

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

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

SIERRA CLUB, and OWENS VALLEY COMMITTEE )

Plaintiffs )

v. )

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF WATER AND POWER; 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

~~PROPOSED~~ ORDER RE:  
DEFENDANTS' VIOLATIONS OF  
COURT ORDERS

Judge: The Hon. Lee Cooper

The proceedings to determine sanctions and/or remedies for the defendants' violations of certain court orders came on regularly for hearing on July 25, 2005. Cross-complainants California State Lands Commission and California Department of Fish and Game appeared by counsel Deputy Attorney General Gordon Burns; plaintiff Owens Valley Committee appeared by counsel Donald Mooney; plaintiff Sierra Club appeared by counsel Laurens Silver; defendants

1 and cross-defendants City of Los Angeles et al. (collectively “the City”) appeared by counsel  
2 Deputy City Attorney Joseph Brajevich; and real-party-in-interest County of Inyo appeared by  
3 County Counsel Paul Bruce and special counsel Gregory James. The hearing followed, and was  
4 based on, the following orders, findings, and hearings:

5 A. The Court set a hearing date of April 25, 2005, to hear any motions concerning the  
6 City’s compliance with the stipulated Court order dated February 13, 2004, as amended  
7 September 15, 2004 (hereafter, the “Feb. 13 order”).

8 B. Cross-complainants California State Lands Commission and California Department  
9 of Fish and Game, and plaintiffs Owens Valley Committee and Sierra Club, filed motions to  
10 enforce the Order. The City filed an opposition brief. Cross-complainants and plaintiffs filed  
11 reply briefs.

12 C. Beginning April 25, 2005, the Court held a three-day evidentiary hearing on the  
13 motions. The parties filed closing briefs on May 11, 2004.

14 D. On June 24, 2005, the Court issued a written Statement of Decision (SOD), finding  
15 that the City violated the Order. The City’s violations include its failure to: complete and release  
16 a final EIR/EIS by June 23, 2004 (Feb. 13 order, ¶2); complete an administrative draft of the  
17 final EIR/EIS by May 7, 2004 (Feb. 13 order, ¶ 2); submit a complete and timely permit  
18 application to the Regional Water Quality Control Board (Feb. 13 order, ¶ 7(a); and meet certain  
19 deadlines for certain tasks for the Hines Spring and Yellow-billed Cuckoo plans (Feb. 13 order,  
20 ¶ 10). It is undisputed that City will also miss the September 5, 2005, deadline for commencing  
21 flows in the river. (Feb. 13 order, ¶ 5.) The Court found that the City’s delays and its failure to  
22 meet the deadlines and tasks in the Order were not due to circumstances beyond its control.  
23 (Feb. 13 order, ¶ 12.) The Court determined that the threat of immediate sanctions was  
24 necessary to force the City to meet its obligation in a timely manner.

25 E. The subject of this action—the Lower Owens River Project (“LORP”)—is a  
26 mitigation measure that the City and the Board of Water and Power Commissioners adopted in  
27 1991 to compensate for significant environmental impacts caused by the City’s groundwater  
28 pumping in the Owens Valley between 1970 and 1990. (See Feb. 13 order, ¶ B.) The Court

1 finds the City's unreasonable delay of the LORP to be a continuing violation of the California  
2 Environmental Quality Act (CEQA) that has been ongoing since 1970. (See *County of Inyo v.*  
3 *Yorty* (1973) 32 Cal.App.3d 795, 814-15; *County of Inyo v. City of Los Angeles* (1977) 71  
4 Cal.App.3d 185; *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1; *County of*  
5 *Inyo v. City of Los Angeles* (1984) 160 Cal.App.3d 1178.)

6 F. The Court ordered the parties to file position papers regarding proposed sanctions  
7 by July 20, 2005, and set a hearing for July 25, 2005.

8 Evidence having been received and considered, the matter having been argued and submitted,  
9 and good cause appearing,

10 IT IS HEREBY ORDERED THAT:

11 1. **Injunction against use of second aqueduct.** The City of Los Angeles, acting  
12 through its Department of Water and Power, shall be enjoined and restrained from exporting  
13 water from the Owens Valley through the Second Los Angeles Aqueduct.

14 2. **Stay of injunction pending compliance with conditions.** The injunction  
15 described above is hereby stayed so long as the City complies with the conditions listed below.

16 A. ***Limitation on groundwater pumping.*** Beginning with the current (2005-  
17 06) runoff year, the City's groundwater pumping in the Owens Valley shall not exceed 57,412  
18 acre-feet (af) of water per runoff year.

