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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

(JAMS REFERENCE NO.
1110016067)

County of Inyo's Reply
Brief Submitted to
Mediation/Arbitration Panel

Hon. Jack Komar (Ret.)
Paul N. Bruce
David Hotchkiss

Mediators/Arbitrators

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1 Pursuant to the Revised Stipulation of the Parties signed on July 11, 2013 (“Revised
2 Stipulation”), the County of Inyo submits its Reply Brief regarding the issues in dispute to the
3 Mediation/Arbitration Panel.

4 **I. INTRODUCTION**

5 As stated in the Revised Stipulation, there are three issues in dispute to be resolved
6 by the Mediators/Arbitrators. One issue has been submitted by the County of Inyo (“County”) and
7 two issues have been submitted by City of Los Angeles Department of Water and Power
8 (“LADWP”).

9 The issue in dispute submitted by the County is:

10 *The County requests a determination by the mediators/temporary*
11 *arbitrators that LADWP’s groundwater pumping and reductions in surface water*
12 *diversions in the Blackrock 94 area have caused a measurable and significant*
13 *change in the vegetation conditions in violation of the provisions of the LTWA*
14 *[Long Term Water Agreement]. The County further requests the Panel to order*
15 *that, as required by Section IV.A of the Water Agreement, reasonable and feasible*
16 *mitigation of this significant impact be commenced within twelve (12) months of*
17 *the determination by the mediators/temporary arbitrators that a significant effect*
18 *on the environment has occurred at Blackrock 94.*

19 In response to the issue submitted by the County, LADWP has submitted the
20 following two issues to mediation/arbitration:

- 21 *a. With regard to the County’s determination that there has been a measurable*
22 *change in the environment at Blackrock 94, LADWP requests that the*
23 *mediators/temporary arbitrators find that the County did not follow and conform to*
24 *all the required rules, procedures and protocols in the Water Agreement, Green*
25 *Book and 1991 EIR when it performed the vegetation monitoring, vegetation data*
26 *collection, vegetation analysis (including the selection of analytical methods,*
27 *assumptions made, and inputs used when conducting an analysis) and, therefore,*
28

1 *the mediators/temporary arbitrators are unable to find that there has been a*
2 *measurable change in the environment at Blackrock 94.*

3 *and/or*

4 *b. With regard to the County's determinations that a measurable, attributable, and*
5 *significant effect has occurred at Blackrock 94, LADWP requests that the*
6 *mediators/temporary arbitrators find that County did not follow and conform to*
7 *required rules, procedures and protocols of the Water Agreement, Green Book, and*
8 *1991 EIR and, therefore, the mediators/temporary arbitrators are unable to find*
9 *that a measurable, attributable and significant effect has occurred at Blackrock 94.*

10 In its Response Brief, LADWP did not directly correlate its responses to each of the issues
11 in dispute. Moreover, many of LADWP's responses apply equally to LADWP Issue "a" and
12 LADWP Issue "b". Additionally, in its Opening Brief and its Response Brief, LADWP raises an
13 issue not encompassed by either of LADWP Issues—that the impacts identified in the County's
14 February 2, 2011 Report (Attachment 10) were addressed and mitigated by the 1991 EIR.
15 Consequently, this Reply Brief is organized as follows:

16 (1) the County replies to LADWP's assertion that the County has not presented any
17 evidence to refute LADWP's contention that the County's February 2, 2011 Report was not
18 prepared in conformance with the Water Agreement (sometimes referred to as the "LTWA");

19 (2) the County replies to the contentions in LADWP's Response Brief that pertain to both
20 LADWP Issue "a" and LADWP Issue "b";

21 (3) the County replies to LADWP's contention that the impacts identified in the February
22 2, 2011 Report were addressed and mitigated by the 1991 EIR; and

23 (4) the County replies to LADWP's responses that a significant effect on vegetation has
24 not occurred at Blackrock 94.

25 In this brief, reference is made to attachments to Inyo County's Opening Brief and to
26 attachments to the County's Response Brief. Attachments numbered 1 through 19 refer to the
27 attachments to the County's Opening Brief and attachments numbered 20 to 25 are attachments to
28 the County's Response Brief. Reference is also made to the Long Term Water Agreement, the

1 Green Book and the 1991 EIR, which have been provided by the County to the panel members
2 pursuant to stipulation of the parties.

3 Both parties acknowledge that in order to determine a significant impact has occurred due
4 to LADWP's water management activities, the Technical Group must make three determinations:
5 (1) that a measurable change has occurred, (2) that the change is attributable to LADWP's
6 groundwater pumping or to LADWP's changes in surface water practices, and (3) that the change
7 is significant. In this is case, all three are answered affirmatively.

8 A. The Parties agree that the Green Book's standard for determining whether a Measurable
9 Change has occurred has been met.

