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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF INYO

SIERRA CLUB and OWENS VALLEY
COMMITTEE,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CALIFORNIA DEPARTMENT OF FISH
AND GAME and CALIFORNIA STATE
LANDS COMMISSION,

Real Parties in Interest and
Cross-Complainants.

COUNTY OF INYO and DOES 51-100
Real Party in Interest

Case No. S1CVCV01-29768
(The Honorable Lee Cooper, Assigned)

STIPULATION & ORDER

A. PURPOSE:

The purpose of this Stipulation and Order is to resolve certain outstanding issues related to LADWP’s compliance with the August 8, 2005 Order of this Court “*Order Re: Defendants’ Violations of Court Orders*” (hereinafter “Court Order”) pertaining to the Lower Owens River Project (“LORP”). A copy of the Court Order is attached as Exhibit “A.” In so doing, this Stipulation and Order will also serve to establish certain data reporting requirements, provide criteria as to what constitutes a permanent baseflow of approximately 40 cubic feet per second (“cfs”) in the Lower Owens River as required by Section II.C.1.b.i of the 1997 Memorandum of Understanding, and provide a mechanism for the enforcement of the provisions of this Stipulation and Order.

1 **B. THE PARTIES:**

2 The parties to this Stipulation and Order are: The City of Los Angeles acting by and
3 through its Department of Water and Power (“LADWP”); the County of Inyo (“County”); State of
4 California Department of Fish and Game (“DFG”); the State Lands Commission (“SLC”); the
5 Owens Valley Committee (“OVC”); and the Sierra Club; all hereinafter collectively referred to as
6 the Parties.

7 **C. BACKGROUND:**

8 In March 1997, the Parties entered into a Memorandum of Understanding (“MOU”).
9 Among its provisions, the MOU required LADWP to implement the LORP. A copy of the MOU
10 is attached as Exhibit “B.” The LORP is compensatory mitigation for impacts related to
11 LADWP’s groundwater pumping in the Owens Valley from 1970 to 1990 that were difficult to
12 quantify or mitigate directly. The LORP includes the restoration of flow in the portion of the
13 Lower Owens River from which the water was diverted by LADWP in 1913. In June 2004,
14 LADWP adopted a final environmental impact report that addressed the LORP (Final LORP
15 EIR).

16 On September 26, 2003, the OVC and the Sierra Club filed a Second Amended and
17 Supplemental Complaint for Declaratory Relief and Petition for Writ of Mandate (“Amended
18 Complaint”). On December 3, 2004, DFG and SLC filed a Cross Complaint for Declaratory
19 Relief and Petition for Writ of Mandate (“Cross Complaint”). Each of these actions alleged
20 violations of the MOU and sought to enforce the provisions of the MOU.

21 On February 13, 2004, this Court entered an order to which the Parties had stipulated. By
22 further stipulation of the Parties, on September 15, 2004, the February 13, 2004 order was
23 amended by the Court (“Amended Stipulation and Order”). A copy of the Amended Stipulation
24 and Order is attached as Exhibit “C.” The purpose of the Amended Stipulation and Order was to
25 resolve the issues raised in the Amended Complaint and the Cross Complaint.

26 On April 25, 2005, proceedings were commenced to hear motions that LADWP was in
27 violation of the Amended Stipulation and Order. On June 24, 2005, this Court issued a written
28 Statement of Decision that found that LADWP violated the Amended Stipulation and Order. The

1 Court found that the imposition of immediate sanctions was necessary to force LADWP to meet
2 its obligations under the Amended Stipulation and Order. The Court Order issued on August 8,
3 2005 imposed an Injunction against the use of the Second Los Angeles Aqueduct (“Injunction”).
4 The Injunction is set forth in Section 1 of the Court Order; however, the Court Order stayed the
5 Injunction so long as LADWP remained in compliance with several conditions (“Conditions”).
6 The Conditions are set forth in Section 2 of the Court Order.

7 On February 27, 2007, LADWP moved the Court to vacate the Injunction and lift the
8 Conditions. On March 12, 2007, this Court found that LADWP was not in compliance with all of
9 the Conditions and denied LADWP’s motion. In its March 12, 2007 Ruling, this Court strongly
10 urged the Parties to meet and confer concerning a resolution of the issues identified in the March
11 12, 2007 Ruling.

12 **D. VACATION OF THE INJUNCTION AND THE LIFTING OF CONDITIONS:**

13 The Parties agree that the changes in the flow measuring stations addressed in the LORP
14 EIR Addendum described below, together with the provisions of this Stipulation and Order,
15 constitute an adequate substitute for compliance with the requirements of Section 2.E and Section
16 4 of the Court Order. This Stipulation and Order resolves all issues pertaining to LADWP’s
17 compliance with the Court Order. The Parties hereby agree that, upon entry of this Stipulation
18 and Order as an order of the Court, the Injunction shall be vacated, and the Conditions shall be
19 terminated and lifted.

20 **E. THE 40 CFS BASEFLOW CRITERIA:**

21 Upon the entry of this Stipulation and Order as an order of the Court, baseflows shall be
22 deemed in compliance with this Stipulation and Order as long as each of the following conditions
23 in the Lower Owens River exists:

- 24 1. A minimum flow of 40 cfs is released from the Intake at all times;
- 25 2. None of the 10 in-river flow measuring stations described in Section F below has a
26 15 day running average of less than 35 cfs;
- 27 3. The mean daily flow at each of the 10 in-river flow measuring stations must equal
28 or exceed 40 cfs on at least 3 individual days per any continuous 15 day period, except that this

1 requirement shall not apply to the flow measuring stations at Reinhackle Springs and Lone Pine
2 Narrow Gage Road between November 1 and April 30 of each runoff year;

3 4. The 15-day running average of the 10 in-river flow measuring stations is no less
4 than 40 cfs.

