

**BEFORE THE BOARD OF SUPERVISORS, COUNTY OF INYO**

**RESOLUTION NUMBER 2005-**

**A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF INYO, STATE OF CALIFORNIA, CERTIFYING THE FINAL EIR/EIS PREPARED PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT FOR THE LOWER OWENS RIVER PROJECT, ADOPTING FINDINGS, MITIGATION MEASURES, A STATEMENT OF OVERRIDING CONSIDERATIONS AND A MITIGATION MONITORING AND REPORTING PROGRAM FOR THE PROJECT**

WHEREAS, the City of Los Angeles Department of Water and Power (“LADWP”) and the County of Inyo (“County”) committed to implement the Lower Owens River Project (“LORP”) in 1991 as part of the Long Term Water Agreement between the City of Los Angeles and the County of Inyo (“Water Agreement”); and,

WHEREAS, as part of the approval of the 1991 Environmental Impact Report (“EIR”), LADWP adopted the LORP as a mitigation measure for environmental impacts that were difficult to quantify or mitigate directly and that were caused by LADWP’s groundwater pumping and surface water management practices in the Owens Valley from 1970 to 1990; and,

WHEREAS, challenges to the legal adequacy of the 1991 EIR were resolved in 1997 with the execution of a Memorandum of Understanding (“MOU”) between LADWP, the County, the California Department of Fish and Game, the California State Lands Commission, the Sierra Club and the Owens Valley Committee. The MOU augmented the description of the LORP contained in the Water Agreement, and required that an EIR on the LORP be jointly prepared by LADWP as the lead agency under CEQA and by the County as a CEQA responsible agency; and,

WHEREAS, the MOU requires LADWP and Inyo County to direct and assist Ecosystem Sciences in the preparation and implementation of a “LORP Plan” to describe the management and/or development of the four physical features of the LORP: (1) Lower Owens River Riverine-Riparian Ecosystem; (2) Owens River Delta Habitat Area; (3) Off-River Lakes and Ponds; and (4) Blackrock Waterfowl Habitat Area; and,

WHEREAS, the 1991 EIR, the Water Agreement, and the MOU require that an EIR be prepared on the LORP in compliance with the California Environmental Quality Act (CEQA); and,

WHEREAS, the MOU directed that the LORP EIR be jointly prepared by LADWP as lead agency and Inyo County as responsible agency; and,

WHEREAS, The Water Agreement requires the County to pay one half of the initial construction costs of the project, up to a limit of \$3.75 million, and once the LORP has been constructed and completed, to jointly operate and fund the non-pumpback portions of the project (these “post-implementation costs include the costs of operation and maintenance, monitoring and reporting, and the implementation of adaptive management and mitigation measures); and,

WHEREAS, because of financial commitments of the County to the LORP contained in the Water Agreement, the County sought federal funds to assist it in fulfilling its financial obligations. In 1999, the County obtained the first of several grants administered by the United States Environmental Protection Agency (“EPA”) to cover a portion of the County’s financial obligations for the LORP. The EPA grant

funds triggered an obligation under the National Environmental Policy Act (“NEPA”) to prepare an Environmental Impact Statement (“EIS”) that addresses the LORP; and,

WHEREAS, EPA, LADWP, and Inyo County worked together to prepare a combined federal and state document called an EIR/EIS and a Draft EIR/EIS on the LORP was released in released in November 2002; and

WHEREAS, EPA, LADWP, and Inyo County worked together to jointly prepare the LORP Final EIR/EIS from January 2003 through May 10, 2004, when LADWP, in order to comply with a court-mandated deadline of June 23, 2004 for release of the Final EIR/EIS, assumed full responsibility for its completion; and

WHEREAS, the following actions were taken during the preparation of the EIR/EIS:

- 1) Pursuant to the CEQA Guidelines, a Notice of Preparation (“NOP”) was issued by LADWP on January 14, 2000 and sent to five federal agencies, eight state agencies, 11 local agencies, eight tribes, five environmental groups, and over 50 individuals, organizations, and other interested parties. A public scoping meeting was conducted on February 16, 2000 in Lone Pine. Approximately 40 people attended the scoping meeting and provided verbal comments. Fourteen letters of comment in response to the NOP and NOI were received.
- 2) Following the release of the Draft EIR/EIS on November 1, 2002, a public review and comment period began which ended on January 14, 2003. Pursuant to State CEQA Guidelines, the Draft EIR/EIS was mailed to a total of nine agencies (including all responsible and trustee agencies), organizations, and interested individuals. Copies of the DEIR/EIS were made available for public review at the LADWP office in Bishop, four local libraries (Main Library in Independence, Bishop Branch, Lone Pine Branch, and Big Pine Branch), and on the LADWP website. A total of 241 written comment letters were received on the DEIR/EIS. In addition, public meetings were held in Lone Pine, California, on December 4, 2002 and in Bishop, California on December 5, 2002 to receive oral comments on the DEIR/EIS. A total of 19 people provided oral comments at the two meetings.
- 3) Following the preparation of the Final EIR/EIS, copies of the document were provided to all commenting agencies. In accordance with State CEQA Guidelines, the Final EIR/EIS contains responses to the written and oral comments received during the public comment period.

