

Staff Report 71

APPLICANT:

City of Los Angeles Department of Water and Power

PROPOSED ACTION:

Amendment of Lease

AREA, LAND TYPE, AND LOCATION:

Sovereign land on the dry lakebed of Owens Lake, Inyo County.

AUTHORIZED USE:

Operation and maintenance of various dust mitigation measures.

TERM:

25 years, beginning June 14, 1999.

CONSIDERATION:

Public health and safety, with the State reserving the right at any time to set a monetary rent if the Commission finds such action to be in the State's best interests.

PROPOSED AMENDMENT:

- The Land Use or Purpose Section of the Lease would be amended to authorize:
 - Implementation of regulatory maintenance activities within Dust Control Areas (DCA) T2-1b, T1A-2a, T2-1 addition, T5-1, T5-3, T29-2, T13-1, T13 addition, T18-0, T23, T24, T25, T27, T4-3, and T30-1
 - Emergency repairs within DCA T13-1N
- Section 2, Special Provision of the lease would be amended to include:
 - Lessee will notify culturally affiliated Native American Tribes of the Owens Valley no later than five days prior to commencing work on the activities proposed under this 26th amendment.
 - Lessee or Lessee's archaeologist shall secure a written agreement with the Lone Pine Paiute-Shoshone Reservation repository regarding the final

disposition and permanent storage and maintenance of any archaeological resources or historical resources recovered as a result of archaeological monitoring, as well as corresponding geographic site data that might be recovered as a result of the specified treatment (i.e., preparation, identification, curation, cataloging, etc.) required before the collection would be accepted for storage. The coordinates of artifacts, features, and sites will be obtained by Lessee's archaeologist, and any artifacts discovered during construction will be collected, cataloged, and placed in a dry and secure temporary storage area until the end of the Project, when they will be given to Lessor's staff for dissemination to the Lone Pine Paiute-Shoshone Reservation.

- o Lessee acknowledges that this lease expires on April 30, 2024. Lessee shall submit a lease application and an approximate expense deposit no later than April 28, 2023, for a new General Lease – Public Agency Use for the continued use and maintenance of dust control measures on Owens Lake.

All other terms and conditions of the lease to remain in effect without amendment.

BACKGROUND:

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 communities including the area's original Native American residents depended on and benefited from the Lake, which covered approximately 110 square miles and was up to 50 feet deep in places. Tribes have occupied the area for thousands of years, moving as the historical shoreline fluctuated over time, using and stewarding the natural resources provided by the Lake, known to them as Patsiata. 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 (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 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 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.

The Commission's lease has authorized the City to conduct dust control measures on the Lake over the years to comply with regulatory orders by the District. These dust control activities have occurred over multiple phases.

The proposed activities would occur in areas of the lake where ongoing dust control measures are already in place. Existing dust control at these locations has already been analyzed by various environmental documents that the Commission considered during previous approvals. Exhibit B lists all the Commission's prior authorizations pertaining to this lease and includes links to the associated staff reports, which provide environmental analysis of the existing uses on the lake. Some of the more recent EIRs regarding Dust Control Measures, and important for the purposes of staff's recommendation, for the Lake are:

(1) the 2008 Owens Valley PM10 Planning Area Demonstration of Attainment State Implementation Plan Final Subsequent Environmental Impact Report (EIR) (State Clearinghouse No. 2007021127), first considered by the Commission in 2008 ([Item 5, August 22, 2008](#));

(2) the Owens Lake Phase 7a Dust Control Measures Draft EIR (State Clearinghouse No. 2011051068), first considered by the Commission in 2013 ([Item 82, September 20, 2013](#)); and

(3) the Owens Lake Dust Mitigation Program Phase 9/10 Project EIR, (State Clearinghouse No. 2014071057) first considered by the Commission in 2015 ([Item 61, August 19, 2015](#)).