5 In order to comply with the foregoing conditions, LADWP has the discretion and
6 responsibility to augment flows as needed. Except as provided in Section I.4 (“Planned Events
7 Resulting in an Inability to Comply”), at all times, LADWP will release a sufficient amount of
8 water to the Lower Owens River to maintain the required baseflows.

9 The mean daily flow shall be the 24-hour mean of the flow data from midnight to
10 midnight at each measuring station, or a current meter measurement if the automated gauge is not
11 functioning. For the purpose of this Stipulation and Order, the 15-day running average is the
12 mean of the mean daily flow for 15 consecutive days up to the date of calculation. Running
13 averages shall be calculated daily, beginning on the 15th day after the entry of this Stipulation and
14 Order as an order of the Court. Further, the Parties acknowledge that as temporary flow
15 monitoring stations are taken out of service, the identified number of stations in the baseflow and
16 monitoring/reporting criteria will be reduced accordingly. Commencing on the date that the Inyo
17 County/Los Angeles Standing Committee (“Standing Committee”) has designated 4 or more
18 permanent flow measuring stations pursuant to Section F.2, compliance with the baseflow criteria
19 will be based only on the designated permanent flow measuring stations.

20 **F. FLOW MEASURING STATIONS:**

21 **1. Modifications to the Configuration of the Flow Measuring Stations:**

22 The LORP EIR identified seventeen flow measuring stations. As constructed, there are
23 sixteen flow measuring stations. For the reasons set forth in the “Flow Station Modification for
24 the Lower Owens River Project, Addendum to the LORP Environmental Impact Report,”
25 (“LORP EIR Addendum”) attached hereto as Exhibit "D" and incorporated by reference, six flow
26 measuring stations that the LORP EIR identified as to be constructed in the river channel were
27 not constructed. Instead, five of these stations were placed in ditches that convey water to
28 augment flow in the river channel and one was eliminated. The ten in-river flow measuring

1 stations that have been constructed are: Intake (a permanent station), Owens River above
2 Blackrock Ditch Return, Owens River East of Goose Lake, Owens River at 2 Culverts (formerly
3 5 Culverts), Owens River at Mazourka Canyon Road, Owens River at Manzanar Reward Road,
4 Owens River at Reinhackle Springs, Owens River at Lone Pine Narrow Gage Road, Owens River
5 at Keeler Bridge and the Pumpback Station. (For the purposes of flow criteria compliance, flow
6 measurement at the Pumpback Station shall be considered an in-river station and shall be the sum
7 of the outflow from the pumps' outlet pipe and releases to the Delta Habitat Area from the
8 Langemann Gate and the overflow weir as described in the LORP EIR Addendum. Reporting of
9 flows from the Pumpback Station shall include the three separate measurements from the outlet
10 pipe, Langemann Gate and overflow weir along with the sum of those three flow measurements.)
11 Six flow measuring stations for augmentation ditches are located at the Blackrock Ditch Return at
12 Owens River, Goose Lake Return at Owens River, Billy Lake Return at Owens River, Locust
13 Ditch Return at Owens River, George's Ditch Return at Owens River and the Alabama Gates
14 Return.

15 **2. Temporary and Permanent Flow Measuring Stations:**

16 The MOU calls for at least 4 permanent flow monitoring stations; therefore, the Parties
17 recognize that up to six of the 10 in-river flow measuring stations are temporary. Except as
18 provided below, the temporary flow monitoring stations will be maintained and operated for at
19 least 24 months after the entry of this Stipulation and Order as an order of the Court and after the
20 24 month period, until the Standing Committee designates the permanent flow measuring
21 stations, as provided below.

22 As provided in Section II.C.1. of the MOU, the permanent flow measuring stations will be
23 sited so that baseflows and seasonal habitat flows can be managed in each of the hydrologically
24 varying sections of the river channel in order to meet the goals and objectives of the LORP. The
25 Standing Committee shall notify all the Parties of the intended designations in advance of making
26 final designations of the permanent flow measuring sites. In addition to designating the
27 permanent sites, the Standing Committee may also designate 1 or more temporary flow
28 measuring stations, which will continue to be monitored after the permanent stations have been

1 designated. The Standing Committee shall not make a final decision on the permanent flow
2 measuring stations or on the temporary flow measuring stations that will continue to be monitored
3 until the Parties have had at least 15 workdays to submit comments to the Standing Committee on
4 the selection of the permanent stations. (As used in this Stipulation and Order, a workday is a day
5 that is not a Saturday, Sunday or a legal LADWP holiday.) While the Parties shall be offered the
6 opportunity to comment, the determination, consistent with the requirements set forth in the
7 MOU, on the designation of the permanent flow measuring stations, and on the determination of
8 which, if any, temporary flow measuring stations will continue to be monitored, shall rest with
9 the Standing Committee; however, this provision does not affect Section II.C.1.b.ii of the MOU
10 which requires the Standing Committee to consult with DFG prior to setting the amount of the
11 seasonal habitat flow.

12 It is currently anticipated by LADWP that all 10 in-river flow measuring stations will
13 have the capability of accurately measuring the full amount of seasonal habitat flows required by
14 the MOU and by applicable permits. However, if it is determined by LADWP, with input from
15 the County, that a flow measuring station is not capable of accurately measuring the first full
16 seasonal habitat flow, LADWP will, with the approval, cooperation and financial participation of
17 the County, modify the station to accurately measure the full seasonal habitat flow prior to the
18 first seasonal habitat flow. If, because of permitting requirements or other reasons, a flow
19 measuring station cannot be modified before the first seasonal habitat flow, or if during the first
20 seasonal habitat flow it is determined by LADWP, with input from the County, that a flow
21 measuring station is not capable of accurately measuring the full seasonal habitat flow, LADWP
22 will, with the approval, cooperation and financial participation of the County, modify the station
23 to accurately measure the full seasonal habitat flow prior to the next seasonal habitat flow.

