

DRAFT MODIFICATION OF WATER AGREEMENT
BIG PINE DITCH SYSTEM

(June 4, 2003)

The Stipulation and Order for Judgment in Inyo County Superior Court Case Number 12908, which sets forth the "Agreement Between the County of Inyo and City of Los Angeles and its Department of Water and Power on a Long Term Groundwater Management Plan for Owens Valley and Inyo County," is modified as set forth below.

Section XIV. E (Big Pine Ditch System), beginning at line 20, on page 42, is modified as set forth below. Deletions are highlighted by strikeover, and additions are highlighted in italics.

E. **BIG PINE DITCH SYSTEM**

The Department shall provide up to one hundred thousand dollars (\$100,000.00) for reconstruction and upgrading of the ditch system and for construction of additional ditches to supply additional properties in the town of Big Pine. The ditch system must be planned, constructed, operated, and maintained by a Big Pine entity or organization separate from the Department or the County, except for existing ditches on Los Angeles-owned land which will continue to be maintained by the Department. This entity or organization must obtain all necessary rights of way prior to construction. *A non-profit corporation named the Big Pine Irrigation and Improvement Association (BPIIA) has been formed to plan, construct, operate and maintain the ditch system.*

1. **Water Supplied to the Ditch System**

The Department shall make a flow of up to six (6) cfs available to supply the ditch system with water. This is in addition to water now diverted for use by Big Pine Water Association members. ~~Water to replace any water used by this project will come from a new well, which will be constructed by the Department west of Big Pine. This well may also supply water to the Big Pine Water System.~~ *Water will be supplied to the ditch system within the same window of time that ditches operated by the Big Pine Water Association are normally provided with water.*

The Department will make water available for the ditch system via diversions from Big Pine Creek, from a new well in Bell Canyon, and from diversions from the Bell Canyon Ditch. Surface water flow in Big Pine Creek will be augmented with groundwater pumped from Well 415, and the surface water flow in the Bell Canyon Ditch will be augmented with groundwater pumped from a new well to be constructed by the Department west of Big Pine in Bell Canyon ("the Bell Canyon Well"). The flow in Bell Canyon will be augmented immediately upstream of the ditch system's Bell Canyon headgates.

Water will be diverted from Big Pine Creek to the Mendenhall Ditch diversion at the existing "Cement Ditch Diversion facility." Water will be diverted to the BPIIA system from the Mendenhall Ditch at a diversion box immediately downstream of the "Cement Ditch Diversion facility." The diversion box will be constructed by the BPIIA. The water will be conveyed from this diversion box to the ditch system's Bell Canyon headgates via an above ground ductile iron steel pipeline that will be constructed by the BPIIA. The Department will provide a license for this pipeline to the BPIIA Groundwater pumped from the new Bell Canyon well will be conveyed to the Bell Canyon headgates via the Bell Canyon pipeline to be constructed by the Department. Water will also be diverted from the Bell Canyon pipeline to the Bell Canyon Ditch immediately upstream of the ditch system's Bell Canyon headgates. Water will be diverted to the BPIIA system from the Bell Canyon Ditch at a diversion box to be constructed by the BPIIA on the ditch immediately upstream of its confluence with Big Pine Creek.

2. *Well Operation and Ditch System Water Supply*

- a. *Well 415 will be operated for no purpose other than to supply the Big Pine town water system, to augment flow in Big Pine Creek for the purpose of supplying water to the ditch system, to replace water annually used by the ditch system, and to supply water for the Eastside Regreening Enhancement/Mitigation Project. Well 415 will be operated to supply water for the ditch system, to replace water annually used by the ditch system, and to supply water for the Eastside Regreening Enhancement/Mitigation Project only after it has supplied the water required by the Big Pine town water system. Further, Well 415 will be operated to supply water for the Eastside Regreening Enhancement/Mitigation Project only after it has supplied the water required by ditch system.*
- b. *The Bell Canyon well will be operated for no purpose other than supplying water to the ditch system or replacing water used by the ditch system. The water will be supplied for these purposes via the Bell Canyon pipeline.*
- c. *If either Well 415, or the Bell Canyon well, is replaced in the future, groundwater to supply uses described in a and b above, will be pumped from the well or wells that replace either of these wells.*
- d. *The Bell Canyon well and the existing Well 415 will be evaluated by the Technical Group, and operating criteria for each well will be established as provided in Section VI of this Stipulation and Order and in the Green Book.*
- e. *If flow in Big Pine Creek (whether or not the flow is augmented by groundwater pumped from Well 415) declines to a level that prevents the diversion of a sufficient amount of surface water to supply the ditch system (because Big Pine Creek flow would drop below the minimum*

required to maintain the fishery other natural resources, and downstream prior water rights), and if diversions from the Bell Canyon Ditch and groundwater pumping from the Bell Canyon well, in combination with diversions from Big Pine Creek, are insufficient to supply the ditch system, the Department will reduce diversions from Big Pine Creek to the "Cement Ditch," up to the full amount normally diverted to supply agriculture located on Los Angeles-owned lands, to provide additional water to the creek so that, to the extent possible, as much of the estimated average supply to the ditch system at its headgate for that year can be maintained. The intent of this section is that if the flow in the creek or in Bell Canyon—whether augmented by pumping or not—drops below the point where the full amount of water to be supplied to the ditch system cannot be diverted, if diversions to the Cement Ditch are occurring, such diversions will be reduced as necessary, up to the full amount normally diverted to supply agriculture located on Los Angeles-owned lands, to allow for the diversion of the estimated average flow to the ditch system for that year.

