

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

LAURENS H. SILVER (SBN 55339)
CALIFORNIA ENVIRONMENTAL
LAW PROJECT
302 Sycamore Avenue
Mill Valley, California 94941
Telephone: (415) 383-5688
Facsimile: (415) 383-7995
Attorney for Plaintiff
SIERRA CLUB

LAW OFFICE OF DONALD B. MOONEY
DONALD B. MOONEY (SBN 153721)
129 C Street, Suite 2
Davis, California 95616
Telephone: (530) 758-2377
Facsimile: (530) 758-7169
Attorney for Plaintiff
OWENS VALLEY COMMITTEE

ROCKARD J. DELGADILLO
City Attorney
RICHARD M HELGESON
Senior Assistant City Attorney for
Water and Power

ARTHUR B. WALSH (SBN 89732)
Special Counsel
Joseph Brajevich (SBN 156144)
Deputy City Attorney
111 North Hope Street, Suite 340
P.O. Box 51111

Los Angeles, California 90051-0100
Telephone: (213) 367-4505
Attorneys for Defendants CITY OF
LOS ANGELES; LOS ANGELES
DEPARTMENT OF WATER AND POWER;
BOARD OF COMMISSIONERS OF THE
DEPARTMENT OF WATER AND POWER;
GERALD GEWE AND GENE COUFAL

BILL LOCKYER
Attorney General of the
State of California
DANIEL L. SIEGEL
Supervising Deputy
Attorney General
GORDON B. BURNS (SBN 173441)
Deputy Attorney General
1300 I Street, Suite 125
P.O. Box 944255
Sacramento, CA 94244-2550
Telephone: (916) 324-3081
Facsimile: (916) 327-2319
Attorneys for Real-Parties-In-Interest
and Cross Complainants/ Petitioners
CALIFORNIA STATE LANDS
COMMISSION and CALIFORNIA
DEPARTMENT OF FISH AND GAME

PAUL N. BRUCE (SBN 081619)
Inyo County Counsel
224 North Edwards Street
P.O. Box M
Independence, California 93526
Telephone: (760) 878-2241
Facsimile: (760) 878-2241

GREGORY L. JAMES (SBN 55760)
Special Legal Counsel
163 May Street
Bishop, California 93514
Telephone: (760) 872-1168
Facsimile: (760) 873-5695

Attorneys for Real Party in Interest
COUNTY OF INYO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF INYO

SIERRA CLUB, and OWENS
VALLEY COMMITTEE)
)
Plaintiffs/Petitioners)
)
v.)

Case No.: SICVCV01-29768
AMENDED STIPULATION AND ORDER

1)
2 CITY OF LOS ANGELES; LOS)
3 ANGELES DEPARTMENT OF)
4 WATER AND POWER; BOARD)
5 OF COMMISSIONERS OF)
6 THE DEPARTMENT)
7 OF WATER AND POWER; GERALD)
8 GEWE; GENE COUFAL; and)
9 DOES 1 - 50)

10)
11 Defendants)

12)
13 CALIFORNIA DEPARTMENT OF)
14 FISH AND GAME; and CALIFORNIA)
15 STATE LANDS COMMISSION)

16)
17 Real Parties in Interest and)
18 Cross-Complainants)

19)
20 COUNTY OF INYO; and DOES)
21 51-100)

22)
23 Real Party in Interest)
24)
25)
26)
27)
28)

INTRODUCTION

A. Memorandum of Understanding. In March 1997, City of Los Angeles Department of Water and Power ("LADWP"), the County of Inyo ("County"), the Sierra Club, the Owens Valley Committee, the California Department of Fish and Game, the California State Lands Commission, and Carla Scheidlinger entered into a Memorandum of Understanding ("MOU").

B. Draft EIR. The MOU requires LADWP, as the lead agency, and the County, as a responsible agency, to jointly prepare an environmental impact report (EIR) for the Lower Owens River Project (LORP). Because federal funds for implementation of the LORP are being provided by the U.S. Environmental Protection Agency ("EPA"), an Environmental Impact Statement ("EIS") must be prepared for the LORP. Therefore, a combined EIR/EIS is being prepared.

The LORP is compensatory mitigation for impacts related to LADWP's groundwater pumping that were difficult to quantify or mitigate directly. LADWP adopted the LORP as a

1 mitigation measure for these impacts in 1991, pursuant to the California Environmental Quality
2 Act ("CEQA"). The MOU augmented the LORP, provided additional detail, and set a schedule
3 for implementation.