24 If prior to the time that the permanent flow measuring stations are designated by the
25 Standing Committee, but after the first seasonal habitat flow, a temporary flow measuring station
26 is destroyed, damaged, becomes inoperable, or is incapable of measuring the seasonal habitat
27 flow, the Standing Committee will determine whether or not the station will be repaired, replaced,
28 or modified. The Standing Committee shall notify all the Parties of an intended decision to not

1 repair, replace or modify a temporary flow measuring station in advance of making final
2 designations of the permanent flow measuring sites. The Standing Committee will not make a
3 final decision on the matter until the Parties have had at least 15 workdays to submit comments
4 on the proposed decision to not repair, replace, or modify a station.

5 Data from a temporary flow measuring station that the Standing Committee has
6 determined will continue to be monitored after 4 or more permanent flow measuring stations have
7 been designated, will be reported as provided in Sections G.2.a, b, and c; however, if the
8 electronic measuring or radio equipment at such a temporary measuring station does not function
9 properly for 24 hours or should the integrity of a flow measuring station be compromised,
10 LADWP is not required to commence either current meter measurements or daily manual data
11 collection at the affected station. Moreover, such temporary stations shall not be included in the
12 calculation of a noncompliance payment pursuant to Sections H.2 and H.3. If such a temporary
13 station is destroyed, damaged, becomes inoperable, is incapable of measuring the seasonal habitat
14 flow, or if it appears that monitoring at the temporary station is no longer necessary, the Standing
15 Committee will determine whether or not the station will be repaired, replaced, modified or
16 discontinued.

17 **G. MONITORING AND REPORTING:**

18 **1. Monitoring Requirements:**

19 Electronic measuring devices shall be used at all temporary and permanent flow
20 measuring stations. In the event that electronic measuring or radio equipment does not function
21 properly for 24 hours or should the integrity of a flow measuring station be compromised,
22 LADWP will commence either current meter measurements or daily manual data collection at the
23 affected station(s) as soon as practical, but not later than the second workday after discovery. The
24 site(s) will be current metered daily until the problem is resolved. The frequency of current
25 metering can be reduced if the flows at the flow measuring stations above and below the affected
26 measuring station are considered stable by LADWP. LADWP will provide the rationale for this
27 consideration to the other MOU parties.

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1 LADWP will perform routine current metering at all the in-river flow measuring sites
2 (except the pumpback station) on at least a monthly basis to insure that the measuring devices are
3 properly calibrated.

4 **2. Reporting Requirements:**

5 **a. Daily Data:**

6 Daily LORP flow reports showing mean daily flows and summary statistics (in-river
7 station average and running average at each station) at all in-river flow measuring stations and all
8 augmentation stations will be posted on the LADWP website at:

9 <http://www.ladwp.com/ladwp/cms/ladwp009121.jsp>. The daily LORP flow report will cover a
10 midnight to midnight period and will be posted on the website before midnight of the following
11 workday. If a problem with equipment or another reason prevents the mean daily flows for any
12 day from being posted on time, then this data will be posted on the website the first subsequent
13 workday. If there are technical problems that prevent the posting, the parties will be notified of
14 this problem by email. LORP daily summary statistics for the previous 2 months will be
15 displayed on the website. Data suspected to be in error will be reported as an estimated value and
16 will be appended with an “E” with an explanation at the bottom of the page for the estimated
17 value.

18 **b. LORP Real Time Data:**

19 Within 2 years of the entry of this Stipulation and Order as an order of the Court, real time
20 flows will be added and posted to the current LADWP real-time website at:

21 http://www.ladwp.com/ladwp/aqueduct/showAqueductMap.ladwp?contentId=LADWP_AQUER
22 TD_SCID for the Intake, Owens River at 2 Culverts, Owens River at Reinhackle Springs, Keeler
23 Bridge and Pumpback Station flow measuring stations. Currently real time data typically has a 3-
24 hour transmission and reporting lag time. Real time data will be posted on workdays, weekends
25 and holidays. LADWP will implement the posting of the real time data as soon as possible within
26 the required 2-year period. While it is LADWP’s intent to add the real time data to the LADWP
27 real-time website within 1 year of the entry of this Stipulation and Order as an order of the Court,
28 if this cannot be accomplished within the 1-year period, LADWP will report on the status of the

1 posting. Once 4 or more permanent flow measuring stations have been designated by the Standing
2 Committee, real time data will be posted only from the designated in-river permanent flow
3 measuring stations and from any of the temporary flow measuring stations identified in this
4 paragraph that the Standing Committee has designated for continued monitoring.

5 **c. Monthly Reports of Final Archived Data:**

6 Monthly data reports will be generated and provided to all the Parties by the last workday
7 of each month unless all the Parties agree to another schedule. The monthly data reports will
8 report data from the month ending approximately 60 days prior to the data report. The data will
9 be provided to all the Parties on CD and posted to the website at:
10 <http://www.ladwp.com/ladwp/cms/ladwp009121.jsp>. The website will retain data for the most
11 recent 12 months. LADWP is planning to place the data, to be included in the monthly data
12 reports, on a public http website where the Parties may download it. Once the data is placed on
13 such a website, the data will no longer be provided to all the Parties on CD. The monthly report
14 will be the official record for determining compliance with the flow criteria of this Stipulation and
15 Order and the seasonal habitat flow requirements of the MOU.

16 The monthly reports will include final archived data for the flow measuring stations (both
17 in-river and augmentation ditch stations), current meter measurements, stage data, mean daily
18 flow values, and other routinely collected data, as well as a synopsis of events for the month.
19 Monthly reports will identify data indicating possible noncompliance with the baseflow criteria
20 set forth in Section E.

