



## **Meeting Summary: September 29, 2010**

### **Agency Forum**

Prepared by the Center for Collaborative Policy

#### **Meeting Overview**

The Agency Forum met in Sacramento to receive an update on the planning process, discuss the legal framework for the plan, consider the planning committee's involvement in the environmental review and discuss future dust control implementation.

The Agency Forum agreed to move forward with a Natural Communities Conservation Plan (NCCP) for the Master Plan. Should significant roadblocks arise with the NCCP process, members would shift to a plan with a master stream and lake bed agreement.

Planning Committee involvement in the environmental review will be explored with the EIR consultants once they are under contract.

The Los Angeles Department of Water and Power (DWP) and Great Basin Unified Air Pollution Control District are working on methods to comply with dust control in 3.1 square miles required by October 1, 2010 (Phase 7 in the area where moat and row was previously proposed). The Forum also discussed Phase 8 (in the northwest) and the potential for Phase 9.

#### **Next Meeting: November 3, 10-2, Sacramento**

Center for Collaborative Policy, 815 S Street

#### **Announcements and Updates**

- Paul Thayer, Executive Officer of State Lands Commission, will retire November 8, 2010. His replacement has not yet been chosen; however, his current recommendation is the Chief Counsel. The Commission will vote on his replacement at its Oct. 29 meeting. Jennifer DeLeon, Staff Environmental Scientist, Division of Environmental Planning and Management, will begin attending Planning Committee meetings.
- There is no news regarding the selection of the next general manager of DWP.
- The tribes are coming together for a meeting on cultural resources October 19 in Bishop.

## Planning Process Update

Facilitator Gina Bartlett provided an overview of planning work completed to date and summarized future planning steps. The Planning Committee has developed a vision statement and objectives for the plan. The Committee also identified planning zones and criteria to assign geographic areas of the lakebed to the zones. The committee and its work groups have assigned a zone to most lakebed areas. Consultants are now evaluating the implications of these zones on habitat values, water use, etc. so the Committee can refine its assignments. Planning Committee members are also conducting briefings with constituent groups to solicit input on the vision and objectives and to inform a broad range of constituents about the planning process.

Next steps in the planning process are to refine the zones, explore the specifics of public access, develop the cultural resources section of the plan, and craft implementation and monitoring.

This section provides summary updates on the EIR consultant selection, the briefing process, the vision and objectives,

### State Lands Commission EIR Consultant Selection

Three very qualified consultants have applied, and State Lands Commission is in the process of finalizing the contract with the selected firm. The firm should be on board by the next Planning Committee meeting, October 20, 2010.

### Briefing Process Underway

Planning Committee members are conducting briefings to help constituents and a range of stakeholders understand and solicit input. The Planning Committee will modify and refine its approach based on input. The next round of briefings will be in December.

### Vision Statement & Objectives

The Agency Forum reviewed the vision statement and objectives. The objectives reflect the goals of the planning process: dust control; robust opportunity for wildlife; interest in solar potential, grazing, economic interests and public access. Owens Lakebed is also a significant tribal cultural resource. The Planning Committee hopes to see access that includes public education and public trust opportunity; the Committee envisions a *mosaic* of different uses.

Planning Committee representative Andrea Jones from California Audubon informed everyone that the committee had added an introductory sentence to the objectives that "The final plan will be a product of hard work and honest collaboration and will provide for effective dust control, preservation and or protection of economic, cultural, visual, natural and water resources and be a possible gateway tool and renewable energy development."

The State Lands Commission noted that the objectives suggest **habitat in perpetuity**. The State Lands Commission cannot issue leases longer than 49 years. Public trust values can shift so *in perpetuity* could be problematic. Participants seemed to think that this issue was not insurmountable. California Department of Fish & Game (DFG) Brad Henderson suggested that

everyone keep this issue in mind as the legal framework for the plan progresses. The leases and other planning documents would need to accommodate this issue, but it should not limit the goals of achieving habitat over the long-term. Although the Natural Communities Conservation Plan is not entirely consistent with public trust, but Paul Thayer, State Lands, and Brad Henderson, DFG, think they can work through these issues.

