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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF INYO

Los Angeles Department of Water and Power,

Plaintiff,

v.

County of Inyo et al.,

Defendant.

) CASE NO. 12908
)
) [Assigned To The Honorable John P. Moran]
)
) JOINT NOTICE OF MOTION AND MOTION)
) TO AMEND THE LONG TERM
) WATER AGREEMENT
)
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Date: March 5, 2004
Time: 1:30 p.m.
Place: Department 4

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2
3 **I**

4 **HISTORY**

5 In 1991, LADWP and Inyo through their governing bodies entered into the Long Term Water
6 Agreement, which by stipulation was subsequently entered as an order and judgment of this court on
7 June 13, 1997. The Long Term Water Agreement was intended to resolve certain on-going disputes
8 between LADWP and Inyo. LADWP owns the rights to most of the surface and groundwater in the
9 Owens Valley and exports much of that water to Los Angeles. Inyo was concerned about the impact
10 of LADWP's water gathering activities and water exports on Inyo's environment. The Long Term
11 Water Agreement declared that its overall goal was "to avoid certain described decreases and
12 changes in vegetation and to cause no significant effect on the environment which cannot be
13 acceptably mitigated while providing a reliable supply of water for export to Los Angeles and for
14 use in Inyo County."

15 Section XIV.E of the Long Term Water Agreement requires that LADWP provide up to one
16 hundred thousand dollars (\$100,000) for reconstruction and upgrading of the Big Pine Ditch System
17 and for construction of additional ditches to supply additional properties in the town (collectively
18 "the Ditch System.") The Long Term Water Agreement also requires LADWP to make a flow of up
19 to six (6) cubic feet per second ("cfs") available to supply the Ditch System with water. Finally, the
20 Long Term Water Agreement specifies that LADWP shall replace this water with water from a new
21 well constructed west of Big Pine which could also supply water to the Big Pine Water System.

22 LADWP has constructed a new well west of Big Pine which supplies water to the Big Pine
23 Water System. However, preliminary testing indicated that that the new well cannot produce
24 sufficient water to meet the water requirements of the Ditch System projects. Thus, it is not possible
25 for LADWP to supply the Ditch System with the amount of water needed to make the Ditch project
26 viable unless another source of water, in addition to the source specified in the Long
27 Term Water Agreement, is made available. Inyo and LADWP have determined that additional
28 sources of water are available to supply the Ditch System. These additional sources are from a

1 well to be constructed in Bell Canyon (west of Big Pine) and from the transfer of 300 acre-feet of
2 water from the Klondike Lake Enhancement/Mitigation Project to the Ditch System.

3 In order to allow the use of these additional sources of water to supply the Ditch System,
4 LADWP and Inyo have agreed to amend Section XIV.E of the Long Term Water Agreement to add
5 the additional sources to the single source identified in Section XIV.E. LADWP and Inyo have also
6 agreed that Section XIV.E should be further amended to specify: (1) how the groundwater water to
7 supply the Ditch System, or to replace water used by the Ditch System, is to be extracted, (2) how
8 groundwater and surface water will be conveyed and distributed, (3) the methods of accounting to
9 be used to determine the Ditch System's water usage, and (4) how water used by the Ditch System
10 will be replaced. Finally, LADWP and Inyo have agreed to amend Section XIV.E to identify the
11 Big Pine Irrigation and Improvement Association as the non-profit corporation which has been
12 formed to plan, construct, operate and maintain the Ditch System. (This entity was not in existence
13 when the Long Term Water Agreement was adopted.) The full text of the proposed amendment to
14 Section XIV.E is contained in Exhibit 1 to this joint motion.