The activities that would occur under the proposed amendment would not change the current use of these areas. Rather the proposed activities are maintenance activities that were anticipated by the applicable environmental documents. The proposed amendment also authorizes a name change (administrative redesignation) of DCAs T5-1 and T29-2 from Shallow Flood to Managed Vegetation to reflect the actual activities occurring on these sites. Operational challenges in keeping water ponded evenly on those two DCAs at a depth for them to be Shallow Flood areas have led to vegetation occurring naturally and performing

better as Managed Vegetation areas that are watered but not flooded, while still maintaining dust control and overall habitat values on Owens Lake. The authorizations proposed by the amendment will enhance or maintain existing dust control activities that have been previously authorized. Additionally, the work in DCA T13-1N was previously approved as emergency repairs through a letter of non-objection due to the damage created by flooding in August and September 2022.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Code sections 6005, 6216, 6301, 6501.1, and 6503; California Code of Regulations, title 2, sections 2000 and 2003.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

On April 28, 2022, the Great Basin Unified Air Pollution Control District (District) issued the City a Notice to Comply for failure to meet Best Available Control Measure (BACM) shallow flooding wetness compliance performance requirements as required by District Governing Board Order 160413-01. The notice to comply requires the City to develop and implement corrective action within dust control areas with ongoing compliance issues.

In response to the District's Notice to Comply, the City is requesting an amendment to the lease to implement regulatory maintenance activities, including the following:

- Installation of subdrain lines
- Additional soil placement within furrows
- Soil placement atop in situ soil to facilitate better drainage
- Sod harvesting/vegetation transplanting
- As needed reseeding, planting, and/or sod replacement
- Installation of new berms and reinforcement of existing berms
- Leveling of DCAs as needed to reduce channelization
- Installation of check and border system for sheet flow irrigation

The City will also redesignate portions of DCAs T5-1 and T29-2 from Shallow Flood BACM to Managed Vegetation BACM. These areas have operated as Shallow Flood BACM in the past, but now meet Managed Vegetation performance standards based on natural recruitment and propagation. Since the transition from Shallow Flood to Managed Vegetation has occurred naturally, no physical activities are being authorized by this redesignation; rather the administrative name change will merely align the designation more accurately with the current use.

Lastly, on December 22, 2022, staff issued the City a Letter of Non-Objection for infrastructure repairs within DCA T13-1N. Between August 5, 2022 and September 13, 2022, three high intensity rainfall events occurred in the upper Centennial Wash watershed, just south of Owens Lake. In response to Tropical Storm Kay, the Governor declared an emergency in Inyo, Imperial, Riverside, and San Bernardino Counties. Due to flash flooding, portions of DCA T13-1N and associated infrastructure (i.e., irrigation laterals, whip lines, partitions/berms, and risers) were damaged or buried with sediment. The Letter of Non-Objection allowed the City to begin repairing and rehabilitating damaged infrastructure, including:

- Removing deposited sediment and conducting grading
- Repairing and unburying irrigation laterals and risers
- Repairing and constructing approximately 17,022 linear feet of partitions/berms
- Repairing, realigning, and installing whip lines
- Flushing irrigation laterals and whip lines

Work within DCA T13-1N began on January 12, 2023 and is anticipated to be completed by the end of June 2023.

CLIMATE CHANGE:

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. The lease area is open land with low vegetation fuels, and is vulnerable to the above events, including dust storms, flooding during above average snowmelt and precipitation, and flash flooding from thunderstorms. The leased land and surrounding land may be vulnerable to these weather events; however, implementing the regulatory maintenance activities and emergency repairs associated with this lease amendment will not increase these vulnerabilities.

TRIBAL CONSULTATION

Because the City was the lead agency for the Phase 7a and 9/10 projects and is the project sponsor for the currently proposed activities, it is the public entity with primary responsibility for conducting tribal outreach and consultation. Commission staff did, however, review the City's efforts, which are summarized here:

- The City presented the details of the project to the Tribal Historic Preservation Officers (THPOs) of the 5 interested Tribes via an online meeting on May 2, 2022.
- On May 23, 2022, the City met with two THPOs and conducted a site visit at Owens Lake.