10 In its February 2, 2011 report (Conclusion, pages 4 and 66), the County found that
11 measurable changes and decreases in vegetation have occurred in Blackrock 94. In a letter dated
12 April 9, 2012 to the County from LADWP (Attachment 13 to the County's Opening Brief),
13 LADWP concurred that "...there are years where both the data collected by LADWP and ICWD
14 suggest that there are measureable differences in total cover from the initial inventory."

15 B. The Measurable Change and Decrease in Vegetation is Attributable to LADWP's
16 Groundwater Pumping and/or to LADWP's Changes in Surface Water Practices.

17 Attributability is clearly shown on pages 31 through 56 of the County's Opening
18 Brief.

19 C. The Measurable Change and Decrease in Vegetation Attributable to LADWP's Activities
20 is Significant.

21 The significance of the change and decrease is shown by the 1/3 decrease in vegetation
22 cover compared to baseline line cover that occurred from 1991 to 2009, the persistence of the
23 decrease in 14 of 19 years since 1991, the fact that shrubs are displacing the meadow vegetation
24 causing a change from Type C to Type B vegetation in violation of the LTWA and by the large
25 size of adversely affected area--more than 300 acres. (See the County's February 2, 2011 Report,
26 page 57.)

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1 **II. LADWP COMPLETELY MISREPRESENTS THE EVIDENCE TO SEEK ITS OWN**
2 **GAIN: DELAY**

3 LADWP claims the County never presented its case to the Technical Group and that the
4 Technical Group never considered Blackrock 94. (See LADWP Response Brief, pages 3, 6 and
5 7.) That is a fabrication. (See County's Opening Brief, page 3 and this Reply Brief, page 8, lines
6 12 through 25, and page 10, lines 1 to 20.) LADWP claims the County acted unilaterally, yet the
7 County sought Technical Group action on the situation in Blackrock 94 at twelve separate
8 Technical Group meetings between 2009 and 2012. (See County's Opening Brief, pages 3 and 4.
9 LADWP claims the County is unable to conduct any analysis without being joined by LADWP,
10 yet the governing documents written by the parties envision and specifically recognize that either
11 party can conduct their own testing and analysis and bring it to the other party, which is why the
12 Technical Group exists. That is the point of its existence. (See LTWA, section XVII, and the
13 County's Opening Brief, page 7, lines 1 to 13.)

14 **III. THE COUNTY HAS PRESENTED AMPLE EVIDENCE TO REFUTE LADWP'S**
15 **ASSERTION THAT THE COUNTY'S FEBRUARY 2, 2011 WAS PREPARED IN**
16 **VIOLATION OF THE WATER AGREEMENT**

17 With regard to both LADWP Issue "a" and LADWP Issue "b", LADWP's primary
18 contention is that the County acted "unilaterally" when the County analyzed vegetation
19 conditions and submitted its February 2, 2011 report to the Technical Group for consideration.
20 LADWP asserts that LTWA, the Green Book and the 1991 EIR require that all monitoring, data
21 collection and analysis to determine measurability, attributability and significance should have
22 been jointly conducted by the Technical Group. Accordingly, LADWP maintains that the
23 Technical Group could not consider the evidence presented by the County because it was not
24 jointly developed by the Parties.

25 In its Response Brief (page 2), LADWP asserts that the County has failed to present:
26 *any argument refuting LADWP's threshold contention that the County wholly*
27 *failed to follow the Water Agreement in creating the ICWD Report. The County*
28 *simply fails to address the fundamental fact that the ICWD Report was not based*
upon any Technical Group activity as mandated by the Water Agreement.

1 As shown below, in both its Opening and Response Briefs the County presented ample
2 evidence that the County's February 2, 2011 Report, using data collected by both Parties, was
3 prepared in full compliance with the Water Agreement and that the Technical Group had many
4 opportunities to take action with regard to the report.

5 With regard to LADWP Issue "a", evidence presented on pages 8 through 18 of the
6 County's Response Brief refutes LADWP's allegations that: (1) the line point monitoring
7 program conducted by the County was not approved in advance by the Technical Group (pages
8 17 through 20 of the County's Opening Brief, quoting from summaries of Technical Group
9 meetings, refutes this contention), (2) that LADWP and the Inyo County Board of Supervisors
10 should have approved the monitoring program employed by the County, (3) that the monitoring
11 program should have been jointly conducted by the Parties, (4) that the analytical procedures
12 employed by the County should have been approved in advance by the Technical Group and (5)
13 the that Parties should have jointly conducted the analytical procedures.