WHEREAS, on July 22, 2004, the LADWP Board of Water and Power Commissioners certified the Final EIR/EIS (“EIR/EIS”), adopted the mitigation measures identified in the EIR/EIS, adopted a Statement of Overriding Considerations for the LORP, approved the LORP, and adopted a Mitigation Monitoring and Reporting Program for the LORP; and,

WHEREAS, the LORP approved by LADWP is comprised of the four physical features and the monitoring/adaptive management and the land management programs; the four physical features and the monitoring/adaptive management and land management programs are described below:

1. The Lower Owens River Riverine-Riparian System. The overall objective of this feature is rewatering the river to establish healthy aquatic and riparian habitats of the river from the site of the existing Los Angeles Aqueduct Intake (“Intake”) to a proposed pump station, located at the upper end of the Owens River Delta. A continuous flow of approximately 40 cubic feet per second (cfs) will be established and maintained in the approximately 62 miles of river channel. As part of the project, it will be necessary to clear sediment and stands of vegetation from the river bed from the Intake for approximately two miles below the Intake. Water may also be released to the river through several of the existing spillgates along the Los Angeles Aqueduct (“LAA”) downstream of the Intake to assure the required flow is maintained. A seasonal habitat

flow (with a total flow ranging from 40 to 200 cfs depending on the predicted amount of annual Owens Valley runoff) will also be released to the river from the Intake each spring.

2. The Owens River Delta Habitat Area, including a pump station with a maximum capacity of 50 cfs. The pump station will be constructed on approximately a 1.25-acre site located between Keeler Bridge and the Lower Owens River Delta. The pump station will recover most of the base flow and some of the seasonal habitat flow for export to Los Angeles in the LAA or for use in LADWP's Owens Lake Dust Project. An annual average of between six and nine cfs and the portion of the seasonal habitat flow in excess of 50 cfs will be released to the delta to maintain the vegetated wetlands that exist at the time of project initiation, and to maintain and enhance existing habitat, consisting of riparian areas and ponds suitable for shorebirds, waterfowl, and other animals. (Most of the Delta Habitat Area is on State-owned lands, managed by the California State Lands Commission.)
3. The Blackrock Waterfowl Habitat Area. This area covers a total of 2,583 acres and includes four management units, Drew, Waggoner, Winterton, and Thibaut, totaling 1,342 acres. Each year when runoff is average or above, 500 will be flooded. The flooded and adjacent areas will provide nesting, resting, and feeding habitat for waterfowl and many other wildlife species that use the Blackrock area. Physical improvements in the form of berms and ditches will be constructed to manage water conveyance and flooding in the management units so as to achieve the objectives. Additionally, some existing spillgates will be replaced or rehabilitated, and new culverts will be installed where necessary.
4. Off-River Lakes and Ponds. These lakes and ponds were implemented by LADWP and Inyo County as part of the Lower Owens River Rewatering Enhancement/Mitigation Project in the mid-1980s. A permanent water supply was provided to Twin Lakes (Upper and Lower), Goose Lake, Billy Lake, and Thibaut Ponds. A permanent water supply to these surface water features will be continued as part of the LORP. Physical improvements made for the Blackrock Waterfowl Habitat Area will also be used to manage the water supply for these Off-River Lakes and Ponds.
5. Monitoring/Adaptive Management. The LORP includes a long-term monitoring plan for collecting and analyzing data on the progress toward meeting the LORP goals. Using this data, the LORP will be adaptively managed and project management will be modified if data from ongoing monitoring and analysis reveal that such modification is necessary to ensure the attainment of the LORP goals.
6. Land Management. The LORP includes a land management plan for LADWP leases within the LORP area which is designed to complement and facilitate the LORP actions and to comply with the MOU requirements along the river, in the Blackrock Waterfowl Habitat Area, and in the Delta Habitat Area. The land management plan focuses on enhancing native habitat diversity while allowing for sustainable grazing. The plan focuses on riparian areas, irrigated pastures, and areas with sensitive species or habitats. In addition, as part of land management, recreational impacts that prevent attainment of LORP goals will be addressed on an as-needed basis; and,

