

**CALENDAR ITEM  
C77**

A 34  
S 18

12/02/13  
W 26685  
D. Simpkin

**GENERAL LEASE – PUBLIC AGENCY USE**

**LESSEE:**

City of Los Angeles  
Department of Water and Power  
111 North Hope Street  
Los Angeles, CA 90012

**AREA, LAND TYPE, AND LOCATION:**

Approximately 5.3 acres of sovereign land in the dry lake bed of Owens Lake, Inyo County.

**AUTHORIZED USE:**

Construction and operation of a Solar Demonstration Project.

**LEASE TERM:**

20 years, beginning December 2, 2013.

**CONSIDERATION:**

The public use and benefit, 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 interest.

**OTHER PERTINENT INFORMATION:**

1. On February 25, 2010, the City of Los Angeles Department of Water and Power (City) submitted a lease application for a Solar Demonstration and Information Collection Study on 80 acres located on the dry lake bed of Owens Lake. On March 22, 2010, Commission staff deemed the application incomplete. The application remained idle until the City requested the application be withdrawn on April 26, 2013.
2. The City has revised its Solar Demonstration Project (Project) and submitted a new lease application for issuance of a General Lease – Public Agency Use for the construction and operation of a new Project.

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3. The Project site is located on an approximately 5.3-acre parcel located within Phase 8 of the Owens Lake Dust Mitigation Program (OLDMP). Phase 8 was authorized by the Commission on December 10, 2010, and permitted the placement of an approximately 4-inch gravel cover over a 2.03-square mile area. Gravel cover is one of three Best Available Control Measures (BACM) approved by the Great Basin Unified Air Pollution Control District.
4. The Project would generate approximately 500 kilowatts (kW) of alternating current through the use of ground-mounted photovoltaic (PV) panels comprising solar arrays. The PV panels will be installed in rows on aluminum frameworks that will each be attached to one of three types of foundations: two with ballasts and one with pile-driven piers. The ballasted foundations will be placed on top of the gravel that currently covers the site. The piles will be driven to a depth of 8 to 10 feet. Approximately 150 piles will be used to support the PV panels. The arrays will have a maximum height of 8 feet.

In addition to the PV panels and foundations, two inverter units will be installed. The inverters will be approximately 7 feet tall and will be located on a concrete pad approximately 1,600 square feet in area and 18 inches deep. A new electrical line will be installed to carry power from the inverters to transformers located north of the Project location. Installation of the power line will require a trench approximately 2,000 feet long. The excavated soil will be replaced into the trench as backfill.

5. In December 2011, the City adopted an amended Renewable Portfolio Standard Policy and Enforcement Program to meet renewable energy goals established by California Senate Bill (SB) 2X1, which was signed into law in April 2011. SB 2X1 mandated that at least 33 percent of annual electrical energy retail sales by California utilities must be generated from eligible renewable resources by the end of 2020.

The Project will assist the City in determining the feasibility and economics of installing ground-mounted solar power systems on Owens Lake. The solar energy generated by the Project would provide power for the City's OLDMP systems on Owens Lake.

6. Solar project developers typically pay a base rent on a per-acre basis and either a megawatt capacity fee or a royalty rate. Since the Project will be located on the Phase 8 gravel cover dust control area already under lease to the City to improve air quality, staff recommends that the base rent be waived. Staff also recommends that the megawatt capacity fee or any

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other fee based on actual power generation be waived provided that the amount of electricity produced is used for the OLDMP. To ensure this condition is met, the City will be required to report annually how much power is produced and where the power was used. Furthermore, the proposed lease also provides that if the Project produces power in excess of the demand from the OLDMP, the City may sell or use that excess power for other purposes, provided that the revenue or other consideration derived is used solely for purposes of funding construction or maintenance activities directly related to the OLDMP authorized under Lease No. PRC 8079.9 and its amendments. Additionally, the proposed lease provides that a monetary rent may be imposed in the future if the Commission finds such action to be in the State's best interest. The proposed lease contains special provisions in substantially the same form as described above.

7. A Mitigated Negative Declaration, State Clearinghouse No. 2013031075, was prepared by the City and adopted on June 19, 2013, for this Project. The California State Lands Commission staff has reviewed such document.

A Mitigation Monitoring Program was adopted by the City.

8. 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.