14 With regard to LADWP Issue "b", evidence presented on pages 18 through 28 of the
15 County's Response Brief refutes LADWP's allegations that: (1) that a decision in a previous
16 dispute found that the County's February 2, 2011 Report could not be considered by the
17 Technical Group because the report was not jointly prepared by the Parties, (2) that the County's
18 February 2, 2011 Report could not be considered by the Technical Group because it addressed
19 measurability, attributability and significance instead of only measureability, (3) that if the
20 Technical Group is in disagreement on the issue of measurability, attributability or significance,
21 the disagreement must be resolved through dispute resolution before the Technical Group can
22 consider the next determination can be made, (4) that the Technical Group has never been
23 afforded an opportunity to consider the question of whether there has been a significant change
24 and decrease in vegetation in Blackrock 94, and (5) that the County is not permitted to invoke
25 dispute resolution on the issue of whether there has been a significant change and decrease in
26 vegetation in Blackrock 94 because such action would deprive LADWP of its vote on the
27 Technical Group.

28

1 Moreover, on pages 5 through 9 of its Opening Brief, the County explains: (1) when and
2 how the Technical Group agreed that the Technical Group would conduct an evaluation of
3 whether a significant impact to vegetation occurred at Blackrock 94, (2) when and how the
4 Technical Group agreed that the County would prepare such an evaluation and submit it to the
5 Technical Group and (3) how, after the evaluation was submitted, LADWP prevented the
6 Technical Group from resolving the issue in a “expeditious fashion.” Additionally, on pages 28
7 through 31 of its Opening Brief, the County shows that the manner in which the County’s
8 February 2, 2011 Report was prepared and submitted to the Technical Group was fully consistent
9 with manner in which the Technical Group had conducted its business for many years.

10 Finally, in the County’s Response Brief, an entire section (pages 4 through 8), explains
11 why the panel should reject LADWP’s interpretation of how the Technical Group fulfills its
12 responsibilities. That section shows why LADWP’s interpretation would disregard 30 years of
13 precedent, severely limit each Party’s rights under the LTWA, Green Book and 1991 EIR to
14 propose appropriate Technical Group action based upon research and analyses conducted by a
15 Party, and would thwart the purpose of the LTWA by empowering one Party to prevent the
16 Technical Group from acting in an “expeditious fashion.”

17 **IV. LADWP’S CONTENTIONS THAT PERTAIN TO BOTH LADWP ISSUE “a” AND**
18 **LADWP ISSUE “b”**

19 In its Response Brief, LADWP raises several contentions that relate to both LADWP
20 Issue “a” and LADWP Issue “b”. In the following section, each LADWP contention is identified
21 and the County’s reply to the contention is presented.

22 **A. Contention:** Before this panel may evaluate the substance of the County’s February 2,
23 2011 Report, it must first find that the report was the product of Technical Group activity.
24 LADWP contends that the Technical Group must agree in advance on how an action or analysis
25 will be undertaken, on how the agreed upon activity will be jointly conducted by the two Parties
26 and, that the Technical Group must jointly conduct the activity and/or analysis. Therefore,
27 LADWP contends that since the February 2, 2011 Report was not prepared in accordance with
28 LADWP’s interpretation, the panel cannot consider the report. (LADWP Response Brief, page 3.)

1 **Reply:** The LTWA, the Green Book and the 1991 EIR allow either party, as a Technical
2 Group member, to conduct monitoring, collect data, analyze the data and, if it believes that the
3 data and analysis show that a significant effect has occurred, to present the results to the
4 Technical Group for consideration along with a request that the Technical Group take appropriate
5 action. The submission of the February 2, 2011 Report did not prevent LADWP from providing a
6 critical evaluation of the report. To the contrary, the Technical Group had many opportunities to
7 discuss, study and otherwise consider the County's report (See the County's Response Brief, page
8 26). Following consideration, the Technical Group failed to agree upon the action requested by
9 the County. The fact that the report was not jointly prepared by the Technical Group did not
10 preclude the Technical Group from acting upon the County's request at the Technical Group and
11 does not preclude this panel from considering the evidence presented in the report.

12 **B. Contention:** Any and all responses from LADWP to the County concerning the County's
13 February 2, 2011 Report were submitted by LADWP as an independent agency, not as a
14 Technical Group member; therefore, this panel is without jurisdiction to consider the evidence
15 presented in the County's report. (LADWP Response Brief, page 3.)

16 **Reply:** This contention is directly contradicted by LADWP's own unambiguous statement
17 in section II of its Response Brief (page 3) that: "*LADWP fully participated in the Technical*
18 *Group process on all matters concerning Blackrock 94.*" Further, direct contradiction of this
19 contention is found in a letter from LADWP to the County sent on August 19, 2011—several
20 months after the submission of the February 2, 2011 Report to the Technical Group. The letter is
21 Attachment D to Exhibit 3 of LADWP's Opening Brief.) The first sentence of the August 19,
22 2011 clearly states:

23 *Pursuant to the Los Angeles Department of Water and Power's (LADWP)*
24 *participation in the Technical Group analysis of Inyo County Water Department's*
25 *(ICWD) dispute alleging impacts within vegetation parcel Blackrock 94...*

1 **C. Contention:** LADWP asserts that the County contends that the mere passage of two
2 years from the submission of the February 2, 2011 Report to the commencement of dispute
3 resolution establishes that LADWP has prevented the Technical Group from resolving the issues
4 in an expeditious fashion. (LADWP Response Brief, page 4.)