19 B. ***Groundwater recharge.*** During the remainder of the current 2005-06  
20 runoff year, and each runoff year thereafter until such time as the conditions are terminated by  
21 operation of this Order, the City shall supply 16,294 af of water from its aqueduct system, or  
22 from the tributaries thereto, for recharging groundwater levels in the Laws Wellfield.

23 C. ***No reduction of in-valley water supply.*** The City shall not reduce the  
24 amount of water that it provides for uses in the Owens Valley pursuant to Section IV. A of the  
25 Long Term Water Agreement including water for Los Angeles-owned lands in Inyo County, for  
26 Enhancement/Mitigation Projects and mitigation measures. Certain baselines for in-valley water  
27 supply have been established pursuant to Section IV. A of the Long Term Water Agreement and  
28 are based on the 1981-82 runoff year. The parties recognize that the in-valley water use figures

1 presented in LADWP's Annual Report are projections and the actual amount of water supplied  
2 for such uses has been greater than the projections in some years and less than the projections in  
3 others. A reduction of actual amount of water supplied from projected figures shall not be  
4 treated as or constitute a reduction of in valley uses under this provision as long the amount of  
5 water supplied is consistent with applicable baselines established pursuant to section IV. A of the  
6 Long Term Water Agreement.

7           D.       ***Payment of \$5,000 per day.*** Effective September 5, 2005, and until the City  
8 has established permanent baseflows of approximately 40 cfs throughout the Lower Owens River,  
9 the City shall pay \$5,000 per day into an escrow account established by the City and the County.  
10 The City shall make these payments monthly, beginning October 5, 2005, and continuing on the  
11 fifth day of each subsequent month thereafter until such time as they are terminated pursuant to  
12 this Order. The proceeds of the account (including accrued interest) are to be used for the  
13 following purposes: (1) to pay the expenses of the Special Master described below; (2) to pay  
14 Inyo County's share of post-implementation costs for the LORP, (3) to pay the cost of  
15 monitoring habitat indicator species at the direction of the California Department of Fish and  
16 Game for a five year period in an amount not to exceed a cumulative total of \$100,000, and (4) to  
17 pay the costs of the escrow account. The account shall be maintained until the funds are  
18 expended.

19           E.       ***Commencement of river flows.*** On or before January 25, 2007, the City  
20 shall commence the Phase 1 releases of water into the Lower Owens River described in the City's  
21 June 2004 environmental impact report for the LORP.

22           F.       ***Establishment of base flows.*** On or before July 25, 2007, the City shall  
23 establish the permanent baseflow of approximately 40 cubic-feet-per-second (cfs) in the river that  
24 is described in Section II.C.1.b(i) of the 1997 LORP Memorandum of Understanding.

25           G.       ***Monthly reports.*** Beginning October 5, 2005, and on the fifth day of each  
26 month thereafter, the City shall file with the Court a report on: (1) the total amount of groundwater  
27 that the City pumped in the Owens Valley the month immediately preceding the prior month (i.e.  
28 the October 5, 2005 report would contain the information for August 2005); the amount of

1 groundwater that was pumped from each well during the month immediately preceding the prior  
2 month, and the cumulative amount of groundwater pumped in the runoff year up to the month  
3 immediately preceding the prior month; (2) the amount of water supplied by the City for  
4 groundwater recharge pursuant to condition 2B during the month immediately preceding the prior  
5 month and, also, cumulatively for the runoff year up to the month immediately preceding the prior  
6 month; (3) the amount of water supplied by the City for irrigation and/or stockwater to lessees  
7 (collectively) of the City in the Owens Valley, supplied to recreation, wildlife, supplied to tribal  
8 uses in the Owens Valley, supplied to each Enhancement/Mitigation Project, and supplied  
9 collectively to mitigation measures during the month immediately preceding the prior month and,  
10 also, cumulatively for the runoff year; provided however, that the monthly amounts of water  
11 supplied to these uses will initially be reported as an unverified preliminary amounts, and the  
12 actual verified amounts will be reported within sixty days of the preliminary report; if any of the  
13 information to be reported per 1, 2 and 3 above, is unavailable at the time of the report, the report  
14 shall explain why it is unavailable and when it will be provided; and (4) the City's progress or  
15 lack thereof, in implementing the LORP, including whether the City's progress is consistent with  
16 the deadlines established by this order and, if not, what the City has done, or plans to do, to meet  
17 those deadlines. The General Manager of the Los Angeles Department of Water and Power shall  
18 verify each progress report as to its accuracy and completeness. The City shall provide copies of  
19 the reports to the parties, the special master, and real-party-in-interest.

