



United States Department of the Interior BUREAU OF LAND MANAGEMENT

Bishop Field Office
351 Pacu Lane, Suite 100
Bishop, California 93514
www.blm.gov/ca/bishop



September 9, 2016

CACA 055470
2800-P
CA170.40

DECISION

City of Los Angeles	=	Application for Right-of-Way Grant
Department of Water and Power	=	Owens Lake Dust Mitigation Program
111 North Hope Street, Room 1050	=	Phase 9/10 Project
Los Angeles, CA 90012	=	CACA 055470

Right-of-Way Granted Rental Waived

Background

In June 2014, the City of Los Angeles Department of Water and Power (LADWP) applied for a right-of-way (ROW) for the construction, operation, maintenance, and termination of dust control measures on public lands administered by the Bureau of Land Management (BLM) Bishop Field Office located along the shoreline of Owens Lake in Inyo County, California. The proposed dust control project, known as the Phase 9/10 Project, is part of the overall Owens Lake Dust Mitigation Program that the LADWP is currently implementing pursuant to multiple agreements with the Great Basin Unified Air Pollution Control District (GBUAPCD). As originally requested, the ROW application proposed the implementation of dust control measures on 85.3 acres of public land located within in three dust control areas (DCAs): Lizard Tail T32-1-L1, Duck Pond L-1 and Duck Pond L-2.

In June 2015, the LADWP completed and certified an Environmental Impact Report (EIR) for the proposed Phase 9/10 Project pursuant to the California Environmental Quality Act (CEQA). Based on the environmental analyses presented in the EIR and the public, agency, and tribal comments received, the LADWP adopted the Avoidance Alternative for the proposed project. The Avoidance Alternative for the proposed Phase 9/10 Project excluded approximately 350 acres from the project footprint as initially delineated by the GBAPCD to avoid adverse impacts to environmentally sensitive resources.

On May 16, 2016 the LADWP amended their ROW application and removed the Lizard Tail T32-1-L1 DCA from consideration to avoid potential impacts to environmentally sensitive resources located on public lands. The amended application also included

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boundary adjustments for the Duck Pond L-1 and Duck Pond L-2 DCAs based survey results. The revised application proposed the implementation of dust control measures on 92.6 acres of public land located within in two DCAs: Duck Pond L-1 and Duck Pond L-2.

On August 28, 2016 the Bishop Field Office completed an Environmental Assessment (EA) for the revised ROW application pursuant to the National Environmental Policy Act (NEPA). The EA (DOI-BLM-CA-C070-2016-0014-EA) considered two alternatives: Alternative A.1., the Phase 9/10 Project Avoidance Alternative - Proposed Action, and; Alternative A.2., the No Action Alternative. On September 8, 2016 the Bishop Field Manager made a Finding of No Significant Impact (FONSI) for the proposed project and selected Alternative A.1 with Stipulations as the appropriate BLM action in response to the amended ROW application received from the LADWP.

The application for the right-of-way on public land is generally located in:

Mount Diablo Base and Meridian, California,
T. 19 S., R. 37 E.,
Section 5, SW $\frac{1}{4}$ and Section 6, SE $\frac{1}{4}$.

Amounting to 92.6 acres, more or less, of public land.

The purpose of the proposed project is to control dust emissions from public land within the Duck Pond L-1 and Duck Pond L-2 DCAs using established dust control measures in compliance with a 2014 Stipulated Judgement between the LADWP and the GBUAPCD.

The need for action is established by the BLM's responsibility under the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, to respond to the ROW application submitted by the LADWP.

The goal of the proposed project is to reduce windblown dust emissions that are causing and contributing to exceedances of both the National Ambient Air Quality Standards (NAAQS) and the California State standards for particulate matter (PM₁₀) air pollution. The project would use managed native vegetation and gravel cover as the dust control methods.

Decision

Under the authority of the Federal Land Policy and Management Act of 1976 (FLPMA) (90 Stat. 2776; 43 U.S.C. 1761), as amended, I hereby issue Right-of-Way (ROW) Grant CACA 055470 to the City of Los Angeles Department of Water and Power (LADWP) for the construction, operation, maintenance, and termination of the Owens

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Lake Dust Mitigation Program Phase 9/10 Project on the public land portions of the Duck Pond L-1 and Duck Pond L-2 dust control areas (DCAs) in Inyo County, California. The ROW is issued subject to all applicable project design features, best management practices, and mitigation measures identified in Alternative A.1., the Phase 9/10 Project Avoidance Alternative - Proposed Action, as described and analyzed in Environmental Assessment (EA) DOI-BLM-CA-C070-2016-0014-EA and supplemented by recommendations from BLM staff. Those measures are hereby applied in total to the Grant document as Stipulations. ROW Stipulations identified as Exhibit A, Exhibit B, Exhibit C (map) and Exhibit D (map), all dated September 7, 2016, are also hereby applied and shall be attached to the Grant document.

