and of extreme importance, the sovereign tribal governments for the five Owens Valley Tribes have not yet agreed to remove the ECR areas from their avoidance status, which was a specific requirement of the draft Tribal recommendations for pursuit of the project.

During the July 1, 2021 Board Meeting when the Board Order was approved, the Air Pollution Control Officer (APCO) of the District acknowledged that the Fort Independence Tribe, the Lone Pine Tribe, and the Bishop Tribe had not yet issued formal approvals for the project, but the clear implication was that such tribal concurrence was forthcoming. Based on the representations of the APCO, when he stated that “all the obstacles, from this point forward, have been removed”, Board Member Hames also generally indicated that all five Tribes were in agreement of the project stating that he was “really excited that we got this far ... and I’m really excited that all the Tribes jumped on board...” As discussed, such tribal concurrence has not yet occurred, and seemed likely to influence this Board’s continuing support of its Board Order.

After years of working in collaboration with the District, LADWP is baffled by the District’s recent efforts to implement and enforce the NOV that is legally deficient on its face. It is clearly inappropriate for the APCO to attempt, as a regulator, to compel a regulated entity to not only violate the legal foundation for compliance with the Clean Air Act, but to also attempt to compel LADWP to disturb culturally significant resources without the express permission from the leadership of the Tribes whose cultural heritage is found on those sites. Consequently, LADWP strongly agrees and supports the Fort Independence Tribe’s request that the District rescind its

Board Order – which would thereby also invalidate the NOV against LADWP that is basis for the order to impose substantial stipulated penalties on LADWP.

LADWP acknowledges that the proposed project, in the light of the scale of projects at Owens Lake, is relatively minor. The size of the project, however, is not the litmus test for the legality of this Board Order, and subsequent NOV. As the APCO stated in the July 1, 2021 Board Meeting, his action “does set precedent.” That precedent, in this case, is a precedent to ignore the rules of the 2016 SIP and the language of the District’s Board Order. Furthermore, it sets a precedent to disregard these applicable rules and requirements despite LADWP raising many of its concerns during that Board Meeting, asking only that the District postpone its vote on the Board Order to ensure the issues we are dealing with today would not occur.

## **V. Conclusion**

Despite the legal roadblocks preventing implementation of the Board Order, LADWP does believe there is a path forward to implement a project outside of the 2016 SIP as outlined in LADWP’s March 16, 2022 letter to the Governing Board. In order to achieve a truly collaborative result, however, all five Tribal governments must indicate formal support of removing the ECR area from its current avoidance status. Once that occurs, LADWP and the District can begin discussing how to pursue the project without running afoul of the legal requirements of the 2014 SJ and the 2016 SIP.

Finally, it is important to note that during the July 21, 2021 Board Meeting, the APCO discussed the consequences LADWP would face if it could not legally comply with the Board Order. According to the APCO, “I am not issuing a violation to LADWP for missing a deadline, my violation to DWP for this Order would be ‘you are not being consistent,’ I mean that’s all.” Clearly, the current NOV goes further than simply requesting that LADWP be consistent. The NOV invokes the Stipulated Penalty provision of the 2014 SJ and alleges that LADWP ratepayers owe nearly \$500,000 (with that penalty amount accruing by approximately \$5,000 per day). Rather than pursue an illegal NOV, Great Basin should rescind the Board Order and require its APCO to work with LADWP to achieve concurrence from the five Tribes and develop a pilot project that does not violate the 2016 SIP and empowers local tribes to be part of achieving airshed attainment of the NAAQS and compliance with the Clean Air Act.

March 3, 2022

Great Basin Unified Air Pollution  
Control District Governing Board  
157 Short Street  
Bishop, California 93514-3537

Dear Governing Board Members:

Subject: District Governing Board Order 210701-06 and its Failure to Comply With  
Terms of 2014 Stipulated Judgment and the 2016 State Implementation Plan

The Los Angeles Department of Water and Power (LADWP) is in receipt of Notice of Violation No. 1008 (NOV) issued by Great Basin Unified Air Pollution Control District (District) on January 7, 2022; District Notice to Comply No. 2001 (NTC) issued on December 16, 2021; and the email from the District's Air Pollution Control Officer (APCO) dated December 7, 2021. These recent correspondences are all premised on Governing Board Order 210701-06 (Order), issued on July 2, 2021, requiring LADWP to implement a Tribally-led<sup>1</sup>, non-BACM<sup>2</sup>, irrigation pilot project within a cultural resource site (a.k.a. Sibi Patsiata-wae-tü) of Dust Control Area (DCA) T32-2, densely covered with artifacts eligible for inclusion in the California Registry for Historical Resources (CRHR). After conducting a detailed review of the Order, and subsequent NTC and NOV, procedures employed to validate and execute the Order, and the type of dust control requested in the order, LADWP has concluded that they all expressly violate the established regulatory rules and procedures of the 2014 Stipulated Judgement (2014 SJ), 2016 State Implementation Plan (2016 SIP), and the various Board Orders referenced in the District's correspondences, and therefore, are not legally enforceable under existing regulatory authority.

Furthermore, LADWP questions how the District determined that LADWP is in violation of any District Order when the plain language of the Order required concurrence by the five Owens Valley Tribes and such concurrence has not occurred. Also, LADWP is interested in knowing how the District harmonizes the requirements of Governing Board Order 210701-06 with the terms of the EPA-approved 2016 SIP because that document specifically assumed the Owens Valley Planning Area (OVPA) would come into compliance with federal air quality laws without requiring dust mitigation infrastructure on areas that were previously avoided due to the presence of eligible cultural resources. It also allowed the District to issue new dust control orders to LADWP if it demonstrated

1. Tribally-led: Tribal members have directed the design and goals of the project.
2. Non-BACM: A dust control measure not approved under the 2016 SIP or any other regulatory documents. Typical BACM types include Gravel, Managed Vegetation, and Shallow Flood.



those previously-avoided areas were emissive, but the District has provided no such evidence.

Finally, The Eligible Cultural Resource (ECR) site, along with several others, was avoided during construction of the Phase 9/10 Dust Mitigation Project to ensure protection of the resources and remain in avoidance as recommended by Cultural Resources Task Force (CRTF). The details of these sites are considered confidential due to the significance to local Tribes and nature of the discovery. Avoidance was conducted in accordance with the mitigation measures of the Phase 9/10 Environmental Impact Report developed under California Environmental Quality Act (CEQA), and the regulatory provisions governing dust mitigation within ECR areas, as codified in the 2014 SJ, the 2016 SIP. Any subsequent orders to perform dust control in an ECR must strictly follow the established rules and procedures, as outlined in the 2016 SIP.

As discussed, the ECR areas outlined in the Order were specifically designated for avoidance and were assumed to be non-emissive by the 2016 SIP. Although LADWP demonstrated it was willing to support a Tribally-led project which applied non-BACM to an ECR areas, despite the lack of evidence that the areas were emissive, LADWP was clear that it would not participate in a project that would violate the 2016 SIP. Unfortunately, the District failed to achieve tribal concurrence for its experimental proposal, and now seeks to unlawfully compel LADWP to adhere to an Order that stands in direct conflict with the SIP, and potentially more troubling seeks to have LADWP perform a project that was designed to be Tribally-led.

Therefore, in order to remain in compliance with the 2016 SIP and to avoid impacting sacred cultural resources without direct Tribal approval and participation, LADWP respectfully requests that Great Basin withdraw its Order and rescind its NOV.

Sincerely,



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Senior Assistant General Manager -Water System

JV:slr

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