WHEREAS, under Mitigation Measure PS-1, LADWP and the County are required to enter into an agreement for the Owens Valley Mosquito Abatement Program ("OVMAP") to abate the potential increase in mosquitoes resulting from the LORP. The EIR/EIS states that OVMAP estimates that the cost of implementing Mitigation Measure will be approximately \$109,000.00 per year. The estimated cost of approximately \$109,000.00 a year is a post-implementation cost to be shared equally by LADWP and the County; and,

WHEREAS, under Mitigation Measure V-2, the Inyo-Mono Agricultural Commissioner will develop protocols for monitoring and controlling new infestations of perennial pepperweed and other noxious weeds that may result from the LORP. The Measure provides that a Memorandum of Understanding between the Agricultural Commissioner and LADWP will be entered into that will outline the responsibilities of each agency under the protocols. LADWP will provide \$50,000.00 per year to the

Agricultural Commissioner for the first seven years of LORP implementation to fund this effort. LADWP will also provide \$150,000.00 per year to the Agricultural Commissioner to fund the control of existing perennial pepperweed and other noxious weed populations outside of the LORP area that could serve as seed sources for the LORP area. If the funds to be provided by LADWP are exhausted, and continuation of the control work is required, funding for the work will be a post-implementation cost to be shared by LADWP and the County; and,

WHEREAS, Mitigation Measure V-3 requires the Inyo County Salt Cedar Control Program to implement measures to monitor and treat new saltcedar infestations in the LORP area and to treat existing saltcedar populations in the LORP area. The Measure provides that protocols are to be developed by the Inyo County Salt Cedar Program in cooperation with LADWP for conducting the work. Under the Mitigation Measure, LADWP will provide up to a total of \$1.5 million in matching funds to the County, with a guarantee that at least \$560,000.00 will be provided, to assist in funding the costs of implementing the mitigation measure. If the matching funds are exhausted, and continuation of the salt cedar control work is required, funding for the work will be a post-implementation cost to be shared by LADWP and the County; and,

WHEREAS, after LADWP certified the Final EIR/EIS and approved the LORP on July 22, 2004, EPA announced that the EIS portion of the EIR/EIS was inadequate to satisfy its responsibilities under federal law. The determination by EPA meant that EPA could not release any of the federal grant funds earmarked for the LORP until an EIS acceptable to EPA was prepared, and a "Record of Decision" on the EIS was published by EPA; and,

WHEREAS, pursuant to court order, the County was required to take action with respect to the certification of the EIR/EIS within two weeks of certification of the EIR/EIS by the LADWP Board. Consequently, this Board of Supervisors considered this matter on August 3, 2004. On that date, this Board directed that consideration of certification of the EIR/EIS and consideration of approval of the LORP be deferred until EPA determined whether it would disburse approximately \$5.2 million in federal grant funds to the County. This Board also directed staff to work with EPA and LADWP to: (a) achieve an EIR/EIS that is acceptable to the three agencies, (b) to secure the federal grant funds for the County at the soonest possible time, and (c) to begin construction of the LORP at the soonest possible time; and,

WHEREAS, this Board reconsidered the EIR/EIS and approval of the LORP on August 17, 2004 and again on September 7, 2004, and on each occasion, this Board deferred consideration of the LORP, and provided the same direction to staff as this Board provided on August 3, 2004; and,

WHEREAS, in late 2004, LADWP, the County and EPA commenced a process for completing an EIS on the LORP that would meet EPA's responsibilities under federal law; and,

WHEREAS, on August 8, 2005, in litigation over LADWP's failure to implement the LORP, the Inyo County Superior Court issued an order that includes the following:

- A. An injunction against the use of the Second Los Angeles Aqueduct.
- B. A stay of the injunction pending compliance with conditions that include the following:
  1. A limitation on LADWP's groundwater pumping in the Owens Valley;
  2. A requirement that LADWP recharge the groundwater basin in the Laws area of the Owens Valley;
  3. A requirement that LADWP not reduce uses of water in the Owens Valley;
  4. A requirement that LADWP pay \$5,000 per day commencing on September 5, 2005 into an escrow account established by LADWP and the County until LADWP has established a permanent baseflow of approximately 40 cfs in the LORP;
  5. A requirement that the proceeds of the escrow account only be used to pay the costs of:
    - (1) the Special Master (see 10 below),
    - (2) the County's share of the post-implementation