**PUBLIC TRUST:**

Owens Lake is sovereign land held in trust for the people of the State under the Public Trust Doctrine. This common law doctrine ensures the public's right to use California's waterways for navigation, fishing, boating, and other water-oriented activities. Preservation of lands in their natural state to protect scenic and wildlife habitat values is also an appropriate Public Trust use. (*Marks v. Whitney* (1971) 6 Cal.3d 251.) The California Supreme Court further stated in *Marks v. Whitney* that the Public Trust is sufficiently flexible to encompass changing public needs. Uses that do not protect or promote Public Trust values, are not water dependent or oriented, and exclude rather than facilitate public

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access and use, are not consistent with the Public Trust. The Commission has the responsibility to manage Owens Lake on behalf of the public to protect these rights and values.

The discretionary action to be taken by the Commission is ultimately a policy decision taking into account all relevant factors, including consistency with the Public Trust, in determining whether the project is in the best interests of the State. Each time the Commission takes action to approve or reject a project, it is exercising its authority and responsibility as trustee of the State's Public Trust lands as authorized by law (Pub. Resources Code §§ 6301 and 6216). Application of the Public Trust Doctrine may require a balancing of competing uses and needs. (*National Audubon Society v. Superior Court of Alpine County* (1983) 33 Cal.3d 419, 496-497.)

The Commission has officially expressed support for environmentally responsible renewable energy development on the State's "school lands", which are not subject to the Public Trust. The proposed Project, if approved, will be the first solar project on sovereign or school lands under the Commission's jurisdiction.

Generally, solar projects are not *per se* consistent with the Public Trust. However, in forming a recommendation for this Project, Commission staff has examined the unique characteristics of Owens Lake and its Public Trust values and uses as they pertain to the site selected for the Project. As previously described, the site, and the Public Trust values associated with this site, have been altered by the application of a 4-inch layer of gravel cover for dust control purposes. Based on these circumstances, Commission staff believes the proposed Project is not inconsistent with the Public Trust needs as they currently exist at the proposed Project site, in that the Project doesn't interfere with the recognized Public Trust values at Owens Lake. Furthermore, Commission staff believes the benefits to the State resulting from the Project, namely the use of the produced renewable energy for the OLDMP, would offset any loss of Public Trust values and therefore recommends approval of the lease. Staff will continue to evaluate each proposed renewable energy project on sovereign lands for consistency with Public Trust principles, values and needs specific to that location.

**EXHIBITS:**

- A. Land Description
- B. Site and Location Map
- C. Mitigation Monitoring Program

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**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2013031075, and a Mitigation Monitoring Program were prepared by the City of Los Angeles, Department of Water and Power, and adopted on June 19, 2013, for this Project and that the Commission has reviewed and considered the information contained therein.

Adopt the Mitigation Monitoring Program, as contained in Exhibit C, attached hereto.

**AUTHORIZATION:**

Authorize the issuance of a General Lease – Public Agency Use to the City of Los Angeles Department of Water and Power, beginning December 2, 2013, for a term of 20 years, to construct and operate a Solar Demonstration Project as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereto; consideration being the public use and benefit, 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 interest.

**Exhibit A. Legal Descriptions  
Owens Lake Solar Project**

W 26685

One parcel of State-owned sovereign land in the bed of Owens Lake in the County of Inyo, State of California, being more particularly described as follows:

**Solar Project Area**

BEGINNING at a point from whence Mineral Monument No. 58, a white marble stone monument with a metal plate cross stamped "MM #58", as said monument is shown on that map filed in Book 11, of Record of Surveys at page 7, Official Records of the County of Inyo, State of California, bears South 64°14'44" East, a distance of 35,504.79 feet; thence along the following described courses:

North 00°00'00" East, 2,892.65 feet, more or less, to the northerly line of State-owned land;  
South 57°14'44" West, 345.12 feet, along said northerly line;  
South 00°00'00" West, leaving said line, 2,045.93 feet;  
North 90°00'00" West, 1,320.00 feet;  
South 00°00'00" West, 660.00 feet;  
South 90°00'00" East, 1,610.25 feet to the point of BEGINNING.

The Bearings used in this description are on the California Coordinate System, NAD83, (CCS83/92), Zone 4. The Coordinate values, in U.S. Survey Feet, of said Mineral Monument No. 58, also known as Triangulation Station "Keeler" are: Northing 2,064,076.37, Easting 6,890,187.91. All distances shown herein are grid distances in U.S. Survey Feet. To obtain ground surface distances, multiply the distances shown by 1.000228742.