4 The MOU provides that a draft EIR addressing the LORP ("Draft EIR") was to have been
5 released by June 13, 2000. A Draft EIR was not released by June 13, 2000. Thereafter, the parties
6 to the MOU agreed to several extensions for completion of the Draft EIR. The Draft EIR was not
7 completed by the agreed-upon extensions. On December 4, 2001, Plaintiffs filed an action in Inyo
8 County Superior Court seeking an order directing LADWP and the County to comply with the
9 MOU provisions requiring completion of the Draft EIR. By stipulation dated May 30, 2002, it
10 was agreed that the Draft EIR would be completed and released by August 31, 2002. The Draft
11 EIR was not released by August 31, 2002. On September 12, 2002, the Inyo County Superior
12 Court issued an Order directing the completion and release of the Draft EIR by November 1, 2002.
13 On November 1, 2002, a Draft EIR/EIS was released for public review and comment. The public
14 comment period on the Draft EIR/EIS closed on January 14, 2003.

15 C. Final EIR. The MOU requires that a Final EIR addressing the LORP be completed
16 and presented to the LADWP Board of Water and Power Commissioners ("LADWP Board") for
17 certification as soon as possible following the Draft EIR.

18 D. Commencement of Baseflows and Implementation of the Other Physical Features
19 of the LORP. The MOU requires LADWP to commence baseflows of approximately 40 cubic
20 feet per second ("cfs") in the lower Owens River by June 13, 2003. LADWP did not commence
21 the baseflows on June 13, 2003, and has not commenced such flows as of the date of this
22 Stipulation and Order. The MOU requires LADWP to commence implementation of the other
23 physical features of the LORP upon certification of the final EIR. Since the final EIR has not
24 been certified as of the date of this Stipulation and Order, the implementation of the other physical
25 features of the LORP has not commenced.

26 E. Additional Commitments. In addition to implementation of the LORP, the MOU
27 requires that by June 13, 2000 (three years from the discharge of the writ), certain studies and
28 evaluations be completed by consultants identified in the MOU ("MOU Consultants") acting

1 under the direction of the County and LADWP. The MOU provides that actions or projects
2 recommended by these studies be considered for approval and implementation by the LADWP
3 Board. Further, the MOU provides that if the LADWP Board determines not to approve and
4 implement all or part of any such action or project, it must set forth its reasons in a resolution of
5 disapproval. By agreement of the parties to the MOU, the MOU Consultants were given
6 extensions of time until September 1, 2001 to complete certain of these tasks.

7 Section III.A.1 of the MOU provides that the MOU Consultants will conduct an evaluation
8 of the condition of Yellow-billed Cuckoo habitat in the riparian woodland areas of Hogback and
9 Baker Creeks and will develop Yellow-billed Cuckoo Habitat Enhancement Plans for those areas.

10 Section III.A.3 of the MOU also requires LADWP to provide additional mitigation in the form of
11 1600 acre-feet of water per year ("AFY"). The MOU Consultants are required to first determine
12 the water requirements (up to 1,600 acre-feet) of the on-site mitigation measure at Hines Springs
13 identified in the 1991 EIR. Once the water supply requirements have been determined,
14 opportunities to use any remaining water in the implementation of on-site and/or off-site
15 mitigation at/for Fish Springs, Big and Little Blackrock Springs, and Big and Little Seely Springs,
16 or other appropriate sites, are to be identified and evaluated by Consultants. The establishment of
17 a shorebird and waterfowl habitat east of Diaz Lake, the enhancement of a wetland at Calvert
18 Slough, and the establishment of a permanent water supply for Warren Lake north of Big Pine to
19 enhance shorebird and wildlife habitat are to be included in the evaluation of off-site measures.

20 The feasibility and the relative environmental benefits of the identified opportunities are also to be
21 assessed. Based upon this evaluation, the MOU Consultants are to recommend reasonable and
22 feasible mitigation measures in addition to the measure at Hines Spring and are to recommend
23 how the water should be released and used to implement and maintain these mitigation measures.

24 Section III. H of the MOU requires that LADWP and the County prepare an annual report,
25 to be released on or about May 1 of each year, that describes the environmental conditions in the
26 Owens Valley and studies, projects, and activities conducted under the Inyo County/Los Angeles
27 Water Agreement ("Agreement") and the MOU.