A recently identified environmentally sensitive area that includes 19.13 acres of public land within the proposed Phase 9/10 project area boundary will be excluded from the ROW being issued. Therefore, the ROW being issued will cover 73.47 acres of public land rather than the 92.6 acres described in the amended application submitted by the LADWP.

The ROW is issued for 30 years + 4 months and is renewable. The ROW will expire on December 31, 2046.

On May 5, 2016 the LADWP requested that rent for the proposed ROW be waived based on public benefit. On August 12, 2016 the Bureau of Land Management (BLM) California State Director waived rent for this ROW based on the public benefit of minimizing PM₁₀ dust emissions from public lands in the project area and the public health benefits of the overall Owens Lake Dust Mitigation Program.

This decision is in full force and effect upon signature by the Bishop Field Manager.

Rationale

Based on my review and consideration of the information and analyses provided in Environmental Assessment (EA) DOI-BLM-CA-C070-2016-0014-EA; other supporting documents incorporated by reference; public, agency, and tribal comments received during preparation of the Environmental Impact Report (EIR) for the Phase 9/10 Project; and recommendations from staff, I have decided to grant the City of Los Angeles Department of Water and Power (LADWP) a 30 year + 4 months renewable right-of-way (ROW)(CACA 055470) for the construction, operation, maintenance, and termination of the proposed Owens Lake Dust Mitigation Program Phase 9/10 Project on the public land portions of the Duck Pond L-1 and Duck Pond L-2 dust control areas (DCAs) in Inyo County, California.

In conducting my review, I determined that a decision to authorize the project as proposed in Alternative A.1. (the Phase 9/10 Project Avoidance Alternative - Proposed

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Action), when implemented according to the applicable project design features, best management practices, and mitigation measures described in the EA as supplemented by recommendations from BLM staff (Stipulations), would not result in any significant adverse effects on the human environment. I also determined that this action conforms to, and is consistent with, the overall guidance and management direction provided by the *Bishop Resource Management Plan* (RMP), approved March 25, 1993, as amended. The proposed action has been reviewed and found to conform to the land use plan terms and conditions as defined at 43 CFR 1601.0-5(b and c) and as required by 43 CFR 1610.5-3(a). I made a Finding of No Significant Impact (FONSI) that details these determinations on September 8, 2016.

The environmental review for this ROW incorporated and considered the public, agency, and tribal comments generated for the LADWP Owens Lake Dust Mitigation Program Phase 9/10 Project EIR. Because the EIR's alternatives were the basis for the alternatives developed and considered herein, comments and information received during the EIR process were a key component of the BLM's environmental review and decision making process for this project.

Both the proposed action (Alternative A.1.) and a no action (Alternative A.2.) alternative were analyzed in detail in EA DOI-BLM-CA-C070-2016-0014-EA. Several other alternatives were considered but eliminated from detailed analysis in the EA because they would not meet project objectives or because they would result in unavoidable adverse impacts to cultural and natural resources that could not be adequately mitigated. In contrast, the proposed action alternative included project design features, best management practices, and other mitigation measures needed to avoid and/or minimize adverse impacts to cultural and natural resources.

As described and disclosed in the EA and associated FONSI, the primary adverse effects predicted from implementation of the proposed action would be short-term. No measurable long-term detrimental effects are expected. In addition, the magnitude of predicted adverse effects is limited and restricted to the local scale. In contrast, the primary beneficial effect expected from implementation of the proposed action is the reduction of windblown dust that is causing and contributing to exceedances of both the National Ambient Air Quality Standards (NAAQS) and the California State standards for particulate matter (PM₁₀) air pollution. While the magnitude of predicted beneficial effects is also limited and largely restricted to the local scale, some regional air quality benefits are possible. Air quality benefits are likely to be longer term than predicted adverse impacts.

I did not choose the no action alternative because it would not meet the purpose of reducing dust emissions from public land within the Duck Pond L-1 and Duck Pond L-2 DCAs. Under the no action alternative there would be no dust control measures applied and the LADWP would be unable to reduce dust emissions that are causing and

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contributing to exceedances of both the NAAQS and the California State standards for particulate matter (PM₁₀) air pollution. Although this alternative would result in no surface disturbance related impacts to other resources, implementation of the proposed action alternative would have minimal impacts on other resources and is considered an acceptable alternative for dust control.