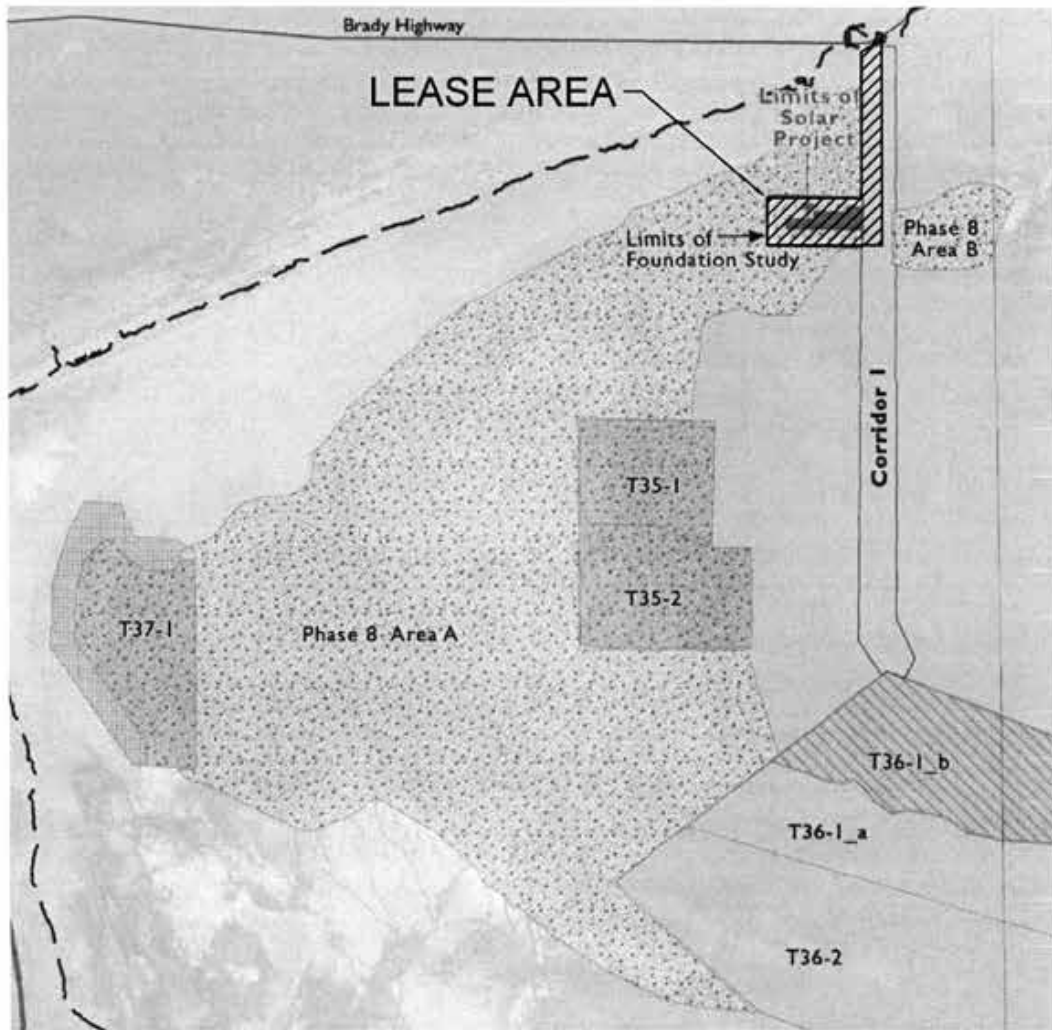
END OF DESCRIPTION



*Patrick R. Maddock*  
6-5-13

NO SCALE

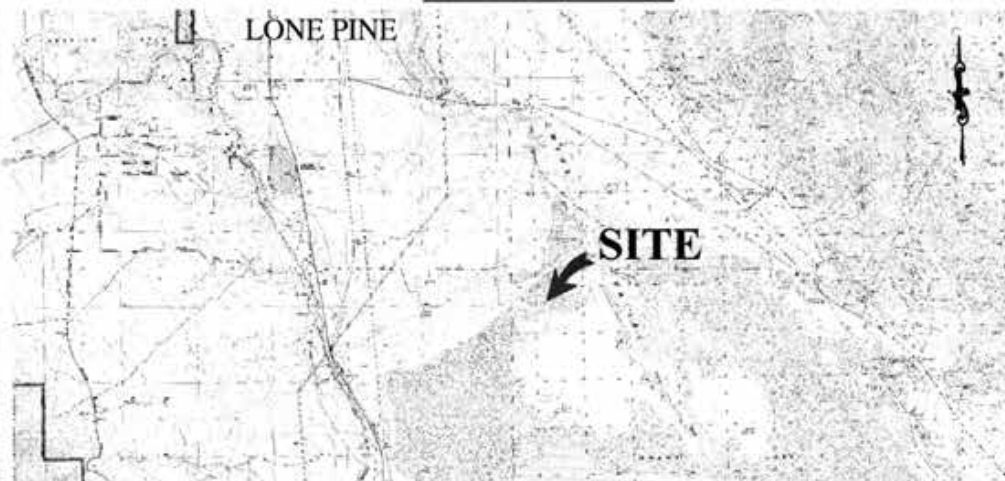
# SITE



### SOLAR PROJECT, OWENS LAKE

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

# Exhibit B

W26685  
 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 C: Mitigation Monitoring Program

| Potential Impact                      | Mitigation Measure   | Location     | Monitoring/Reporting Action | Agency Responsible | Timing                           |
|---------------------------------------|--|--------------|-----------------------------|--------------------|----------------------------------|
| Impacts to Sensitive Wildlife Species | <b>MM BIO-1. Construction Worker Education Program.</b> To minimize potential direct impacts to snowy plover from construction activities, the Los Angeles Department of Water and Power (LADWP) shall continue the construction worker education program consistent with the previous approach and per California Department of Fish and Wildlife (CDFW) recommendations. The program shall be based on snowy plover identification, basic biology and natural history, alarm behavior of the snowy plover, and applicable mitigation procedures required of LADWP and construction personnel. The program shall be conducted by a biologist familiar with the biology of the snowy plover at Owens Lake. The education program shall explain the need for the speed limit in the snowy plover buffer areas and the identification and meaning of buffer markers. All construction, operation, and maintenance personnel working within the Project area shall complete the program prior to their working on the lake bed. | Project area | Compliance monitoring       | LADWP              | Prior to construction            |
|                                       | <b>MM BIO-2. Preconstruction Surveys for Snowy Plover.</b> To minimize potential direct impacts to snowy plover within the Project area due to construction activities, the Los Angeles Department of Water and Power (LADWP) shall conduct a preconstruction survey for snowy plover in all potential snowy plover habitat prior to any construction activity that is performed during the snowy plover breeding season (March 15 to August 15). Preconstruction surveys shall be performed no more than 7 days prior to the start of ground-disturbing activities. A 200-foot buffer shall be placed around all active snowy plover nests that are discovered within the construction area. This buffer shall  | Project area | Compliance monitoring       | LADWP              | Prior to and during construction |