5 **Reply:** The County does not argue that the two year delay alone establishes that LADWP
6 has prevented the Technical Group from determining whether a significant effect has occurred,
7 instead, the County argues that the two year delay conflicts with the requirement that a
8 determination of whether a significant effect has occurred be made in an “expeditious fashion.”
9 As stated on page 10-70 of the 1991 EIR, the LTWA is an adopted mitigation measure under
10 CEQA. The LTWA requires the implementation of the mitigation for significant impacts to
11 vegetation that occur after the adoption of the LTWA. Unreasonable delay in implementing
12 mitigation is inconsistent with the requirements of CEQA and with the requirement that
13 determinations of whether a significant effect has occurred be made in an “expeditious fashion.”

14 **D. Contention:** The intent of the Water Agreement is for joint monitoring and analysis--
15 not individually created reports. (LADWP Response Brief, page 5.)

16 **Reply:** As explained above in the reply to contention “A,” the Green Book and the
17 1991 EIR do not preclude either party, as a Technical Group member, from conducting
18 monitoring, collecting data, analyzing the data and, if it believes that the data and analysis
19 show that a significant effect has occurred, from presenting the results to the Technical
20 Group for consideration along with a request that the Technical Group take appropriate
21 action. In fact, the LTWA specifically allows the Parties to conduct independent
22 monitoring (LTWA Section XVII). Additionally, see the reply to Contention G.

23 **E. Contention:** LADWP admits that the Technical Group must act in an expeditious fashion
24 to determine whether a significant impact has occurred; however, LADWP contends that the
25 timing for measuring what constitutes expeditious action commences when the Technical Group
26 begins an evaluation and, since the Technical Group has never conducted an evaluation of
27 Blackrock 94, any argument that the Technical Group has not acted in an expeditious fashion is
28 without merit.

1 **Reply:** By letter dated October 13, 2009, LADWP agreed that the Technical Group
2 should conduct an evaluation of whether there has been a significant effect in vegetation at
3 Blackrock 94. (See County Opening Brief, page 6.) Pages 23 through 26 of the County's
4 Response Brief show that LADWP acknowledged that the County was preparing a report
5 evaluating the conditions at Blackrock 94 and that LADWP was relying on the County to produce
6 an analysis. As stated on page 23 of the County's Response Brief, during the period from June
7 2009 through February 2011 the Technical Group agenda reflects that the Technical Group
8 considered the vegetation conditions in Blackrock 94 at ten separate meetings. On February 3,
9 2011, the County presented its February 2, 2011 report to the Technical Group. (See County
10 Opening Brief, page 3.)

11 After the submission of the report to the Technical Committee, on August 19, 2011,
12 LADWP sent a letter to the County acknowledging that the Technical Group was considering the
13 question of whether there was a significant effect on vegetation in Blackrock 94. (See Attachment
14 D to Exhibit 3 to LADWP's Opening Brief.) The letter from LADWP stated:

15 *Pursuant to the Los Angeles Department of Water and Power's (LADWP)*
16 *participation in the Technical Group analysis of Inyo County Water Department's*
17 *(ICWD) dispute alleging impacts within vegetation parcel Blackrock 94...*

18 Finally, following the submission of the matter to dispute resolution, the Technical Group
19 met on May 9, 2012 and again on June 14, 2012 to consider the question of whether there has
20 been a significant effect on vegetation in Blackrock 94. (See LADWP's Opening Brief, page 4.)

21 **F. Contention:** The County prevented expeditious action by the Technical Group by
22 ignoring the provisions of the Water Agreement when it prepared its February 2, 2011 Report.
23 (LADWP Response Brief, page 7.)

24 **Reply:** As discussed above, the preparation of the February 2, 2011 Report by the County
25 was not inconsistent with the provisions of the LTWA, Green Book or 1991 EIR. Moreover, at
26 the County's behest, the issue of the conditions at Blackrock 94 on the Technical Group appeared
27 on the Technical Group's agenda twelve times between June 2009 and June 2012.

28

1 **G. Contention:** The County's explanation of how the Technical Group has conducted its
2 business in the past is irrelevant to how the Technical Group is supposed to conduct vegetation
3 monitoring and analysis since the County's references are only to Technical Group action with
4 regard to dispute resolution and new well evaluation. (LADWP Response Brief, page 8.)