## **Zone Identification & Assignment**

The Planning Committee developed criteria to assign planning zones. It then examined where overlapping zones occurred and resolved those overlaps. Next, the technical consultants will analyze the zones for dust control, public trust value and water use so the Committee can refine the zone assignments.

The State Lands Commission staff highlighted that individual zone assignments have differing impacts: some could be disruptive impacts while others may change habitat value. The environmental review process will evaluate these impacts. Habitat values are likely to shift in one area, yet be enhanced overall. The assignments and the associated changes will be explored.

## **Habitat Zones**

Brian Tillemans reported on behalf of the Habitat Work Group. The work group has members from the Department of Fish and Game, plant ecologists, and Audubon regional experts. He then described the process the group used to identify the habitat refuge or preserve areas presented. The work group systematically reviewed the lake. The group identified the location of waterfowl and snowy plover in areas. The group's goal was identify variables that draw wildlife; this helped them to refine the criteria. The group factored in spring migration and other wildlife such as brine shrimp. The group also considered existing infrastructure, dust seasons, top soil, and soil conductivity. The group is in the process of identifying springs and seeps and thinking about how they can be incorporated. Members want connectivity. The group is also considering potential enhancements within the designated areas. For example when DWP tilled areas in the previous year, staff found that birds nested and coyotes were uncomfortable walking in tilled areas so this is potentially positive for birds.

One of the major concerns is trying to manage salt. High salinity areas cannot produce high value habitat. Owens Lake does not have plants or it does not have animals, because it is either too salty for plants or not salty enough. The challenge is how to dovetail certain measures to improve things for wildlife.

Ash Creek and Cottonwood Creek have some wetlands, but salt cedar is encroaching so the group is thinking of working on the vegetation there. The work group is also very interested in connecting with the productive Delta wetlands. The wetlands are compatible with dust control.

## **Grazing and Mining Zones**

State Lands Commission currently has three grazing leases and one mining lease with Borax.

## **Dust Control**

Great Basin Unified Air Pollution Control District summarized that 39.2 square miles of dust control exists, and that proposed habitat is existing dust control. DWP is required to put in three more miles of dust control in phase 7; phase 8 is proposed to be gravel.

The dust control designation process is reactive: the District monitors air quality. When the dust picks up and exceeds standards at the shoreline, the District requires that controls be put into place. Because the process is a reactive, mitigation has occurred in a piecemeal manner.

Solar may assist with dust control. The only approved dust control measure right now aside from water is gravel. Gravel cost estimates are about \$30 million/mile. Other forms of dust control are under consideration. Changing vegetation types or some hybrid of vegetation and gravel are under consideration. Another solution is tillage. DWP would till and when the tillage breaks down, DWP would flood the area to re-stabilize the soil crust. One member stated that the thrust of the planning process is defining a process and creating the ability to try things.

The year 2010 was an extremely windy year: April was the windiest with winds over 70 miles/hour. The “lizard tail” area in the northeast has continued to be in violation throughout the summer so the District will likely require that something be done in that area.

Yet, the success of the dust control program should be noted. When the City (of Los Angeles) started, the lakebed produced 85,000 tons of particulate matter; this year the lakebed produced 8500 tons. Historically, the lakebed produced 150,000 microgram parts per thousand; this year, 1500 microgram parts per thousand.

## **Solar Potential**

Solar potential areas have the best capacity for solar due to soil conditions. Proximity to transmission lines is also a factor. In a few areas, both the solar work group and the habitat work group had both assigned the same area. In these few circumstances, habitat prevailed. It is not known at this time how many miles are potentially available for solar. To make a clear determination about solar potential, the GeoTech study is necessary.

