

Staff Report 53

PROPOSED ACTION:

Consider adopting a resolution supporting the recommendation of the Patsiata Tribal Oversight Committee to the Patsiata Cultural Resources Task Force regarding implementation of a vegetation enhancement project on the Sibi Patsiata-wae-tü Cultural Resource Area on Owens Lake, located in Inyo County, and in support of an order by the Great Basin Unified Air Pollution Control District in furtherance of the vegetation enhancement project as a means to prevent and control dust emissions.

BACKGROUND:

Owens Lake (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. The Lake covered approximately 110 square miles and was 50 feet deep in places. Wildlife, waterfowl, and the nearby residents depended on and benefited from the Lake. In the modern era, settlers diverted water from the Owens River to grow crops and irrigate pasture for livestock, and steamboats carried cargo across the Lake.

Beginning in 1913, the City of Los Angeles Department of Water and Power (LADWP) began diverting water from the Lake and transporting the water southwest to Los Angeles through a City-constructed aqueduct system. The Lake level rapidly declined, and by the mid-1920s the Lake was essentially dry. Since then, dust storms have carried away as much as four million tons (3.6 million metric tons) of dust from the lakebed each year, causing respiratory problems for residents in the Owens Valley. As a result of the air quality standard violations caused by the dust, the U.S. EPA, through the Great Basin Unified Air Pollution Control District (GBUAPCD), ordered LADWP to implement dust mitigation actions, consisting of shallow flooding, vegetation planting, and placement of gravel cover to control blowing dust and meet air quality standards. The Commission issued a 20-year lease to LADWP in 1999 and subsequently issued 24 amendments to the lease to allow implementation of dust control measures on additional areas of the Lake. Implementation of the dust mitigation program has been evaluated under the California Environmental Quality Act (CEQA) to assess the effect of proposed implementation on the environment, including on cultural resources.

The Lake is also important to local Native American Tribes, who have occupied the Lake and surrounding areas for thousands of years, shifting their residency, resource use, and land use patterns as Lake levels rose and fell over time, and experiencing displacement and tragedy at the hands of settlers arriving to occupy the Owens Valley area. These Tribes include the Big Pine Paiute Tribe, the Bishop Paiute Tribe, the Fort Independence Paiute Tribe, the Lone Pine Paiute Shoshone Reservation, and the Timbisha-Shoshone Tribe. To this day, culturally significant resources and sites remain on the Lake, some known due to archaeological surveys or local Tribal knowledge, but others are still undiscovered. The landscape includes ceremonial areas, massacre sites, grinding rocks, figurines, arrowheads, rock features, and other artifacts. In the course of implementing its dust mitigation activities, LADWP uncovered many artifacts and sites from the Tribes' historical occupation of the Lake. In 2013, LADWP approved a proposal for implementing Phase 7a dust mitigation; however, prior to the start of construction, the Tribes objected, stating that portions of the area were a historic massacre site with significant cultural value, and that damage to or infringement on the site would be deeply offensive to and destructive of the Tribes' identities.

BASES FOR RESOLUTION:

The discovery of cultural resources in the Phase 7a dust mitigation project area resulted in construction delays that were resolved by a process described in a Settlement Agreement and Release (Agreement) dated August 19, 2013, between LADWP and GBUAPCD which, in part, included the formation of a Cultural Resources Task Force (CRTF). The CRTF was described in the Agreement as an advisory group consisting of representatives of LADWP, GBUAPCD, the Commission, the State Historic Preservation Office (SHPO), the Native American Heritage Commission, and local Tribal representatives. The purpose of the CRTF was to make non-binding recommendations concerning the treatment of cultural resources in the project area.

Recognizing the benefits of the CRTF as a venue to discuss and resolve issues related to protection and treatment of cultural resources on the Lake during dust control planning and implementation, the members of the CRTF agreed to voluntarily extend the convening of the body beyond the Phase 7a area as long as operations at Owens Lake continue. In making this decision, the CRTF also renamed itself the Patsiata Cultural Resources Task Force (PCRTF) in recognition of the indigenous name for Owens Lake. Additionally, the Tribal representatives formed a subgroup within the PCRTF called the Patsiata Tribal Oversight Committee (PTOC). On September 11, 2017, the PTOC presented recommendations to the PCRTF related to culturally significant areas proposed for construction during the Phase

9/10 dust control project. The 2017 PCRTF recommendations were adopted and incorporated into the GBUAPCD's formal dust control order. As such, the dust control order postponed construction in the culturally sensitive areas, including the area known as Sibi Patsiata-wae-tü (Dust Control Area T32-2), originally slated for dust control treatments as part of Phase 9/10 until appropriate methods of controlling dust, while at the same time protecting the cultural resources, could be developed. To date no construction of dust control measures has been implemented in Sibi Patsiata-wae-tü, consistent with the existing GBUAPCD dust control order.