- On June 14, 2022, the THPOs attended another online meeting to discuss the project.
- On June 17, 2022, the THPOs attended an online meeting to discuss DCA T13-1.

On December 12, 2022, the Commission's Tribal Liaison emailed the THPOs to inform them of staff's intent to issue the City a Letter of Non-Objection for the proposed activities with T13-1N.

On January 30, 2023, the Commission's Tribal Liaison emailed the THPOs to inform them of Staff's intent to take this lease amendment to the Commission for consideration at the February 28, 2023 meeting. No responses have been received to date.

CONCLUSION:

Staff believes the proposed amendment will not significantly impair Public Trust resources and values, including wildlife habitat, public access, recreation, and aesthetic enjoyment on Owens Lake at this time. The proposed maintenance activities will reduce dust emissions and improve air quality for residents in the Owens Valley.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the lease amendment is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Lessee may not proceed with the proposed projects. The lessee has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with the "Leading Climate Activism", "Meeting Evolving Public Trust Needs" and "Partnering with Sovereign Tribal Governments and Communities" Strategic Focus Areas of the Commission's 2021- 2025 Strategic Plan.
3. **Emergency Repairs within DCA T13-1N:** Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a statutorily exempt project. The project is exempt because it involves a project undertaken, carried out, or approved by a public agency to maintain, repair, restore, demolish, or replace property or facilities damaged or destroyed as a result of a disaster in a disaster-stricken area in which a state of emergency has been proclaimed by the Governor

pursuant to Chapter 7 (commencing with section 8550) of Division 1, title 2 of the Government Code.

Authority: Public Resources Code section 21080, subdivision (b)(3) and California Code of Regulations, title 14, section 15269, subdivision (a).

Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

4. **Implementation of Regulatory Maintenance Activities and ministerial redesignation of portions of DCAs T5-1 and T29-2 from Shallow Flood BACM to Managed Vegetation BACM:** Staff recommends that the Commission find that this activity is exempt from the requirements of CEQA as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300.

5. This activity involves lands which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code section 6370 et seq.; however, the Commission has declared that all lands are "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code section 6370 et seq., use classifications for such lands have not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

APPROVAL REQUIRED:

California Department of Fish and Wildlife

EXHIBITS:

- A. Site and Location Map
- B. Summary of Lease Amendments

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Emergency Repairs within DCA T13-1N: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a statutorily exempt project pursuant to Public Resources Code section 21080, subdivision (b)(1) and California Code of Regulations, title 14, section 15269, subdivision (b), emergency repairs to public service facilities necessary to maintain service.

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

Implementation of Regulatory Maintenance Activities and ministerial Redesignation of portions of DCAs T5-1 and T29-2 from Shallow Flood BACM to Managed

Vegetation BACM: Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 14, section 15301.

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendment will not substantially interfere with the Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

AUTHORIZATION:

Authorize the amendment of Lease 8079, a General Lease – Public Agency Use, effective March 1, 2023, to implement regulatory maintenance activities, emergency repair activities associated with DCA T13-1N, and amend Section 2, Special Provisions; all other terms and conditions of the lease will remain in effect without amendment.

