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CITY OF LOS ANGELES ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

CITY OF LOS ANGELES; DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES, Plaintiffs, vs. BOARD OF SUPERVISORS OF THE COUNTY OF INYO; THE COUNTY OF INYO; JOHN K. SMITH, COUNTY ADMINISTRATIVE OFFICER; INYO COUNTY WATER COMMISSION; AND DOES 1 THROUGH 50, Defendants.	Case No. 12908 **ISSUE SUBMITTED TO DISPUTE RESOLUTION PURSUANT TO STIPULATION AND ORDER FOR JUDGMENT**

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TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD HEREIN:

PLAINTIFFS, CITY OF LOS ANGELES ACTING BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER, hereby submits its issue to dispute resolution, pursuant to Stipulation and Order for Judgment as follows:

I. ISSUE

Inyo County's unilateral determination that LADWP's ground water pumping operations have caused an impact to vegetation at Blackrock 94[1] is a material, and incurable, violation of The Agreement Between the County of Inyo (County) and the City of Los Angeles (City) and Its Department of Water and Power (LADWP) for a Long Term Groundwater Management Plan for Owens Valley and Inyo County (Water Agreement), found in Section II of Stipulation and Order for Judgment in *City of Los Angeles, et al. v. Board of Supervisors of the County of Inyo, et al.*, (Case No. 12908, Superior Court of California, County of Inyo). The Water Agreement includes authorizing provisions for the Inyo County/Los Angeles Standing Committee (Standing Committee) and the Inyo/Los Angeles Technical Group (Technical Group) to continue in existence with the intent to represent the LADWP and Inyo County in implementing the goals and principles of the Water Agreement. The Technical Group is comprised of not more than five (5) representatives selected by the County and five (5) by the Department. (Water Agreement, p. 6). Technical Group, along

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[1] Vegetation parcel Blackrock 094 is an approximately 333 acre parcel in the Blackrock Vegetation and Wellfield Management Area. Management areas were delineated by the parties as the areal unit for vegetation management pursuant to the provisions of the Water Agreement (Water Agreement Section I.B, page 7; Green Book Section I.C, page 19. paragraph 3; 1991 EIR, page 5-3, paragraph 1). The vegetation parcel was delineated and surveyed by LADWP in 1986 as an area of similar vegetation type following the vegetation mapping protocols summarized in Green Book Section II.A.2 (Green Book, page 36). As noted in Exhibit A of the Water Agreement (and Appendix B in 1991 FEIR Volume II, Appendices), the total area of the Blackrock Wellfield Vegetation and Management Area is the 6,763 acres. See Exhibit 27 for a map.

with the Standing Committee, is obligated, pursuant to both the terms of the Water Agreement and the Stipulation and Order, to follow established technical processes to determine whether the LADWP's groundwater pumping, has caused or could potentially cause, a measurable, significant decrease or change in vegetation or another significant effect to the environment. The technical processes, which require the joint analysis of vegetation conditions by the Technical Group, are established in Section IV.B of the Water Agreement and are further described in Section I.C. of the Green Book, the technical appendix to the Water Agreement (Green Book).

As noted, Technical Group representatives are charged with executing all technical tasks and duties mandated by the Water Agreement. Although the Technical Group is comprised by several staff members from each agency, each agency is vested with one vote on all Technical Group decisions. Throughout this document, Inyo County and the City of Los Angeles and its Department of Water and Power are collectively referred to as "Parties" and all subsequent references are to the Water Agreement, unless otherwise noted.

On February 2, 2011 the Inyo County Water Department (ICWD)[2] presented a report to the Technical Group entitled *Analysis of Conditions in Vegetation Parcel Blackrock 94, February 2, 2011* (ICWD's Report). Although ICWD's Report was prepared unilaterally by the ICWD, without input, participation or comment by LADWP, or any authorization by the Technical Group, it concluded with a technical assertion that LADWP's groundwater pumping operations have resulted in a measurable change in vegetation at Blackrock 94, that the change was attributable to LADWP pumping, and that the change was significant, therefore requiring mitigation.

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[2] ICWD is an agency of Inyo County and its submittal of the ICWD Report was made on behalf of the County with the support of the Inyo County Board of Supervisors who oversee the ICWD.

Over the course of the next year, LADWP objected to the ICWD's Report, both procedurally and substantively. Procedurally, LADWP argued that the ICWD's Report was fatally flawed and violated the Water Agreement because the ICWD failed to act as a member of the Technical Group when it prepared its ICWD Report. Specifically, LADWP argued that ICWD's did not act as a member of the Technical Group when it prepared the 2011 Report because the ICWD (1) unilaterally created and collected its own data in a manner inconsistent with the Green Book and without authorization of the Technical Group; (2) unilaterally developed its own analytic methods, and the parameters considered in the analytic method, to review its data without authorization or involvement of the Technical Group, and (3) used its illegal data and analysis as its sole foundation to unilaterally conclude, outside the Technical Group process, that LADWP's groundwater pumping was the cause of significant impacts at Blackrock 94.

Despite its serious concerns and objections relating to the ICWD's circumvention of the Technical Group and the provisions of the Water Agreement, LADWP attempted to understand the ICWD's approach, in the spirit of cooperation mandated by the Water Agreement. To that end, LADWP employed outside consultants and LADWP personnel to undertake a substantive review of the ICWD's Report. LADWP concluded that the ICWD's Report was substantively deficient and wholly failed to support the conclusion that LADWP's groundwater pumping had caused vegetation impacts at Blackrock 94. Among its chief substantive objections were the ICWD's (1) use of non-standardized data sets which biased the ICWD's results, (2) use of an untested an unreliable statistical modeling, assumption s and procedural package that resulted in unreliable modeling results, and (3) failure to adhere to Green Book protocols for the execution of vegetation monitoring which led to an unreliable finding of vegetation impacts due to groundwater pumping.

LADWP, spent many months' of research and endeavored to schedule joint meetings, attempting to reconcile the ICWD's Report with sound science and the rules set

forth in the Water Agreement and Green Book. The County, however, generally refused to cooperate with LADWP's efforts, stonewalled all attempts to engage the technical Group in an evaluation of its ICWD Report and refused to permit the Technical Group to carry out is vegetation evaluation duties under the Water Agreement. From February 2011, when the County issued the ICWD Report, through May 1, 2012, the County never engaged the Technical Group in an analysis of its work.

Instead of participating as a member of the Technical Group and subjecting its report to Technical Group scrutiny, the County, by letter dated May 1, 2012, provided a written request to resolve issues relating to Blackrock 94. [Exhibit 1]. The ICWD letter detailed both its position that a significant vegetation impact had occurred at Blackrock 94 as a result of LADWP's groundwater pumping, and detailing LADWP's arguments objecting to the ICWD Report. [Id].

Pursuant to Water Agreement Dispute Resolution procedures, the Technical Group held a meeting on May 9, 2012, that was continued through June 14, 2012. During the course of that dispute resolution meeting, both the ICWD and LADWP clearly outlined their respective positions regarding all matter involved at Blackrock 94. [Exhibit 2, Exhibit 7]. Both LADWP and the ICWD requested that the Technical Group take certain actions relating to their respective positions. [Exhibit 7]. LADWP argued that the ICWD Report was not created or approved by the Technical Group and that the Technical Group lacked jurisdiction under the Water Agreement to accept the County's unilateral findings and conclusions. The Technical Group was unable to resolve the matter and was unable to make a unanimous recommendation to the Standing Committee. [Exhibit 2].

Thereafter, pursuant to Water Agreement Section XXVI.B.2, the Parties submitted a joint report to the Standing Committee detailing the subjects of disagreement, and each party's argument in favor of its position along with supporting data and background. [exhibit

3]. The Standing Committee met on September 26, 2012, in an effort to resolve the Parties' disputed issues, but was unable to reach consensus. [Exhibit 7].

Although either party was free to elevate the disputed issue to arbitration, both the County and LADWP agreed to enter a period of negotiation in hopes of resolving the questions presented regarding Blackrock 94. After several months of meetings, LADWP, by letter dated April 25, 2013 invoked arbitration pursuant to Water Agreement Section XXVI. [Exhibit 4]. ICWD invoked arbitration on April 26, 2013. [Exhibit 5]

By stipulation between the Parties, this Panel is asked to resolve the following issues: [Exhibit 6]

II. QUESTIONS PRESENTED

The County's Request:

1. The County requests a determination by the mediators/temporary arbitrators that LADWP's groundwater pumping and reductions in surface water diversions in the Blackrock 94 area have caused a measurable and significant change in the vegetation conditions in violation of the provisions of the LTWA. The County further requests the Panel to order that, as required by section IV.A of the Water Agreement, reasonable and feasible mitigation of this significant impact be commenced within twelve (12) months of the determination by the mediators/temporary arbitrators that a significant effect on the environment has occurred at Blackrock 94.

The Requests by LADWP:

1. With regard to the County's determination that there has been a measurable change in the environment at Blackrock 94, LADWP requests that the

mediators/temporary arbitrators find that the County did not follow and conform to all the required rules, procedures and protocols in the Water Agreement, Green Book and 1991 EIR when it performed the vegetation monitoring, vegetation data collection, vegetation analysis (including the selection of analytical methods, assumptions made, and inputs used when conducting an analysis) and, therefore, the mediators/temporary arbitrators are unable to find that there has been a measurable change in the environment at Blackrock 94.

and/or

2. With regard to the County's determinations that a measurable, attributable, and significant effect has occurred at Blackrock 94, LADWP requests that the mediators/temporary arbitrators find that County did not follow and conform to required rules, procedures and protocols of the Water Agreement, Green Book, and 1991 EIR and, therefore, the mediators/temporary arbitrators are unable to find that a measurable, attributable and significant effect has occurred at Blackrock 94.

III. SHORT ANSWER

The heart of both Parties' questions is whether the ICWD may act unilaterally, outside the cooperative confines of the Technical Group, and in contravention of the rules, procedures and protocols of the Water Agreement, Green Book, and mitigation measures adopted by both Parties in the 1991 EIR[3], to perform certain vegetation monitoring, and then bind the Technical Group to its outcome and conclusions by use of dispute resolution. The answer to that question is, no.

[3] It is undisputed that both LADWP and the County certified the 1991 EIR.

In order for this Panel to accept the County's position that a significant impact exists at Blackrock 94, that is attributable to LADWP's groundwater pumping, and then impose mitigation, it must also find that the Technical Group was responsible for all aspects of the ICWD Report. As discussed more thoroughly below, such a finding is illegal under the Water Agreement and the 2011 Arbitration Decision.

Instead, this Panel must, find that the ICWD's Report is not admissible to support the County's conclusions because: it (1) was not the product of the Technical Group; (2) did not follow and conform to all the required rules, procedures and protocols in the Water Agreement, Green Book and 1991 EIR.[4]

In the alternative, LADWP will provide evidence to allow this Panel to also find that ICWD's Report is scientifically unsupportable. Therefore, the ICWD Report's conclusions related to (1) measurability and (2) significance and attributability are invalid.

Even if this Panel finds that, despite ICWD's wholesale failure to adhere to the Water Agreement in its the creation of the ICWD Report, it has subject matter jurisdiction to review the County's evidentiary basis that underpin the ICWD Report's conclusions, this Panel must find that the subject report is scientifically flawed and does not support the County's conclusion that there has been a significant impact to vegetation at Blackrock 94 resulting from LADWP's groundwater pumping operations. Therefore, the County's question fails.

[4] This finding is consistent with the 2011 Arbitration Decision, discussed in detail below.

IV. THIS ARBITRATION PANEL HAS JURISDICTION TO DECIDE LADWP'S DISPUTED QUESTIONS

On February 2, 2011, the ICWD presented a unilaterally generated report to the Technical Group finding impacts to vegetation at Blackrock 94.[5] LADWP objected to the ICWD's report, on substantive grounds, and on procedural grounds, but agreed to meet, as a member of the Technical Group in an attempt to resolve issues surrounding allegations of vegetation impacts at Blackrock 94. Over the course of the next year, the Technical Group met, but was unable to resolve issues surrounding the ICWD's Report, not the least of which is that the County did not engage the Technical Group in the analysis necessary for production of the ICWD Report.

On May 1, 2012, ICWD presented a written request to the Technical Group to resolve issues related to its Report. [Exhibit 1]. Thereafter, the Technical Group convened, within 14 days, on May 9, 2012, for the purpose of attempting to resolve the disagreement over a vegetation impacts at Blackrock 94, which is a matter within the jurisdiction of the Technical Group.[6] During the May 9, 2012, Technical Group meeting, both ICWD and the LADWP presented their respective positions relating to vegetation impacts at Blackrock 94. The meeting was carried-over until June 14, 2012, in order to continue discussions related to the County's Report. [see generally Exhibits 2, 3, 7].