Beginning in 2017, the PTOC and staff from LADWP, GBUAPCD, the Commission, and the Native American Heritage Commission have worked together to develop a pilot project to treat Sibi Patsiata-wae-tü with a Vegetation Enhancement Project. Recently, the PTOC brought its amended recommendation for the Vegetation Enhancement Project to the PCRTF, which concurred during its June 9, 2021, meeting. The Vegetation Enhancement Project is designed to be a Tribally led, LADWP supported project that will minimize ground disturbance and encourage the growth and expansion of existing vegetation within the site through seasonal watering to slow winds near the ground surface and anchor soils enough to reduce dust emissions. Successful implementation of the Project would protect the sensitive cultural resources on the site, stabilize the site to reduce dust emissions, and provide valuable information regarding alternative dust control methods that could be used more broadly in the future.

The Vegetation Enhancement Project would be implemented on a portion of Dust Control Area T32-2 (Sibi Patsiata-wae-tü) where a water line laid on top of the ground would be placed to bring water to the existing vegetation. The project elements and scope of work was presented at the August 18, 2020 PCRTF meeting. Critical design elements include: (1) ground disturbance will be avoided; (2) a 1,000-foot-long water line would be laid on top of the ground surface; (3) the water line would have three hose bibs or spigots where hoses can be attached to allow a Tribal crew to water the vegetation; and (4) water would be supplied by a trailer parked on the existing berm road. The Tribal crew will monitor any soil movement caused by the watering and inform the Lone Pine Paiute-Shoshone Tribal Historic Preservation Officer if any artifacts or features are uncovered.

Because the 2017 PCRTF recommendation sought to postpone all construction in culturally sensitive areas, and was subsequently included in the GBUAPCD dust control order, LADWP is not currently authorized to conduct work within the Sibi Patsiata-wae-tü area. The Commission understands that the PCRTF's recently recommended Vegetation Enhancement Project cannot move forward unless the GBUAPCD Governing Board accepts the PCRTF's recommendation and modifies

the existing dust control order to require LADWP to implement the Vegetation Enhancement Project at Sibi Patsiata-wae-tü. The amended recommendation, including the project description and conceptual design plan map, is included as Exhibit A. The Timbisha Shoshone Tribe approved the recommendation at its June 8, 2021 Council meeting, and the Fort Independence Paiute Tribe and Lone Pine Paiute-Shoshone Reservation Tribal Councils are expected to consider formalizing the recommendation of their PCRTF representatives at upcoming Council meetings in July and August, respectively. The Bishop Paiute and Big Pine Paiute Tribes have not yet set dates for consideration by their Councils.

At this time, staff recommends the Commission adopt the Resolution, attached as Exhibit B, supporting the amended recommendation of the PCRTF, which replaces the 2017 CRTF recommendation of *avoidance* with a recommendation to *implement* the Vegetation Enhancement Project on the Sibi Patsiata-wae-tü area of the Lake. In addition, the Resolution acknowledges and supports a similar inclusion of the amended PCRTF recommendation (as described in Exhibit A) in any future order. If an order is issued by the GBUAPCD, consistent with the PCRTF's recommended Vegetation Enhancement Project, LADWP will need to seek Commission review and approval prior to implementation of any project related construction.

OTHER PERTINENT INFORMATION:

1. This action is consistent with the "Meeting Evolving Public Trust Needs," "Prioritizing Social, Economic and Environmental Justice," and "Partnering with Sovereign Tribal Governments and Communities" Strategic Focus Area of the Commission's 2021-2025 Strategic Plan.
2. The cultural significance of the Sibi Patsiata-wae-tü area and the challenges associated with reconciling protection of cultural values and landscapes with the need to control dust emissions are ongoing. In 2017, recognizing the significant cultural value of Owens Lake to the local Native American Tribes, the Commission adopted a Resolution ([C77, June 22, 2017](#)) supporting the nomination of Owens Lake to the National Register of Historic Places. The current Resolution is consistent with the 2017 Resolution and draft Nomination and furthers the goals of developing dust control strategies that minimize impacts to cultural resources, values, and landscapes.
3. The area covered by the proposed Resolution is under lease to LADWP, which is ultimately responsible for controlling dust emissions on it if GBUAPCD determines that the Vegetation Enhancement Project is not successful.