Although I have selected the proposed action as the basis for my decision, I have also decided to remove 19.13 acres of public land within the proposed Phase 9/10 project area boundary to protect environmentally sensitive resources. This mitigation originates from tribal consultation and tribal comments. The tribes have stated a high level of concern for potential impacts to cultural resources in the project vicinity. It is my responsibility to ensure that tribal concerns are taken into account and given due consideration in the decision making process (see Bishop RMP General Policies, Page 9, No. 13). Therefore, I have removed 19.13 acres from the ROW being issued due to environmentally sensitive resource concerns.

This undertaking would have no adverse effect on any cultural properties, including those currently listed in, or eligible for listing in, the National Register of Historic Places.

Implementation of the proposed project would have no effect on any species listed, or proposed for listing, as either threatened or endangered under the Endangered Species Act of 1973 (ESA), as amended; nor would it have any effect on any proposed or designated critical habitat for any such species.

All applicable project design features, best management practices, and mitigation measures identified in the proposed action as described and analyzed in EA DOI-BLM-CA-C070-2016-0014-EA are required by this decision. In addition, Stipulations will be attached to the Grant document as Exhibit A, which lists standard ROW stipulations per the 43 CFR 2800 regulations; and as Exhibit B, which lists mitigations listed in the EA as supplemented by recommendations by BLM staff based on the environmental review and my consultation with affected tribal interests. Most of the mitigations listed in Exhibit B are excerpts from project design features and best management practices described in the EA.

It is in the public interest to issue Right-of-Way Grant CACA 055470 to the LADWP as described herein. Authorization of the proposed action meets the intended purpose of the ROW application and will allow the LADWP to construct, operate, maintain, and terminate the Owens Lake Dust Mitigation Program Phase 9/10 Project on the public land portions of the Duck Pond L-1 and Duck Pond L-2 DCAs in Inyo County, California. Implementation of the proposed action will reduce windblown dust emissions that are causing and contributing to exceedances of both the NAAQS and the California State standards for particulate matter (PM₁₀) air pollution; thereby improving air quality in communities adjacent to Owens Lake and within the larger Owens Valley, while

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protecting environmentally sensitive resources.

The BLM California State Director has waived annual rent for this ROW. Project implementation will minimize PM₁₀ dust emissions from 73.47 acres of public land in the project area and contribute to the public health benefits of the overall Owens Lake Dust Mitigation Program. The estimated cost of the annual rent that will be waived amounts to \$2,240.00/year. The LADWP estimates that their total cost for implementing and maintaining dust control measures on public land within the ROW will be \$14 million dollars over the life of the project. It is in the public interest to waive annual rent due to the public benefit associated with reduced dust emissions and the overall effort to ensure compliance with the NAAQS and the California State standards for particulate matter (PM₁₀) air pollution.

Administrative Remedies

Administrative remedies may be available to those who believe they will be adversely affected by this decision. Appeals may be made to the Office of Hearings and Appeals, Office of the Secretary, U.S. Department of the Interior, Board of Land Appeals (Board) in strict compliance with the regulations in 43 CFR Part 4 and the enclosed Form 1842-1. The appellant has the burden of showing that the decision being appealed is in error.

Notices of appeal must be filed with the Field Manager, Bureau of Land Management, Bishop Field Office, 351 Pacu Lane, Suite 100, Bishop, California, 93514 within 30 days after publication of this decision. If a notice of appeal does not include a statement of reasons, such statement must be filed with this office and the Board within 30 days after the notice of appeal is filed. The notice of appeal and any statement of reasons, written arguments, or briefs must also be served upon the Regional Solicitor, Pacific Southwest Region, U.S. Department of the Interior, 2800 Cottage Way, E-1712, Sacramento, California, 95825-1890. Please consult the regulations (43 CFR Part 4) for further appeal requirements.

If you wish to file a petition pursuant to regulation 43 CFR 4.21 for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Board, the petition for a stay must accompany your notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to the Board and the Regional Solicitor identified above (see 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of

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a decision pending appeal shall show sufficient justification based on the following standards:

- 1) The relative harm to the parties if the stay is granted or denied;
- 2) The likelihood of the appellant's success on the merits;
- 3) The likelihood of immediate and irreparable harm if the stay is not granted, and;
- 4) Whether the public interest favors granting the stay.

Authorized Officer

This decision is issued pursuant to 43 CFR 2801.10(b) and is effective immediately upon signature. The decision and the action authorized herein will remain in effect unless stayed by the Interior Board of Land Appeals in accordance with the regulations at 43 CFR Part 4.

/s/ Steven Nelson

Steven Nelson
Bishop Field Manager

Enclosures:

Grant Document CACA 055470 with Stipulations and Maps
Appeal Form 1842-1