Great Basin Unified Air Pollution Control District = Application for ROW Grant
157 Short St., Suite 6
Bishop, CA 93514

Right-of-Way Granted
Exempt from Rent

Background

On March 26, 2014 the Great Basin Unified Air Pollution Control District filed an application for a right-of-way (ROW) for the construction, operation, maintenance, and termination of a dust control project in the Keeler Dunes under the authority of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976 (90 Stat. 2744, 43 U.S.C. 1701), as amended. The proposed ROW is located in the Keeler Dunes, along the eastern shoreline of Owens Lake in Inyo County, California.

The goal of the dust control project is to reduce dust emissions from the Keeler Dunes to a level that meets National Ambient Air Quality Standards and California State standards for particulate matter (PM10) air pollution. To that end, the project will use straw bales and native vegetation in order to stabilize the dune surface.

Project construction on public land will require the placement of straw bales, planting of native vegetation, and the temporary establishment of three staging areas, all-terrain vehicle (ATV) access routes totaling approximately 2 miles, and an above ground irrigation system about 48,000 feet in length comprised of a main supply line with lateral lines every 150 to 160 feet across the project footprint. A portion of the pipeline will be placed under California State Highway 136 and connected to the Keeler community water well. Temporary project elements will be removed after three years, at which point it is anticipated that a natural, self-sustaining vegetated dune community will be established and will mitigate PM10 emissions.
The application for the right-of-way over public land is generally located in:

Mount Diablo Base and Meridian, California,
   T. 16 S., R. 37 E.,
   Section 25,
   S1/2 of the NE1/4, E1/2 of the NW1/4,
   E1/2 of the SW1/4, SE1/4;
   T. 16 S., R. 38 E.,
   Section 30,
   S1/2 of Lot 2 of the SW1/4;
   Section 31,
   S1/2 of Lot 1 of the NW1/4,
   Lot 2 of the NE1/4,
   Lot 1 of the SW1/4,
   N1/2 of the SE1/4.

Amounting to 144.5 acres, more or less, of public land.

**Decision**

Under the authority of the Federal Land Policy and Management Act (FLPMA) of October 21, 1976, Title V (90 Stat. 2776, 43 U.S.C. 1761), as amended, I hereby issue Right-of-Way (ROW) Grant CACA 054155 to the Great Basin Unified Air Pollution Control District (District) for the construction, operation, maintenance, and termination of a dust control project on public land in the Keeler Dunes in Inyo County, California. The ROW will cover 144.5 acres of public land. Approximately 17 acres within the ROW are reserved for phased treatment, if needed, due to sensitive environmental resource concerns. If project effectiveness monitoring indicates that treatment of the reserved area is required to achieve minimum air quality standards and/or to protect sensitive environmental resources, the District shall consult with the BLM and other affected interests to determine the appropriate treatment measures to be applied. No treatment in the reserved area may occur without subsequent written authorization from the BLM authorized officer. A map of the reserved area will be maintained on file at the BLM Bishop Field Office and is incorporated into this ROW by reference.

The ROW is issued with all project design features, best management practices, and other minimizing measures (mitigations) related to Alternative 5 as described and analyzed in Environmental Assessment (EA) DOI-BLM-CAC-070-2014-0023-EA. Those measures are hereby applied to the Grant document. The ROW Stipulations described as Exhibit A and Exhibit B, and Exhibit C (Map), all dated August 11, 2014 are also hereby applied and are attached to the Grant document.

The ROW is issued for 3 years + 4 months and is renewable. The ROW will expire on December 31, 2017. The ROW is determined to be exempted from rent per regulation at 43 CFR 2806.14(a)(2).
In addition, the District must post a reclamation and rehabilitation bond in the amount of $120,000.00 (One Hundred and Twenty Thousand Dollars and 00 Cents) for the term of the ROW Grant or until such a time that the BLM authorized officer determines that the bond is no longer needed.

I have reviewed the Keeler Dunes Dust Control Project Final Environmental Impact Report/Environmental Assessment. The EA is labeled as DOI-BLM-CAC-070-2014-0023-EA. I have chosen Alternative 5 with all project design features, best management practices, and other minimizing measures (mitigations) related to Alternative 5. I have added standard ROW stipulations (Exhibit A). I have also highlighted key stipulations from the EA and added additional stipulations recommended by BLM staff specialists based on the environmental review and my consultation with affected tribal interests (Exhibit B). Although the environmental review for Alternative 5 covered 194 acres, only 144.5 acres of this total is public land. The remainder of the area is land owned and managed by the City of Los Angeles Department of Water and Power.