28

1 F. Capacity of the LORP Pump Station. The Agreement provides that LADWP will
2 construct a pump station to recover water released to the LORP and convey the water to the Los
3 Angeles Aqueduct. LADWP contends that there is no limit on the capacity of the pump station so
4 long as the flows established by the MOU and the goals of the LORP plan are met. The other
5 signatories to the MOU believe that the Agreement and the MOU require LADWP to construct a
6 pump station with a capacity of 50 cfs.

7 G. Second Amended and Supplemental Complaint and Cross Complaint. On
8 September 26, 2003, Plaintiffs filed a Second Amended and Supplemental Complaint for
9 Declaratory and Injunctive Relief and Petition for Writ of Mandate ("Amended Complaint"). On
10 December 4, 2003, the California Department of Fish And Game and the California State Lands
11 Commission filed a Cross Complaint for Declaratory Relief and Petition for Writ of Mandate
12 ("Cross Complaint"). These actions seek to enforce the terms of the MOU.

13 H. Purpose of the Stipulation and Order. The purpose of this Stipulation and Order is
14 to resolve the issues raised in the Amended Complaint and the Cross Complaint, and to resolve the
15 issue of the capacity of the LORP pump station.

16
17 **STIPULATION**

18 It is hereby and stipulated by and between Plaintiff Sierra Club by and through Laurens H.
19 Silver, Plaintiff Owens Valley Committee by and through Donald B. Mooney, Defendants City of
20 Los Angeles, Los Angeles Department of Water and Power, Board of Commissioners of the
21 Department of Water and Power, Gerald Gewe, and Gene Coufal, by and through Rockard J.
22 Delgadillo, City Attorney, Richard M. Helgeson, Senior Assistant City Attorney for Water and
23 Power, Arthur B. Walsh, Assistant City Attorney, Real Party in Interest County of Inyo by and
24 through Paul N. Bruce, County Counsel and Gregory L. James, Special Legal Counsel, and Cross-
25 Complainants California Department of Fish And Game and California State Lands Commission
26 by and through Bill Lockyer, Attorney General, Gordon Burns, Deputy Attorney General and
27 Daniel L. Siegel (together referred to as "the parties") as follows:
28

1 1. LADWP shall build a "stand alone" (non-expandable) LORP pump station that is
2 limited to a maximum capacity of 50 cfs. At any given time, the rate of pumping by the pump
3 station may be up to, but shall not exceed 50 cfs. The U.S Bureau of Reclamation will design the
4 pump station, including such redundancy in pumping capacity as it deems necessary. LADWP will
5 construct the pump station as designed by the U.S Bureau of Reclamation. LADWP shall
6 continuously measure and record the rate of pumping at all times. The location of the
7 measurement shall be at the LORP pump station or in the pipeline that connects the pump station
8 with the existing 60-inch pipeline that leads to both the LA Aqueduct and to LADWP's Owens
9 Lake dust control project. LADWP shall insure the accuracy of the pumping measurements by
10 calibrating its metering device(s) on a periodic basis as per the manufacturer's recommendations.
11 LADWP shall submit an annual pump station report to the other parties that demonstrates
12 compliance with the above pumping limitation and shall post the flow data in real time and the
13 average flow for the then current month to LADWP's website. The raw data associated with flow
14 measurements shall be available for inspection and copying as a public record. LADWP will
15 provide to the County, the California Department of Fish and Game and the California State Lands
16 Commission reasonable access to its metering devices, control structures, etc. for the purpose of
17 such independent monitoring and inspection as is relevant to confirming compliance with this
18 Stipulation and Order.

19 2. LADWP and the County shall complete and release to the public and the parties a
20 Final EIR/EIS addressing the LORP by June 23, 2004. The Final EIR/EIS shall be prepared in
21 accordance with the schedule attached as Exhibit A to this Stipulation and Order. In particular:

- 22 • Activity Numbers 1 through 4, on Exhibit A, shall be completed by LADWP and the
23 County by January 23, 2004.
- 24 • Activity Number 5, on Exhibit A, shall be completed by February 20, 2004; however, if
25 the EPA has not completed the portion of Activity Number 2 that is to be performed by
26 EPA, Activity Number 5 shall be completed within five working days after completion of
27 the Activity Number 2 work by EPA.

- 1 • Activity Number 14, on Exhibit A, (preparation of an Administrative Draft of the Final
2 EIR/EIS) shall be completed by May 7, 2004.