4. Adoption of the Resolution is not a project as defined by the California Environmental Quality Act 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).

EXHIBITS:

- A. Vegetation Enhancement Project Design
- B. Resolution

RECOMMENDED ACTION:

It is recommended that the Commission:

Adopt a resolution, in substantively the form as set forth in Exhibit B, supporting the amended recommendation of the Patsiata Tribal Oversight Committee through the Patsiata Cultural Resources Task Force regarding implementation of a vegetation enhancement project on the Sibi Patsiata-wae-tü Cultural Resource Area on Owens Lake, located in Inyo County, and in support of including the Patsiata Tribal Oversight Committee's recommendations in any future orders issued by the Great Basin Unified Air Pollution Control District, to the Los Angeles Department of Water and Power, in furtherance of the vegetation enhancement project as a means to prevent and control dust emissions.

EXHIBIT A

Amended Tribal Recommendation for Dust Control Treatment of T32-2 For the Patsiata Cultural Resources Task Force

By the Patsiata Tribal Oversight Committee, May 22, 2021

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.

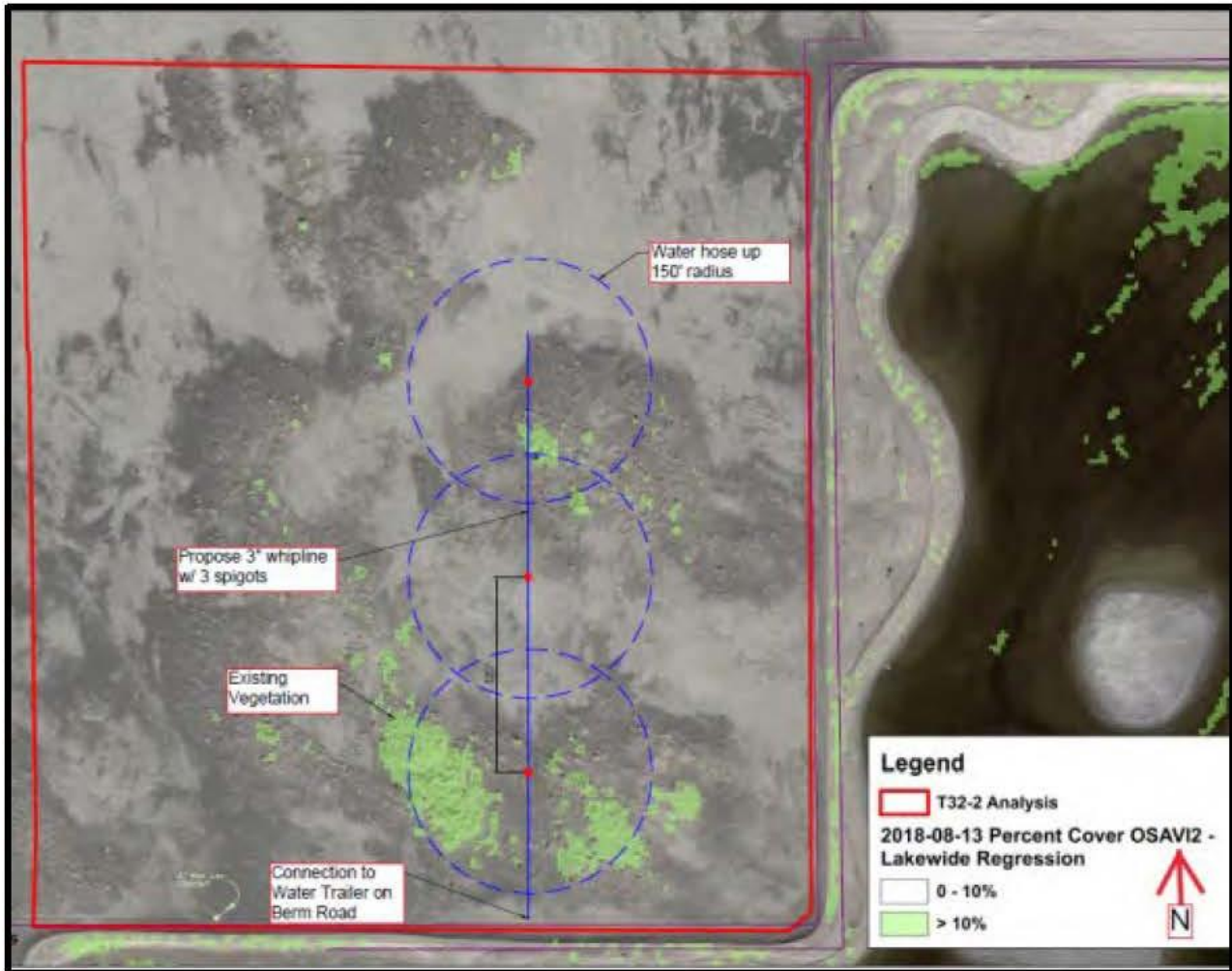
Proposed Recommendation: The Patsiata Tribal Oversight Committee (PTOC) recommends that the Patsiata Cultural Resources Task Force (PCRTF) request that the Governing Board for the Great Basin Unified Air Pollution Control District issue an order to the City of Los Angeles Department of Water and Power to implement the T32-2 Vegetation Enhancement Project.