Alternative 5, with all the requirements and stipulations summarized above, is the ROW being granted.

Based on my review of the environmental analyses, I have determined that implementation of the selected alternative (Alternative 5), when constructed according to all required stipulations outlined herein, does not constitute a major federal action that will significantly affect the quality of the human environment. I issued a Finding of No Significant Impact (FONSI) for the selected alternative with full consideration of all required stipulations on August 15, 2014; therefore, an Environmental Impact Statement is not required and will not be prepared.

This action is subject to the Bishop Resource Management Plan (RMP), approved March 25, 1993 and is within the Owens Lake Management Area. I have reviewed the Bishop RMP and determined that the selected alternative (Alternative 5), when constructed according to all required stipulations outlined herein, does conform to the terms and conditions of the applicable land use plan as defined at 43 CFR 1601.0-5(b) and as required by 43 CFR 1610.5-3(b).

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

**Rationale**

The environmental review for the Keeler Dunes dust control project consisted of a combined Environmental Impact Statement (EIR)/Environmental Assessment (EA). The Final EIR/EA is the Draft EIR/EA as amended by Volume IV - Clarifications and Revisions to the Draft Environmental Impact Report/Environmental Assessment. The Keeler Dunes dust control project right-of-way (ROW) application was analyzed under the EA. Six action alternatives and a No Action alternative were analyzed in detail.

In general, the action alternatives ranged from 194 acres to 214 acres where the acreage totals included both BLM administered public land and Los Angeles Department of Water and Power
(LADWP) land. The proposed dust control measures for all the action alternatives included the installation of straw bales and associated planting of native vegetation. Straw bales would be placed on the ground surface, and next to the bales native vegetation would be planted and then watered to increase survivorship. The action alternatives varied by the amount of straw bales and native vegetation used, pipeline coverage, water application methods, use of all-terrain vehicles (ATVs), water delivery methods, storage tanks, and construction/watering travel mileage. The minimum control efficiency for the action alternatives varied from 85% to 95% based on the amount and siting of straw bales and native vegetation proposed for use within the project area. Siting of dust control elements (straw bales and plants) within the action alternatives strived to minimize impacts to potentially affected resources. All the action alternatives also included project design features, best management practices, and other measures (mitigations) needed to avoid and/or minimize resource impacts.

In total, the environmental review included the identification, explanation, and resolution of any potentially significant effects on the human environment that would result from implementation of any of the action alternatives considered for the construction, operation, maintenance, and termination of the proposed straw bale and native vegetation dust control project. The environmental review also fully considered the effects on the human that would result from no action.

A number of alternatives were considered but rejected. The Keeler Dunes source area for dust emissions is characterized as an open, sparsely vegetated area containing active sand dunes and sand sheets with known sensitive biological and cultural resources. Therefore, any reasonable alternative needed to avoid and/or minimize impacts to these sensitive environmental resources. Best Available Control Methods (BACMs) previously used on the Owens Lake lakebed include gravel, shallow flooding, and managed vegetation. Each of these BACMs requires substantial ground disturbance that would be incompatible with existing BLM land use plan guidance, and/or applicable federal law or policy, and/or other objectives for the project area which include conservation and protection of sensitive environmental resources that characterize the site. Therefore, potential alternatives using Owens Lake lakebed BACMs were rejected from detailed consideration during the environmental review.

Three other potential alternatives were also considered but rejected: 1) geotextile fabric and gravel; 2) excavation and removal; and 3) spraying emissive sand deposits. Geotextile fabric and gravel would result in wildlife habitat loss and adverse impacts to cultural resources from surface disturbance and/or direct physical impact. Excavation and removal of sand deposits would result in significant impacts to biological resources, cultural resources, and air quality. This alternative was also considered to be infeasible due to the limited effectiveness and feasibility of removing all sand that might contribute to fugitive dust emissions. Spraying emissive sand deposits would require a long-term water source, a permanent water conveyance and spraying system, and continued water system maintenance. In addition, the long-term use of water could negatively impact cultural resources because frequent water applications would likely result in physical and/or chemical damage to subsurface cultural resources.
Public comments were solicited and received on the draft EIR/EA. A notice of availability of the Draft EIR/EA was sent to federal, state, regional, and local agencies, to local Native American tribes, and to numerous individuals and private organizations. The notice was also posted at four libraries, and in Keeler. Notice of DEIR/EA availability was also published in the Inyo Register. Two public workshops were also convened. Comment letters were received from the California Native American Heritage Commission (CNAHC), the California Department of Transportation (Caltrans District 9), and the LADWP. Verbal comments were received from the Lone Pine Paiute-Shoshone and the Big Pine Paiute tribes. All comments were considered during the environmental review. Volume IV of the Final EIR/EA incorporates edits and corrections based on comments received, and also includes full comment letters and responses.