- costs of the LORP, (3) the cost of monitoring habitat indicator species for a five year period at the direction of the California Department of Fish and Game in an amount not to exceed \$100,000.00, and (4) the costs of the escrow account;
6. A requirement that initial releases of water into the LORP commence by January 25, 2007;
  7. A requirement that a permanent baseflow of approximately 40 cfs be established in the LORP by July 25, 2007;
  8. A requirement that LADWP submit monthly reports concerning its compliance with the Court Order;
  9. A requirement that LADWP submit a revised plan for its groundwater pumping and groundwater recharge operations by September 30, 2005;
  10. The appointment of a Special Master to monitor compliance with the Court Order.
- C. If LADWP fails to comply with the Court imposed conditions, the issuance of a permanent injunction against the use of the Second Los Angeles Aqueduct that is to remain in effect until LADWP establishes a permanent baseflow of approximately 40 cfs in the LORP; and,

WHEREAS, before LADWP can begin construction of the LORP, it must first obtain certain permits from the U.S. Army Corps of Engineers (“Corps”). The Corps must utilize the EIS prepared by EPA to determine the environmental effects of the issuance of its permits. The Corps estimated that its permits would be issued approximately 30 calendar days after the publication of a Record of Decision on the EIS. However, the Corps reported to LADWP that if an EIS were not to be prepared by EPA, the Corps would be able to perform its own analysis of the environmental effects of the issuance of its permits, and would be able to issue the permits in December 2005—several months before the permits could be issued if a LORP EIS were to be prepared; and,

WHEREAS, if EPA grant funds are not used for the implementation of the LORP, there is no need for the EPA to prepare an EIS on the LORP. Earlier this year, to expedite the implementation of the LORP by eliminating the need for the EPA to prepare an EIS, LADWP informed the County that it was willing to forego a \$862,200.00 grant to LADWP from EPA for the LORP, and offered to provide \$5,393,033.00 to the County if the County would forego \$5,393,033.00 in grant funds from EPA for the LORP; and,

WHEREAS, on September 6, 2005, this Board approved an agreement with LADWP whereby the County agreed to forego the \$5,393,033.00 in consideration of the provision of \$5,393,033.00 to the County by LADWP. By letter dated September 20, 2005, the County informed EPA that the County would forego the use of the EPA grant funds for the implementation of the LORP; and,

WHEREAS, because neither LADWP nor the County will be using EPA grant funds to implement the LORP, no EIS on the LORP will be prepared; and,

WHEREAS, following the certification of the EIR/EIS by LADWP, the Sierra Club filed a lawsuit in the Inyo County Superior Court (Case Number S1CVPT04-37217) challenging the legal adequacy of the EIR/EIS. On July 25, 2005, pursuant to a stipulation, the Inyo County Superior Court issued a Judgment in the case that includes the following:

1. A finding by the Court that the portion of the EIR that addresses the impacts of the LORP to the “brine pool transition area” is not adequate under CEQA; however, the Court specifically found the remainder of the EIR that addresses the vast majority of the impacts of the LORP is in compliance with CEQA;
2. Direction to LADWP to prepare a focused environmental analysis that addresses the impacts of the LORP to the “brine pool transition area by February 10, 2006;
3. Direction to LADWP to set aside and vacate the findings by the LADWP Board that, with regard to the “brine pool transition area, . . . impacts to existing aquatic and wetland habitats of the Delta would therefore range from beneficial to less than significant,” and direction to the LADWP

Board to reconsider its findings, or consider new findings, regarding the “brine pool transition area” once LADWP has completed a focused environmental analysis;

4. An injunction preventing LADWP from operation of that portion of the LORP that could affect the “brine pool transition area;” and,
5. Direction to LADWP to proceed with construction of the remainder of the LORP (including the pumpback station); and,

WHEREAS, implementation of the LORP will enhance and improve the environment in the area of the LORP, and will provide compensatory mitigation for some of the adverse impacts of LADWP’s groundwater pumping from 1970 to 1990.