## **Legal Framework**

The Planning Committee has been working with the Department of Fish & Game to identify the best legal framework to meet member interests. Two options have emerged as the primary choices: a Natural Communities Conservation Plan (NCCP) or a Master Plan with master stream and lakebed permits. After discussion, the Agency Forum supported the idea of moving forward with the NCCP while continuing to work through details. Participants felt the NCCP structure would support a robust plan and public engagement. If an issue emerges that ultimately creates a roadblock for developing an NCCP, the Planning Committee can shift to the Master Plan with permits. There was agreement between parties present at the Agency Forum to proceed with NCCP and figure out the details upon moving forward. Members need to brief their boards and constituents and have them agree on the best approach.

There was concern that under the NCCP the Department of Fish and Game and State Lands Commission might have differing objectives. The State Lands Commission according to Public Trust Doctrine is required to maintain flexibility in their lease agreements (i.e. up to 49 years). The Department of Fish and Game might be interested in creating habitat refuges in perpetuity; however, someone reported that DFG often has a specific timeframe in the actual agreements. Once refuges are actually set up, there may be no interest in changing them. However, building in a certain level of flexibility is necessary to comply with Public Trust Doctrine.

Great Basin asked if the NCCP could have an impact on its ability to regulate air quality. Chuck Keene, DWR, reported that the ability to implement leases and air quality needs to be addressed in the plan.

<b>Elements of Different Legal Frameworks</b>	
<b>NCCP</b>	<b>Master Plan with Permits and Memorandum of Understanding</b>
Assurances for non-listed species	No assurances
Code book, transparent, open to public scrutiny	No predetermined guidelines Create agreements that suit Signatories
Requires planning agreement	No requirement
Requires science advisory panel	No requirement
Multiple signatories	Multiple signatories

### **Key Questions to Address Moving Forward**

- Can plan administrator be different than CEQA lead?
- Will State Lands Commission serve as plan administrator?
- Will non-biological components be incorporated in the NCCP?
- What time period will be used for habitat refuges?
- Work with EIR consultants to identify alternatives
- How to handle air quality regulation via NCCP?
- What resources will State Lands Commission need if plan administrator?
- Does the Department of Fish and Game want to do an NCCP given there is no need to issue permits (i.e. no listed species, snowy plover take)?

### **Planning Committee Involvement in Environmental Review**

The Agency Forum began discussing how to involve the Planning Committee in the environmental review process. The Planning Committee has already discussed using the CEQA scoping meeting as a public workshop on the plan. There were concerns about confidentiality regarding the public or the Planning Committee reviewing CEQA documents. For Planning Committee members to review draft documents, they would have to sign confidentiality agreements. Engaging stakeholders in the review process could also affect the timeframe.

DWP and Great Basin Unified Air Pollution Control District emphasized that Owens Lakebed is a unique environment, and the expertise on the Planning Committee was varied and substantive. It

was highly recommended that the expertise on the Planning Committee be utilized. It was also suggested that a work group might be more manageable than using the whole planning committee as a review body. Ultimately, everyone agreed to wait until the EIR consultants are under contract and hear what suggestions they might have in involving the Planning Committee in the environmental review.

One example for consideration is the advisory committee on the Salton Sea. They were briefed in detail rather than reviewing drafts. The State Lands Commission's typical model is to share the administrative draft with the federal entity and State Coastal Conservancy.

## **Future Dust Control**

Great Basin Unified Air Pollution Control District's Ted Schade and DWP's Martin Adams and Bill VanWagoner provided an overview of current and future dust control efforts.

### **Phase 7a Proposal**

As of October 1, 2010, the Department of Water and Power will be out of compliance with dust control on Owens Lakebed. They are currently working with the Great Basin Air Pollution Control District to rectify this. There are 3.1 miles that are not completed. This area, known as Phase 7, has a new proposal that is nicknamed "Phase 7a."