Background: On September 11, 2017, representatives of the Lone Pine Paiute Shoshone Tribe, Fort Independence Tribe, Timbisha Shoshone Tribe, the Big Pine Paiute Tribe of the Owens Valley, and the Bishop Paiute Tribe presented recommendations to their fellow members of the Cultural Resources Task Force (CRTF). Those recommendations, titled “Tribes’ Initial and Interim Recommendation on Best Way to Balance Cultural Resource Protection and Dust Control for Sensitive Areas in Phase 9/10B Proposed Final Version,” were adopted by the CRTF, and incorporated into the Great Basin Unified Air Pollution Control District’s dust-control orders. In effect, this meant that dust-control treatments of the culturally sensitive areas originally slated for dust-control treatments as part of Phase 9/10 were postponed until appropriate methods of controlling dust while protecting the cultural resources could be recommended. Accordingly, working with its Tribal representatives, the PCRTF (successor to the CRTF) developed a proposal to treat DCA T32-2 with a Vegetation Enhancement Project.

T32-2 Vegetation Enhancement Project: The Vegetation Enhancement Project has been designed to minimize ground disturbance and encourage the growth and expansion of existing vegetation within T32-2 through seasonal watering. The enhanced vegetation would slow winds near the ground surface and anchor soils enough to reduce dust emissions. A water line laid on top of the ground would feed three hose bibs or spigots placed to supply water to the existing vegetation at crucial seasons to enhance their growth. Water would be supplied by a water trailer, which would be parked on the existing berm road. The water, equipment, and supplies would be provided by LADWP, and labor would be provided by a crew composed of members of the Lone Pine Paiute Shoshone Reservation who have experience in vegetation enhancement and cultural resource monitoring.

Need for PCRTF and Governing Board Action: Under the current dust-control orders, LADWP is not authorized to conduct any work within Phase 9/10b areas. Under the 2013 Settlement Agreement, incorporated into the 2016 State Implementation Plan, the CRTF (and its successor, the PCRTF) can make non-binding recommendations to the Governing Board regarding new treatments, and the Governing Board can then issue an order for implementation.

Proposed PCRTF Resolution: The Patsiata Cultural Resources Task Force (PCRTF) requests that the Governing Board for the Great Basin Unified Air Pollution Control District amend the current dust-control orders by issuing an order to the City of Los Angeles Department of Water and Power to implement the T32-2 Vegetation Enhancement Project as shared at the PCRTF meeting held virtually on August 18, 2020. The map and description below are adapted from Jaime Valenzuela's presentation at that meeting.



T32-2 Vegetation Enhancement Project

Portion of Dust Control Area T32-2 where a water line laid on top of the ground would be placed to bring water to the existing vegetation. Critical design elements: (1) ground disturbance will be avoided; (2) a 1000-foot-long water line would be laid on top of ground surface; (3) the water line would have three hose bibs or spigots where hoses can be attached to allow a Tribal crew to water the vegetation; (4) water would be supplied by a trailer parked on the existing berm road. The Tribal crew will monitor any soil movement caused by the watering and inform the Lone Pine Paiute Shoshone Tribal Historic Preservation Officer if any artifacts or features are uncovered.

Exhibit B

RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION SUPPORTING THE RECOMMENDATION OF THE PATSIATA TRIBAL OVERSIGHT COMMITTEE TO THE PATSIATA CULTURAL RESOURCES TASK FORCE REGARDING IMPLEMENTATION OF A VEGETATION ENHANCEMENT PILOT PROJECT ON OWENS LAKE, LOCATED IN INYO COUNTY, AND IN SUPPORT OF INCLUDING THE PATSIATA TRIBAL OVERSIGHT COMMITTEE'S RECOMMENDATIONS IN ANY FUTURE ORDERS THE GREAT BASIN UNIFIED AIR POLLUTION CONTROL DISTRICT ISSUES IN FURTHERANCE OF THE VEGETATION ENHANCEMENT PILOT PROJECT AS A MEANS TO PREVENT AND CONTROL DUST EMISSIONS