3 LADWP, as the CEQA lead agency, shall present the Final EIR/EIS and accompanying
4 documents to the LADWP Board for consideration of certification on or before the first meeting of
5 the LADWP Board in August 2004. The LADWP Board shall take action with respect to
6 certification of the Final EIR/EIS and approval of the project within 30 days of its presentation for
7 certification. The Inyo County Board of Supervisors, as a CEQA responsible agency, will take
8 action with respect to certification of the Final EIR/EIS within two weeks of action by the
9 LADWP Board. The date for completion and release of the Final EIR/EIS, the date for
10 submission of the Final EIR/EIS to the LADWP Board, the date for submission of the Final
11 EIR/EIS to the Inyo County Board of Supervisors, and the dates for certification of the Final
12 EIR/EIS may be extended by unanimous agreement of the parties, or by order of the Court upon
13 the Court's determination that circumstances beyond the control of LADWP, or the County,
14 justify an extension of a date(s).

15 3. If LADWP completes, releases, submits and certifies the Final EIR/EIS
16 as provided in section 2, the Sierra Club, the Owens Valley Committee, the California Department
17 of Fish and Game, the California State Lands Commission, and the County will not challenge the
18 adequacy of the Final EIR/EIS on the basis that the Draft EIR/EIS should have been re-circulated.

19 4. After the Final EIR/EIS has been certified by the LADWP Board and that action
20 has become final following the passage of the requisite review period by the Los Angeles City
21 Council, and after the Final EIR/EIS has been certified by the Inyo County Board of Supervisors,
22 and upon EPA's issuance of a Record of Decision on the EIS portion of the Final EIR/EIS (an
23 action necessary for federal grant funds to become available), LADWP shall promptly commence
24 implementation of the Off-River Lakes and Ponds and the Blackrock Waterfowl Habitat Area.

25 5. The initial releases of water that will commence the ramping (increasing) of flows
26 specified in the project description in the Final EIR/EIS adopted by LADWP and the County will
27 be commenced by LADWP on or before September 5, 2005. LADWP will ramp the flows as
28 rapidly as possible while attempting to avoid adverse impacts on water quality and fish. It is

1 anticipated that LORP baseflows of 40 cfs in the river channel will be fully implemented by April
2 1, 2006. However, if at the time of the approval of the LORP, LADWP and the County determine,
3 upon substantial evidence, that full implementation of baseflows by April 2006 cannot occur
4 without significant adverse impacts on water quality and/or fish, and therefore adopt an alternative
5 to the project that allows for full implementation of baseflows after April 1, 2006, the rights,
6 remedies, or causes of action that are available to any party in regard to a failure by LADWP to
7 implement baseflows by June 13, 2003 as required by the MOU, shall not be limited by the
8 provisions of section 15 of this Stipulation and Order.

9 6. The County shall seek new grant funds (from agencies other than LADWP and the
10 County) that will allow the County to continue to conduct its salt cedar control program in the area
11 of the LORP. LADWP will provide funds to the County in an amount not to exceed \$500,000 per
12 year, that matches the amount of any grant funds obtained by the County for the continuation of its
13 salt cedar control program in the LORP up to a total maximum of \$1,500,000. The County will
14 provide to LADWP a copy of each monthly invoice(s) submitted by the County to a granting
15 agency(s) for reimbursement of expenses incurred by the County. Within ninety days of receipt of
16 written notification from the County that all or part of the invoiced funds have been received by
17 the County from the granting agency, LADWP will provide to the County an amount of funds
18 equal to the amount of the funds received from the granting agency (up to a maximum of \$500,000
19 per fiscal year). If LADWP has provided \$500,000 to the County in a fiscal year, the difference
20 between \$500,000 and the amount of any unmatched grant funds (up to the \$500,000 maximum
21 for the following fiscal year) will be provided to the County by LADWP during the following
22 fiscal year. LADWP and the County will agree on the procedures and specific schedules for
23 providing the matching funds to the County. LADWP will cooperate with the County and assist
24 the County in its attempts to obtain such grant funds. If the County fails to obtain such grant
25 funds, the provisions of this Stipulation and Order shall not require the County to continue its salt
26 cedar control program in the area of the LORP.

27 7. LADWP will conform to each of the following deadlines:
28

1 (a) Not later than 7 days from certification of the Final EIR/EIS by the LADWP Board,
2 LADWP shall submit complete applications for all permits necessary to allow implementation of
3 the LORP. LADWP shall provide evidence to the other parties to this Stipulation and Order that
4 the applications were timely submitted.

5 /
6 (b) LADWP shall initiate the Phase 1 flows as described on page 2-21 of the LORP
7 Draft EIR not later than six (6) months from the granting of all permits necessary to allow the
8 implementation of Phase 1 flows.