3. Replacement Water

- a. *Water annually used by the ditch system is defined as the difference between the measured amount of water that is supplied to the ditch system at the Mendenhall Ditch diversion structure (from Big Pine Creek), the Bell Canyon headgates (from the Bell Canyon well), and at the system's Bell Canyon diversion box (from the Bell Canyon Ditch), and the measured amount of water that flows out of the ditch system.*
- b. *The amount of water annually used by the ditch system must be replaced by an equal amount of water as described below.*
- c. *The Standing Committee, acting pursuant to Section X of this Agreement, has adopted a permanent reduction in the amount of water estimated to be used for the Klondike Lake Enhancement/Mitigation project. A portion of this reduction, 300 acre-feet, will be credited to the Big Pine Ditch System. This credit is referred to as the "E/M credit."*
- d. *Water annually used by the ditch system shall be replaced from the following sources: (1) the E/M credit; (2) pumping from Well 415 (the amount pumped in excess of the amount supplied the town water system); and (3) pumping from the Bell Canyon well.*
- e. *If, at the beginning of a ditch operation season, pumping from Well 415 and/or the Bell Canyon well is not allowed under the applicable operating criteria established as provided in Section VI of this Stipulation and Order and in the Green Book, as long as sufficient water is available for diversion from Big Pine Creek and Bell Canyon (above the minimum required to maintain the fishery, other natural resources or prior downstream water rights), the Department will supply water to the ditch system over a period of time, and in an amount, to be determined by*

agreement of the BPIIA and the Department until then available E/M credit has been used by the ditch system, at which time the supply will be discontinued. If it is subsequently determined that Well 415 and/or the Bell Canyon well can be operated during that runoff year, the Department will supply the ditch system with the amount of water calculated to provide the ditch system with the then available E/M credit plus the amount of groundwater that is projected to be pumped that runoff year from the well or wells.

- f. If at the end of a ditch operation season, the combined total of the annual E/M credit, plus the amount of groundwater pumped from Well 415 (the amount pumped in excess of the amount supplied the town water system) and from the Bell Canyon well during that runoff year is less than the amount of water used by the ditch system (this difference is referred to as the "negative differential"), groundwater pumping from these wells will continue (if such pumping can continue in accordance with the operating criteria for each well established as provided in Section VI of this Stipulation and Order and in the Green Book) until the amount of water pumped is equal to the amount of the negative differential.*
- g. If a negative differential has not been made up by the commencement of the following ditch operation season, and if pumping from Well 415 and the Bell Canyon well is not allowed under the applicable operating criteria established as provided in Section VI of this Stipulation and Order and in the Green Book, as long as sufficient water is available for diversion from Big Pine Creek and Bell Canyon, the Department will supply water to the ditch system over a period of time, and in an amount, to be determined by agreement of the BPIIA and the Department until the then available E/M credit has been used by the ditch system, at which time the supply will be discontinued. If either well can be operated, the Department will supply the ditch system with the amount of water calculated to provide the ditch system with the E/M credit plus the amount of groundwater that is projected to be pumped that runoff year from either well that is in excess of the amount needed to make up the negative differential.*
- h. If a negative differential has not been made up by the commencement of a third ditch operating season, the E/M credit for that year shall be reduced by the amount of the remaining negative differential. Under such circumstances, as long as sufficient water is available for diversion from Big Pine Creek and Bell Canyon, the Department will supply the ditch system with an amount of water calculated to provide the ditch system with the total of the reduced E/M credit plus the amount of groundwater that is projected to be pumped that runoff year from Well 415 (the amount pumped in excess of the amount supplied the town water system) and/or the Bell Canyon well.*
- i. If at the end of a ditch operation season, the total of the E/M credit plus the amount of groundwater pumped from Well 415 (the amount pumped in excess of the amount supplied the town water system) and the Bell*

Canyon well, during that runoff year, is in excess of the amount of water used by the ditch system, and any deficit from prior years has been made up, the amount in excess will be added to the following year's E/M credit.

4. Approval of the Use of Existing Ditches

The stockholders of the Big Pine Water Association must approve the use of existing ditches. The Department (a stockholder) shall not unreasonably refuse such approval, or unreasonably refuse the right to use or modify existing ditches on Los Angeles-owned property. Water rights of all stockholders must be protected and current water delivery rates maintained.

5. Use of Funds

Provisions will be made to insure that the project funds will only be made available to an appropriate entity or organization and only will be made available as construction of the Big Pine ditch system or other approved projects progresses. Any costs of constructing the ditch system in excess of one hundred thousand dollars (\$100,000.00), must be secured prior to commencement of funding of the construction of the ditch system. *Unless this time period is extended by the County and the Department acting through the Standing Committee,* ~~P~~project funds would only be made available if substantial construction of the ditch system is commenced within two (2) years of the entry of this Stipulation and Order. If such construction is not commenced within this two year period, unless otherwise agreed by the Inyo County Board of Supervisors and the Department, through the Standing Committee, the funds shall be used for a project other than a ditch system. If less than \$100,000 is expended on the ditch system, or if no ditch system is constructed, the unexpended difference may be used by the ~~Big Pine entity or organization~~ *BPIIA* on other projects in Big Pine that have been approved in advance by the Department and the Inyo County Board of Supervisors, acting through the Standing Committee.