21 Final archived data is defined as the dataset that has been reviewed under quality
22 assurance and calibration procedures (“QA procedures”). The final archived data will be
23 provided at the sampling interval at which it was recorded. LADWP will provide a description of
24 the QA procedures that it employs to review the data (and a description of any future changes to
25 the procedures) to all the Parties.

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1 The synopsis of events will describe events that occurred during the month including
2 current metering dates, adjustments to the flow meters, maintenance to flow measuring stations,
3 any changes to the project that affect flows, and any other information that would be helpful to
4 allow an accurate interpretation of the final archived data and other relevant data.

5 **d. Measurement of Outflow from the Delta:**

6 Section 2.10.2 of the Final LORP EIR provides that during the first year, outflow from the
7 Delta will be recorded hourly and collected biweekly from continuous recorders at temporary
8 gauging stations established where the vegetation ends in the channel of the lower west branch
9 and lower east branch.

10 During the first year following the completion of the pump station, LADWP will post the
11 outflow data from the two temporary gauging stations on the LADWP website at:
12 <http://www.ladwp.com/ladwp/cms/ladwp009121.jsp> within 5 workdays following the biweekly
13 collection of the data. If outflow data is collected after the first year, the data will be posted on
14 the LADWP website within 5 workdays following the collection of the data.

15 **e. Changes in Web Sites:**

16 Should the address of any websites described in this Stipulation and Order be changed,
17 LADWP will notify all the Parties of the new address within three workdays.

18 **f. Hydrologic Data for Other LORP Components:**

19 Within 210 days of the entry of this Stipulation and Order as an order of the Court, the
20 Standing Committee will adopt a reporting program for hydrologic data for the Blackrock
21 Waterfowl Area and Off-River Lakes and Ponds. The proposed reporting program will be
22 provided to the parties for their comments at least 15 days before the Standing Committee
23 considers adoption of the reporting program. Provision shall be made in the reporting programs
24 for providing the data to the MOU parties.

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1 **H. NONCOMPLIANCE PAYMENTS:**

2 **1. Noncompliance Payments are Not In Lieu of Maintaining Baseflows or In Lieu of**
3 **Other Remedies:**

4 The payments for noncompliance described below are not intended to allow payment in
5 lieu of meeting the baseflow requirements described in Section E or meeting the monitoring and
6 reporting requirements described in Section G, nor are such payments intended to supersede or
7 waive any of the other remedies which may be available to the Parties, including a motion to
8 enforce the requirements of this Stipulation and Order.

9 **2. Interim Noncompliance Payments Until the Time that the Decision on Permanent**
10 **Stations Is Made:**

11 **a. Flow Requirements at Individual Measuring Stations and Monitoring**
12 **Requirements (Sections E.1, E.2, E.3, and G.1):**

13 Until such time as the Standing Committee has designated 4 or more permanent stations
14 pursuant to Section F.2, for each station that is out of compliance with the flow requirements set
15 forth in Sections E.1, E.2, E.3, or the monitoring requirements set forth in Section G.1, LADWP
16 shall pay into the Trust Account described in Section H.4 the following amounts:

- 17 1) \$500 per day for the first 3 days for each station that is out of compliance;
- 18 2) \$1,000 per day for days 4 through 6 for each station that is out of compliance;
- 19 3) \$1,250 per day for days 7 through 9 for each station that is out of compliance;
- 20 4) \$1,500 per day for day 10 and onward for each station that is out of compliance.

21 Any payments made pursuant to Sections H.2.b (for noncompliance with the average river
22 flow requirement of Section E.4 and the reporting requirements of Sections G.2.a through G.2.d)
23 are in addition to any payments made pursuant to this section. Provided, however, that the
24 cumulative total payments pursuant to this section (H.2.a) and Section H.2.b for all instances of
25 noncompliance shall not exceed \$5,000 per day.

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1 **b. Average River Flow Requirements and Reporting Requirements (Sections E.4 and**
2 **G.2.a through G.2.d):**

3 Until such time that the Standing Committee has designated 4 or more permanent stations
4 pursuant to Section F.2, in the event that LADWP is out of compliance with the average flow
5 requirements set forth in Section E.4, or any reporting requirement set forth in sections G.2.a
6 through G.2.d, it shall pay into the Trust Account described in Section H.4 the following
7 amounts:

- 8 1) \$500 per day for the first 3 days;
- 9 2) \$1,000 per day for days 4 through 6;
- 10 3) \$1,250 per day for days 7 through 9;
- 11 4) \$1,500 per day for day 10 and onward.

12 Any payments made pursuant to Sections H.2.a (for noncompliance with the flow
13 requirements of Sections E.1, E.2, E.3, or with the monitoring requirements of Section G.1) are in
14 addition to any payments made pursuant to this section. Provided, however, that the cumulative
15 total payments pursuant to this section (H.2.b) and Section H.2.a for all instances of
16 noncompliance shall not exceed \$5,000 per day. Additionally, any violation or simultaneous
17 violations of Section E.4 and the reporting requirements set forth in section G.2.a through G.2.d
18 shall only be considered as one violation for purposes of noncompliance payments under this
19 section (H.2.b).

20 **3. Noncompliance Payments Commencing on the Date that the Standing Committee**
21 **has Designated 4 or More Permanent Stations:**

22 **a. Flow Requirements at Individual Measuring Stations and Monitoring**
23 **Requirements (Sections E.1, E.2, E.3, and G.1):**

24 Commencing on the date that the Standing Committee has designated 4 or more
25 permanent stations pursuant to Section F.2, for each permanent station that is out of compliance
26 with the flow requirements set forth in Sections E.1, E.2, E.3, or with the monitoring
27 requirements set forth in Section G.1, LADWP shall pay into the Trust Account described in
28 Section H.4 the following amounts:

- 1 1) \$1,000 per day for the first 3 days for each station that is out of compliance;
- 2 2) \$2,000 per day for days 4 through 6 for each station that is out of compliance;
- 3 3) \$2,500 per day for days 7 through 9 for each station that is out of compliance;
- 4 4) \$3,000 per day for day 10 and onward for each station that is out of
- 5 compliance.