DWP is currently using about 95,000 acre feet of water per year for dust control on Owens Lake. Given water supply conditions and DWP policy, DWP cannot add more water to the dust control program. Therefore, as these new areas are added, any increase in water demand due to the additions will be offset by conserving equivalent water elsewhere within the facilities. This will be achieved by transitioning existing dust control areas to alternative, more water efficient methods of dust control, namely managed vegetation containing a variety of native plant species. Phase 7a proposed dust controls methods are:

- T12-1: Tillage testing
- T32-1: Managed vegetation, waiting for approval of native plants
- T1A-3 and T1A-4: Shallow flood / potential brine pool
- T28N, T28S, T36-1\_b, T17-1b, T5-1, T1A-2A, T10-2A: Change from shallow flood to managed vegetation
- T37-1 and 2: Gravel

To provide dust control for this area, DWP is changing dust control in a six-mile area to use the water in Phase 7a. The location of the exchange is consistent with the habitat work group proposals, diversifying the habitat of the area so the habitat work group will view this as an improvement. Also, this type of exchange and improvements in habitat along with operational shifts are viewed as consistent with the planning process and anticipated to happen more in the future to implement the Master Plan.

### **Phase 8 Gravel Proposal**

DWP has proposed gravel for the area known as Phase 8 on the lakebed. The State Lands Commission has the environmental document, but has yet to submit a letter of completion. State

Lands reported that it had not yet determined mitigation for this area. The solar work group of the Planning Committee identified Phase 8 as one of its solar potential areas, primarily based on soil conditions.

Martin Adams said that DWP has been talking with the Annenberg Foundation founder's group called Metabolic Studios, which has very creative ideas for projects on the lake. They see the lake as having a lot of potential for history and connectivity with Los Angeles. They are willing to invest in the area. They are particularly interested in the north end of the lake.

Paul Thayer, State Lands Commission, acknowledged that Phase 8 public trust impact mitigation could be achieved through Master Plan elements. State Lands cannot approve a plan that diminishes public trust. State Lands understand that access opportunities may be limited.

An important role of the Master Plan could be to determine how habitat and other public trust values are measured to determine how much mitigation could occur. The Master Plan could also confirm where that mitigation is located.

The Great Basin Air Pollution Control District stated that DWP was talking about a doing an enhancement as mitigation to Phase 8 that could be added to the Master Plan and the CEQA baseline. The key question, to be examined at the subsequent Agency Forum, is the methodology for measuring habitat value. The State Lands Commission is interested primarily in access and the amount of habitat lake-wide.

### **Phase 9: Future Sites**

Ted Schade introduced the possibility of a Phase 9. This area has been emissive so the District is running models to analyze the area. The District identified Phase 9 suggesting that it would dovetail nicely with the master plan.

### **Next Steps**

Martin Adams suggested that dust control work group form to explore issues related to dust control and new measures. DWP is hoping that more tools come along to give other options besides gravel.

Facilitator Gina Bartlett suggested that implementation is going to be key to success since the group needs to identify how to measure habitat and provide enough specificity about what can and cannot happen on the lakebed so all the agencies understand what they are agreeing to in the plan.

The Planning Committee is grappling with all these issues and is thinking of forming a dust control work group. At the November meeting, the Agency Forum will consider the framework for evaluating habitat and determining the baseline.

## Participants

California Air Resources Board

Sylvia Oey, Southern California SIP Section

California Department of Water Resources

Chuck Keene, Integrated Regional Water Management Southern Region

California State Lands Commission

Paul Thayer, Executive Officer

Colin Connor, Assistant Chief, Land Management Division

Brian Bugsch, Chief, Land Management Division

Cy Oggins, Chief, Division of Environmental Planning and Management

Jennifer DeLeon, Staff Environmental Scientist, Division of Environmental Planning and Management

Pamela Griggs, Senior Staff Counsel, Legal Office

County of Inyo

Joshua Hart, Planning Director

Great Basin Air Pollution Control District

Ted Schade, Director

Los Angeles Department of Water & Power

Marty Adams, Director of Water Management

Bill VanWagoner, Owens Lakebed Operations Manager

Brian Tillemans, Watershed Resources Manager

### **Observers (Two At-Large Planning Committee Members to Observe Each Meetings)**

Andrea Jones, California Audubon