5 **Reply:** With regard to how the Technical Group conducts vegetation monitoring
6 and analysis, in a least two instances, LADWP's own actions demonstrate that one Party may
7 conduct an analysis concerning vegetation conditions and may present the analysis to the
8 Technical Group together with a request that the analysis be approved. In a letter dated April 9,
9 2012 LADWP provided an analysis that concluded that there has been a measureable change in
10 vegetation in Blackrock 94. (See page 8 of the County's Opening Brief, and Attachment 13 to the
11 County's Opening Brief). Despite the fact that the analysis was not jointly conducted by LADWP
12 and the County, LADWP submitted the analysis to the Technical Group and supported the
13 Technical Group advancement of the Green Book process to attributability based upon
14 acceptance of LADWP's unilateral analysis by the Technical Group. (County's Opening Brief,
15 page 27). In another instance, LADWP prepared a unilateral response to the California Native
16 Plant Society's allegations of vegetation decline at Blackrock 94 and requested the County to
17 consider it as a joint response. (See Attachment 8 to the County's Opening Brief.) LADWP's
18 actions show that either Technical Group member is be free to develop and present information
19 that it believes is relevant to Technical Group's responsibilities. Such freedom has been the
20 customary practice of the Technical Group since its inception.

21 **H. Contention:** LADWP did not authorize the County to analyze the conditions at Blackrock
22 94 since LADWP is not empowered to authorize such an analysis. (LADWP Response Brief,
23 page 9.)

24 **Reply:** Regardless of whether or not LADWP authorized the County to evaluate the
25 conditions at Blackrock 94 or whether LADWP was empowered to authorize such an evaluation,
26 as shown on pages 4 through 8 of the County's Response Brief, the LTWA, Green Book and
27 1991 EIR do not preclude the County from conducting such an analysis and presenting the results
28 to the Technical Group for consideration.

1 **I. Contention:** The record of the October 18, 2010 Technical Group meeting shows that the
2 Technical Group was discussing a procedure for conducting an analysis of Blackrock 94, the
3 Technical Group was not discussing whether the County should move forward with conducting
4 an analysis; instead, the parties were discussing that the County would assemble data and then the
5 Technical Group would convene to review the data and decide whether further action should be
6 undertaken. (LADWP Response Brief, pages 10, 11, 12 and 13.)

7 **Reply:** LADWP's Response Brief does not provide the complete transcript of the portion
8 of the October 18, 2010 Technical Group meeting. The complete transcript of the portion of the
9 meeting that is pertinent to LADWP's contention appears at pages 23 through 26 of the County's
10 Response Brief. In addition, the full recording of October 18, 2010 meeting is included in
11 Attachment 20 to the County's Response Brief.

12 The record is clear that the Technical Group was discussing an analysis of the conditions
13 at Blackrock 94—there is no evidence in the record of the Technical Group meeting that the
14 Technical Group was discussing a procedure for conducting such an analysis. It is also clear from
15 the discussion at this meeting that both parties recognized that the County's line point data would
16 be used in the analysis. These facts are evidenced by the statement of the County's Water
17 Director, Bob Harrington, at the October 18th meeting, when he clearly said that the County was
18 *"...working on the analysis of the vegetation change in the parcel and comparisons to the nearby*
19 *parcel."* (County Response Brief, page 24, lines 3 through 5.) The County's soil scientist, Aaron
20 Steinwand, confirmed that the County was conducting such an analysis when he said: *"...we*
21 *exchanged a bunch of letters back and forth and then it was said we should do the analysis and*
22 *then they [LADWP] said OK you do the analysis and tell us what you think and if there is a*
23 *problem we will address it then."* (County Response Brief, page 25, lines 20 through 24.) Finally,
24 Gene Coufal, Manager of the Los Angeles Aqueduct, concluded: *"We'll look forward to your [the*
25 *County's] analysis."* (County Response Brief, page 26, line 6.)
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1 **V. THE IMPACTS IDENTIFIED IN THE COUNTY'S FEBRUARY 2, 2011**
2 **REPORT WERE NOT ADDRESSED IN OR MITIGATED BY IN THE 1991 EIR**
3 **AND SUCH IMPACTS DID NOT PREDATE THE LTWA; THEREFORE, SUCH**
4 **IMPACTS ARE SUBJECT TO THE LTWA'S PROVISIONS FOR MITIGATION**

5 LADWP contends in its Opening Brief and again in its Response Brief that the impacts
6 identified in the County's February 2, 2011 Report were addressed in and/or mitigated by the
7 1991 EIR. Additionally, in its Response Brief (pages 13 and 14), LADWP contends that the
8 impacts identified in the County's report predated the signing of the Water Agreement and are,
9 therefore, not subject to its provisions for mitigating significant effects. In its Response Brief
10 (pages 29 through 38), the County explains in detail why the impacts at Blackrock 94 identified in
11 the February 2, 2011 Report were not addressed in or mitigated by the 1991 EIR.