The CNAHC highlighted agency responsibilities for Native American consultation and consideration of cultural resources, mitigation measures, and the laws encompassing cultural resources and tribal interests. Caltrans District 9 comments focused on potential impacts to California State Highway 136 including access to the site from the highway, encroachment permits related to the highway, storm-water runoff affecting the highway, and traffic control. Document edits and corrections were also noted. LADWP comments centered on project development on City of Los Angeles property, access road use, air modeling, and Owens Lake Dust Mitigation BACMs. The LADWP also commented on the straw bale/vegetation method, groundwater pumping at the Fault Test well, and project status at the end of 3 years. The LADWP stated support for protection of sensitive environmental resources and broadening the project objective. The LADWP also stated concern that the project would not provide sufficient control within the Owens Valley planning area for National Ambient Quality Standards and that the straw bale test duration was not fully discussed in the DEIR. Various document edits and corrections were also listed. Tribal concerns were focused on the sensitive resources known to exist throughout the dunes, potential impacts to sensitive resources from straw bale movement and bale breakdown over time, placement of bales over cultural and other sensitive sites, and plant predation. Additional tribal concerns were that the whole project area would be affected even though not totally covered by bales, the effect of lake bed well testing on the fault test well, and the effect of irrigation material.

On October 24, 2011 a certified letter was sent to the Tribal Chairs of the Lone Pine Paiute-Shoshone Reservation, the Fort Independence Indian Colony, the Big Pine Paiute Reservation, and the Bishop Paiute Reservation inviting them to participate in government to government consultation regarding the proposed Keeler Dunes Dust Mitigation Project with the BLM. Follow-up phone calls three weeks later revealed that both the Lone Pine Paiute-Shoshone and the Big Pine Paiute wished to discuss the proposed project. This resulted in a series of meetings in early 2012. Consultation continued during regularly scheduled protocol meetings with both tribes.

In late 2013, the project was modified substantially and a new round of certified letters was sent to the Tribal Chairs and the Tribal Historic Preservation Officers (THPOs). These letters were sent to the previously identified tribal groups and to the Timbisha-Shoshone Tribe. Both the Lone Pine and Big Pine tribes asked for meetings. These meetings were conducted in February of 2014. During these consultations the Keeler Dunes were identified as a tribally sensitive area.
of concern. The Lone Pine Paiute-Shoshone raised concern with any project activities occurring on or near archaeological features. They specifically identified areas of concern in the southern project area and asked that these areas be avoided during project implementation. The Big Pine Paiute Tribe also mentioned this concern but stated that they would defer to the Lone Pine THPO.

As a result of public comments and tribal consultation, the DEIR/EA was amended to incorporate various edits, corrections, and comments resulting in the Final EIR/EA. Some of the comments were specific to certain alternatives and did not apply to the selected alternative.

As the basis for my decision, I have selected Alternative 5 with all project design features, best management practices, and other minimizing measures (mitigations) related to this alternative as described and analyzed in EA DOI-BLM-CAC-070-2014-0023-EA. The selected alternative covers 194 acres; however, only 144.5 acres of this total is public land. The remainder of the project area is land owned and managed by the LADWP. This is also the alternative selected by the District for implementation on LADWP land.