On June 14, 2012, the ICWD again reiterated its requests found in its May 1, 2012 letter, that the Technical Group find a measurable, attributable and significant change in vegetation at Blackrock 94 that resulted from LADWP's groundwater pumping. The County further requested that the Technical Group impose a mitigation plan.

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[5] Although LADWP disputes the validity of the County's report, both substantively and procedurally, for purposes of the present issue, the content of the report is not relevant and is referenced as part of the overall timeline.

[6] Neither party disputes that disputes arising from alleged impacts to vegetation falls within the subject matter of the Technical Group

At the same meeting, LADWP openly disagreed with the ICWD's position and explained that the Technical Group could not accept the County's Report for reasons that are relevant below. Further, LADWP presented its own question to the Technical Group relating to subject matter surrounding Blackrock 94. [Exhibit 2].

The Technical Group was unable to resolve either the ICWD's issues or LADWP's issues concerning vegetation impacts at Blackrock 94. [Exhibit 7]. Thereafter, the Technical Group prepared a submittal to the Standing Committee. The Technical Group's submittal to the Standing Committee detailed both Technical Group members' subjects of disagreement and their respective arguments in favor of their positions, in accordance with the Water Agreement. [Exhibit 3].

On September 26, 2012, the Standing Committee convened and addressed the matters of disagreement raised by both members of the Technical Group. Both ICWD and LADWP presented their respective positions and concerns regarding Blackrock 94. Ultimately, the Standing Committee was unable to resolve either the ICWD's requests or LADWP's requests. [Exhibit 7].

On Date April 25, 2013, LADWP timely submitted its disputed issue surrounding Blackrock 94 to arbitration. [Exhibit 4]. On Date April 26, 2013, the ICWD submitted its disputed issue to an arbitration Panel for arbitration. [Exhibit 5].

V. FACTUAL BACKGROUND

A. History

In 1913, the City of Los Angeles commenced operation of the Los Angeles Aqueduct, transporting water more than 200 miles from the Owens Valley to the City. The construction of the Los Angeles Aqueduct was heralded at the time as an engineering feat second only to the construction of the Panama Canal. The operation of the Los Angeles Aqueduct supplied water for the City's growing population throughout the 20th century and

beyond. According to 2010 United States Census Bureau data, 3.8 million residents reside within 469 square miles in the City of Los Angeles. The LADWP is the sole water provider to the people of Los Angeles.

The first aqueduct of the Los Angeles Aqueduct system had a capacity of 480 cubic feet per second (cfs). In 1970, construction of a second aqueduct, with a capacity of 300 cfs was completed and began operating, bringing the total capacity of the aqueduct system to about 780 cfs. The City's operations to supply water to the second aqueduct, including the pumping of groundwater in the Owens Valley, led to litigation by Inyo County against the City (collectively Parties).

In a lawsuit filed in 1972, Inyo County claimed that increased groundwater pumping was harming the environment of the Owens Valley and that the practice should be analyzed in an Environmental Impact Report (EIR), in accordance with the provisions of the California Environmental Quality Act (CEQA). Several related appeals followed. Additionally, the City challenged Inyo County's groundwater ordinance, which attempted to regulate groundwater pumping in the Owens Valley through a groundwater pumping permit procedure. In 1983, the Inyo County Superior Court found the groundwater ordinance unconstitutional, invalid, preempted by state law, and enjoined its implementation. In 1983, the Parties agreed to resolve ongoing litigation by attempting to develop a groundwater management plan that would settle the Parties' dispute. After operating under a joint five-year interim agreement, cooperatively developing and implementing numerous enhancement and mitigation projects in the Owens Valley, and negotiating over specific terms for additional years, the Parties reached preliminary agreement on a joint long-term water management plan on August 1, 1989. Both Parties analyzed and certified an EIR for the proposed long-term water management plan. The Parties agreed to the terms of the long-term water groundwater management plan on October 18, 1991 (Water Agreement),

and those terms were incorporated into a Stipulation and Order in the above captioned case.

B. ICWD's Report

This dispute arises out of the County's failure to engage in the mandatory Technical Group process for analyzing the effects of LADWP's groundwater pumping on the vegetation at Blackrock 094. Instead of working collaboratively with the LADWP Technical Group members, Inyo gathered evidence, analyzed it, and concluded that "significant" changes to the vegetation at Blackrock 094 were caused by LADWP's groundwater pumping. The County's rogue actions are not authorized under the Water Agreement. In the unilaterally developed ICWD Report, the ICWD analyzed vegetation data that it independently collected using methods never approved by the Technical Group, never agreed to by LADWP, and that entirely out of conformance with Water Agreement Section IV.B or Green Book Section I.C. [Exhibit 8]. Further, the ICWD unilaterally selected the methods of analysis it used without consulting the Technical Group or seeking Technical Group approval. [Id.]. These unorthodox methods included the use of statistical packages, presumptions and analytic methods which were entirely unknown to LADWP's Technical Group members and not approved by the Technical Group, or authorized by the Water Agreement or Green Book. [Id.].

All on its own, Inyo County conducted an analysis of measurability, attributability, and significance. Although the County, using the unapproved and previously undisclosed methods, claims to have followed the Water Agreement, it reality it blatantly ignored the Water Agreement and Green Book Section requirements to conduct the analysis "jointly" under the Technical Group. Instead, it unilaterally made a determination that there was a measurable change in Blackrock 094 in violation of the Water Agreement and the Green Book. [Water Agreement, p. 7, ¶ 1; Green Book Section I, p. 1, ¶ 1]. The County refused

to allow the Technical Group to consider measurability before proceeding with its unilateral analysis of attributability in violation of Water Agreement Section Green Book. [Exhibit 8]. Instead, the County unilaterally determined that a measurable change was attributable to LADWP's groundwater pumping and changes in LADWP's surface water management practices, and the County refused to allow the Technical Group to consider attributability before proceeding with its unilateral analysis of significance. Finally, the County unilaterally determined that a significant impact was occurring in vegetation parcel Blackrock 094 and required mitigation. Each of the County's actions were clear violations of the Water Agreement and Green Book

Inyo County omitted some sections required to be considered pursuant to Green Book Section I.C in its analysis and incorrectly applied other sections. For example, while Water Agreement Section IV.B requires the Technical Group to conduct "an analysis of all relevant factors" prior to making a determination that measurable changes in vegetation are attributable to groundwater pumping or changes in surface water management practices. Inyo County, however, largely ignored the influence of drought, wet/dry climactic cycles, and range management practices in its report and completely ignored a 1990 wildfire and the expansion of Highway 395 within Blackrock 094. [Exhibit 9, p. XYZ, ¶ ?].

Inyo County based its analysis of vegetation in vegetation parcel Blackrock 094 using methods that were never even considered by the Technical Group, including the use of unilaterally collected vegetation data obtained under its unilaterally developed vegetation monitoring program and using randomly placed vegetation transects, which may underestimate vegetation cover in vegetation parcel Blackrock 094 [Exhibit 8]:

> *Numerous sources of data, each of differing complexity and scale, were examined to assess whether a change in vegetation in Blackrock 94 can be detected: photo points at permanent transects, vegetation cover and composition from permanent transects,* ***vegetation cover and composition measured at***

randomly located transects from 1991-2009 measured by Water Department staff..."(*Analysis of Vegetation Conditions in Vegetation Parcel Blackrock 94*, Inyo County Water Department, February 2011, page 1, paragraph 3, emphasis added).

Inyo County only considered perennial vegetation in the ICWD 2011 Report analysis instead of live vegetation cover, which consists of both annual and perennial vegetation species, in contravention of Water Agreement Sections IV.A and IV.B and Green Book Section I.C:

"*Perennial species cover in Blackrock 94 has been monitored annually each summer from 1991 through 2009. Annual measurements of perennial cover were compared with the baseline data...*" (Analysis of Vegetation Conditions in Vegetation Parcel Blackrock 94, Inyo County Water Department, February 2011, page 9, paragraph 3).

The Green Book defines vegetation cover as "*the crown cover of all live plants in relation to the ground surface.*" (Green Book, p. 38, ¶ 3).

Inyo County merely presented the results of its independent analysis of vegetation parcel Blackrock 094 in the ICWD 2011 Report and did not provide any actual supporting evidence, including the data sets, assumptions, and parameters used in the ICWD 2011 Report, for consideration by the Technical Group. Moreover, Inyo County delayed or refused to provide additional information regarding its analysis or to meet with LADWP's Technical Group member to discuss its analysis.

Despite failing to provide supporting evidence, Inyo County concluded in the ICWD 2011 report that groundwater pumping between the 1987 and 1991 is now causing a significant change to be occurring in vegetation parcel Blackrock 094 (ICWD Report, p. 56, ¶ 1, p. 66, ¶ 2). It must be noted the time period between 1987 and 1991 is an era prior to the signing of the Water Agreement (The Water Agreement became effective on October

18, 1991). Moreover, groundwater pumping during the 1987 to 1991 period was fully addressed and mitigated under the provisions of the1991 FEIR, which also analyzed Blackrock Fish Hatchery pumping.

Finally, the ICWD Report concluded that a significant change in vegetation parcel Blackrock 094 "*is* occurring" (ICWD Report, p. 4, ¶ 4, p. 66, ¶ 2), does not support the question the County posed to the Technical Group, Standing Committee, and this Arbitration Panel that a significant change "*has* occurred". [see Exhibit 6]. The importance of when the change occurred, if it did occur, is crucial to all of the elements necessary for resolution of the question. The Technical Group must analyze: whether a significant change has or is occurring; whether that change is a result of LADWP's groundwater pumping; and whether mitigation is required. If the County has demonstrated that a measureable, significant change to the vegetation occurred during 1987-1991 because of LADWP's prior groundwater pumping, the question of the appropriate mitigation has already been answered by the mitigation measures adopted by both Parties in the 1991 EIR. Therefore, the County's issue for dispute resolution would be moot.

C. LADWP'S Response

As noted above, the Technical Group cannot accept the ICWD's Report, and its conclusions, because ICWD's Report is based on inadequate and unreliable data, inconclusive results, inaccurate interpretation of results, and incomplete analysis or discussion of processes which influence vegetation cover and composition in Blackrock 094.

ICWD"s Report failed to establish a clear causal relationship between vegetation changes in vegetation parcel Blackrock 094 and groundwater pumping at Blackrock Fish Hatchery/water table fluctuations in or near Blackrock 094. ICWD also failed to adequately consider the roles of drought, wet/dry climatic cycles, grazing, wildfire, and a combination of

these factors on alleged vegetation changes as required under Green Book Section I.C.1.b.v (Green Book, page 24).

The alleged changes in vegetation cover and composition are closely related to drought and wet/dry climatic cycles because the vegetation changes and depth-to-water fluctuations closely correlate with the runoff patterns of the Owens Valley and Sawmill Creek, and this is evident both statistically and graphically. [See generally Exhibits 9, 10]]. The ICWD Report is fatally flawed because Water Agreement Section IV.B requires that "all relevant factors" reasonably related to alleged changes within the vegetation community in Blackrock 094 and must be considered in order to reach sound conclusions.

VI. ARGUMENT

This issue is a dispute over the applicable terms of a contract. Section IV of the Water Agreement represents the Parties' agreement to cooperate and jointly monitor and analyze decreases in live vegetation cover, and potential significant effects on the environment, through the Technical Group. The Water Agreement established procedures and practices for the LADWP to manage the City's water resources within Inyo County and established Inyo County's role for participating LADWP's groundwater pumping program and its role in enforcing protections of live vegetation and the environment.

Here, Inyo County seeks to use the Water Agreement dispute resolution procedures to circumvent and unwind rules, procedures and protocols found in the Water Agreement, Green Book and 1991 EIR that govern the Parties' relationship relating to groundwater pumping in the Owens Valley. In essence, the County is requesting that this Panel rewrite the terms of the Water Agreement, the Green Book and the 1991 EIR by allowing the ICWD to refuse to engage in a collaborative analysis on alleged changes to vegetation, create an unilateral report, submit that report to dispute resolution and ask an arbitration

Panel to act as the Technical Group and accept the ICWD's conclusions without any input or cooperation for the second Technical Group member, LADWP.

In essence, the County is asking this Panel to stand in LADWP's shoes, as a member of the Technical Group, and cast LADWP's vote in favor of the County's unilateral actions taken in the ICWD Report. The County is using the dispute resolution process to hijack the Water Agreement in order to permit the County to ignore the cooperative mandates of the Technical Group when that judicially ordered process does not suit its underlying agenda, the cessation of groundwater pumping in the Owen Valley for export to Los Angeles

Inyo County's challenge however, is entirely inconsistent with the language of the Parties' governing documents. Inyo County's challenge ignores the Water Agreement's fundamental requirement that the Parties act cooperatively through the Technical Group, and its technical processes, to define whether an effect on vegetation is "measurable", "significant", or "attributable" to groundwater pumping, or to determine the appropriate mitigation measure for addressing such alleged impacts. The Water Agreement represents the whole of the Parties' settlement. It must be analyzed as a complete document.