15
16 **II**

17 **METHOD OF AMENDING THE LONG TERM WATER AGREEMENT**

18 The Long Term Water Agreement provides in Section XXV that:

19 "If, as a result of information gained from ongoing research or cooperative studies,
20 or for other reasons as may be necessary to better achieve the goals of this
21 Stipulation and Order, or for purposes of improving the monitoring and evaluation
22 activities, the Department and the Inyo County Board of Supervisors, by agreement,
23 may modify: 1) any provision of the Green Book, including its provisions for
24 monitoring sites, the type of monitoring, and the interpretation of monitoring results;
25 2) the Management Areas (section I); 3) the Management Maps (section II); and 4)
26 the soil moisture "triggering mechanism" for turning off wells (sections V.A,

27 B, and C), including a substitution of an entirely new "triggering mechanism." A
28 disagreement over such a modification shall be subject to dispute resolution. The
remaining provisions of this Stipulation and Order, other than those identified above,
may be modified by agreement between the Department and the Inyo County Board of
Supervisors, and approval of such modification by the Court. Approval by the Court
shall be upon written noticed motion. Notice shall be given in accordance with
California Civil Procedure Section 1005, and published in Los Angeles and Inyo
counties in accordance with Government Code Section 6062a."

1 LADWP and Inyo discussed between themselves whether the proposed amendment was one
2 that could be accomplished without Court approval under the provisions of the first sentence of the
3 quoted paragraph. LADWP and Inyo have agreed that for purposes of this amendment the first
4 sentence of Section XXV should be construed narrowly so as to apply only to correction of errors,
5 and that the proposed changes in the Section XIV.E should be considered to fall under the
6 provisions of the third sentence, requiring notice to the public and to the parties, and requiring the
7 approval of this Court.

8
9 **III**

10 **THE MOTION TO AMEND THE LONG TERM WATER AGREEMENT**
11 **SHOULD BE GRANTED**

12
13 The proposed amendment of the Long Term Water Agreement will allow the Ditch System to
14 be supplied by sources of water that are in addition to the single source identified in the Long Term
15 Water Agreement. Without the proposed amendment, there will not be sufficient water to supply the
16 Ditch System. Moreover, the proposed use of the additional sources of water will not inhibit any of
17 the other purposes of the Long Term Water Agreement.

18 Both LADWP, acting through the Los Angeles Board of Water and Power Commissioners,
19 and Inyo County, acting through its Board of Supervisors, have approved the proposed amendment.
20 (See Exhibit 2, a true and correct copy of the Resolution adopted by the Board of Water and Power
21 Commissioners, and Exhibit 3, a true and correct copy of the Resolution adopted by the Board of
22 Supervisors.)

23 A Mitigated Negative Declaration was prepared for the proposed project as required by the
24 California Environmental Quality Act. LADWP as lead agency and, subsequently, the County as a
25 responsible agency adopted the Mitigated Negative Declaration. A true and correct copy of that
26 Mitigated Negative Declaration is attached as Exhibit 4. LADWP and, subsequently, Inyo each
27 separately filed Notices of Determination (“NOD”) with the Inyo County Clerk. The second Notice
28 of Determination filed with the Inyo County Clerk was filed by Inyo on December 24, 2003. More

1 than thirty days have elapsed since the date of the filling the second of the two Notices of
2 Determination.

3 LADWP and Inyo will cause notice of this motion to be published in Los Angeles and Inyo
4 Counties in the manner required by Government Code section 6062a and will file proof of those
5 publications with the court at the time of the hearing.

6 **CONCLUSION**

7 The proposed project as fully described in the Mitigated Negative Declaration (Exhibit 4)
8 will better meet the goals of the Long Term Water Agreement and will be of benefit to both the
9 County of Inyo and the City of Los Angeles. The requested amendment to the Long Term Water
10 Agreement will allow the Ditch System to be supplied with water. Therefore, LADWP and Inyo
11 County pray that this court approve the amendment.

12 Dated: February 19, 2004

13 Respectfully submitted:

14
15 _____
16 Arthur B. Walsh, Assistant City Attorney
17 Attorney for the City of Los Angeles by and
18 Through its Department of Water and
19 Power

20 _____
21 Paul N. Bruce, Inyo County Counsel
22 Attorney for the County of Inyo

23 _____
24 Gregory L. James, Special Legal Counsel
25 Attorney for the County of Inyo
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