**NOW, THEREFORE, BE IT RESOLVED:**

1. That this Board finds that, in its Judgment in Case Number S1CVPT04-37217, the Inyo County Superior Court found that, except for the portion of the Final LORP EIR/EIS that addresses the impacts of the LORP to the “brine pool transition area,” the EIR/EIS is in compliance with CEQA. This Board further finds that the Inyo County Superior Court has ordered LADWP to prepare a focused supplemental environmental analysis that addresses the impacts of the LORP on the “brine pool transition area,” and has directed LADWP to proceed with the construction and implementation of the remainder of the LORP (including the LORP pumpback station).
2. That this Board finds that the Final EIR/EIS includes all public comments on the DEIR/EIS and responses to the comments. This Board has considered the responses to comments contained in the EIR/EIS and finds that, except for comments and responses that address the impacts of the LORP on the “brine pool transition area,” such responses adequately respond to the issues and concerns raised during the public comment period.
3. That this Board finds that the comments and the responses to comments made during the review period for the EIR/EIS and at the public hearings on the LORP, and other information available concerning the LORP, do not rise to the level of significant new information requiring recirculation or additional environmental review of the LORP pursuant to State CEQA Guidelines.
4. That following review of the Final EIR/EIS, this Board has considered the impacts of the LORP, and has considered the mitigation measures for the LORP, and finds that changes or alterations have been required in, or incorporated into, the LORP, and mitigation measures have been identified, which, except for water quality degradation from initial channel rewatering due to suspension of organic material, and fish kills which may occur due to the water quality degradation, mitigate or avoid significant effects on the environment. This Board adopts the mitigation measures as described and contained in the Final EIR/EIS and in the LORP Mitigation Monitoring and Reporting Program.
5. That, in accordance with CEQA and the State CEQA Guidelines, except for the portion of the EIR/EIS that addresses the impacts of the LORP to the “brine pool transition area,” the Final EIR/EIS sufficiently analyzes the feasible mitigation measures necessary to avoid or substantially lessen the LORP’s potential significant environmental impacts and analyzes a range of feasible alternatives capable of eliminating or reducing these effects, including the “No Project” alternative.
6. That this Board certifies that, prior to taking action, this Board has heard, been presented with, reviewed, and considered the information and data in the Final EIR/EIS.

7. That this Board hereby finds and determines that, except for the portion of the EIR/EIS that addresses the impacts of the LORP to the “brine pool transition area,” the Final EIR/EIS with the adopted mitigation measures and Statement of Overriding Considerations, adequately addresses the LORP and any potential environmental impacts of the LORP.
8. That, except for the portion of the EIR/EIS that addresses the impacts of the LORP to the “brine pool transition area,” this Board certifies that the Final EIR/EIS has been prepared in accordance with the provisions of CEQA and the State CEQA Guidelines.
9. That this Board, upon the exercise of its independent judgment and analysis, approves and adopts each of the “Findings” and the “Statement of Overriding Considerations” set forth in the document titled “*LORP Findings and LORP Statement of Overriding Considerations*” which is Exhibit 1 hereto and is incorporated by reference herein at this point.
10. That this Board hereby declares that, except for the potential alternatives that address the impacts of the LORP to the “brine pool transition area,” it has considered and rejected as infeasible the CEQA alternatives identified in the Final EIR/EIS.
11. That this Board approves and adopts the “Mitigation Monitoring and Reporting Program” for the LORP adopted by the LADWP Board of Water and Power Commissioners on July 22, 2004, which is Exhibit 2 hereto and is incorporated by reference herein at this point.
12. That the Director of the Inyo County Water Department is hereby authorized and directed to file a Notice of Determination that finds that this Board has approved the LORP, that the LORP will not have a significant adverse impact on the environment except for those impacts for which the Board has adopted a Statement of Overriding Considerations, and that the Board has approved a Mitigation Monitoring and Reporting Program for the LORP, and that said Notice of Determination shall be filed with the Inyo County Clerk, the Los Angeles County Clerk, the Los Angeles City Clerk, and the State of California Office of Planning and Research.
13. That based upon the entire record before the Board, including the above findings and all written evidence presented to the Board, except for the portion of the LORP that affects the “brine pool transition area,” the Board hereby approves the LORP and, except for the portion of the LORP that affects the “brine pool transition area,” directs staff to proceed with the joint implementation and funding of the project with LADWP, including the development of required agreements and protocols between LADWP and the County concerning mosquito, deleterious species and salt cedar control, and to consider the issuance of grading and building permits required for the project.
14. That once LADWP has completed, certified and adopted a focused supplemental environmental analysis that addresses the impacts of the LORP on the “brine pool transition area,” as required by the Judgment of the Inyo County Superior Court in case number S1CVPT04-37217, this Board will consider the certification and adoption of the document and/or other appropriate actions of the County of Inyo related to the LORP.
15. That the Clerk of the Board of Supervisors shall be the custodian of the record of proceedings for this project.

ACTIONS PASSED AND ADOPTED THIS 21st DAY OF NOVEMBER, 2005

AYES:

NOES:

ABSTAIN:

ABSENT:

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TED WILLIAMS, Chair  
Inyo County Board of Supervisors

ATTEST:  
RON JULIFF  
Clerk of the Board

By: \_\_\_\_\_  
Pat Gunsolley, Assistant