A. Law of the Case is Established: the 2011 Arbitration Decision Mandates that the County's Request Fails

The threshold question posed to this Panel of whether the ICWD may act unilaterally, outside the cooperative confines of the Technical Group, and produce work product that unilaterally determines that LADWP groundwater pumping operations had or will have an impact to vegetation, and then force the Technical Group to accept is conclusions through dispute resolution, has already been answered in a previous a Water Agreement dispute. The law of the case is that the County may not unilaterally act in such

a manner and cannot bind the Technical Group to the ICWD Report through dispute resolution

On November 7, 2011, the Parties submitted an issue to be decided by mediation/temporary arbitration pursuant to Section XXVI.C of the Water Agreement (2011 Arbitration Decision). [Exhibit 11]. The stipulated issue to be decided by arbitration was:

> "*Is the Technical Group required to follow Water Agreement Section IV.B and Green Book Section I.C when making a determination regarding an alleged violation to the vegetation goals of the Water Agreement arising out of an Annual Operations Plan?*" [Exhibit 11, p. 1, ¶ 1].

On June 29, 2011, the ICWD submitted a dispute resolution letter to the Technical Group concluding that LADWP's Annual Pumping Plan would create impacts to vegetation at Blackrock 94. [Exhibit 12]. The County's conclusion was premised on data, analysis and conclusions found in the ICWD Report, the same report that forms the basis of the current dispute. [Id.].

LADWP argued that the County's conclusions did not constitute Technical Group action because the Significance-Mitigation Determination process was not executed by the Technical Group, but instead was performed unilaterally by the County. The arbitration Panel held:

> "*It is the unanimous opinion of the Panel that the Technical Group is required in the furtherance of dispute resolution to follow Water Agreement Section IV.B and Green Book Section I.C when making a determination regarding an alleged violation to the vegetation goals of the Water Agreement arising out of the Annual Operations Plan.*" [Exhibit 11].

Although the 2011 Dispute involved the County's challenge to LADWP's Annual Pumping Plan, and alleged future impacts to vegetation, the reasoning provides binding precedent in this case. The 2011 Arbitration Decision explained that the answer to the

2011 Dispute is 'that the Technical Group is required to follow the Significance-Mitigation Determination process when it is applied to the Annual Operations Plan..." [Exhibit 11].

Here, the County is arguing that the Technical Group must accept its Significance-Mitigation Determination and find that LADWP groundwater pumping has caused a significant impact to vegetation at Blackrock 94 and that mitigation is required. The County's argument fails, however, because submittal of an independent report, the same report relied upon by the County in 2011, does not constitute Technical Group action. Its conclusions are based solely on its unilaterally-created ICWD Report, and such actions do not constitute Technical Group action under the Water Agreement.

Therefore, this Panel must find that, under the precedent set in the 2011 Dispute, the ICWD Report does not constitute Technical Group action and it must find that there is no evidence to support a finding that LADWP's groundwater pumping has caused a significant impact to vegetation at Blackrock 94.

B. The Water Agreement

In the event that this Panel finds that the 2011 Arbitration Decision is not dispositive of the current dispute, the plain terms of the Water Agreement mandate that the County's position fails. Therefore, this Panel must find the ICWD's Report, unilaterally created outside the Technical Group and in violation of the Water Agreement, provides no evidentiary basis to show that a measureable, significant impact has occurred at Blackrock 94 that is attributable to LADWP's groundwater pumping and that further mitigation is not required under the Water Agreement.

1. The Water Agreement is the Exclusive Groundwater Management Tool under the Parties' Settlement.

The Water Agreement establishes a comprehensive framework under which LADWP will manage its groundwater pumping and certain surface water management practices in

the Owens Valley, while taking into account important environmental considerations.[7] LADWP and Inyo County recognized that each Party had differing perspectives relating to groundwater pumping in the Owens Valley. The Parties understood, however, that the Water Agreement's success, and ultimately the success of their settlement, was dependent on the Parties ability to cooperate and work together when addressing groundwater pumping in the Owens Valley[8].

The fundamental purpose of the Water Agreement is found in Section III.A and explains that *"The overall goal of managing the water resources within Inyo County is to avoid certain described decreases and changes in vegetation and to cause no significant effect on the environment which cannot be acceptably mitigated while providing a reliable supply of water for export to Los Angeles and for use in Inyo County"* (Sec. III.A., p. 10). The joint intent of the Water Agreement is to "avoid long term groundwater mining from aquifers of Inyo County[,]" not to eliminate LADWP's right to utilize Owens Valley groundwater, subject to the overall goals of the Water Agreement. (Sec. III.B, p. 10).

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[7] While the Water Agreement provides a tool to monitor, analyze and mitigate for LADWP's groundwater pumping in the Owens Valley, the Los Angeles City Charter retains exclusive possession, management and control of the City's Water Assets with the Board of Water and Power Commissioners. (Los Angeles City Charter § 672). Nothing in the Water Agreement provides Inyo County with authority to exercise the LADWP's water rights or to substitute its judgment for that of the Board of Water and Power Commissioners as to the appropriate management and control of the City's Water Assets. (Water Agreement Sec. II.XXII., p. 51). In fact, the Los Angeles City Charter specifically prohibits the sale, lease or disposal of any of the City's water rights, in whole or in part, without the assent of two-thirds of the registered voters voting on the proposition. (Los Angeles City Charter § 673(b)).

[8] The Water Agreement refers to itself as "the joint long term groundwater management plan" (page 6, paragraph 1). The introduction to Water Agreement Section II (page 7, paragraph 1) states: "Neither the Technical Group nor the Standing Committee shall make any determination or recommendation as called for in this Stipulation and Order, the Green Book, or the EIR without first obtaining agreement among the Department's representatives and the County's representatives."

The Water Agreement established that LADWP's groundwater pumping will be regulated according to its effect on vegetation. (*See Generally* Secs. III.D & E). The Water Agreement set vegetation benchmarks to monitor compliance with the goals and terms of the Water Agreement.[9] Unlike many other California groundwater basins that are subject to court orders and stipulations, the Parties did not establish a "safe yield" for the amount of water that could be extracted from the Owens Valley in the Water Agreement, but instead the Parties agreed to jointly monitor vegetation conditions and jointly recommend mitigation measures if they concluded LADWP's groundwater pumping significantly adversely affected or could significantly adversely affect vegetation.[10]

2. The Technical Group has the Authority to Oversee and Implement the Vegetation Management Goals of the Water Agreement.

The Parties recognized the need for a jointly governed body to oversee implementation of the Water Agreement. Accordingly, the Parties engaged the Technical Group and the Standing Committee to oversee enforcement the goals and principles found in the Water Agreement. (Water Agreement, p. 6). The Parties specifically divested themselves of authority to unilaterally analyze the effects, either current or future, of LADWP's groundwater pumping, and Inyo County also relinquished unilateral authority to

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[9] Beyond the explicit vegetation management goals described in the Water Agreement, Section V of the Water Agreement establishes a regime for the City's groundwater pumping program, including procedures for the automatic turn-on/turn-off of wells when their operation affects groundwater-dependent vegetation. These procedures and constant monitoring are intended as a means of identifying water management-caused problems before impacts occur. By its continued adherence to the operations and monitoring procedures called for by the Water Agreement and the Green Book, LADWP has taken necessary steps to avoid significant decreases and changes in Owens Valley vegetation from conditions documented in 1984 to 1987 due to water resources management.

[10] "Safe yield "is defined as 'the maximum amount of water which can be withdrawn annually from a ground water supply under a given set of conditions without causing an undesirable result.'" *The City of Los Angeles v. City of Fernando, et al.* (14 Cal.3d 199, 278)

implement mitigation measures to remedy impacts caused, or potentially caused by such pumping. (*Id*).[11]

The Technical Group is a collaborative body whose mission is to work within the confines of the Water Agreement to monitor groundwater pumping and its effects. (*Id.*) Every section of the Water Agreement addressing vegetation management goals and principles contemplates joint monitoring and analysis of technical data by the Technical Group. Specifically, the goals and principles of the Water Agreement noted that "any determination or recommendation as called for in the [Water Agreement], the Green Book, or the EIR" must include agreement by both LADWP and Inyo County, acting through the Technical Group. (*Id.* p. 7).

One of the primary responsibilities of the Technical Group is to jointly monitor, analyze, and interpret results of vegetation sites throughout the Owens Valley. (Sec. III.D). Specifically, Water Agreement Section III.D explicitly requires that "all monitoring, analysis and interpretation of results shall be done by the Technical Group." The Water Agreement recognized, however, that live vegetation composition and density could change due to a variety of factors other than LADWP's groundwater pumping. (Sec. I.D, p. 8). Since changes in vegetation cannot be attributed solely to LADWP's groundwater pumping without scientifically-credible supporting evidence, the Water Agreement, along with the Green Book, provides a roadmap for the Parties, through analysis by the Technical Group, to determine whether the vegetation management goals of the Water Agreement are being significantly impacted by LADWP's groundwater pumping. (*See* Water Agreement, Secs. I, III.D, IV, V; and entire Green Book).

The Water Agreement set certain goals and principles for various Vegetation Classifications within the Owens Valley. The Water Agreement then requires the Technical

[11] LADWP may unilaterally implement mitigation measures. (Sec V.C, p. 22).

Group to implement the goals associated with each vegetation classification. (Sect. IV.A). Type B, C, and D Vegetation provided that the goal was to *"manage groundwater pumping and surface water management practices so as to avoid causing a significant"* impact to live vegetation in the Owens Valley.

When concern arises over vegetation management, Section IV.A vests discretion "in the Technical Group and/or Standing Committee to take appropriate action." Sec. IV.B establishes the context of "appropriate action" for the Technical Group when addressing the vegetation management goals of the Water Agreement. "Appropriate action" refers to the Technical Group's processes for determining whether LADWP's groundwater pumping has impacted the vegetation management goals of the Water Agreement.

While either party may evaluate vegetation conditions in the Owens Valley in its capacity as an independent agency, the Water Agreement does not permit either LADWP or the County to unilaterally analyze vegetation impacts or to take independent, unilateral action based on their independent analyses in a manner that binds the Technical Group. The Green Book explicitly underscores the drafters' cooperative intent and states that the Water Agreement *"describes methods for achieving the goals and principles for vegetation management of the Agreement. Unless otherwise specified, determination decisions, or actions called for in this section will be made by the Technical Group."* (Green Book, Sec.I).

3. The Technical Group Must Perform All Vegetation Monitoring in Conformity with the Water Agreement, Green Book and 1991 EIR.

Vegetation monitoring is the cornerstone of any meaningful review of vegetation conditions in the areas subject to Water Agreement jurisdiction. Without meaningful, reliable monitoring data, it is impossible to accurately evaluate whether changes in

vegetation have occurred or will occur. As discussed below, the Technical Group is vested with the sole authority to perform vegetation monitoring under the Water Agreement.

a. Technical Group Must Perform All Vegetation Monitoring

The Water Agreement **solely** authorizes the Technical Group to conduct vegetation monitoring in conformance with its goals and principles:

> *"The vegetation and groundwater conditions within the management areas will be carefully monitored by the Technical Group to assure that the goals and principles of this groundwater management plan are met."* (Water Agreement Section I.B, page 7, paragraph 3).

The 1991 EIR explains the Parties' agreement and understanding that the Water Agreement and Green Book require that vegetation monitoring will be jointly conducted by Inyo County and LADWP:

> *"The Agreement and the Green Book provide that groundwater and vegetation monitoring will be jointly conducted by Inyo County and LADWP."* (1991 FEIR, Vol. I Response to Comments on September 1990 Draft EIR, response PD-7, page 2-15).

The Water Agreement reiterates and strengthens the 1991 FEIR requirement that the Technical Group determine the type of vegetation and environmental monitoring that will be conducted, pursuant to its terms, and shall jointly perform all monitoring, analysis, and interpretation of results:

> *"The type of monitoring that will be conducted at each site and at each monitoring well will vary as determined necessary by the Technical Group. Monitoring could include, but is not limited to, measurement of retained soil water, water levels in deep and shallow wells, analysis of vegetation, and the use of photographic monitoring.* ***All monitoring, analysis and interpretation***

of results shall be done by the Technical Group." (Water Agreement Section III.D, page 12, paragraph 1, emphasis added).