The EA states in Volume I, 2.1.5.2 Project Elements, E. Construction Scenario Common to All Alternatives, Schedule, Page 2-16: “... In an effort to avoid and minimize impacts to the emissive areas that contain the most sensitive environmental resources, the District has agreed to install the straw bales and native plants on the 177 acres with the lesser level of environmental sensitivity. If attainment is achieved with 177 acres, the additional 17 acres specified for the proposed project/proposed action and Alternatives 1, 2, 3, 4, and 5 would be delayed until the monitoring results confirm for a period of three consecutive years that treatment is not required to achieve attainment or that monitoring demonstrates that exceedances are occurring that warrant treatment. The proposed project/proposed action and proposed project/proposed action alternatives were analyzed on the full build-out scenario, as a reasonable worst case scenario, given the contingent nature of the ability to avoid the environmentally sensitive areas dependent on the outcome of the monitoring data...”. This 17 acre delayed or phasing concept was also stated in the Executive Summary, ES.7 Issues to be Resolved, paragraph 2, Page ES-21.

Although I have selected Alternative 5 as the basis for my decision, I have also decided to reserve 17 acres for phased implementation, if needed, to achieve minimum air quality standards and/or to protect sensitive environmental resources. This reservation originates from the language in the EA cited above and from tribal consultation and tribal comments. The tribes have stated a high level of concern for potential impacts to cultural resources located within the project area and specifically the reserved 17 acres. 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 am requiring the following stipulation: “Approximately 17 acres within the right-of-way (ROW) are reserved for phased treatment, if needed, due to sensitive environmental resource concerns. If project effectiveness monitoring indicates that treatment of the reserved area is required to achieve minimum air quality standards and/or to protect sensitive environmental resources, the District shall consult with the BLM and other affected interests to determine the appropriate treatment measures to be applied. No treatment in the reserved area may occur without subsequent written authorization...”
from the BLM authorized officer. A map of the reserved area is on file at the BLM Bishop Field Office and incorporated into this ROW by reference.”

I have also decided to require a $120,000 reclamation/rehabilitation bond in order to ensure that all facilities are removed from the project site when no longer needed. Due to the sensitive nature of the project site, removal of the facilities must be guaranteed. The bond is being required per 43 CFR 2805.12(g) which provides that: “BLM may require a bond, an increase or decrease in the value of an existing bond, or other acceptable security at any time during the term of the grant.”

All project design features, best management practices, and other minimizing measures (mitigations) related to Alternative 5 as described and analyzed in the 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 stipulations that the BLM is highlighting for emphasis and to provide further detail. Most of the stipulations listed in Exhibit B are excerpts from project design features and best management practices described in the EA.

The primary adverse effects that will result from implementation of the selected alternative are restricted to: 1) Short-term disturbance and displacement of wildlife in the immediate project vicinity as the result of noise and human activity associated with project installation and maintenance; 2) Removal of vegetation associated with the construction of staging areas and access routes, followed by restoration including de-compaction, broadcast seeding and raking upon project completion; and 3) Temporary restriction of public access during project construction. These impacts will be short-term and no measurable long-term detrimental effects are expected. Overall, the magnitude of the predicted adverse effects are limited and restricted to the local scale.

In contrast, the primary beneficial effect that will result from implementation of the selected alternative is a 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. The selected alternative will meet the primary goal of the project which is to attain both the NAAQS and the California PM10 standards in the communities of Keeler and Swansea. Overall, the magnitude of the predicted beneficial effects are limited and restricted to the local scale with some regional air quality benefits possible.

As described in my Finding of No Significance (FONSI) for this project, none of the above effects are considered significant in either context or intensity. My finding was dependent on applying all the design features, best management practices, and other minimizing measures (mitigations) described and analyzed in the EA for the selected alternative as supplemented by Exhibit A and Exhibit B.

I did not choose the No Action alternative because it would not meet the District’s stated purpose of reducing dust emissions from the Keeler Dunes to a level that meets NAAQS and California PM10 standards for air pollution. Under the No Action alternative there would be no dust
control measures applied and the District would be unable to reduce PM10 emissions from the Keeler Dunes. Although this alternative would result in no resource impacts, the selected alternative would result in only minimal resource impacts and is an acceptable alternative for dust control.

I did not choose the Proposed Project/Proposed Action alternative, or Alternatives 1 thru 4 as described in DOI-BLM-CAC-070-2014-0023-EA because these alternatives would all result in greater impacts to the human environment than the selected alternative (Alternative 5).

The Proposed Project/Proposed Action alternative would require 8 times the amount of total travel miles and twice the number of days for plant watering when compared to the selected alternative. These results would occur due to water truck hauling from the Fault Test well to storage tanks and then the use of ATVs for delivery of water across the project area. All of which would increase surface disturbance on the project site, increase fugitive dust emissions from dirt road and access route travel, increase exhaust emissions, and increase visual impacts due to truck/ATV water hauling activity and the presence of storage tanks.