12 With regard to LADWP's contentions that impacts at Blackrock 94 occurred before the
13 signing of the LTWA, as noted on page 36 of the County's Response Brief:

14 *On pages 4 and 66, the February 2, 2011 report states that a measureable*
15 *vegetation change occurred in Blackrock 94 between the baseline period and*
16 *1991. Importantly, the report does not state that a significant impact on vegetation*
17 *occurred during such period, only that a measureable change occurred. On both*
18 *pages, the report notes that the measureable changes have persisted over time, but*
19 *the report concludes that because of continued groundwater pumping and reduced*
20 *surface water diversions in the vicinity of Blackrock 94, the changes have become*
21 *significant since the 1987 to 1991 period.*

22 In its 2011 report, the County observed that measureable changes in vegetation had
23 occurred at Blackrock 94 by 1991 (the year that the County commenced its vegetation monitoring
24 program); however, the Green Book (Section I.C.1.c) requires that an evaluation of significance
25 include a consideration of the permanence of the change in the affected area. The County's
26 report states that the persistent decline in vegetation after 1991 is evidence of for a significant
27 effect under the LTWA. Since the measureable changes were unknown at the time of the approval
28 of the 1991 EIR and the LTWA, neither the LTWA nor the 1991 EIR describe any measureable
changes in Blackrock 94 and do not analyze whether such changes are significant.

1 As stated on page 37 of the County's Response Brief, LADWP agreed in the 1991
2 EIR that if an impact occurred between 1970 and 1990, and if it was not addressed in the 1991
3 EIR, the impact would be mitigated under the LTWA if the impact were to be found significant.
4 Therefore, the significant impacts that occurred at Blackrock 94 should be mitigated as provided
5 in the LTWA.

6 **VI. A MEASUREABLE AND SIGNIFICANT CHANGE AND DECREASE IN**
7 **VEGETATION HAS OCCURRED AT BLACKROCK 94 WHICH IS ATTRIBUTABLE**
8 **TO LADWP'S GROUNDWATER PUMPING AND TO ITS CHANGES IN SURFACE**
9 **WATER MANAGEMENT PRACTICES**

10 In its Response Brief, LADWP raises two contentions that relate to the overall issue of
11 whether there has been a measureable and significant change and decrease in vegetation and
12 several contentions that pertain to either measureability, attributability or significance. In the
13 following section, the two LADWP contentions that pertain to the overall issue are addressed and
14 then the contentions that apply to measureability, attributability and significance are addressed.

15 **A. Contentions that Pertain to the Overall Issue of Significance.**

16 **1. Contention:** The County's February 2, 2011 report does not allege or establish
17 that a measureable, attributable and significant change has occurred at Blackrock 94 since the
18 report only suggests that a change in vegetation is "occurring" and does not allege that a change
19 from Type C to Type B has occurred. (LADWP Response Brief, pages 13 and 14.)

20 **Reply:** The February 2, 2011 Report clearly states both a change in vegetation type and a
21 decrease in vegetation cover have occurred in Blackrock 94. On both pages 4 and 66 it is
22 concluded that:

23 *Conclusion. The Water Department has evaluated conditions in vegetation parcel*
24 *Blackrock 94 in accordance with the LTWA Section IV.B and Green Book Section*
25 *I.C. Available factual and scientific data indicate a measurable vegetation change*
26 *since baseline has occurred in Blackrock 94, both in terms of vegetation cover and*
27 *species composition. These changes occurred between baseline and 1991 and have*
28 *persisted in time. Vegetation composition has changed toward increasing shrub*
proportion and a decrease in grass cover. While the proportion of shrubs in

1 *Blackrock 94 has not yet caused the parcel to change from Type C to Type B*
2 *vegetation, changes in species composition for perennial species suggest a change*
3 *in Type is occurring. Parcel Blackrock 94 is currently Type C, but is changing to*
4 *Type B. Vegetation decrease and change is primarily attributable to changes in*
5 *water availability resulting from groundwater pumping and reduced surface water*
6 *diversions into the vicinity of Blackrock 94. (Underlining added for emphasis.)*

7 Concerning the extent of the significant decrease in vegetation cover, the report states on
8 page 57 that:

9 *Baseline perennial cover measured 41%, while, on average, parcel cover from*
10 *1991-2009 was 27% (Figure 3a). This represents a 1/3 decrease in cover on*
11 *average, while in the same period, Blackrock 99 has increased in cover. The*
12 *decrease in vegetation cover is persistent, occurring in 14 of 19 years since the*
13 *Green Book monitoring program began in 1991.*