9 (c) For information purposes only, LADWP shall, within 45 days of the entry of this
10 Stipulation and Order, develop and submit for review to the other parties a schedule that: (1)
11 identifies the various tasks which are to be undertaken by outside contractors that are prerequisites
12 to implementing the Phase 1 flows, and are prerequisites to completing other LORP pre-
13 implementation work, (2) provides the anticipated dates for LADWP to release Requests for
14 Proposals for each of those tasks, (3) provides the anticipated starting and completion date for
15 each task, (4) identifies the work that will be undertaken by LADWP that is prerequisite to
16 completing other LORP pre-implementation work, and (5) provides the anticipated starting and
17 completion dates for each of those tasks. All tasks and work described in (1) through (5) shall be
18 structured by LADWP so that the schedule for commencing the releases into the river
19 implementing the Phase 1 flows described in section 7b, and the schedule for releasing baseflows
20 into the river described in section 5 are attained. LADWP will report on its adherence to the
21 schedules described in (1) through (5), and, if it deems it necessary, will submit modifications to
22 the schedule to the other parties.

23 8. Section III. A. 1 of the MOU is amended to read as follows (the amended language
24 is shown in italics):

25 1. YELLOW-BILLED CUCKOO HABITAT. Consultants, *in*
26 *accordance with a work plan developed by Consultants and approved by DWP and*
27 *the County, and with the assistance of a subcontractor(s) recommended by the*
28 *County and acceptable to Consultants, will conduct an evaluation of the condition*

1 of Yellow-billed Cuckoo habitat in the riparian woodland areas of Hogback and
2 Baker Creeks shown on Figure 5. Based on that evaluation, Consultants will
3 develop, as they deem warranted, Yellow-billed Cuckoo Habitat Enhancement
4 Plans for these areas. Each *habitat enhancement* plan will identify reasonable and
5 feasible actions or projects to maintain and/or improve the habitat of the Yellow-
6 billed Cuckoo. In developing the plans, the Consultants *and the subcontractor(s)*
7 will consider the recommendations for these areas that were identified in the
8 *Distribution of Breeding Riparian Birds in Owens Valley, Inyo County, California*
9 (Laymon and Williams 1994) and will confer with DWP, the lessee for each area
10 and the Parties.

11 *Any inquiries, requests for guidance, reports, drafts, memoranda, data,*
12 *draft recommendations, whether oral or written, and whether made or provided by*
13 *Consultants and/or any subcontractors to DWP or the County, made or provided*
14 *by DWP to Consultants and/or subcontractors, or made or provided by County to*
15 *Consultants and/or subcontractors, will be provided to County and/or DWP in the*
16 *same manner and at the same time.*

17 *The plans will include schedules for implementing the plans. Projects*
18 *recommended by these studies and evaluations will be presented to the Board of*
19 *Water and Power Commissioners for approval and implementation as soon as*
20 *possible after compliance with CEQA.*

21 *The parties acknowledge that the process of utilizing subcontractor(s)*
22 *recommended by the County could result in delays such that the above completion*
23 *dates cannot be met, and the parties agree to extend the completion dates to the*
24 *extent that the subcontractors cause such delays to occur.*

25 9. Section III. A. 3 of the MOU is amended to read as follows (the amended
26 language is shown in italics):

27 3. ADDITIONAL MITIGATION. A total of 1600 AFY will be
28 supplied by DWP for (1) the implementation of the on-site mitigation measure at

1 Hines Spring identified in the EIR, and (2) the implementation of on-site and/or
2 off-site mitigation that is in addition to the mitigation measures identified in the
3 EIR for impacts at Fish Springs, Big and Little Blackrock Springs, and Big and
4 Little Seely Springs.

5 /
6 Consultants, *in accordance with a work plan developed by Consultants and*
7 *approved by DWP and the County, and with the assistance of a subcontractor(s)*
8 *recommended by the County and acceptable to Consultants*, will determine the
9 water requirements of the mitigation measure at Hines Spring. Once the water
10 supply requirements have been determined, opportunities to use any remaining
11 water in the implementation of on-site and/or off-site mitigation at/for Fish Springs,
12 Big and Little Blackrock Springs, and Big and Little Seely Springs, *or additional*
13 *mitigation measures at Hines Springs*, will be identified and evaluated by
14 Consultants. The establishment of a shorebird and waterfowl habitat east of Diaz
15 Lake, the enhancement of a wetland at Calvert Slough, the establishment of a
16 permanent water supply for Warren Lake north of Big Pine to enhance shorebird
17 and wildlife habitat, *and other appropriate sites identified by the County* will be
18 included in the evaluation of off-site measures. The feasibility and the relative
19 environmental benefits of the identified opportunities also will be assessed.