The Water Agreement designates the Green Book to be the source of all standardized procedures for monitoring, analysis, and the interpretation of results to be followed by the Technical Group:

> "*The location of each management area, vegetation monitoring site, and each monitoring well, the wells linked to each vegetation monitoring site, the method for locating additional monitoring sites and monitoring wells,* ***the type of monitoring to be conducted at each site, the standardized procedures for analysis and interpretation of monitoring results, including the determination of available soil water and the amount of soil water required by vegetation, are set forth in a technical document called a "Green Book."*** *The "Green Book" is attached as a technical appendix to this Stipulation and Order and to the EIR."* (Water Agreement Section III.E, page 12, paragraph 2, emphasis added).

b. Green Book Sets Forth Vegetation Monitoring Protocols

The Green Book explicitly sets forth the methods and protocols that the Technical Group must follow when monitoring impacts to vegetation under the Water Agreement. Green Book Section I, pg. 1, provides that the Green Book "describes the methods for achieving the goals and principles for vegetation management of the Agreement. Unless otherwise specified, determinations, decisions, or actions called for in this section will be made by the Technical Group." [Green Book Section I, page 1, paragraph 1].

Vegetation monitoring begins with evaluation of vegetation transects in order to compare current conditions to past, baseline, conditions. As described below, the Green Book requires that vegetation transects are conducted by the Technical Group in order to determine if a change in vegetation is occurring or has occurred. Box I.C.1.a.ii provides that

vegetation transects are to be performed in a similar manner as the 1984-87 initial vegetation inventory unless the technique is modified to permit statistical comparison to use randomly selected transects. However, modifying the line-point transect technique is a modification of the Green Book, which, pursuant to Water Agreement Section XXV, requires the agreement of the Inyo County Board of Supervisors and LADWP. The Inyo County Board of Supervisors and LADWP have never agreed to modify the vegetation monitoring provisions of the Green Book (nor have they ever been requested to), therefore the Technical Group is obligated to follow the provisions of the Green Book that requires that line-point transects should be performed in a similar manner as the initial inventory.

Green Book Section I.C, Box I.C.1.a.ii explains the use of vegetation transects:

> "***Vegetation transects shall also be used in cases of suspected vegetation changes due to groundwater pumping.*** *However, rather than using the intensive sampling technique of Section III.D for calculating evapotranspiration,* ***plant cover shall be measured by the line-point technique described below.***
>
> *During the 1984-87 inventory, each parcel was sampled with at least five line-point transects of 100 feet in length, with sampling points at one-foot intervals, providing a two-dimensional representation of vegetation within the parcel. At each one-foot marker, the first contact with the uppermost layer of live plant cover was recorded. Cover and species composition were calculated from all sampling points along the transect.*
>
> *The 1984-87 inventory shall be used as a "baseline" to determine whether vegetation cover and/or species composition has changed. This inventory is the only one of sufficient accuracy to permit comparison.* ***Future line-point***

***transects should be performed in a similar manner as the initial inventory to determine whether vegetation has change(d)**, but the technique may be modified to permit detailed statistical comparison by randomly selected transects. Statistical analysis will be used to determine the measurability (statistical significance) of vegetation changes from the 1984-87 inventory maps."* (Green Book Section I.C, Box I.C.1.a.ii, pages 22 and 23).

Green Book Section II provides a detailed description of how the line-point transects, mandated by Section I.C, Box I.C.1.a.ii, were conducted during the initial 1984-87 vegetation inventory:

"*Section II of the Agreement provides that management maps that classify dominant vegetation on the Valley floor into five types are to be used in achieving the goals of the Agreement. Vegetation inventories that were conducted by the Department between 1984 and 1987 were used in compiling these maps. This section describes the vegetation mapping methods and the development of the management maps.*" (Green Book Section II, page 34, paragraph 1).

Green Book Section II.A.2 describes the line-point methods used by LADWP during the 1984-87 vegetation inventory, which are the methods **required** for use by the Technical Group, pursuant to Green Book Section I.C, Box I.C.1.a.ii, to determine whether vegetation has changed:

"*LADWP lands were defined into parcels based on historic and current land use and on contiguous assemblages of plants with relatively similar cover and composition.*" (Green Book Section II.A.2, page 36, paragraph 2).

"*Field sampling of the vegetation parcel was accomplished by vegetation transect. The line-point transect was chosen as the technique...*" (Green Book Section II.A.2.d, page 37, paragraph 2).

"*A minimum of five transects were run on each parcel. If the vegetation cover was particularly heterogeneous, a qualitative method was employed in selecting additional transects. The transect data were checked visually and additional transects were then run depending upon the degree of variability. If the transect data were highly variable, up to seven additional transects were run. Aerial photos were an aid in locating the transects.*" (Green Book Section II.A.2.d.iii, page 37, paragraph 5).

The initial inventory protocol requiring repeated transects to be conducted in vegetation parcels stems from the fact that vegetation within parcels is heterogeneous, typically aggregating in bunches: "*In nature, living beings are distributed neither uniformly nor at random. Rather, they are aggregated in patches, or they form gradients or other kinds of spatial structures*" (Legendre and Fortin. 1989. Spatial pattern and ecological analysis. Vegetatio 80, 107-138).

The line-point vegetation transect method as conducted by LADWP in the 1984-87 initial inventory, and mandated by the Green Book for use by the Technical Group, deliberately located vegetation transects in more dense units of representative vegetation cover within a vegetation parcel in order to record "*contiguous assemblages of plants with relatively similar cover and composition*". [Green Book Section II.A.2, page 36, paragraph 2; Exhibit 13]. If a vegetation parcel was less heterogeneous, vegetation cover and composition was described by as little as five transects; however, as the heterogeneity of vegetation within a parcel increased, up to twelve vegetation transects were run in order to

measure the distributed patches or clusters of vegetation within the parcel (Green Book Sections II.A.2.iii and II.A.2.iv).

LADWP's practice of intentionally focusing transects in the higher cover areas within a vegetation parcel and avoiding lower cover areas, tended to result in exaggerated cover values reported by the 1984-87 vegetation inventory as compared to vegetation cover values that would have been obtained if transect locations were chosen randomly (by randomly locating vegetation transects in heterogeneous parcels, sometimes transects would be run in higher cover areas and sometimes, at random, transects would be run in lower cover areas). [Exhibit 13]. Green Book Section II.A.2 describes LADWP's initial vegetation inventory protocol that intentionally measured representative units of vegetation cover within heterogeneous vegetation parcels:

> "***Transects were located visually by choosing lines that appeared to cover the representative units of vegetation within the parcel.*** *With regard to the parcel area, transect locations were generally run toward the center of the parcels in order to avoid transitional areas at the parcel edges.*" (Green Book Section II.A.2.d.iv., page 39, paragraph 2).

The purpose of adhering to Green Book transect monitoring protocols is twofold: "*Vegetation transects are included within the Green Book to serve two purposes: 1) to estimate transpiration from a monitoring site, and 2) for use in determining whether vegetation has decreased or changed significantly from the previous cover.*" (Green Book, page 22, paragraph 1). The purpose of mandating that the Technical Group perform all transect monitoring is simple, it prevents either party from engaging in work that is not in conformity with the process spelled-out in the Green Book.

4. Technical Group Must Consider all Current or Projected Impacts to Vegetation.

The Technical Group is solely responsible for analyzing all current impacts, and all future or projected impacts, to vegetation in the Owens Valley that are premised on monitoring conducted by the Technical Group as described above. The Technical Group is specifically authorized to project, analyze and consider any impact to vegetation, current or projected. Water Agreement Section III.D provides that the Technical Group shall monitor impacts to vegetation. Water Agreement Section III.D also provides a non-exclusive list of monitoring options.

Water Agreement Section IV.B and Green Book Section I contemplate that the Technical Group will utilize procedures for analyzing all impacts to vegetation. The Green Book "describes methods for achieving the goals and principles for vegetation management of the Agreement." (Green Book, Sec. I., p. 1). These methods include joint monitoring and determination of impacts and mitigation by the Technical Group. Green Book Section I.B provides that: *"one means of achieving the management goals for the Owens Valley vegetation is an extensive monitoring program developed with the intent of identifying water management-caused problems before impacts occur."* Water Agreement Section IV.B and Section I of the Green Book further underscore the Parties intent to use the Technical Group procedures for analyzing impacts to vegetation, stating that "if, through seasonal water balance calculations or through other means, the Technical Group projects that significant decreases or changes in vegetation could occur, the Technical Group will take such action as it deems feasible and necessary to avoid the projected impact." *See* Green Book Section I.C.1.d (emphasis added). The same intent applies to impacts alleged at Blackrock 94.

Finally, the 1991 Final Environmental Impact Report (FEIR), certified by both Parties to analyze the Water Agreement, specified that the Technical Group must consider all

impacts to vegetation. In its description of the management goals and provisions of the Water Agreement, the FEIR states that the Technical Group will determine *"whether significant adverse changes could occur or were occurring[.]"* (1991 FEIR, p. S-6). Failure by the Technical Group to consider past, present and projected impacts to vegetation in the Owens Valley would be a violation of the Technical Group's duties and would therefore be a breach of the Water Agreement.

5. Technical Group Must Follow the Significance-Mitigation Determination Process to Assess Impacts of Groundwater Pumping on Vegetation.

Logic dictates that the protection of LADWP's right to pump groundwater in the Owens Valley was the driving force behind the Water Agreement because without LADWP's groundwater pumping activities in the Owens Valley, the County would not have commenced the litigation that the Water Agreement was intended to settle. Continued groundwater pumping, however, is tempered by the Parties' goal of avoiding certain described changes to vegetation and mitigation for significant effects on the environment. Accordingly, the Water Agreement provides a process for LADWP to pump groundwater using specific procedures designed to avoid significant impacts. (*See* Water Agreement, Section V).

At its core, the Water Agreement requires the Technical Group to follow specific, legally-binding, procedures to: (1) monitor, analyze and measure changes in vegetation, (2) determine whether any detected changes, either current or projected, can be attributed to LADWP's groundwater pumping, or changes to surface water management practices(3) determine if any measured vegetation effects are significant, and (4) if such effects are measurable, attributable to LADWP's pumping and significant, then the Technical Group

shall develop a mitigation plan. [12] There is no language or term in the Water Agreement, the Green Book or the FEIR that permits Inyo County, or LADWP, to independently dispute the unilaterally projected effects of LADWP's groundwater pumping on live vegetation without first engaging the Technical Group in its technical processes.

If one Party were allowed to skip the joint analysis required of the Technical Group relating to measurability, attributability, significance, and potential appropriate mitigation, the Significance-Mitigation Determination Process, and unilaterally determine that LADWP's groundwater pumping must be reduced, or impose other mitigation, in order to mitigate certain described changes in vegetation, then such an action would render the Technical Group's processes useless, would undermine the cooperative intent of the Water Agreement, and would therefore be a breach of contract. Here, the Parties bargained for, and the Water Agreement provides due process, by requiring both LADWP and the County, through the structure afforded by the Technical Group, to jointly analyze allegations of groundwater impacts to vegetation prior to considering any recommended mitigation, including a reduction of water supply to the City of Los Angeles. Consequently, neither the County nor LADWP is permitted to unilaterally invoke dispute resolution to in an effort to force the Technical Group to accepts its' unilateral Significance-Mitigation Determination finding that an impact to vegetation has occurred when the Technical Group has failed to follows its procedures and evaluate whether a measurable, attributable and significant impact on the environment has occurred..

[12] This process has been referred to in the 2011 Decision at the Significance-Mitigation Determination Process, and is fully described below. [see Exhibit 11].

a. The Technical Group Must Find Measurable Environmental Impacts

The threshold task assigned to the Technical Group is to determine, on a *"case by case analysis [] whether the decrease or change[in vegetation] can be measurably demonstrated."* (Water Agreement, Sec. IV.B, p. 18-19. The Water Agreement sets forth express procedures that the Technical Group must employ when determining whether any observed effects on vegetation are the result of changes in groundwater pumping, surface water management practices, or derive from other factors unrelated to LADWP's water management practices. (Sec. IV.B, p. 18-19). The Water Agreement does not permit either Inyo County or LADWP to unilaterally perform measurability analyses.