20 H. ***Annual Operations Plan.*** By September 30, 2005, the City shall submit to  
21 the court, the parties, the special master, and real-party-in-interest, its proposed plan for  
22 groundwater pumping operations and water recharge operations for the remainder of the 2005-06  
23 runoff year. In each subsequent runoff year, until these conditions are lifted, the City shall submit  
24 an Annual Operations Plan on or before May 15 that describes its planned groundwater pumping  
25 operations and planned water recharge operations.

26 I. ***Special Master.*** Under the direction and supervision of the Court, a special  
27 master shall monitor compliance with these conditions. By August 31, 2005, the parties shall file  
28 a recommendation for a special master and a proposed order to appoint the special master or if the

1 parties are unable to agree upon the individual to serve as special master they shall submit their  
2 individual recommendations and the Court shall select a special master in accordance with the  
3 procedures set forth in CCP 640.

4 3. **Compliance with conditions; vacation of injunction.** Unless prevented by  
5 *force majeure*, the City shall comply with the conditions listed in Section 2 until it has established  
6 permanent baseflows throughout the Lower Owens River of approximately 40 cfs. If the Court  
7 finds that the City has failed to comply with any of the conditions—and unless the City’s non-  
8 compliance is excused by *force majeure*—the injunction described in Section 1 shall be made  
9 permanent. When the City has established permanent baseflows throughout the Lower Owens  
10 River of approximately 40 cfs, it shall, within five court days, file and serve a report certifying that  
11 it has done so. Upon the filing of such report, the Court shall vacate the injunction and lift the  
12 conditions. Within 45 days of the lifting of the groundwater pumping limits and recharge  
13 conditions (Sections 2A and 2B), the City shall submit to the Parties and to the real party in  
14 interest an updated version of all applicable sections of the Annual Pumping Plan that covers the  
15 remainder of that runoff year.

16 4. **Recognition of Operation Emergencies.** The Court recognizes that in the scope and  
17 course of its operations, the City may encounter certain emergency situations requiring actions  
18 which might otherwise be considered a violation of the pumping restrictions of this order. If  
19 emergency situations arise which require such actions, those actions will not be deemed a  
20 violation of this order provided that they were taken in good faith to address or avert an  
21 emergency situation (such as the prevention of freezing) and the Court and parties were notified  
22 of said actions in writing within two court days of their occurrence. Any amount of groundwater  
23 used by the City pursuant to this emergency shall be debited against the City’s groundwater  
24 pumping for the next runoff year. If the cumulative amount of water that will be used for any  
25 such emergency situations will exceed a cumulative total of 5,000 acre feet, the City will file an ex  
26 parte application with the Court within two court days seeking an order to allow the City to  
27 continue the emergency use.

1           5.     Court to retain jurisdiction. The Court shall retain jurisdiction to enforce  
2 compliance with this order.

3

4 Dated: August \_\_\_, 2005

5

\_\_\_\_\_  
The Hon. Lee Cooper  
Superior Court Judge

6

7

8 **APPROVED AS TO FORM:**

9 Dated: August \_\_\_, 2005

10

LAW OFFICE OF DONALD B. MOONEY

11

12

\_\_\_\_\_  
By: Donald B. Mooney  
Attorneys for Plaintiff  
Owens Valley Committee

13

14 **APPROVED AS TO FORM:**

15 Dated: August \_\_\_, 2005

16

CALIFORNIA ENVIRONMENTAL  
LAW PROJECT

17

18

\_\_\_\_\_  
By: Laurens Silver  
Attorney for Plaintiff  
SIERRA CLUB

19

20

21 **APPROVED AS TO FORM:**

22 Dated: August \_\_\_, 2005

23

BILL LOCKYER  
Attorney General of the State of California

24

25

\_\_\_\_\_  
By: Gordon Burns  
Deputy Attorney General  
Attorney for Real Parties in Interest  
And Cross-Complaints California  
Department of Fish and Game and  
California State Lands Commission

26

27

28

1 **APPROVED AS TO FORM:**

2 Dated: August \_\_, 2005

3

4

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

5

6

By: \_\_\_\_\_  
Joseph Brajevich  
Deputy City Attorney  
Attorney for Defendants City of Los  
Angeles; Los Angeles Department of Water  
and Power; Board of Commissioners of the  
Department of Water Power;

7

8

9

10 **APPROVED AS TO FORM:**

11 Dated: August \_\_, 2005

12

13

PAUL BRUCE  
County of Inyo County Counsel

14

15

By: \_\_\_\_\_  
Gregory L. James  
Special Counsel for Real Party in Interest  
County of Inyo

16

17

18

19

20

21

22

23

24

25

26

27

28