6 Any payments made pursuant to Sections H.3.b (for noncompliance with Sections E.4 and
7 G.2.a through G.2.d) are in addition to any payments made pursuant to this section. Provided,
8 however, that the cumulative total payments pursuant to this section (H.3.a) for noncompliance
9 shall not exceed \$5,000 per day.

10 **b. Average River Flow Requirements and Reporting Requirements (Sections E.4**
11 **and G.2.a through G.2.d)**

12 Commencing on the date that the Standing Committee has designated 4 or more
13 permanent stations pursuant to Section F.2, in the event that LADWP is out of compliance with
14 the average flow requirements set forth in Section E.4, as applicable to the permanent stations, or
15 any reporting requirement set forth in sections G.2.a through G.2.d, as applicable to the
16 permanent stations, it shall pay into the Trust Account described in Section H.4 the following
17 amounts:

- 18 1) \$1,000 per day for the first 3 days;
- 19 2) \$2,000 per day for days 4 through 6;
- 20 3) \$2,500 per day for days 7 through 9;
- 21 4) \$3,000 per day for day 10 and onward.

22 Any payments made pursuant to Section H.3.a (for noncompliance with Sections E.1, E.2,
23 E.3, or G.1) are in addition to any payments made pursuant to this section. Additionally, any
24 violation or simultaneous violations of Section E.4 and the reporting requirements set forth in
25 Sections G.2.a through G.2.d shall only be considered as one violation for purposes of
26 noncompliance payments under this section (H.3.b). Provided, however, that the cumulative total
27 payments pursuant to this section (H.3.b) and Section H.3.a for all instances of noncompliance
28 shall not exceed \$8,000 per day.

1 **4. Noncompliance Payments Payee:**

2 Section 2.D of the Court Order provides that LADWP will pay \$5,000 per day into an
3 escrow account to be established by LADWP and the County. Pursuant to an agreement dated
4 September 16, 2005, LADWP and County agreed that the escrow account required by the Court
5 Order would be established in the Inyo County Treasury as a trust account (“Trust Account”).
6 Any noncompliance payments made pursuant to this Stipulation and Order shall be made into the
7 Trust Account. The principal and interest in the Trust Account shall be used only for the
8 purposes described in Section 2.D of the Court Order. With regard to the Trust Account, the
9 County shall provide the Parties with a monthly accounting of funds received, an itemization of
10 debits and a statement of the remaining balance.

11 **5. Inflation Adjustments:**

12 Beginning January 1, 2008, and continuing each year thereafter, the amount of each of the
13 payment amounts described for non-compliance shall be adjusted upward or downward in
14 accordance with the U.S. Department of Labor Los Angeles-Anaheim-Riverside All Urban
15 Consumer Price Index or its successor. The County shall calculate the adjustment and notify the
16 parties of the adjusted amount on an annual basis starting January 1, 2008.

17 **6. Waiver of Noncompliance Payment**

18 Within 30 calendar days after the release of Final Archived Data pursuant to Section G.2.c
19 above that shows that the flows are not in compliance with the requirements of this Stipulation
20 and Order, or within 30 calendar days of a failure to report monitoring data as required by
21 Sections G.2.a, G.2.b, G.2.c, and G.2.d, LADWP may request a waiver of a noncompliance
22 payment described in this Stipulation and Order. A waiver request shall be submitted in writing
23 to the Parties. A failure by LADWP to request a waiver within the 30 calendar day period shall
24 constitute a waiver of the right to seek a waiver. Each Party shall respond to LADWP’s request
25 in writing or via email within 30 calendar days. So long as LADWP’s waiver request is in good
26 faith and LADWP, using reasonable diligence and reasonable efforts, has repaired the damage,
27 remedied the operational problem or provided the monitoring data in a reasonable and timely
28 manner under the circumstances or has shown that LADWP will remedy the operational problem

1 using reasonable diligence and reasonable efforts in a reasonable and timely manner under the
2 circumstances, the waiver request shall not be unreasonably denied. If a Party determines that it
3 will not grant the waiver requested, that party shall specifically set forth the reasons in writing via
4 email for its denial of the requested waiver. A failure by a Party to respond to a waiver request
5 within the 30 calendar day period shall be deemed an approval of the requested waiver. In the
6 event that one or more of the Parties has denied the waiver request, within 60 calendar days of
7 submitting the written waiver request to the Parties, LADWP may apply to the Court for a waiver
8 by way of a noticed motion. A failure by LADWP to request a waiver within the 60 calendar day
9 period shall constitute a waiver of the right to seek a waiver from the Court.

10 **7. Timing of Noncompliance Payments:**

11 Any noncompliance payment required by this Stipulation and Order shall be made on
12 whichever of the following dates occurs later in time: (a) not later than the 60th calendar day after
13 the release of Final Archived Data pursuant to Section G.2.c. above that shows that the flows are
14 not in compliance with the requirements of this Stipulation and Order; (b) not later than the 60th
15 calendar day after LADWP waives its right to seek a waiver from the Court; or (c) not later than
16 the 60th calendar day after a ruling by the Court that a waiver of a noncompliance payment should
17 not be granted.