20 *Consultants will independently evaluate the recommendations and report(s)*
21 *of the subcontractor(s)*. Based upon this evaluation, Consultants will recommend
22 reasonable and feasible mitigation measures in addition to the measure at Hines
23 Spring and will recommend how the water should be released and used to
24 implement and maintain these mitigation measures. *The recommendations shall*
25 *include schedules for implementing the mitigation measures*. Reasonable and
26 feasible measures will be recommended which will provide the most environmental
27 benefits that can be achieved with the available water. On-site mitigation measures
28 will be preferred unless off-site measures are found to be more environmentally

1 beneficial than identified on-site measures. In considering whether to recommend
2 a measure, Consultants will confer with DWP, the lessee for each affected area and
3 the Parties. Mitigation measures recommended by the Consultants, within the
4 water limits of 1600 AFY, will be implemented by DWP in accordance with the
5 recommended schedules, and will be maintained by DWP and/or the County.

6 *Projects recommended by these studies and evaluations will be presented to the*
7 *Board of Water and Power Commissioners for approval and implementation as*
8 *soon as possible after compliance with CEQA.*

9 *Any inquiries, requests for guidance, reports, drafts, memoranda, data,*
10 *draft recommendations, whether oral or written, and whether made or provided by*
11 *Consultants and/or any subcontractors to DWP or the County, made or provided*
12 *by DWP to Consultants and/or subcontractors, or made or provided by County to*
13 *Consultants and/or subcontractors, will be provided to County and/or DWP in the*
14 *same manner and at the same time.*

15 *The parties acknowledge that the process of utilizing subcontractor(s)*
16 *recommended by the County, could result in delays such that the above completion*
17 *dates cannot be met, and the parties agree to extend the completion dates to the*
18 *extent that the subcontractors cause such delays to occur.*

19 10 (a) Work Plans. The County and LADWP have agreed upon a work plan for
20 developing the Yellow-billed Cuckoo Habitat Enhancement Plans pursuant to Section III.A.1 of
21 the MOU (as revised in section 8), and have agreed upon a work plan for developing the
22 mitigation measures to be recommended pursuant to Section III.A.3 of the MOU (as revised in
23 section 9). The agreed upon work plans, together with the accompanying budgets and schedules
24 are Exhibits B and C hereto. The other parties to the MOU have reviewed the schedules for the
25 two work plans and are in agreement with the schedules. LADWP and Inyo County shall direct
26 the MOU Consultants to complete the activities described in each work plan in accordance with
27 the schedule attached to each work plan. This Stipulation and Order incorporates the schedules for
28

1 developing the Yellow-billed Cuckoo Habitat Enhancement Plans and for developing the
2 mitigation measures as enforceable orders of the Court.

3 (b) Schedules. If any party disagrees with a schedule approved by the Board of Water
4 and Power Commissioners for implementing a Yellow-billed Cuckoo Habitat Enhancement Plan,
5 or disagrees with a schedule approved by the Board of Water and Power Commissioners for
6 implementing a mitigation measure that is recommended pursuant to Section III.A.3 of the MOU
7 (as revised in section 9), if the Court receives a written request from that party within thirty days
8 of the Board of Water and Power Commissioners' action approving a schedule, the Court shall
9 schedule a mandatory settlement conference or conferences for the purpose of attempting to reach
10 agreement on schedules for conducting the work. If the parties are in agreement on some or all of
11 the schedules approved by the Board of Water and Power Commissioners, the parties shall amend
12 this Stipulation and Order to incorporate those schedules as enforceable orders of the Court. If
13 some or all of the schedules are made the subject of a mandatory settlement conference as
14 described in the preceding paragraph, any alternative schedules agreed to by the parties shall be
15 incorporated into this Stipulation and Order by amendment as enforceable orders of the Court. If,
16 following a mandatory conference or conferences, there is no agreement on a schedule(s) for
17 implementing the work, any party to this Stipulation and Order may pursue its rights, remedies, or
18 causes of action against any Defendant as provided in section 14 below. A failure to reach
19 agreement on a schedule shall not in anyway alter or modify this Stipulation and Order, or the
20 rights of the parties under this Stipulation and Order.