NO SCALE

SITE

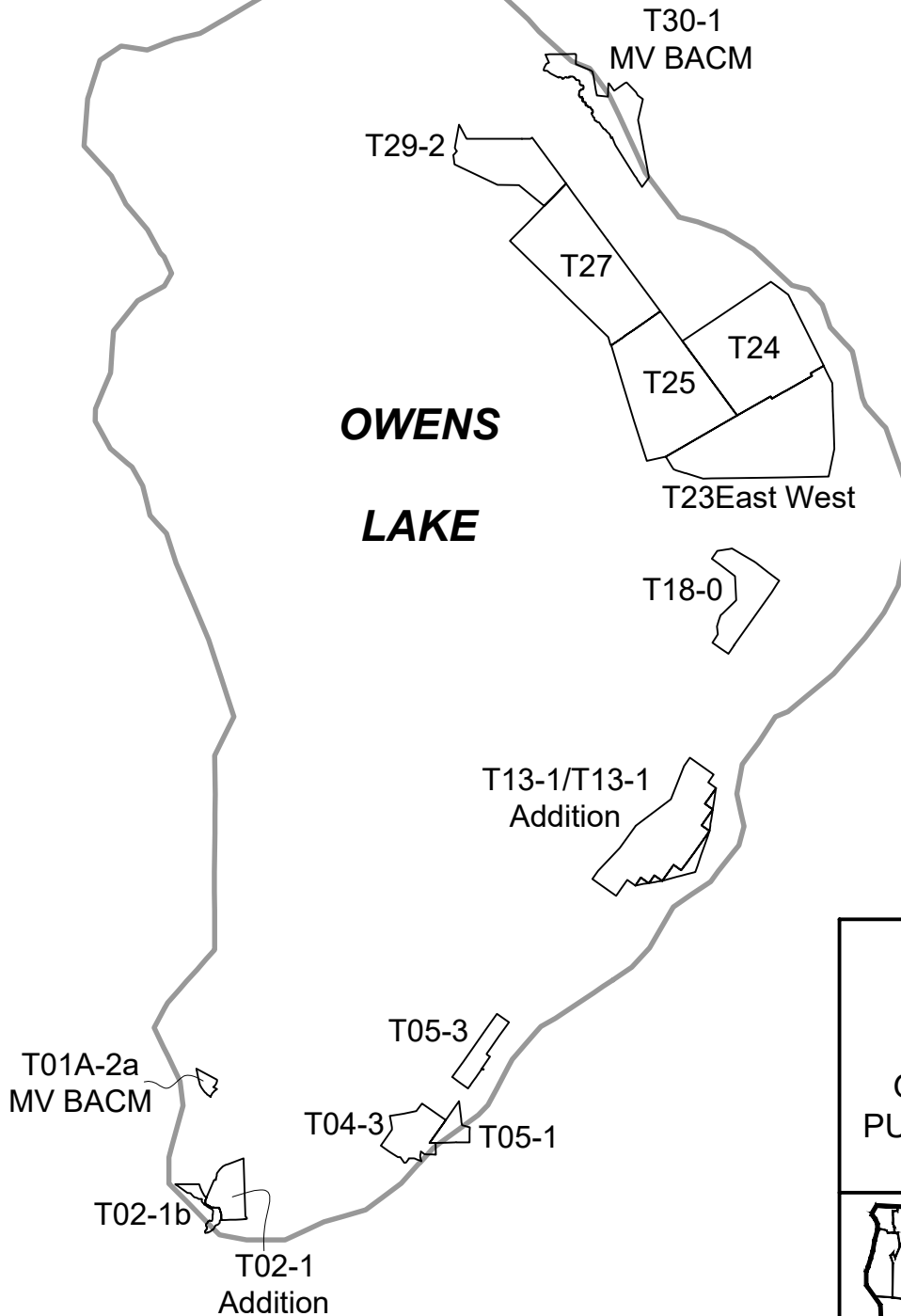


Exhibit A

PRC 8079
LADWP
GENERAL LEASE-
PUBLIC AGENCY USE
INYO COUNTY



THIS EXHIBIT IS SOLELY FOR PURPOSES OF GENERALLY DEFINING THE LEASE PREMISES, IS BASED ON UNVERIFIED INFORMATION PROVIDED BY THE LESSEE OR OTHER PARTIES AND IS NOT INTENDED TO BE, NOR SHALL IT BE CONSTRUED AS, A WAIVER OR LIMITATION OF ANY STATE INTEREST IN THE SUBJECT OR ANY OTHER PROPERTY.