18 **8. Refund of Noncompliance Payments**

19 If, after the payment of a noncompliance payment, subsequent review by LADWP,
20 utilizing quality assurance and calibration procedures, shows that the data upon which a
21 noncompliance payment was based is incorrect, LADWP shall provide all Parties with the
22 corrected data and an explanation of the quality assurance and calibration procedures that were
23 utilized to correct the data. Under such circumstances, LADWP may request a refund of all or
24 part of a noncompliance payment. A refund request shall be submitted in writing to the Parties.
25 Each Party shall respond to LADWP's request in writing or via email within 30 calendar days.
26 So long as LADWP's refund request is in good faith, the refund request shall not be unreasonably
27 denied. If a Party determines that it will not grant the refund requested, that party shall
28 specifically set forth the reasons in writing via email for its denial of the requested refund. A

1 failure by a Party to respond to a refund request within the 30 calendar day period shall be
2 deemed an approval of the requested refund. In the event that one or more of the Parties has
3 denied the refund request, within 60 calendar days of submitting the written refund request to the
4 Parties, LADWP may apply to the Court for an order for a refund by way of a noticed motion. A
5 failure by LADWP to request a refund from the Court within the 60 calendar day period shall
6 constitute a waiver of the right to seek an order for a refund from the Court.

7 **I. EVENTS IMPACTING LADWP'S ABILITY TO COMPLY WITH THE 40 CFS**
8 **BASEFLOW CRITERIA:**

9 As recognized by the MOU, the goal of the LORP is in part, "the establishment of a
10 healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of
11 healthy, functioning ecosystems in the other physical features of the LORP, for the benefit of
12 biodiversity and Threatened and Endangered Species, while providing for the continuation of
13 sustainable uses including recreation, livestock grazing, agriculture and other activities." The
14 Parties recognize that implementation of flows to the Lower Owens River Project only
15 commenced in late 2006. In all likelihood, events and conditions will be encountered in the
16 management of LORP flows that cannot be predicted or accounted for in this Stipulation and
17 Order. The Parties agree to cooperatively work in good faith towards addressing any such events
18 or conditions which may impact LADWP'S ability to meet the baseflow criteria and monitoring
19 and reporting requirements set forth in this Stipulation and Order.

20 **1. Emergency Events Resulting in an Inability to Comply:**

21 The Parties recognize emergency events may impact LADWP's ability to comply with the
22 baseflow criteria established by this Stipulation and Order. In the event of the need for immediate
23 emergency work necessary to protect life or property; or damage to the system due to a
24 catastrophic emergency such as, without limitation, fire, flood, storm, earthquake, land
25 subsidence, gradual earth movement or landslide; either of which interferes with LADWP being
26 able to carry out the required monitoring or to maintain the baseflow criteria, LADWP shall
27 notify via e-mail the Parties of such emergency event as soon as possible, but in no event more
28 than 5 workdays after the emergency event, that one or more of the requirements cannot be met

1 due to the emergency work or damage. The notification shall set forth the nature of the
2 emergency, the actions that LADWP is taking to remedy the situation, and how long it will take
3 to remedy the situation. A failure of the electronic monitoring system for a gauging station shall
4 not be considered an emergency unless daily current meter measurements are also precluded by
5 the emergency. In the absence of a showing of good cause, a failure by LADWP to provide a
6 notification within the required 5-workday period shall constitute a waiver of the right to seek a
7 waiver of the obligation to make noncompliance payments that accrue as a result of the
8 emergency.

9 **2. Non-Emergency Events Resulting in an Inability to Comply:**

10 The Parties recognize that operational or other reasons, such as, without limitation, beaver
11 dams and freezing, may impact LADWP's ability to comply with the flow criteria and/or
12 monitoring criteria. In the event that LADWP is unable to comply with the baseflow or reporting
13 criteria, LADWP shall notify the Parties within 5 workdays of its discovery of the situation or
14 event, describe the actions that LADWP is taking to remedy the situation, and how long it will
15 take to remedy the situation. In the absence of a showing of good cause, a failure by LADWP to
16 provide a notification within the required 5-workday period shall constitute a waiver of the right
17 to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the
18 non-emergency event.

19 **3. Operational Problems of Monitoring/Reporting Equipment:**

20 The Parties acknowledge that monitoring and reporting criteria described in this
21 Stipulation and Order rely heavily on computers and technology. The Parties recognize that
22 issues may arise with hardware, software, servers, other technologies or equipment, which will
23 impact LADWP's ability to comply with the monitoring and reporting requirements. In the event
24 LADWP encounters events that will result in an inability to comply with the monitoring or
25 reporting criteria, LADWP shall notify the Parties within 5 workdays of its discovery of the
26 situation or the event, the actions that LADWP is taking to remedy the situation, and how long it
27 will take to remedy the situation. In the absence of a showing of good cause, a failure by
28 LADWP to provide a notification within the required 5-workday period shall constitute a waiver

1 of the right to seek a waiver of the obligation to make noncompliance payments that accrue as a
2 result of the non-emergency event.

3 **4. Planned Events Resulting in an Inability to Comply:**

4 Should LADWP plan an operational or maintenance activity, or should LADWP and the
5 County plan to implement an adaptive management measure that would result in temporary
6 noncompliance with the baseflow criteria in this Stipulation and Order, LADWP may seek an
7 advance waiver of noncompliance payments from the other Parties. A waiver request shall be
8 submitted in writing to the Parties. A failure to seek an advance waiver request shall not prevent
9 the implementation of the planned activity or adaptive management measure or prevent LADWP
10 from seeking a waiver pursuant to Section H.6. If an activity or adaptive management measure is
11 implemented without first obtaining an advance waiver, LADWP shall notify the Parties within 5
12 workdays after commencement of the temporary noncompliance with the baseflow criteria in this
13 Stipulation and Order. In the absence of a showing of good cause, a failure by LADWP to
14 provide a notification within the required 5-workday period shall constitute a waiver of the right
15 to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the
16 non-emergency event.