Moreover, while there is no requirement under the Water Agreement for LADWP to avoid vegetation changes due to reasons other than groundwater pumping or changes in its surface water management, the Technical Group may proceed with its measurability analysis regardless of the underlying cause of the vegetation impact. The Water Agreement states that *"[i]t is recognized that vegetation composition and density varies for reasons other than groundwater pumping from period to period, depending upon weather, precipitation, surface water spreading, and other factors."* (Sec. I.D., p.8). Nonetheless, if the Technical Group detects that a measurable impact has resulted, or finds that a measurable impact could result, either from groundwater pumping or from any other cause, then it may proceed to the next step – determining whether the impact is attributable to LADWP's groundwater pumping.[13]

[13] Green Book Section I.C states "the Technical Group will consider *all* relevant factors" when determining measurability. It is reasonable to conclude that the Technical Group may use its discretion to project that a measurable impact could occur due to LADWP's pumping, based upon past experience, groundwater and vegetation modeling, or for other reasons.

b. The Technical Group Must Find that the Measurable Vegetation Impact is Attributable to LADWP's Groundwater Pumping

Once the Technical Group has jointly determined that a current or future impact to vegetation is measurable, it must then analyze whether it is "*or is not attributable to groundwater pumping and/or to surface water management practices.*" The Technical Group bears the responsibility to find attributability. Neither LADWP, nor Inyo County, can unilaterally attribute LADWP's groundwater pumping, current or future, to impacts on vegetation or the environment.

Consistent with the purpose and goals of the Water Agreement, and in accord with its analysis relating to measurability, the Technical Group must jointly analyze whether a detected impact is attributable to LADWP's groundwater pumping or changes in surface water management practices[14]. There is no provision in the Water Agreement, or the Green Book, that permits one Party to independently attribute, or refute, an impact (or potential impact) to LADWP's actions. To the contrary, if a Party attempts to act independently, including bringing a unilateral dispute, and circumvents the Technical Group, then that Party acts in contravention to the intent and letter of the Water Agreement.

c. The Technical Group Must Find that the Measurable, Attributable Impact is "Significant".

The term "significant" has special meaning within the Water Agreement. If the Technical Group finds that a measurable, attributable impact to vegetation exists, due to LADWP's pumping plan, then it must determine whether the alleged impact is "significant",

[14] Water Agreement Section IV.B requires the Technical Group to conduct an "analysis of all relevant factors" prior to making a determination that a measurable change is "attributable to groundwater pumping or a change in surface water management practices..." Green Book Section I.C.1.B.v requires the Technical Group to conduct an "evaluation of the extent to which other factors unrelated to the effects of groundwater pumping may have contributed to vegetation change or decrease."

as pursuant to the Water Agreement and its protocols, goals and mandates. As with measurability and attributability, neither LADWP, nor the County, can define what is, or is not, "significant."

The Water Agreement describes the goals and principles for managing each vegetation type. Section IV.A. describes the goal for Type B, C, and D Vegetation Classifications as *". . .to manage groundwater pumping and surface water management practices to avoid causing* ***significant*** *decreases in live vegetation cover, and to avoid causing a* ***significant*** *amount of vegetation comprising either the Type B,C, or D classification to change to vegetation in a classification type which precedes it alphabetically . . ."* (emphasis added).

Water Agreement Section IV.B provides: *"In determining (1) whether a decrease in live vegetation cover is* ***'significant,'*** *or (2) whether a change in vegetation from one vegetation classification to another is* ***'significant,'*** *or (3) whether a* ***'significant effect on the environment'*** *has occurred, it is recognized that it is infeasible to develop definitions of these terms for use in all areas and under all conditions. Therefore a determination of what is a significant decrease or change in vegetation and of what is a significant effect on the environment will be made on a case by case analysis."*

Section IV.B. then describes the necessary steps for the Technical Group to follow when determining "significant" and "significant effect on the environment." In order to carry out its duties under Section IV.B, the Technical Group refers to the Green Book for technical guidance. Section I of the Green Book sets forth the procedures and methods for analyzing significance under the Water Agreement. Specifically, Section I.C. *"outlines a procedure for determining whether decreases and/or changes in vegetation or other significant effects on the environment have occurred or are occurring in a given management area.* ***It describes the process the Technical Group will follow*** *to*

ascertain whether a change is significant, and thus, whether it requires mitigation . . ." (emphasis added).

The Green Book then *"describes methods for achieving the goals and principles for vegetation management of the Agreement. Unless otherwise specified, determination decisions, or actions called for in this section will be made by the Technical Group."* (Green Book, Sec. I). Therefore, the Technical Group is required to determine the impact's significance or significant effect on the environment *"in accordance with the guidelines contained in the [Water] Agreement and Green Book".* (1991 FEIR, p. 10-72).

As discussed, the Parties recognized that it was not feasible to develop definitions for the terms "significant" and "significant effect on the environment" for use in all areas and under all conditions. Instead, the Parties established guidelines to mutually determine whether an impact is "significant." The Parties utilize the Technical Group to execute the terms of the Water Agreement, and, as with measurability, neither Party has the authority to unilaterally determine whether a measured impact is, or is not, "significant." All such actions described in Sec. IV.B contemplates joint analysis and determination by the Technical Group. Only after the Technical Group finds that an impact is (1) measurable and (2) attributable to groundwater pumping, can it begin analyzing whether the impact is significant.

California law states that the words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the Parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed. (Cal. Civil Code Sec. 1646). Under the Water Agreement, neither party can define "significance" as the term relates to changes in vegetation. In order to define the term "significant", the Water Agreement requires the Parties to follow explicit processes involving the joint analysis by the Technical Group.

d. The Technical Group Must Jointly Develop a Mitigation Plan if it Finds a Measurable, Attributable and Significant Impact

Only after the Technical Group has followed the mandatory processes of Water Agreement Sec. II.IV.B and Green Book Sec. I.C., and has determined that LADWP's Annual Operations Plan has caused or will cause a measurable, attributable and significant impact on the vegetation management goals outlined in the Water Agreement, may the Technical Group consider an appropriate mitigation plan. The Water Agreement does not provide an exhaustive menu of mitigation measures. Instead, the Water Agreement provides that "mitigation activities could include, but are not limited to, surface water application or reduction in groundwater pumping." (Section IV.A). All mitigation plans, however, must be developed solely by the Technical Group. (Sec. IV.A, p. 15-16; Green Book Sec. I.C.2.b., p. 29).

The policy reasons for enforcing this provision of the Water Agreement correspond with the overall goal of the Water Agreement: cooperative protection of the environment while providing a reliable supply of water for export to Los Angeles and for use in Inyo County. If one Party finds that a reduction in groundwater pumping is the appropriate mitigation measure for LADWP's current or future groundwater pumping, but such a mitigation plan would breach the Parties' contractual obligations to consider providing a reliable supply of water to Los Angeles and Inyo County, both Parties must consider the appropriateness of implementing such a mitigation measure. The Water Agreement did not divest the City of Los Angeles of its water rights and mitigation is not a trump card enabling Inyo County to prohibit or interfere with LADWP's ability and right to pump groundwater. (Sec. XXII., p. 51). Further, the Water Agreement did not grant Inyo County the authority to independently analyze and challenge LADWP's groundwater pumping and seek a reduction in what LADWP had determined to be a reliable water supply before allowing the Technical Group to engage in its technical processes.

6. The Water Agreement Does Not Vest Inyo County with Discretion to Circumvent the Provisions of the Water Agreement

The Water Agreement's primary goal was to enable LADWP to pump groundwater in the Owens Valley for use within the valley and for export to the City of Los Angeles. That goal was qualified by the Parties' desire to avoid certain decreases in vegetation and to mitigate for significant environmental impacts which could not be acceptably avoided. Neither the goal of the Water Agreement, nor the vegetation management provisions contained therein, vest Inyo County with authority to independently evaluate vegetation impacts, and bind the Technical Group to its findings, before engaging in a comprehensive, cooperative analysis of groundwater pumping's effect on vegetation by the Technical Group.

While the Water Agreement establishes the goals and principles for vegetation management in the Owens Valley, the Green Book describes the appropriate technical methods for achieving those goals. The Green Book establishes the "appropriate actions" referred to in Water Agreement Sec. IV.A and Sect. V.B for the vegetation management goals of the Water Agreement. Green Book Section I provides: *"one means of achieving the management goals for the Owens Valley vegetation is an extensive monitoring program developed with the intent of identifying water management-caused problems before impacts occur."* The Green Book does not grant Inyo County, or any Party, with the power to engage in anticipatory analysis and independent mitigation – that duty is exclusively reserved for the Technical Group.

Moreover, the Significance-Mitigation Determination procedures prescribed under Section I.C. of the Green Book further require that if "the Technical Group projects that significant decreases or changes in vegetation could occur, the Technical Group will take such action as it deems feasible and necessary to avoid the projected impact." (Green Book, Sec. I.C.2.d, p. 31). The assumptions throughout the Green Book, for ascertaining

whether LADWP's groundwater pumping has caused or could cause significant changes to vegetation, demonstrate the Parties clear intent that these determinations must be made solely by the Technical Group, not by the individual Parties.

a. The Technical Group Did not Perform any Monitoring to Support Conclusions in the ICWD Report

The ICWD violated the terms of the Green Book in its collection of data that it uses to support its findings of measurability, and for that reason the ICWD's vegetation data sets are not valid pursuant to the provisions of the Water Agreement, and provide no evidence to support the ICWD's conclusions. The Water Agreement requires that the Technical Group shall conduct all vegetation monitoring (Water Agreement Section III.D, page 12, paragraph 1). As discussed above in Section IV.B.3, all monitoring must be performed by the Technical Group in accordance with the technical procedures found in the Green Book.

However, much of the vegetation data analyzed in the ICWD 2011 Report were independently collected by the ICWD utilizing its unilaterally derived method of re-randomizing vegetation transects annually. The County's use of re-randomized transects was not approved by the Technical Group is not authorized by the Green Book, as thoroughly discussed above in Section IV.B.3.b. [[Exhibit 8]. Further, LADWP has objected to the County's vegetation monitoring protocols as scientifically invalid since at least 1992. [Exhibit 14].

b. The Technical Group Did Not Approve and Monitoring Changes Used in the ICWD Report

Even if the County were permitted to unilaterally monitor vegetation changes at Blackrock 94, it must use methods that are mandated by the Green Book or agreed upon by the Technical Group and approved by LADWP and the Inyo County Board of Supervisors. [Water Agreement Section XXV]. Inyo County's vegetation monitoring

procedures, which include the random placement of vegetation transects which was developed and unilaterally implemented by the Inyo County Water Department was never approved by the Technical Group or Standing Committee, in fact they were specifically rejected by LADWP since at least 1992. [Exhibit 8, 14]. Therefore, this Panel must reject the ICWD Report because its conclusions are based on monitoring methods that were not approved or implemented by the Technical Group.

While the 1991 EIR, Water Agreement, and Green Book did include provisions for modifying the Green Book (1991 FEIR, page 10-71; Water Agreement, Water Agreement Section XXV, page 52; Green Book Section I.C, Box I.C.1.a.ii, page 23, paragraph 1), it did not grant the authority for either party to change the procedures unilaterally. Green Book Page ii states the "*Provisions for revising and updating the Green Book are specified in Section III.E of the Agreement...*"[15] The provisions for modification under the Water Agreement are under Section XXV, which require agreement by LADWP and the Inyo County Board of Supervisors in order to change any portion of the Green Book (Water Agreement, page 52, paragraph 3)

LADWP and the Inyo County Board of Supervisors have not agreed to modify any provision of Green Book Sections I.C or II.A, therefore the modification of the vegetation monitoring program described in the Green Book by Inyo County is in contravention of the Stipulation and Order and the data obtained or analysis conducted by Inyo County's using methods not included by the Green Book or agreed upon by the Technical Group are not binding upon the Technical Group or LADWP. [Exhibit 8].

Absent agreement by the Technical Group and Standing Committee to modify the vegetation monitoring provisions of the Green Book, the Parties are obligated to follow the vegetation monitoring procedures of the Green Book. Consequently, this Panel must

[15] Water Agreement Section III.E describes the provisions of the Green Book and attaches the Green Book as a "technical appendix to this Stipulation and Order and to the EIR." The actual provisions for updating and modifying the Green Book are provided under Water Agreement Section XXV.

reject the ICWD Report because it is based on data that was unilaterally collected based on methods not approved by the Technical Group.

c. The Technical Group Did Not Approve any Statistical or Analytical Methods Used in the ICWD Report

This Panel must reject the ICWD Report because its conclusions are based on analysis of data performed with analytical and statistical methods that were not approved by the Technical Group. Water Agreement Section III.D, and Green Book Section I, explicitly requires that "all monitoring, analysis and interpretation of results shall be done by the Technical Group[, and] [u]nless otherwise specified, determinations, decisions, or actions called for in this section will be made by the Technical Group". (Green Book, page 1, paragraph 1).

The ICWD Report, however, unilaterally analyzed the monitoring data obtained through its unilateral vegetation monitoring program, ignoring the legal requirements of the Water Agreement, and using methods that were not approved by the Technical Group. [Exhibit 8].