14 With regard to the extent of the change in species composition, the report states on page
15 57 that:

16 *Grass cover has decreased, while shrub cover is has changed little resulting in an*
17 *increasing proportion of shrubs (Figures 5a and b, Figure 6). Changes in*
18 *vegetation community composition suggest a transition from Type C to Type B*
19 *vegetation is occurring in Blackrock 94 (Figures 7a and 17a). Such a decrease*
20 *and change is contrary to the goals of the LTWA.*

21 **2. Contention:** The County provides no evidence in the February 2, 2011 report as to
22 how changes that occurred between 1987 and 1990 could result in a change in vegetation
23 occurring some 20 years later. (LADWP Response Brief, page 14.)

24 **Reply:** As stated in the reply to the previous contention, the February 2, 2011 report
25 documented a persistent and significant decrease in vegetation cover in 14 of 19 years since the
26 Green Book monitoring program began in 1991 and a change in species composition resulting in
27 from an increase in shrubs in proportion to grass. As noted on page 15 of the County's Opening
28 Brief, under the LTWA, the degree of vegetation change and/or decrease in the affected area and

1 the permanency of the change and/or decrease are required indicators for determining whether the
2 decrease or change is significant. Consequently, a measureable vegetation change or decrease that
3 was first observed in 1991 was only deemed significant once the degree and permanency of the
4 change and decrease was apparent when the County's report was released in 2011.

5 **B. Measureability**

6 **1. Contention:** LADWP claims that the vegetation data relied upon in the County's
7 February 2, 2011 Report (Attachment 10) was collected using a biased and flawed monitoring
8 program that did not follow the monitoring procedures and protocols required by the Green Book
9 (LADWP Response Brief, page 15.)

10 **Reply:** In its February 2, 2011 Report, the County relied on data collected by both the
11 County and LADWP. (See page 14, Table 14 of County's Response Brief.) The County's line-
12 point vegetation monitoring was conducted according to Green Book procedures and the
13 Technical Group acknowledged that the data that would be used to assess vegetation change from
14 baseline conditions (County's Opening Brief, pages 17-18 and Attachments 1, 2, 12 (page 2), 15
15 (pages 3-5), and 16 (page 3) to the County's Opening Brief). In its February 2, 2011 Report, the
16 County also relied on vegetation data collected at permanent monitoring sites maintained and
17 measured by both the County and LADWP (Green Book, Sections III.C.1 and III.C.2), and line
18 point data collected only by LADWP.

19 **2. Contention:** LADWP claims that the County's use of line point transects was required to
20 be approved by the Inyo Board of Supervisors and by LADWP pursuant to Water Agreement
21 section XXV. (LADWP Response Brief, pages 15 and 16.)

22 **Reply:** This contention is fully refuted in the County's response to Contention 1.a—3 on
23 pages 12 and 13 of the County's Response Brief.

24 **3. Contention:** LADWP claims that the County's re-randomization of transects lumps
25 temporal and spatial changes which makes it impossible to determine whether differences are due
26 to actual changes in vegetation or are due to monitoring transects being placed in different
27 locations each year (LADWP Response Brief, page 16.)

28

1 **Reply:** LADWP makes this assertion but provides no credible data, analysis, or evidence
2 to support its claim. Further, the method recommended and used by LADWP in its line-point
3 monitoring potentially degrades the ability to detect changes in vegetation from baseline
4 conditions. The County's program was designed specifically to collect data for comparison with
5 the baseline survey and prevent falsely detecting a change in vegetation where there is none. The
6 County has addressed LADWP's contentions regarding re-randomization of transects in
7 Responses 2 and 3 on pages 40 through 42 of the County's Response Brief, in Attachments 12
8 (pages 4-6) and 16 (pages 1-5) to its Opening Brief, and in Attachment 22 (pages 3-9) to its
9 Response Brief.

10 **4. Contention:** LADWP claims that the County randomly placed transects in low vegetation
11 cover areas or in barren areas so the data from such transects can't be compared to LADWP's
12 baseline data which was obtained using transects placed in representative units of vegetation.
13 (LADWP Response Brief, page 16.)

14 **Reply:** Random placement of transects provides an unbiased estimate of the actual
15 vegetation cover and species composition of the parcel. The reasons that this contention is
16 without merit are explained in Responses 2 and 3 on pages 40 through 42 of the County's
17 Response Brief, Attachment 12 (16-20) of the County's Opening Brief, and in Attachment 22
18 (pages 3-5) of the County's Response Brief.

19 **5. Contention:** LADWP claims that the flaws in the County's monitoring were well known
20 as early as 2004 when Montgomery-Watson-Harza (MWH) released its vegetation report.
21 (LADWP Resp. Brief, page 16.) LADWP provides statements from its consultants ostensibly
22 supporting this claim. (LADWP Response Brief, pages 16-18.)