Exhibit C: Mitigation Monitoring Program

| Potential Impact | Mitigation Measure   | Location     | Monitoring/ Reporting Action | Agency Responsible | Timing                              |
|------------------|--|--------------|------------------------------|--------------------|-------------------------------------|
|                  | <p>protect the plover nest from both destruction and construction noise. Green-colored stakes of less than 60 inches in height shall be used to mark buffer edges, with stakes spaced at approximate cardinal directions. Maps of snowy plover nest locations shall be posted at the construction office and made available to all site personnel. The activity of the nest shall be monitored by a biological monitor, as per existing guidelines for the North Sand Sheet and Southern Zones dust control projects and any revisions to the monitoring protocol that have been approved by the California Department of Fish and Wildlife (CDFW). Active snowy plover nests shall be monitored at least weekly. The nest buffer shall remain in place until such time as the biological monitor determines that the nest is no longer active and that fledglings are no longer in danger from proposed construction activities in the area. Buffers shall be more densely marked where they intersect Project-maintained roads. Vehicles shall be allowed to pass through nest buffers on maintained roads at speeds less than 15 miles per hour, but shall not be allowed to stop or park within active nest buffers. Permitted activity within the nest buffer shall be limited to foot crews working with hand tools and shall be limited to 15-minute intervals, at least one hour apart, within a nest buffer at an one time.</p> |              |                              |                    |                                     |
|                  | <p><b>MM BIO-3. Snowy Plover Nest Speed Limit.</b> To minimize potential direct and cumulative impacts to snowy plover and other sensitive biological resources from vehicles construction activities, the Los Angeles Department of Water and Power (LADWP) shall implement a speed limit of 30 miles per hour within all active construction areas on Owens Lake during construction of dust control measures.</p>   | Project area | Compliance monitoring        | LADWP              | During construction and operations. |