17 **J. FREEZE PROTECTION GROUNDWATER PUMPING DURING THE 2006-2007**
18 **RUNOFF YEAR:**

19 Section 4 of the Court Order recognizes the need for emergency groundwater pumping to
20 prevent the freezing of the Los Angeles Aqueduct. The Court Order requires that the amount of
21 any such emergency groundwater pumping shall be deducted from LADWP's groundwater
22 pumping during the following year. During the 2006-2007 runoff year, LADWP pumped 2,116
23 acre-feet of groundwater for freeze protection. The pumping of this amount of groundwater for
24 freeze protection caused LADWP's groundwater pumping for the year to exceed the annual
25 groundwater pumping limit of 57,412 acre-feet imposed by the Court Order by 1,218 acre-feet.
26 LADWP will deduct 1,218 acre-feet from its groundwater pumping from the Owens Valley
27 during the 2007-2008 runoff year.

28 /

1 **K. MODIFICATION OF 2007-2008 PUMPING PLAN:**

2 As required by Section 2.H of the Court Order, within 45 days of the entry of this
3 Stipulation and Order as an order of this Court, LADWP shall submit to the Parties an updated
4 version of all applicable sections of its 2007-2008 Operations Plan that covers the portion of the
5 runoff year that remains after the entry of the order.

6 **L. ANNUAL LORP MEETING:**

7 Section 2.10.4 of the Final LORP EIR provides that:

8 *The County and LADWP will prepare an annual report that includes data*
9 *collected during the habitat and flow compliance monitoring, results of analysis*
10 *and recommendations on the need for adaptive management actions. The annual*
11 *report will be reviewed by the Inyo/Los Angeles Technical Group and will also be*
12 *made available to the public. The Technical Group meetings are open to the*
13 *public, and meeting agendas are provided to the public in advance of each*
14 *meeting.*

15 Section 2.10.5 of the Final LORP EIR provides in pertinent part:

16 *The Technical Group, Standing Committee and the governing boards of*
17 *LADWP and the County will make the ultimate decision on implementing adaptive*
18 *management actions after reviewing the annual report and any other relevant*
19 *monitoring data.*

20 LADWP and the County will release to the public and to the representatives of the Parties
21 identified in the MOU a draft of the annual report described in section 2.10.4 of the Final LORP
22 EIR. The County and LADWP shall conduct a public meeting on the information contained in
23 the draft report. The draft report will be released at least 15 calendar days in advance of the
24 meeting. The public and the Parties will have the opportunity to offer comments on the draft
25 report at the meeting and to submit written comments within a 15 calendar day period following
26 the meeting. Following consideration of the comments submitted, the Technical Group will
27 conduct the meeting described in Section 2.10.4 of the Final LORP EIR.

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1 For the first 7 years following the entry of this Stipulation and Order as an order of the
2 Court, LADWP shall reimburse the Sierra Club and the OVC for the reasonable fees and
3 expenses, up to a collective maximum of \$4,000 for scientific/technical consultants to assist
4 Sierra Club and OVC in connection with their participation in the annual meeting. After this
5 initial period, during 4 of the next 8 years (years 8 through 15), LADWP shall reimburse the
6 Sierra Club and the OVC for the reasonable fees and expenses, up to a collective maximum of
7 \$4,000 for scientific/technical consultants to assist Sierra Club and OVC in connection with their
8 participation in the annual meeting. The Sierra Club and the OVC shall decide in which years
9 such reimbursement is to be made by LADWP. Beginning January 1, 2008, and continuing each
10 year thereafter, the amount of each of the reimbursements shall be adjusted upward or downward
11 in accordance with the U.S. Department of Labor Los Angeles-Anaheim-Riverside All Urban
12 Consumer Price Index or its successor.

13 **M. DOCUMENTATION OF TECHNICAL GROUP ACTIONS AND PROVISION OF**
14 **STANDING COMMITTEE AGENDA MATERIALS:**

15 In addition to the requirement of Section III.G of the MOU that all Technical Group
16 meetings shall be open to the public, as soon as a Technical Group meeting is scheduled,
17 LADWP shall provide the representatives of the Parties identified in the MOU with notice of the
18 meeting. If the meeting is subsequently cancelled or rescheduled, LADWP shall provide notice
19 of the cancellation or rescheduling to the representatives of the Parties identified in the MOU.
20 LADWP shall provide to the representatives of the Parties identified in the MOU proposed
21 meeting agendas of upcoming Technical Group meetings at least 48 hours prior to a Technical
22 Group meeting.

23 Within 5 workdays after a Technical Group meeting, LADWP shall provide to the
24 representatives of the Parties identified in the MOU an audio recording of the Technical Group
25 meeting. Additionally, within 5 workdays after the scheduled Technical Group meeting, LADWP
26 shall post on its website its understanding of any final action taken by the Technical Group at the
27 meeting with respect to any item on the meeting agenda that pertained to implementation of the
28 LORP. The posting shall represent LADWP's understanding of the final action taken, and shall

1 not be binding on the County. The County does not have an obligation to respond to the posting
2 and a non-response by the County to the posting shall not be considered to be an agreement with
3 its content or waiver of any objections to the content of the posting.

4 The Parties have made a standing request under the California Public Records Act to be
5 provided with copies of all agenda materials that are provided to the Standing Committee in
6 advance of a Standing Committee meeting. Up to the close of business on the last workday prior
7 to a Standing Committee meeting, LADWP will provide such materials via email to the
8 representatives of the Parties identified in the MOU at the same time as such materials are
9 provided to the Standing Committee. Any agenda materials provided to the Standing Committee
10 after the close of business on the last workday prior to a Standing Committee meeting will be
11 distributed to the public at the Standing Committee meeting and will be provided to the
12 representatives of the Parties identified in the MOU via email within 10 workdays after the
13 Standing Committee meeting.