Inyo County compares the vegetation data collected by LADWP during the 1984-87 baseline to vegetation it has independently collected during other time periods without accounting for biases introduced by LADWP's and Inyo County's data collection methods. As previously discussed, when conducting the 1984-87 vegetation inventory, LADWP intentionally selected the placement of vegetation transects in patches of representative cover "by choosing lines that appeared to cover representative units of vegetation". [Green Book Section II.A.2.iv., Exhibit 13]. By intentionally running vegetation transects through patches or clusters of representative vegetation within a parcel and avoiding areas of low or no cover, LADWP, during the 1984-87 initial inventory measured higher cover areas within

a vegetation parcel which tended to produce a bias toward over representing vegetation cover and composition within these heterogeneous parcels. [Exhibit 13].

In contrast, the County's random placement of vegetation transects could result in vegetation transects being placed in higher cover areas within a parcel as well as vegetation transects being placed in lower cover or bare areas within a parcel. [Id.]. Because the County runs numerous transects in each vegetation parcel, transects are likely run both in patches of representative cover and areas of low cover or disturbed or bare areas. [Id.]. The random placement of transects results in a bias toward underrepresenting vegetation cover and composition when compared to LADWP's initial inventory. "*Because transects are placed throughout the parcel at random, there is always a chance that they will result in a depiction of conditions that are not truly representative of the entire parcel.*" [Exhibit 25, p. 6, ¶ 4,].

In its analysis, Inyo County independently compares the vegetation data it collects under its vegetation monitoring program to the vegetation data collected by LADWP during the 1984-87 initial vegetation inventory without accounting for the biases introduced by each of the two methods. [Exhibit 13]. The comparison of data obtained using the two methods results in an exaggeration in the amount of change in vegetation cover and composition within a vegetation parcel due solely to the differences in data collection methods. [Exhibit 13].

Hypothetically, if transects were run in a vegetation parcel concurrently using the methods employed by LADWP during the 1984-87 inventory, and using the random transect placement method used by Inyo County, Inyo County's data would inevitably result in lower vegetation cover data. [Exhibit 13]. This is because the 1984-87 LADWP protocol would focus only on the "representative units of vegetation" within the parcel, while the County measurements would be at random: some measurements in representative cover areas, some in low cover or bare areas. Inyo County fails to consider the bias introduced by

its decision to locate vegetation transects randomly in its analysis of changes in vegetation cover and composition. [Exhibit 13].

Moreover, the period between 1978 and 1986 was an extremely wet period in the Eastern Sierra. LADWP's hydrological records show that average annual snowpack runoff during this period was approximately 136% of normal. [Exhibit 13]. LADWP's customary practice during periods of very high snowpack runoff is to spread surface water over City lands, in the Owens Valley, in order to avoid placing more water into the Los Angeles Aqueduct than its available holding capacity and to recharge the groundwater table. [Id.]. The large amount of snowpack runoff during the nine years prior to and including the year of the 1986 vegetation inventory conducted by LADWP, and later incorporated into the Water Agreement as the "initial inventory" or "baseline inventory", resulted in a large amount of water spreading and a correspondingly large amount of vegetation growth in vegetation parcel Blackrock 094, including a preponderance of grasses. [Id.]. Inyo County made little attempt in its analysis to consider how the difference in hydrologic conditions may have affected vegetation during the 1986 initial inventory period (also known as baseline inventory) and the dryer conditions which existed during the period of the County's analysis. [Id.]. In determining attributability, the Technical Group is obligated to consider both the effects of "wet/dry climatic cycles" and "drought" pursuant to Green Book Section I.C.b.v (Green Book page 24).

d. The Technical Group Did Not Evaluate the ICWD Report

Even if LADWP, as a member of the Technical Group, was obligated, under the general principal of good faith and fair dealing, to jointly evaluate the ICWD Report, the County refused to permit the Technical Group to perform such an action because it refused to adequately explain the methods that formed the basis of its conclusions, failed to provide

access to its analytic methods, failed to describe its use of monitoring data and generally stonewalled LADWP attempts to fully vet the ICWD Report.

By letter dated June 19, 2009, to LADWP [Exhibit 5], the ICWD expressed its belief that the Technical Group should evaluate an alleged significant adverse change in vegetation within vegetation parcel Blackrock 094. In subsequent correspondence dated October 13, 2009 and March 10, 2010 [Exhibits 16, 17], LADWP and the ICWD agreed to participate in a joint Technical Group analysis pursuant to Water Agreement Section IV.B to determine if new impacts, other than those associated with the project evaluated in the 1991 EIR,[16] may have occurred in the Blackrock Wellfield Management Area.

Despite its apparent agreement to participate in a joint Technical Group analysis of alleged adverse changes to vegetation within the Blackrock Wellfield Management Area, the ICWD instead commenced and conducted a unilateral analysis of vegetation change in vegetation parcel Blackrock 094, in a manner that was inconsistent with the procedures of Green Book Section I.C. During the period the ICWD spent unilaterally analyzing vegetation parcel Blackrock 094, it did not involve the Technical Group in any aspect of the monitoring, selection of analytical methods or the assumptions made, procedures performed, or the interpretation of results of those methods; all of which were developed independently by the ICWD, and in violation of the Water Agreement and Green Book. [Exhibit 8]. From June 2009, through February 2011, LADWP was completely unaware that the County was pursuing a monitoring and analysis of vegetation impacts at Blackrock 94. [Exhibit 8].

On February 3, 2011, the ICWD provided a copy of the ICWD 2011 Report to LADWP. In February and March, 2011, LADWP's staff, in their capacity as LADWP

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[16] The County's argument in support of its disputed question fails because the impacts subsequently alleged in the ICWD Report were already considered and mitigated in the 1991 EIR as discussed in section VI.6, below.

employees, began reviewing the ICWD 2011 Report and conducting additional analysis. No one on LADWP's Technical Group staff had any familiarity with the statistical methods selected and conducted by the ICWD using its own software. [Exhibit 8]. Therefore, despite the County's unilateral action, LADWP attempted to develop competency with the County's statistical method .

To that end, on August 19, 2011, LADWP requested the ICWD to provide additional information regarding its ICWD 2011 Report. [Exhibit 18]. The September 8, 2011 response received from the ICWD provided very limited information and was of little use in allowing LADWP's technical consultant to recreate or verify the County's analysis contained in the ICWD 2011 Report. [Exhibit 19]. The County was attempting to force LADWP to accept its unilateral activity because it refused to provide sufficient information to allow the Technical Group to participate in the evaluation.

On September 6, 2011, LADWP provided its initial findings regarding the ICWD 2011 Report. [Exhibit 20]. Using traditional nonparametric statistical analysis LADWP's technical staff was unable to confirm the ICWD Report's conclusions and could not demonstrate a statistically significant measurable change in vegetation parcel Blackrock 094. [Id.]. LADWP observed in its September 6, 2011 correspondence, that the ICWD 2011 Report contained insufficient information for a proper analysis of the report and that LADWP's Technical Group representatives still had a number of unanswered questions regarding the monitoring and analytical methods used by the ICWD. [Id.].

On November 10, 2011, via email to ICWD Director Dr. Robert Harrington LADWP stated that it did not have a sufficient understanding of the statistical analysis conducted by Inyo County and requested a meeting with the ICWD technical staff to discuss the analysis. Inyo County did not respond to the request. [Exhibit 21].

At a November 30, 2011 Technical Group meeting, LADWP's Technical Group representatives again requested that the ICWD Technical staff member who conducted the

County's analysis meet with LADWP Technical Group representatives and LADWP's technical consultant to discuss a number of outstanding issues regarding the analysis. [Exhibit 8]. Inyo County's Technical Group representatives finally agreed to participate in such a meeting to discuss the use of the statistical package used in the formation of its report. Unfortunately, when LADWP, via email sent December 5, 2011, attempted to schedule the agreed upon meeting, ICWD balked and instead suggested discussing the issue at an upcoming Technical Group meeting. [Exhibit 8, 24].

While continually refusing to meet and disclose the foundations of the ICWD Report, the County, on January 3, 2012, sent a letter to LADWP that purported to answer LADWP's questions posed in its September 6, 2011 initial findings report. [Exhibit 22]. The ICWD response, while providing some limited information, failed to substantively address LADWP's technical questions and further prevented the Technical Group from thoroughly analyzing the ICWD Report.

On Mach 2, 2012, the County objected to LADWP's characterization that the ICWD had "abruptly recanted its offer" to meet with LADWP consultants in order to further decipher the analytic methods found in the ICWD Report. That letter claimed that the County was willing to meet. The County, however, reiterated that it had already performed all necessary analysis, as documented in its ICWD Report and that the County's "preference" was that the Technical Group "proceed with its analysis [of Blackrock 94] based on methods and conclusions presented in the [ICWD Report]." [Exhibit 27]. Again, the County's intent was to shoehorn the Technical Group into basing its mandated, joint analysis on the unilaterally generated ICWD Report, in clear violation of the Water Agreement.[17]

[17] By letter dated March 21, 2012, the County again reiterated its belief that a mitigation plan was required at Blackrock 94 based on findings and conclusions found in the ICWD Report. [Exhibit 28, ¶ 3].

Finally, on April 20, 2012,[18] during a Technical Group meeting, Inyo County's Technical Group representatives agreed to participate in a face to face meeting with LADWP's Technical Group members and LADWP's technical consultant to discuss the foundations of the ICWD Report relating to its statistical analysis contained in the Report. Although, for the first time since the County issued its ICWD Report, the Technical Group members agreed to meet, as a Technical Group, to discuss the alleged impacts at Blackrock 94, the meeting was never held. [Exhibit 8].

Instead, on May 1, 2012, Inyo County initiated the dispute resolution process under the Water Agreement to address an issue concerning vegetation parcel Blackrock 094. [Exhibit 1]. From February 2, 2011, the date the County issued its ICWD Report, until May 1, 2012, when the County initiated dispute, the Technical Group never engaged in any monitoring or analysis related to Blackrock 94 and did not follow the Significance-Mitigation Determination process mandated by the Water Agreement, specifically affirmed by the 2011 Arbitration Decision, which requires the Technical Group follow certain steps and make specific findings prior to determining whether a measurable, significant and attributable effect has occurred.

On June 7, 2012, the County sent a letter to LADWP's Technical Group members outlining its interpretation of the events surrounding Blackrock 94. [Exhibit 30]. The County's letter attempted to rationalize its unilateral approach to the ICWD Report by characterizing the County's action as somehow authorized by LADWP as a member of the Technical Group. However, as more thoroughly discuss below, such was never the case. Instead, the County's letter underscores that it approached vegetation analysis at Blackrock from a purely unilateral position. According to the County's letter, "[t]he [ICWD] provided its

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[18] LADWP submitted a letter to the County, on April 20, 2012, that reiterated its position that the County's ICWD Report did not constitute Technical Group action and that its conclusions were based on data collection and analytic methods that were not approved or employed by the Technical group as required by the Water Agreement. [Exhibit 29].

analysis to the Technical Group and has waited more than a year before formally requesting that the Technical Group take action."

Further, the County stated that the "[ICWD used and will continue to use the best methods available it has at its disposal for any analysis done to fulfill its obligations to the Technical Group." [Exhibit 30]. The County's statement further exemplifies its misunderstanding of Water Agreement requirements. The County's obligation is to work through the Technical Group to analyze and evaluate vegetation impacts. The County does not have a right, and certainly does not have an obligation to unilaterally perform work and force it upon the Technical Group.

At no point from 2009 through May 2012, did the County adhere to the requirements of the Water Agreement and act as a member of the Technical Group in any activities related to vegetation monitoring, interpretation of results or reporting at Blackrock 94. To the contrary, during that entire time period, the County acted surreptitiously to develop is ICWD Report. More troubling, once it issued the ICWD Report, the County engaged in a pattern of behavior that stonewalled all attempts by LADWP's Technical Group members to understand and analyze the County's unilateral activity that formed the basis of its report. Therefore, despite LADWP's best effort, the County prevented the Technical Group for executing its duties mandated by the Water Agreement and the consequence is that the ICWD Report cannot form an evidentiary basis for impacts to vegetation at Blackrock 94.

7. LADWP Did Not Authorize the County to Act on Behalf of the Technical Group

It is anticipated that the County will argue that LADWP, acting as a member of the Technical Group, somehow authorized the County to conduct its unilateral investigation of vegetation impacts at Blackrock 94, and that authorization was intended to allow the ICWD to independently collect data, undertake analysis and reach conclusions that would bind the Technical Group. No such authorization was ever granted.