21 11. By May 31, 2004, LADWP shall complete and release to the other parties and to
22 the public, an annual report for 2003 that is in conformance with section III.H of the MOU.
23 Further, on or about May 1 of each year thereafter, LADWP and the County shall complete and
24 release an annual report that is in conformance with section III.H of the MOU. These annual
25 reports may be filed jointly or separately by the two entities.

26 12. The deadlines described in sections 2, 4, 5, 7, 8, 9 and 11 may be extended by
27 unanimous agreement of the parties, or by order of the Court upon the Court's determination that
28 circumstances beyond the control of LADWP, or the County, justify an extension of the deadlines.

1 13. Prior to the completion and release of the Final EIR/EIS, on January 23, 2004,
2 February 20, 2004, March 26, 2004, April 23, 2004, May 21, 2004, and every two weeks
3 thereafter until certification of the Final EIR, LADWP and the County will provide progress
4 reports to the parties and will file the progress reports with the Court. After certification of the
5 Final EIR, on the last court day of each month until the LORP baseflows have been implemented,
6 LADWP and the County shall provide progress reports to the other parties and shall file the
7 reports with the Court. These reports may be filed jointly or separately by the two entities. The
8 reports shall identify progress, or lack thereof, in implementing the Stipulation and Order,
9 including whether the progress is consistent with the schedules established by the Stipulation and
10 Order, and if not consistent with the implementation schedule, the facts and circumstances
11 regarding the inconsistency, and the planned action that will be taken to meet the implementation
12 schedule.

13 14. A party or parties to this Stipulation and Order may seek enforcement of this
14 Stipulation and Order by filing and serving a noticed motion to set a hearing for an order to show
15 cause why a remedy, sanctions, or other order proposed in the motion, or otherwise determined to
16 be appropriate by the court, should not be imposed.

17 15. As long as LADWP is in compliance with the deadlines described in sections 2, 4,
18 5, 7 a, 7b, 8, 9 and 11, has submitted the schedule described in section 7c, and has provided
19 matching funds pursuant to section 6, no party to this Stipulation and Order may seek an order
20 from any Court that compels a reduction in LADWP's groundwater pumping in the Owens Valley,
21 and no party to this Stipulation and Order may seek an order from any court to compel the
22 commencement of flows in the river (LADWP shall be deemed in compliance with any of the
23 above-described deadlines if it is in compliance with the deadline as extended by unanimous
24 agreement of the MOU Parties or by order of the Court.) However, if LADWP fails to comply
25 with any of these deadlines: (1) this Stipulation and Order shall not limit the rights, remedies, or
26 causes of action of any party to this Stipulation and Order against any Defendant, including rights,
27 remedies, and causes of action that have not yet been filed, provided that the party pursues such
28 rights, remedies or causes of action in Inyo County Superior Court; (2) Defendants agree to toll

1 any and all applicable statutes of limitations and other procedural requirements and limitations
2 from the date of the filing of this Stipulation and Order for all such rights, remedies, and causes of
3 action, and (3) any and all claims of laches are waived by Defendants, with respect to such rights,
4 remedies, and causes of action, except that no right, remedy or cause of action which would have
5 expired or been barred prior to the date of this Stipulation and Order is revived by this paragraph.

6 If a party pursues such rights, remedies, or causes of action in a new action, Defendants
7 shall not oppose coordination or consolidation with the current action. The parties intend this
8 provision to maintain the status quo and avoid any prejudice to the parties for granting Defendants
9 additional time to implement the LORP. This section shall not bar or affect any dispute that has
10 been, or may be, brought by the County against LADWP under the dispute resolution provisions
11 of the Agreement. Moreover, this section is intended to limit a parties' remedies only for
12 Defendants' failure to meet the MOU deadlines that have been extended herein; it is not intended
13 to apply to other breaches of the MOU or other legal duties, such as disputes about the project's
14 design.

15 16. If the current judge (Denton, J.) assigned to this case is no longer available for any
16 reason, then this Stipulation and Order will be enforced by a disinterested judge from a neutral
17 county assigned by the chairperson of the Judicial Council pursuant to Code of Civil Procedure
18 section 394(a).

19 17. Nothing in this Stipulation and Order shall be interpreted as changing or modifying
20 any provision or provisions of the MOU or any obligation in the MOU unless such change or
21 modification is expressly identified. Nothing in this Stipulation and Order shall alter any legal
22 obligation, duty or commitment by any party, including but not limited to obligations, duties and
23 commitments under CEQA, the Agreement, and the findings and resolutions adopted by the Los
24 Angeles City Council on October 18, 1991, and by LADWP on October 15, 1991, in which they
25 committed to implement the LORP and other mitigation measures. Nothing in this Stipulation and
26 Order constitutes an admission by any party that the delays in preparation of a Final EIR/EIS or in
27 implementation of the baseflows were or were not attributable to circumstances beyond the
28 control of the Defendants.