WHEREAS, Owens Lake was, historically, a navigable lake and, is therefore, sovereign land owned by the State of California, under the jurisdiction of the California State Lands Commission; and

WHEREAS, the Commission serves the people of California by providing stewardship of the lands, waterways, and resources entrusted to its care based on the principles of equity, sustainability, and resiliency, through preservation, restoration, enhancement, responsible economic development, and the promotion of public access; and

WHEREAS, the construction in 1913 of the Los Angeles Aqueduct diverted flows from the Owens River to supply water to Los Angeles, causing much of the Lake to dry up, resulting in dust storms affecting public health in the Owens Valley; and

WHEREAS, the Commission, as the state owner of most of the Lakebed, issued a lease to the Los Angeles Department of Water and Power (LADWP) in 1999, and has subsequently issued 24 amendments to the lease, to authorize dust mitigation activities including shallow flooding, vegetation planting, and placement of gravel cover to meet air quality standards as directed by the Great Basin Unified Air Pollution Control District (GBUAPCD); and

WHEREAS, Owens Lake and its surrounding landscape is culturally significant to five California Native American Tribes geographically and culturally affiliated with the area – including the Big Pine Paiute, Bishop Paiute, Fort Independence Paiute, Lone Pine Paiute-Shoshone Reservation, and Timbisha-Shoshone (collectively, Tribes) – and contains hundreds of culturally important sites and artifacts that have been or could be affected by LADWP's dust mitigation activities; and

Exhibit B

WHEREAS, cultural resources in the Phase 7a dust mitigation project area resulted in construction delays and the formation of a Cultural Resources Task Force (CRTF), an advisory group consisting of representatives of LADWP, GBUAPCD, the Commission, the State Historic Preservation Office (SHPO), and Tribal representatives, to make non-binding recommendations concerning the treatment of cultural resources; and

WHEREAS, on September 11, 2017, the CRTF Tribal representatives, known as the Patsiata Tribal Oversight Committee (PTOC) presented recommendations to the CRTF, which were adopted and incorporated into the GBUAPCD's dust-control orders, such that dust-control treatments of the culturally sensitive areas originally slated for dust-control treatments as part of Phase 9/10 were postponed until appropriate methods of controlling dust while protecting the cultural resources could be recommended; and

WHEREAS, under the current dust-control orders, LADWP is not authorized to conduct any work within the identified culturally sensitive areas of Phase 9/10b, but under the 2013 Settlement Agreement, incorporated into the 2016 State Implementation Plan, the CRTF (and its successor, known as the Patsiata Cultural Resources Task Force or PCRTF) can make non-binding recommendations to the Governing Board regarding new treatments, and the Governing Board may then issue an order for implementation if it so chooses; and

WHEREAS, working with the PTOC, the members of the PCRTF collaboratively developed a proposal to treat the area called Sibi Patsiata-wae-tü, within the culturally sensitive avoidance areas of Phase 9/10b, with a Vegetation Enhancement Project that will minimize ground disturbance and encourage the growth and expansion of existing vegetation within the site through seasonal watering to slow winds near the ground surface and anchor soils enough to reduce dust emissions, and the PTOC brought the proposal to the full PCRTF as an amended Recommendation on June 9, 2021; and

WHEREAS, pursuant to its Tribal Consultation policy, the Commission is committed to respecting the sovereign authority and the valuable knowledge and history of Native Nations, and in recognition of the Tribes' unique experiences and resources present on the Lakebed, the implementation of the Vegetation Enhancement Project would accomplish these goals in the most objective and

Exhibit B

practical manner to ensure maximum consideration of cultural resources during dust mitigation activities; now therefore, be it

RESOLVED BY THE CALIFORNIA STATE LANDS COMMISSION that it supports the recommendation of the PCRTF to amend the 2017 Tribal Recommendation to facilitate the implementation of the Vegetation Enhancement Project on the Sibi Patsiata-wae-tü area of the Lake, as shared at the August 18, 2020 PCRTF meeting; and be it further

RESOLVED, that the Commission supports the inclusion of the PCRTF's proposed Vegetation Enhancement Project in any future dust control orders issued by the Great Basin Unified Air Pollution to LADWP, as a means to prevent and control dust emissions; and be it further

RESOLVED, that the Commission's Executive Officer transmit copies of this resolution to the Governor of California's Tribal Advisor, the Tribes, LADWP, and GBUAPCD.