During an October 18, 2010, Technical Group meeting, Dr. Bob Harrington, the Inyo County Technical Group lead representative reported that the ICWD was engaging in an effort regarding vegetation parcel Blackrock 094 of "cleaning up a data base" in order to address "some issues with the data itself". [Exhibit 26]. LADWP's Technical Group representative understood that the ICWD was conducting some limited analysis in order to develop a plan to be presented to the Technical Group in order to proceed with an analysis of vegetation parcel Blackrock 094 in order to determine whether LADWP's operations have caused or were causing a significant effect to vegetation in the Blackrock Vegetation and Wellfield Management Area. [Id.].

Specifically, LADWP's Technical Group representative Gene Coufal, the Los Angeles Aqueduct manager stated that "we [the Technical Group] are in the back and fourth stage and looking at the data and seeing what's available" and "somebody has to take a first crack at a plan". [Id.]. There was no indication, and certainly no Technical Group authorization, that ICWD would proceed with a unilateral research project into vegetation impacts at Blackrock 94 on behalf of the Technical Group. [Id.]. Mr. Coufal's acknowledgement that the County should present a plan was intended, and understood by the County, to present a path forward. [Id.]. Formation of a "plan" is not a directive to undertake a comprehensive vegetation analysis because such a directive is contrary to the rules of the Water Agreement.[19]

[19] For example, a work plan for initiating a Technical Group analysis of vegetation impacts to a management area would include identification of what data would be used in the analysis; agreement of how previously collected data would be used; an explanation of how such data sets would be incorporated into an analysis; identification for methods of collecting new data; identification of analytic methods to be used by the Technical Group, including the identification of statistical packages, models, and other analytical methods; a plan for working through the Technical Group to execute all field work, identification of the parties who will perform certain work, and identification of a timeline for completion of the analysis. [Exhibit 26, ¶, 14].

From October 18, 2010 until February 3, 2011, there was no indication that the ICWD was performing any work related to Blackrock 94, other than the formation of a plan to address the issues that arose in 2009. [Exhibit 8, 26]. LADWP simply suggested that the County recommend a path forward to begin the Technical Group process. Only after the issuance of the ICWD Report was the technical Group informed that the County had unilaterally evaluated vegetation parcel Blackrock 094.

Further, at the February 11, 2011, Technical Group meeting, shortly after becoming aware that Inyo County had conducted a unilateral analysis of vegetation parcel Blackrock 094, Mr. Robert Prendergast, an LADWP employee and Technical Group representative for LADWP, stated that the Water Agreement procedures require the Technical Group to first determine measurability prior to proceeding to the next step in the process. [Exhibit 8, 26]. Although LADWP agreed to evaluate the ICWD Report, after its surprise submission, there was no Technical Group action taken, and LADWP's election to evaluate the report was driven by a desire to understand the ICWD process, and act as a matter of good faith. [Id.].

At a subsequent Technical Group meeting held on April 11, 2011, Technical Group meeting Dr. Bob Harrington, Inyo County Water Department Director, stated with regard to the Technical Group analysis of vegetation parcel Blackrock 094 that he did not believe that the ICWD's process precluded Technical Group discussion, but that the ICWD Report "stands alone as a final", clearly indicating that the ICWD Report was intended as a unilaterally created document that was generated outside the Technical Group process. [Exhibit 8, 26; See Exhibit 31].

While the County may argue that the Technical Group authorized the County to unilaterally evaluate vegetation conditions at Blackrock 94, the facts do not support their contention. LADWP merely agreed to allow the ICWD to create a work plan that would detail a suggested approach to vegetation evaluation. In no way was LADWP's acknowledgment that one party had to begin the Technical Group process an authorization

for the County to act outside the rules of the Water Agreement and unilaterally evaluate vegetation at Blackrock 94, or any other vegetation parcel in the Owens Valley

C. The 1991 EIR Considered Groundwater Pumping at Blackrock 94

The current dispute involves alleged impacts to vegetation at vegetation parcel Blackrock 94 resulting from LADWP groundwater pumping for the Blackrock Fish Hatchery, which is located in the Thibaut-Sawmill Well Field and the *Blackrock Vegetation and Wellfield Management Area*. The 1991 EIR addressed and provided mitigation for the exact vegetation impacts currently alleged by the County. The 1991 EIR found that groundwater pumping's effect on the environment was significant and that maintenance of the Blackrock Fish Hatchery and the implementation of the Lower Owens River Project (LORP) would mitigate those effects. Under well-established law, once the short statute of limitations on challenges to an EIR (a maximum of 180 days) has expired, the EIR is conclusively presumed valid, and the analysis and conclusions in the EIR are beyond further legal challenge. Because the 1991 EIR already evaluated, considered and mitigated the impacts to vegetation related to LADWP's groundwater pumping at Blackrock 94, and because it is more two decades too late to challenge the EIR, its analysis or its conclusions, these proceedings are precluded by law from considering any arguments related to vegetation impacts of groundwater pumping at Blackrock 94 or the mitigation of those impacts by maintenance of the Blackrock Fish Hatchery. Therefore the County's argument must fail.

The Blackrock Fish Hatchery is located in the Thibaut-Sawmill Well Field and the Blackrock Vegetation and Wellfield Management Area. The Blackrock Hatchery wells pump ground water that is used to supply the Blackrock Fish Hatchery. Water that is supplied to the Blackrock Fish Hatchery then passes through the hatchery and is captured by the Los Angeles Aqueduct.

The wells supplying the Blackrock Fish Hatchery, which are the same wells that are alleged to have caused the currently disputed impacts, were included in the proposed project description in the 1991 Final EIR. The 1991 FEIR identifies the combined capacity of the Blackrock Fish Hatchery supply wells to be 26.7 cfs. (1991 FEIR, page 5-15, paragraph 1).

The widespread effect on the groundwater table caused by operating the Blackrock hatchery supply wells, Wells W351 and W356, was identified by 1991 EIR Impact 9-11. Increased pumping between 1970 and 1990 caused alterations of groundwater flow patterns with no significant impact on water resources. This 1991 EIR states in part:

> "*There appeared to have been a shift in groundwater flow direction compared to the pre-1970 period in the area south of Blackrock Springs. Continuous fish hatchery pumping has shifted the flow direction from southerly, south of the hatchery, to northerly; it is estimated that approximately one-half of the recharge from Oak Creek now flows north towards the area of depression caused by hatchery pumping. This shift is a change from pre-project conditions.*" (1991 FEIR, Impact 9-11, page 9-64, paragraph 1).[20]

Reduced groundwater levels in the area of the Blackrock Springs Fish Hatchery were also identified in the 1991 EIR under Impact 9-13, Continuous pumping between 1970 and 1990 for fish hatchery supply has lowered groundwater levels and eliminated spring flow, with no significant impact on water resources. This section states:

> "*Figures 9-24 and 9-25 show hydrographs of deep wells 224 and 339 which are in the vicinity of the Fish Springs and Blackrock hatcheries respectively.* ***It can be seen that the continuous pumping to supply the hatcheries, even in above***

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[20] Oak Creek, as referenced under Impact 9-11, is located about 6 – ½ miles to the south of Blackrock Fish Hatchery (attachment xxxxxx).

average years, has caused a lowering of water levels. The recovery in wet years that is observed elsewhere in the Valley has not occurred in these areas because of continuous pumping. *Only a partial recovery of groundwater levels was seen in these two areas. The continuous pumping to supply these hatcheries has lowered groundwater levels and eliminated flow in Fish Springs, and Little and Big Blackrock Springs. The changes to water levels themselves are not judged to be significant, although the consequences to vegetation could be significant.*

The hydrographs indicate that wet year (early 1980's) groundwater level recovery in the Fish Springs area was 10 to 15 feet less than pre-1970 levels. In the Blackrock Springs area, water level recovery was one to five feet less." (1991 FEIR, Impact 9-13, page 9-73, paragraph 5).

Well 339 (also known as V339), which is referred to as being in the vicinity of Blackrock Fish Hatchery by 1991 EIR Impact 9-13, is located approximately 1-1/4 miles to the southwest of Blackrock Fish Hatchery. This well is also located a few thousand feet to northwest of vegetation parcel Blackrock 094 (see Exhibit 27).

As demonstrated by Impacts 9-11 and 9-13, the 1991 EIR analyzed the effect hatchery supply pumping on the groundwater table in the area of vegetation parcel Blackrock 094.

A nexus between groundwater pumping for Blackrock Fish Hatchery supply and adverse impacts to vegetation is made in 1991 Final EIR Impact 9-17, which states in part:

"...because of continuous pumping for fish hatchery supply at Blackrock and Fish Springs, and due to the lack of complete recovery in the Laws area, groundwater storage was depleted in these areas by 8,000 acre-feet. This depletion in storage

is a response to the high and continuous pumping and is distinct from the concept of groundwater mining...

The decreases in evapotranspiration and spring and seep flow are associated with a reduction of vegetation cover in some areas, and die-off of vegetation in other areas." (1991 FEIR, Impact 9-17, page 9-83, paragraph 4, emphasis added).

Chapter 10 of the 1991 EIR provides additional analysis of the effect of groundwater pumping to supply the Blackrock Fish Hatchery, and from other wells, on vegetation under Impact 10-14 which states:

"*Groundwater pumping from wells that supply the CDFG Blackrock Fish Hatchery, combined with increased pumping from other wells in the area, have caused the elimination of spring flow from these two springs* (Big and Little Blackrock Springs). *At Big Blackrock Springs, much of the area of the former riparian vegetation that was supplied by the spring is now occupied by the State's fish hatchery, a large pond, and several fish rearing facilities associated with the hatchery.*" (1991 FEIR, Impact 10-14, page 10-61, paragraph 2).

Mitigation measure 10-14 addresses these impacts as follows:

"No on-site mitigation will be implemented at Fish Springs and Big Blackrock Springs; however, the CDFG fish hatcheries at these locations serve as mitigation of a compensatory nature by producing fish that are stocked throughout Inyo County.

Although not all springs ***and associated riparian and meadow vegetation will receive on-site mitigation, the Lower Owens River Project will provide mitigation*** **of** ***a compensatory nature.*** *This project will rewater over 50 miles* of

the river channel allowing for restoration of *riparian vegetation along the river. This project also will result in the creation* of *several new ponds along the river and will provide the continuation* of *existing lakes associated with the project. The project will restore large areas of wetland and meadow vegetation, perhaps exceeding 1,000 acres adjacent to the river and in its delta. In comparison, the area* of *riparian and meadow vegetation that has been lost and will not be restored because* of *the elimination* of *spring flow due to groundwater pumping is estimated to be less than 100 acres.*" (1991 FEIR, Mitigation Measure 10-14, page 10-62, paragraphs 1 and 5, emphasis added).

The general effects of Los Angeles' water gathering activities on vegetation were also discussed in the 1991 EIR (1991 FEIR, page 10-46):

"*Several studies have attempted to evaluate the vegetation changes that have occurred in Owens Valley due to the increased diversion or export of surface water and groundwater due to the project. Griepentrog and Groeneveld observed vegetation to determine the degree of vegetation change as indicated by the vigor and condition of living plants versus remnant dead plant material at locations throughout the Valley. This very qualitative analysis produced a map of vegetation change corresponding to changes in depth to the water table due to groundwater pumping. In addition, several of the areas with vegetation change are known to have experienced such changes due to decreases in the amount of surplus surface water released during wet years. Their analysis concluded that more than 25,000 acres of vegetation had been affected by water gathering activities, and that most of the effects had been caused by increased export after 1970.*" (1991 FEIR, page 10-46, paragraph 4).

Pumping for the Blackrock Fish Hatchery was identified as a project component in the 1991 FEIR. The impacts due to pumping for the Blackrock Fish Hatchery, including

those to water resources and vegetation, were identified and mitigated. Moreover, the 1991 EIR analyzed impacts associated with the operation of the Blackrock Fish Hatchery wells at a production rate of 26.7 cfs (1991 EIR page 5-15, paragraph 1). The 26.7 cfs (or 19,296 acre-feet per year) production rate of the Blackrock Fish Hatchery wells analyzed in the 1991 EIR far exceeds LADWP's actual production rates from the Blackrock Fish Hatchery wells (the greatest annual production from the hatchery wells since the 1991 EIR was certified was 13,354 acre-feet per year in 2009 and the greatest production since the wells were installed in 1972 was 15,275 in 1987).