Exhibit C: Mitigation Monitoring Program

| Potential Impact | Mitigation Measure   | Location     | Monitoring/Reporting Action | Agency Responsible | Timing                              |
|------------------|--|--------------|-----------------------------|--------------------|-------------------------------------|
|                  | Speed limits shall be 15 miles per hour within active snowy plover nest buffers. Designated speed limits for other construction areas outside of active nest buffers shall be maintained at 30 miles per hour where it is determined to be safe according to vehicle capabilities, weather conditions, and road conditions. Site personnel shall be informed daily of locations where active nest buffers overlap with roads in the construction area. Signs shall be posted that clearly state required speed limits. Speed limit signs shall be posted at all entry points to the lake. The number of speed limit signs shall be kept at a minimum near active snowy plover nest areas to reduce potential perches for raptors and other Snowy Plover predators and shall be outfitted with Nixalite or the functional equivalent if greater than 72 inches in height at entry points to the lake and 60 inches in height by active snowy plover nest areas. |              |                             |                    |                                     |
|                  | <b>MM BIO-4. Potential Predator Perches.</b> To reduce potential perches for raptors and other snowy plover predators, any equipment more than 6 feet (or 72 inches) high shall be outfitted with Nixalite or the functional equivalent.   | Project area | Compliance monitoring       | LADWP              | During construction and operations. |
|                  | <b>MM BIO-5. Lighting Best Management Practices.</b> To minimize indirect impacts to nesting bird species associated with Project lighting during construction activities, the Los Angeles Department of Water and Power (LADWP) shall institute all best management practices to minimize lighting impacts on nocturnal wildlife consistent with previous requirements and California Department of Fish and Wildlife (CDFW) recommendations. If night work is deemed necessary, then construction crews shall make   | Project area | Compliance monitoring       | LADWP              | During construction                 |

Exhibit C: Mitigation Monitoring Program

| Potential Impact                                   | Mitigation Measure  | Location        | Monitoring/Reporting Action | Agency Responsible | Timing              |
|--|---|-----------------|-----------------------------|--------------------|---------------------|
|  | every effort to shield lighting on equipment downward and away from natural vegetation communities or playa areas, and especially away from known nesting areas for snowy plovers during the nesting season (March to August).  |                 |                             |                    |                     |
| Impacts to Historical and Archaeological Resources | <b>MM CUL-1. Archaeological Monitoring.</b> During earthwork necessary for power line installation in the Corridor 1 Road, a qualified archaeological monitor shall be present. The Lone Pine Paiute-Shoshone tribe shall be contacted prior to the start of Project construction. Qualified Lone Pine Paiute-Shoshone cultural resources monitors shall be afforded an opportunity to be present during earthwork and excavation activities associated with Project construction.  | Corridor 1 Road | Field monitoring            | LADWP              | During construction |
|  | <b>MM CUL-2. Unanticipated Discoveries.</b> If previously unrecorded cultural resources are encountered during the Project, all work shall cease within 100 feet of the discovery until the find can be evaluated by a qualified archaeologist. Work shall not resume until the discovery has been evaluated and the recommendations of a qualified archaeologist have been implemented.  | Project area    | Compliance monitoring       | LADWP              | During construction |
| Impacts to Paleontological Resources               | <b>MM CUL-3. Power Line Installation Paleontological Monitoring.</b> During earthwork necessary for power line installation in the Corridor 1 Road, a paleontological monitor shall be present. The monitor may be a qualified paleontological monitor or a cross-trained archaeologist, biologist, or geologist working under the supervision of a qualified principal paleontologist. If paleontological materials are discovered that are significant or potentially significant, then the following would apply: data recovery and analysis, preparation of a data recovery report or other reports, and accession of recovered | Corridor 1 Road | Field monitoring            | LADWP              | During construction |

*Exhibit C: Mitigation Monitoring Program*

| Potential Impact                | Mitigation Measure  | Location     | Monitoring/Reporting Action | Agency Responsible | Timing              |
|---------------------------------|---|--------------|-----------------------------|--------------------|---------------------|
|                                 | fossil material at an accredited paleontological repository (e.g., the University of California's Museum of Paleontology).  |              |                             |                    |                     |
| <b>Impacts to Human Remains</b> | <b>MM CUL-4. Human Remains.</b> In the unexpected event that human remains are discovered, the Inyo County Coroner shall be contacted, the area of the find shall be protected, and provisions of State California Environmental Quality Act (CEQA) Guidelines Section 15064.5 shall be followed. | Project Area | Compliance monitoring       | LADWP              | During construction |