14 **N. NOTICES:**

15 Except for any motions or proceedings filed with the Court, any notice required to be
16 given by this Stipulation and Order including requests for waivers to the Parties and responses
17 thereto shall be given by e-mail. It shall be the responsibility of each party to notify the other
18 Parties if there is change of individuals to receive notice, or if there is a change in the e-mail
19 address of the designated individuals. Except for recipients of notices identified in Sections L
20 and M, the Parties hereby designate the following individuals as those to whom notice shall be
21 given in accordance with this Stipulation and Order.

22 **LADWP:**

23 Thomas Erb:	Thomas.Erb@ladwp.com
24 Gene Coufal:	Gene.Coufal@ladwp.com
25 Joseph Brajevich:	Joseph.Brajevich@ladwp.com

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1 **County:**

2 Inyo County Administrator, Ron Juliff: rjuliff@qnet.com

3 Director, Inyo County Water Department
4 Tom Brooks: tbrooks@inyowater.org

5 Inyo County Counsel, Paul Bruce: pbruce@inyocounty.us

6 **Sierra Club:**

7 MOU Representative, Mark Bagley: markbagley@qnet.com

8 Coordinating Attorney for Sierra Club: aaronisherwood@sierraclub.org

9 Attorney for Sierra Club, Larry Silver: larrysilver@celproject.net

10 **OVC:**

11 President, Carla Scheidlinger: carla@agarian.org

12 Derrick Vocelka: dvocelka@cebridge.net

13 Attorney for OVC, Don Mooney: dbmooney@dcn.org

14 **DFG:**

15 Bruce Kinney, Deputy Regional Manager,
16 Region 6: bkinney@dfg.ca.gov

17 Steve Parmenter, Senior Biologist: spar@dfg.ca.gov

18 Nancee Murray, Senior Legal Counsel: nmurray@dfg.ca.gov

19 Marian Moe, Deputy Attorney General: marian.moe@doj.ca.gov

20 **SLC:**

21 Barbara Dugal, Chief Land Management Division: dugalb@slc.ca.gov

22 Jack Rump, Chief Counsel: rumpj@slc.ca.gov

23 Marian E. Moe, Deputy Attorney General: marian.moe@doj.ca.gov

24 **O. SPECIAL MASTER:**

25 As provided in the Order Re: Appointment of Special Master filed October 3, 2005, upon
26 the entry of an order as provided in this Stipulation and Order, the service of the Special Master
27 shall be terminated.

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1 **P. MODIFICATIONS:**

2 This Stipulation and Order may be modified or amended by written stipulation of the
3 Parties and approval of the stipulation by the Court. The Parties recognize that as this project
4 evolves modifications will likely become necessary. The Parties shall meet 24 months after the
5 entering of this Stipulation and Order to evaluate the criteria set forth herein and to discuss any
6 changes and modifications, including, but not limited to, the need for this Stipulation and Order to
7 continue to require noncompliance payments. Nothing herein shall prevent a party from
8 requesting a modification to the Stipulation and Order before the end of the 24-month period.

9 **Q. DURATION:**

10 This Stipulation and Order shall remain in effect until it is terminated by order of the
11 Court.

12 **R. JURISDICTION AND ENFORCEMENT:**

13 The Court shall retain jurisdiction to enforce any of the terms of this Stipulation and Order
14 and to grant or deny requests for waivers. A party to this Stipulation and Order may seek
15 enforcement of this Stipulation and Order by filing and serving a noticed motion to set a hearing
16 for an order to show cause why a remedy, sanctions, or other order proposed in the motion, or
17 otherwise determined to be appropriate by the Court, should not be imposed. A party making a
18 motion seeking to enforce this Stipulation and Order need not comply with the dispute resolution
19 provisions set forth in Section VI of the MOU before making such a motion. This Court shall
20 retain jurisdiction for the purpose of hearing and ruling on such motions and making and
21 enforcing such further orders as justice may require.

22 **S. COUNTERPARTS**

23 This Stipulation and Order may be executed in counterparts by the Parties. Signature
24 pages that have been executed by the Parties and submitted via facsimile may be attached to the
25 Stipulation and Order that is submitted to the Court.

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1 Dated: July , 2007

LAW OFFICE OF DONALD B. MOONEY

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By: Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

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6 Dated: July , 2007

CALIFORNIA ENVIRONMENTAL
LAW PROJECT

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By: Laurens H. Silver
Attorney for Plaintiff
Sierra Club

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11

Dated: July , 2007

EDMUND G. BROWN JR.
Attorney General of the State of California

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By: Marian E. Moe
Deputy Attorney General
Attorney for Real Parties in Interest
And Cross-Complaints California Department
of Fish and Game and California State Lands
Commission

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17

Dated: July , 2007

ROCKARD J. DELGADILLO
City Attorney of the City of Los Angeles

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21

By: Joseph A. Brajevich
Assistant General Counsel, Water and Power
Attorney for Defendants City of Los Angeles;
Los Angeles Department of Water and Power;
Board of Commissioners of the Department of
Water and Power

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1 Dated: July , 2007

2 County of Inyo County Counsel

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4 By: Paul N. Bruce
5 Counsel for Real Party in Interest
6 County of Inyo

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF INYO

SIERRA CLUB and OWENS VALLEY
COMMITTEE,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CALIFORNIA DEPARTMENT OF FISH
AND GAME and CALIFORNIA STATE
LANDS COMMISSION,

Real Parties in Interest and
Cross-Complainants.

COUNTY OF INYO and DOES 51-100
Real Party in Interest

Case No. S1CVCV01-29768
[The Honorable Lee Cooper, Assigned)

ORDER

Good cause appearing therefore, it is hereby ordered that the above Stipulation is
approved and is hereby an order of this Court.

Dated: July , 2007

The Honorable Lee E. Cooper
Judge of the Superior Court