Exhibit B: Summary of Lease Amendments

Below is a summary of the amendments to Lease No. PRC 8079.9 which the Commission has approved to date.

Original Lease. Allowed the City to comply with dust mitigation requirements by installing a South Sand Sheet Air Quality and Sand Fence Effectiveness Monitoring System on the leased premises ("Premises"). (Approved: 6/14/1999; Available at: http://archives.slc.ca.gov/Meeting_Summaries/1999_Documents/06-14-99/Items/061499C06.pdf)

First Amendment. Allowed the City to construct and operate a Shallow Flooding project on 13.5 square miles in the North Sand Sheet area of the Premises. (Approved: 6/27/2000; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2000_Documents/06-27-00/Items/062700C15.pdf)

Second Amendment. Permitted the implementation of the South Zone Dust Control Project on the Premises through the following dust mitigation measures ("DCMs"): (1) 6.4 square miles Managed Vegetation; (2) 1.7 square miles Shallow Flooding; and (3) approximately 40 acres Gravel Cover. (Approved: 11/26/ 2001; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2001_Documents/11-26-01/Items/112601C18.pdf)

Third Amendment. Authorized 154 acres of additional Shallow Flooding for the South Zone Dust Control Project. (Approved: 6/18/2002; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2002_Documents/06-18-02/Items/060802C05.pdf)

Fourth Amendment. Allowed additional Shallow Flooding on the Premises for Phases IV and V of the Owens Lake Dust Control Project. (Approved: 6/26/2006; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2006_Documents/06-26-06/Items/062606C24.pdf)

Fifth Amendment. Allowed additional Shallow Flooding for Phase VII of the Owens Lake Dust Control Project. This included the construction of earthen roads and berms, several miles of pipeline, and other equipment installations. (Approved 8/22/2008; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2008_Documents/08-22-08/ITEMS_AND_EXHIBITS/C05.pdf)

Sixth Amendment. Allowed two earthen berms, two access roads, and two barrier gates on the Premises for Phase VII of the Owens Lake Dust Mitigation Project. (Approved 6/1/2009; Available at:

http://archives.slc.ca.gov/Meeting_Summaries/2009_Documents/06-01-09/ITEMS_AND_EXHIBITS/C23.pdf)

Seventh Amendment. Authorized drip irrigation components for Phase VII of the Owens Lake Dust Control Project. (Approved 10/22/2009; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2009_Documents/10-22-09/ITEMS_AND_EXHIBITS/C17.pdf)

Eighth Amendment. Authorized sand fencing and irrigation facilities on area T1A-01 of the Premises. (Approved 12/17/2009; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2009_Documents/12-17-09/ITEMS_AND_EXHIBITS/41.pdf; Note: Recommendation modified; for actual approval, see: http://archives.slc.ca.gov/Meeting_Summaries/2009_Documents/12-17-09/Minutes.pdf)

Ninth Amendment. Allowed: (1) the two new access roads; and (2) soil tillage of 3.12 square miles of land: (Approved: 6/28/2010; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2010_Documents/06-28-10/ITEMS_AND_EXHIBITS/C33.pdf)

Tenth Amendment. Allowed 2.03 square miles of Gravel Cover on 2.03 square miles and roadway expansion. (Approved: 12/10/2010; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2010_Documents/12-10-10/Items_and_Exhibits/50.pdf)

Eleventh Amendment. Allowed the placement of above-grade sprinklers in the Channel Area and area T1A-1. (Approved: 1/26/2012; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2012_Documents/01-26-12/Items_and_Exhibits/C43.pdf)

Twelfth Amendment. Extended the deadline for performing the soil tillage permitted under the Ninth Amendment. (Approved: 6/21/2013; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2013_Documents/06-21-13/Items_and_Exhibits/C61.pdf)

Thirteenth Amendment. Permitted DCMs on 3.1 square miles of the Premises and transitioned DCMs on 3.4 square miles of the Premises. (Approved: 9/20/2013; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2013_Documents/09-20-13/Items_and_Exhibits/C82.pdf)