1 18. Nothing in this Stipulation and Order shall be construed to (1) bar LADWP from
2 coming before this Court to pursue any claimed legal rights or remedies that it may have to change
3 the terms of Section 1 in the event of a subsequent change of circumstances, or (2) imply that
4 LADWP is entitled to change the terms of Section 1.

5
6
7 _____
Date

Laurens H. Silver, Esq.
Attorney for Plaintiff
Sierra Club

8
9
10 _____
Date

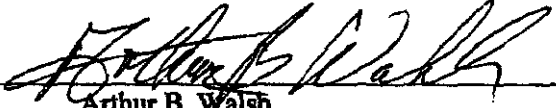
Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

11
12
13 _____
Date

Gordon B. Burns
Deputy Attorney General
Attorney for Real Parties in Interest/Cross
Complainants
California Department of Fish and Game
California State Lands Commission

14
15
16
17
18
19 8/18/04

20 _____
Date


Arthur B. Walsh
Special Counsel
Joseph Brajevich
Attorney for Defendants
City of Los Angeles; Los Angeles
Department Of Water And Power;
Board of Commissioners of The
Department Of Water and Power;
Gerald Gewe and Gene Coufal

21
22
23
24
25
26
27 _____
Date


Paul N. Bruce
County Counsel

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

8/18/04

Date



Laurens H. Silver, Esq.
Attorney for Plaintiff
Sierra Club

Date

Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

Date

Gordon B. Burns
Deputy Attorney General
Attorney for Real Parties in Interest/Cross
Complainants
California Department of Fish and Game
California State Lands Commission

Date

Arthur B. Walsh
Special Counsel
Joseph Brajevich
Attorney for Defendants
City of Los Angeles; Los Angeles
Department Of Water And Power;
Board of Commissioners of The
Department Of Water and Power;
Gerald Gewe and Gene Coufal

Date

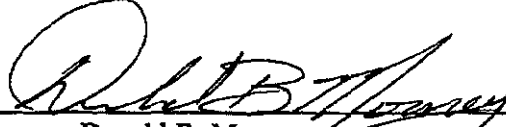
Paul N. Bruce
County Counsel
Gregory L. James
Special Legal Counsel
Attorneys for Real Party in Interest
County of Inyo

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

Date

Laurens H. Silver, Esq.
Attorney for Plaintiff
Sierra Club

August 16, 2004
Date



Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

Date

Gordon B. Burns
Deputy Attorney General
Attorney for Real Parties in Interest/Cross
Complainants
California Department of Fish and Game
California State Lands Commission

Date

Arthur B. Walsh
Assistant City Attorney
Attorney for Defendants
City of Los Angeles; Los Angeles
Department Of Water And Power;
Board of Commissioners of The
Department Of Water and Power;
Gerald Gewe and Gene Coufal

Date

Paul N. Bruce
County Counsel
Gregory L. James
Special Legal Counsel
Attorneys for Real Party in Interest
County of Inyo

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

Date

Laurens H. Silver, Esq.
Attorney for Plaintiff
Sierra Club

Date

Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

8/18/04
Date

G. Burns
Gordon B. Burns

Deputy Attorney General
Attorney for Real Parties in Interest/Cross
Complainants
California Department of Fish and Game
California State Lands Commission

Date

Arthur B. Walsh
Special Counsel
Joseph Brajevich
Attorney for Defendants
City of Los Angeles; Los Angeles
Department Of Water And Power;
Board of Commissioners of The
Department Of Water and Power;
Gerald Gewe and Gene Coufal

Date

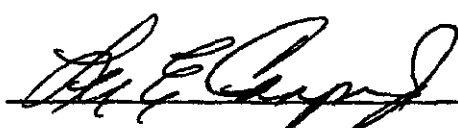
Paul N. Bruce
County Counsel
Gregory L. James
Special Legal Counsel
Attorneys for Real Party in Interest
County of Inyo

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

Gregory L. James
Special Legal Counsel
Attorneys for Real Party in Interest
County of Inyo

SECTION 3
ORDER

Good cause appearing therefore, the Amended Stipulation set forth above is the order of this Court.

Dated: Sept. 15 2004 
Judge of the Superior Court