Alternatives 1 and 2, which would also use water from the Fault Test well, would result in comparative impacts similar to those described above for the Proposed Project/Proposed Action, but surface disturbance impacts would be even greater because a higher number of straw bales and planted vegetation would be sited within the project area.

Alternative 3, which would also use the Fault Test well but pump water from storage tanks to a pipeline irrigation system, would require 1.6 times greater total travel miles with the same number of irrigation days, and number of plants and straw bales when compared to the selected alternative. Impacts would be higher due to water truck hauling (exhaust and fugitive dust emissions) and the use of storage tanks (visual).

Alternative 4 would also use the Fault Test well, but water haul trucks would be parked on the highway and connected to a pipeline irrigation system. This alternative would require 1.6 times greater total travel miles with the same irrigation days and number of plants and straw bales as the selected alternative. Impacts would be higher due to truck water hauling (exhaust and fugitive dust emissions) and from parking water trucks on California State Highway 136 and connecting to a pipeline irrigation system (visual impacts).

This action is subject to the Bishop Resource Management Plan (RMP), approved March 25, 1993 and is within the Owens Lake Management Area. Consistent with the Bishop RMP, the selected alternative has been designed to protect the quality of scenic, ecological, environmental, air, atmospheric, and archeological values of the Keeler Dunes. PM10 fugitive dust emission will be reduced through a stabilized dune formation using native vegetation. Cultural and other sensitive resources will be avoided and protected via pre-construction surveys to be completed with the assistance of BLM staff and tribal monitors that will be on site during final project design layout and construction. The unique and important vegetation community providing wildlife habitat within the Keeler Dunes will be enhanced upon completion of the dust mitigation project. Protection of the dune environment will be achieved through noxious/invasive species
monitoring and mitigation if needed. The selected alternative will also meet Bishop RMP Visual Resource Management (VRM) Class III standards for the Owens Lake Management Area.

Public comments were received and Native American tribal consultation was conducted, all of which were fully considered and used to design the selected alternative and formulate my decision.

Based on the above, I have decided to issue a three year (3) + four (4) month renewable ROW (CACA 054155) to the Great Basin Unified Air Pollution Control District for implementation of a straw bale and native vegetation dust control project on public land in the Keeler Dunes in Inyo County, California. My decision incorporates all project design features, best management practices, and other minimizing measures (mitigations) related to Alternative 5 as described and analyzed in EA DOI-BLM-CAC-070-2014-0023-EA. My decision also incorporates standard ROW stipulations (Exhibit A) and highlights key stipulations from the EA and additional stipulations recommended by BLM staff specialists based on the environmental review and my consultation with affected tribal interests (Exhibit B).

Authorization of the selected alternative will meet the intended purpose of the applied for ROW, which is to allow the District to construct, operate, maintain, and terminate a straw bale and native vegetation dust control project on public land in the Keeler Dunes. Implementation of the selected alternative will improve air quality in the communities of Keeler and Swansea by reducing PM10 emissions from the Keeler Dunes.

I have given full consideration to the protection of sensitive environmental resources and reserved 17 acres for phased implementation, if needed, to achieve minimum air quality standards and/or to protect sensitive environmental resources. I have also required a $120,000 reclamation/rehabilitation bond pursuant to 43 CFR 2805.12(g) due to the sensitive nature of the project area in order to guarantee that all facilities are removed from the project site when no longer needed.

It is in the public interest to issue Right-of-Way Grant CACA 054155 to the Great Basin Unified Air Pollution Control District in order to construct, operate, maintain, and terminate a straw bale and native vegetation dust control project in the Keeler Dunes in Inyo County, California. This project will reduce dust emissions from the Keeler Dunes to a level that meets both National Ambient Air Quality Standards (NAAQS) and California State standards for particulate matter (PM10) air pollution, while protecting sensitive resources.

Administrative Remedies

This decision may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR, Part 4 and the enclosed Form 1842-1. If an appeal is taken, your notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden of showing that the decision being appealed is in error.
If you wish to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2801.10 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 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 each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (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 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.

_/s/ Steven Nelson_
_______________________
Steven Nelson
Bishop Field Manager

Enc: Appeal Form 1842-1
      Grant Document CACA 054155