The statute of limitations on challenging the conclusions of the 1991 EIR expired no later than 180 days after the EIR was certified under the California Environmental Quality Act, or CEQA. (Pub. Res. Code section 21167.) Because the statute of limitations has run on the 1991 EIR, further environmental analysis of impacts or mitigation which were considered in the 1991 EIR is barred *except* in the limited instance (not present here) where a change or other "subsequent approval" is proposed to the "project" which was covered in the EIR. (Pub. Res. Code section 21166.) And even then, any further analysis would limited to the proposed change, or changes in circumstances or new information about the Project, and "the underlying EIR . . . may not be attacked." (*Temecula Band of Luiseno Mission Indians v. Rancho Cal. Water Dist.* (1996) 43 Cal.App.4th 425, 437; Pub. Res. Code section 21166.) That is because, "as a general rule, once a negative declaration or an EIR is completed, that decision is protected by concerns for finality and presumptive correctness." (*Snarled Traffic Obstructs Progress v. City and County of San Francisco* (1999) 74 Cal.App.4th 793, 797.) This bedrock principal of finality and presumed adequacy of analysis and conclusions of an EIR applies even "if the initial review is discovered to have been inaccurate and misleading in the description of a significant effect or the severity of its consequences." (*Friends of Davis v. City of Davis* (2000) 83

Cal.App.4th 1004, 1018.) In short, once the statute of limitations on an EIR has expired, the analysis or conclusions in that EIR may *never* be challenged, in *any* collateral proceeding.

The allegations in this proceeding, that pumping and operation of the Blackrock Fish Hatchery which were considered in the 1991 EIR (and are not proposed to change) have resulted or will result in adverse impacts to vegetation, constitute an indirect collateral attack on the analysis and conclusions of the 1991 EIR. Those allegations are now time-barred under CEQA, and therefore cannot be raised or considered in this proceeding.

The ICWD Report concludes that changes to vegetation occurred between the 1986 vegetation inventory (referred to as "baseline" by the ICWD) and 1991 (ICWD Report page 4, paragraph 3; page 56, paragraph 3, and page 66, paragraph 2) and during a period where Blackrock Fish Hatchery pumping was analyzed under the 1991 EIR. If Inyo County believes that impacts to vegetation parcel Blackrock 094 were not specifically addressed by the 1991 EIR and should have been, Inyo County could have raised the issue under the draft 1991 EIR or challenged the final 1991 EIR. Instead, the Inyo County Board of Supervisors certified the 1991 EIR as a responsible agency. LADWP has not operated the hatchery wells in a manner other than the way that was analyzed by the 1991 EIR and Inyo County cannot contest the analysis and findings of the 1991 EIR more than twenty years after it was certified.

Consequently, the County is foreclosed from alleging impacts to vegetation at Blackrock 94 because those impacts were already evaluated, considered and mitigated in the 1991 EIR.

D. The ICWD Report is Scientifically Flawed and Does Not Support the County's Conclusions

Even if this Panel finds that the County satisfied its obligation to act a member of the Technical group in the creation of its ICWD Report, its conclusion that LADWP's groundwater pumping caused a significant impact to vegetation at Blackrock 94 fails

because the ICWD Report is scientifically flawed and does not support the County's conclusions. Therefore this panel must reject the County's question and find that there is no evidence that demonstrates an impact to vegetation cause by LADWP's groundwater pumping at Blackrock 94.

As discussed above, the Significance-Mitigation Determination process requires three separate findings: measurability, attributability and significance. Although the ICWD report alleges all three findings, the scientific underpinnings of those conclusions are not scientifically sound. Therefore, in the absence of reliable scientific evidence, the ICWD Report must be rejected.

1. Measurability

The "evidence" presented by ICWD do not adequately describe alleged changes in vegetation in vegetation parcel Blackrock 094. Permanent monitoring site vegetation data do not adequately represent the parcel as a whole because there are only two permanent monitoring sites located in the parcel and vegetation within the parcel itself is highly heterogeneous due to differences in water spreading, soil types, grazing, and historical burns (Martin, Measurability I.A.2, page 6). The annual re-randomized placement of transects adopted by ICWD seriously hinders one's ability to detect vegetation changes over time because it lumps temporal and spatial change into just change so one cannot tell if any potential difference detected is an actual change or a result of transects being run in different locations (Martin, Measurability I.A.3.d, page 13). The data gathered using ICWD's annual re-randomized placement of vegetation transects cannot be reasonably compared to the 1986 initial inventory data because the 1986 transects were subjectively placed in order to "*cover representative units of vegetation within the parcel*" (Green Book, Section II.A.2.d.iv, page 38) and the initial inventory data were collected as part of a cooperative study with the United States Department of Agriculture, Soil Conservation Service researching ties between vegetation and soil types and not designed to represent

average vegetation cover within the entire parcel (Martin, Measurability I.C.2.a, page 23; Green Book Section II.A.2.d.iv, page 38; Declaration of Mr. Brian Tillemans, Exhibit 13).

Results from the ICWD multivariate analyses must be taken with caution because a number of potential variables were ignored in the analysis and results can be greatly influenced depending on data standardization/transformation, inclusion or exclusion of rare species, and a type of distance matrix (Martin, Measurability I.C.2.e, page 27). In addition, presented multivariate analysis results were not appropriately interpreted by ICWD (Martin, Measurability I.C.2.f, page 27). The substitution of the adjacent vegetation parcel, Blackrock 099 as a control site, is an apples to oranges comparison and is completely inadequate because this designation is contradictory to Green Book Sections I.C.1a.ii (Green Book, page 20), I.C.1.b.ii (Green Book, page 23), I.C.1.b.iv (Green Book, page 24), which require comparison of an allegedly affected area to a designated control site (control sites are listed in Green Book Table I.A, page 7). Vegetation parcels Blackrock 099 and Blackrock 094 differ in four additional factors that greatly influence vegetation cover and composition: irrigation (Blackrock 099 is irrigated; Blackrock 094 is not), grazing, fire history, and soil types (Martin, Measurability II, page 29).

2. Attributability

The ICWD Report does not adequately or accurately assess whether impacts to vegetation at Blackrock 94 are attributable to LADWP's ground water pumping. ICWD concludes; "*Vegetation decrease and change is primarily attributable to changes in water availability resulting from groundwater pumping and reduced surface water diversions into the vicinity of Blackrock 94.*" LADWP does not agree with this conclusion for the following reasons: First of all, ICWD failed to clearly establish a causal relationship between changes in vegetation and fluctuations in water table under Blackrock 094 because; 1) DTW (depth to water table from ground surface) only explains at most 20% of vegetation changes over time. The ICWD does not address the 80% or more of the of the DTW

measurements not correlated with hatchery pumping, 2) not all environmental factors were included, 3) a role of precipitation was not adequately represented, and 4) the ICWD kriging[21] estimates of April DTW are unreliable and poorly conceived (Jorat memorandum; Martin, Attributability III.A, page 39, and III.B, page 41). Second, there is no significant statistical or graphical causal relationship between pumping at Blackrock Fish Hatchery (the main source of Thibaut-Sawmill Well Field pumping) and DTW (depth to water table) readings from test and monitoring wells/April DTW estimates under Blackrock 094 (Jorat memorandum). The alleged relationship is statistically insignificant and cannot be derived graphically (Jorat memorandum; Martin, Attributability I.A, page 32). ICWD stated that ". . . *the majority of drawdown from 1987 to 1992, about 10 ft, was caused by pumping from both hatchery and non-hatchery wells*" (ICWD Report, page 52, paragraph 1). However, during this period, the hatchery pumping, which has remained relatively constant since 1972, could not have caused any new groundwater drawdown between 1987 and 1992. The drawdown on the water table in the Thibaut-Sawmill Wellfield which could possibly be attributed to the hatchery wells first occurred beginning in October of 1972 when the hatchery wells began operation, stabilized sometime in 1973 or 1974, and has remained generally stable since. In fact, the actual reason for the draw down under Blackrock 94 between 1987 and 1992 was the combination of a six year drought and pumping from other nearby wells (Jorat memorandum). Third, ICWD failed to examine the role of water spreading, which greatly affects both vegetation and depth to water fluctuations (Martin, Attributability I.B.2, page 36). Lastly, ICWD failed to discuss or quantitatively compare other factors to alleged vegetation changes (Martin, Attributability IV.B, page 45). Green Book Section I.C.1.b.v (Green Book, page 24) requires the Technical Group to consider these other factors, which include wet/dry climatic cycle, grazing, wildfire, and succession,

[21] Kriging is a statistical method used to estimate the value of a parameter (e.g. water level) at a given location based upon the measured value of the parameter at nearby locations.

all of which can have a profound effect on vegetation, and which were generally ignored by the ICWD. LADWP clearly demonstrated the close relationship between wet/dry climatic cycles and vegetation changes/water table fluctuations (Jorat memorandum); yet, ICWD did not adequately evaluate the role of drought or wet/dry climatic cycles on the water table. Grazing is one of the most important factors influencing vegetation in the **grazed** rangeland and cannot be ignored. ICWD failed to mention a wildfire in 1990, and its discussion failed to consider grazing, drought, and wet/dry climatic cycles for vegetation recovery. (Martin, Attributability IV.B, page 45)

3. Significance

For The ICWD Report fails to support the conclusions related to whether the alleged impacts are significant under the Water agreement. ICWD failed to detect cyclic changes of vegetation according to wet/dry climatic cycles, and falsely concluded that current changes are unidirectional toward more shrub domination. Since 2000, there has not been a wet cycle lasting more than two years; thus, the current climatic condition should be considered "drought" comparing to the initial inventory period, which was conducted in a nine year "wet" cycle that included the highest four year average runoff for the period of record of 164% (Martin, Attributability IV.B.1, page 45). The purported increase in shrub proportions claimed by ICWD is not limited in Blackrock 094 and it is observed throughout the valley most specifically at six of the eight permanent monitoring Sites (Martin, Attributability IV.B.4, page 50). ICWD's conclusions regarding significant impacts are based on a unilateral and subjective analysis of vegetation parcels and substitution of vegetation parcels for both control sites and the Blackrock Vegetation and Wellfield Management Area. Control sites are designated under Green Book Sections I.C1.a.ii (Green Book, page 20), I.C.1.b.ii (Green Book, page 23), and I.C.1.b.iv as the areal unit for comparison with the allegedly affected area (control sites are listed in Green Book Table I.A, page 7). Wellfield management areas are the areal unit specified under Water

Agreement Section I for the Technical Group to monitor "vegetation and groundwater conditions...to assure that the goals and principles of this groundwater management plan are met" (Water Agreement Section I.B, page 7; Martin, Significance IV, page 53). Finally, with regard to the significance of any potential change within the parcel, Blackrock 094 is 334 acres which is less than 1% of the nearly 20,000 acre area of the Thibaut Sawmill Wellfield and 5% of the Blackrock Vegetation and Wellfield Management Area (Martin, Significance IV, page 52). Green Book Section I.C.1.c.i requires the Technical Group to consider the "size, location, and use of the area that has been affected. By unilaterally delineating the vegetation parcel as the area of analysis and unilaterally determining that 100% of vegetation parcel Blackrock 94 has been measurably changed due to LADWP's water management practices, the ICWD make an artificial basis for determining significance.

VII. CONCLUSION

The Water Agreement's terms and conditions plainly demonstrate the Parties' intent to work cooperatively, through the Technical Group, to analyze perceived impacts or potential future impacts/changes in vegetation within the Owens Valley and determine the appropriate measures for avoiding and mitigating those adverse impacts to vegetation. Therefore, it is imperative that a ruling be made that the Technical Group must analyze all effects to vegetation and the environment resulting from LADWP's groundwater pumping,

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and that neither party may preempt the responsibility of the Technical Group and independently invoke dispute resolution based on its unilateral finding that LADWP's pumping plan violates, or does not violate, the vegetation goals found in the Water Agreement.

Dated: July 26, 2013

MICHAEL N. FEUER, City Attorney
RICHARD M. BROWN, General Counsel
JULIE C. RILEY, Deputy City Attorney
DAVID EDWARDS, Deputy City Attorney

By _____
DAVID EDWARDS
Deputy City Attorney

Attorneys for Plaintiffs CITY OF LOS ANGELES and the DEPARTMENT OF WATER AND POWER OF THE CITY OF LOS ANGELES

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PROOF OF SERVICE

I am employed in the County of Los Angeles; I am over the age of eighteen years and am not a party to the within entitled action; my business address is 111 North Hope Street, Suite 340, Los Angeles, California 90012-2694. On July 26, 2013, I served the document titled **ISSUE SUBMITTED TO DISPUTE RESOLUTION PURSUANT TO STIPULATION AND ORDER FOR JUDGMENT**

(X) **(VIA OVERNIGHT):** By causing said document listed above to be Federal Expressed next business day to the persons listed below:

David Hotchkiss
Mediator
1400 North Roosevelt Avenue
Pasadena, CA 91004

Randy Keller **(2 Copies)**
168 North Edwards Street
Independence, CA 93526

Greg James
Attorney for the County of Inyo
1839 Shoshone Drive
Bishop, CA 93514

(X) **(VIA EMAIL):** By sending the document (**w/o exhibits**) listed above to the persons listed below via e-mail:

Randy Keller
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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 26, 2013, at Los Angeles, California.