Fourteenth Amendment. Allowed the City to create a stockpile area on the Premises to store aggregate road base material. (Approved: 4/23/2014; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2014_Documents/04-23-14/Items_and_exhibits/C55.pdf)

Fifteenth Amendment. Allowed the City conserve water by converting 4.12 square miles from Shallow Flooding to tillage with best available control measure backup. (Approved: 9/2/2014; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2014_Documents/09-02-14/Items_and_exhibits/02.pdf)

Sixteenth Amendment. Approved Phase 9/10 project, excluding T18S, allowing 3.6 square miles of new dust control in 17 Dust Control Areas. (Approved 8/19/2015; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2015_Documents/08-19-15/Items_and_exhibits/C61.pdf)

Seventeenth Amendment. Approved the transition of T18S from 1.82 square miles of shallow flooding to approximately 1.02 square miles of shallow flooding and 0.81 square miles of gravel cover. (Approved 6/28/2016; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2016_Documents/06-28-16/Items_and_Exhibits/95.pdf)

Eighteenth Amendment. Approved the implementation of the 2016 Owens Lake Dynamic Water Management Plan (Approved 6/9/2016; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2016_Documents/08-09-16/Items_and_Exhibits/C42.pdf)

Nineteenth Amendment. Approved placement of gravel cover for dust control for the 0.41-acre parcel west of Mainline, between existing DCAs T21 and T21-L3. (Approved 6/22/17; Available at: http://archives.slc.ca.gov/Meeting_Summaries/2017_Documents/06-22-17/Items_and_exhibits/C58.pdf)

Twentieth Amendment. Approved staff's emergency authorization of emergency measures taken between April 2017 and June 2017 and authorized the Executive Officer to amend the lease to allow for the placement of 0.45 acre of gravel cover in Dust Control Area (DCA) T37-2-L-1/T37-2a. (Approved 11/29/17); Available at: https://www.slc.ca.gov/Meeting_Summaries/2017_Documents/11-29-17/Items_and_Exhibits/C54.pdf)

Twenty-first Amendment. Approved the deadline to develop a Tribal Consultation Policy, including adoption of the Policy and the appointment of an official Tribal Liaison, from June 22, 2018 to December 23, 2018. (Approved

6/21/18; Available at:

http://archives.slc.ca.gov/Meeting_Summaries/2018_Documents/06-21-18/Items_and_Exhibits/C58.pdf)

Twenty-second Amendment. Approved use of barn owl boxes, extended use of sand fences, the redesignation of 353 acres of managed vegetation dust control measures to sprinkler shallow flooding, the continued use and maintenance of two previously unauthorized access roads, installation of flood control system in DCA T2-1b (C2-L1), and the continued use and maintenance of 0.81 acre of previously unauthorized gravel cover. (Approved 2/4/19; Available at: https://slcprdappazappwordpress.azurewebsites.net/wp-content/uploads/2019/02/02-04-19_C58.pdf)

Twenty-third Amendment: Approved removal of gravel in T37-2d and installation of sprinkler shallow flooding, modifications to T13-1 and T17-2, and extended the term of the lease to April 30, 2024. (Approved April 5, 2019; Available at: http://www.slc.ca.gov/wp-content/uploads/2019/03/04-05-19_C50.pdf)

Twenty-fourth Amendment: Approved of 2.5 miles of water diversion ditches adjacent to dust control area T36. (Approved February 29, 2020; Available at: https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2020/02/02-28-2020_40.pdf)

Twenty-fifth Amendment: Approved 146 acres of new dust control measures associated with the 2021 Contingency Order, allow modifications to Dust Control Areas T16 and T2-2, associated with the Tillage with Best Available Control Measure Backup Remedial Action Plan. (Approved August 23, 2022; Available at: https://slcprdwordpressstorage.blob.core.windows.net/wordpressdata/2022/08/08-23-22_26.pdf)