23 **Reply:** The County addressed these contentions in its Opening Brief (page 31), and
24 Attachments 12 (pages 3-4), 18 (page 1), 19 of its Opening Brief, and in Attachment 22 (pages 9-
25 10) of its Response Brief. MWH may have concluded that the monitoring conducted by the
26 County was flawed in 2004, but LADWP did not provide MWH's work to the County until 2012.
27 It is disingenuous that LADWP would claim, on one hand, that all of the Technical Group's work
28 must be done jointly and fault the County for producing an analysis and providing it to the

1 Technical Group for consideration, while on the other hand, LADWP was unilaterally conducting
2 its own monitoring program while directing a consultant to analyze the Technical Group's
3 vegetation monitoring program and withholding their results from the Technical Group.
4 LADWP's claims of widespread deviations from the field methods are exaggerated and the
5 effects of any such deviations on the County's results were not quantified by LADWP. LADWP
6 fails to note that 94% of the County's measurements observed by LADWP's consultants' were
7 not critically commented on. In addition to concluding that no County data are acceptable,
8 LADWP even questions the ability to compare baseline data to vegetation data that LADWP has
9 collected (LADWP Response Brief, Exhibit 9, p. 25). LADWP seems to be saying, that no data
10 or analysis can be trusted and, thus, the Technical Group and the panel are unable to determine
11 whether or not LADWP has caused an impact.

12 **6. Contention:** LADWP claims that the statistical methods used by the County to determine
13 measurability are flawed because the County rejected the use of "*the customary statistical*
14 *methods used by the Technical Group when it performs vegetation monitoring*" and instead used
15 obscure methods (LADWP Response Brief, page 18.)

16 **Reply:** LADWP's claim does not specify what methods they object to, or what methods
17 they consider to be the Technical Group's customary methods. The County used a number of
18 sophisticated and widely accepted statistical methods, described in the February 2, 2011 Report
19 and in its Response Brief (pages 43-44). The County has responded to a number of LADWP's
20 contentions concerning various statistical methods in Attachments 12 (pages 11-12, 13-16), 18
21 (pages 10-11 to the County's Opening Brief, and in Attachment 22 (pages 19-25) to the County's
22 Response Brief.

23 **7. Contention:** LADWP claims that by selecting NPMANOVA and PERMDISP, the
24 County controlled the data to control the outcome of the County's analyses (LADWP Response
25 Brief, page 19.)

26 **Reply:** The County addressed this contention in Attachment 18 (page 10) to its Opening
27 Brief and Attachment 22 (page 25) to its Response Brief. The County used a level of significance
28 of 0.05, a standard significance level in ecology. LADWP reduced the level of significance to

1 0.01 and although LADWP concluded that fewer years were significantly different than baseline,
2 LADWP still concluded that some years were significantly different than baseline (LADWP letter
3 dated April 9, 2012, Attachment 13 to the County's Opening Brief.). Both Parties have found
4 that a measureable change has occurred under the Green Book's standard that "...a determination
5 of measureability will be made if any of the relevant factors document even a small change in
6 vegetation cover or composition has occurred".

7 **8. Contention:** LADWP claims that by averaging data from all of the transects in Blackrock
8 94 thereby combining areas of low and high vegetation cover) the County manipulated the
9 parameters used in its statistical analysis to increase the number of years where there was a
10 statistically significant change (LADWP Response Brief, page 19.)

11 **Reply:** Calculating an average of a sample is standard scientific practice and it is absurd
12 for LADWP to characterize such a practice as data manipulation. Because the locations of the
13 samples in the baseline inventory were not recorded when LADWP conducted the baseline
14 surveys, the analysis suggested by LADWP to compare cover within a parcel against the baseline
15 data would be meaningless. The most valid comparison is the average of the baseline samples
16 with the average of samples collected in subsequent years.

17 The management maps included in the Water Agreement as Exhibit A established
18 baseline vegetation conditions at the parcel-scale based upon vegetation data collected from
19 several transects in each parcel. Since the baseline vegetation conditions were established at the
20 parcel level, the County analyzed vegetation change at Blackrock 94 at the scale of the 333-acre
21 parcel. In the 1991 EIR, significant impacts to vegetation were identified on a similar spatial
22 scale (Attachment 10, page 57 of the County's Opening Brief). LADWP's argument that the
23 County should have evaluated impacts at a smaller spatial scale than the parcel (by evaluating
24 data from individual transects) is contrary to LADWP's argument elsewhere that the County
25 should have evaluated impacts at the much larger spatial scale of the management area (LADWP
26 Response Brief, pages 32-33). The Water Agreement Section IV.B and Green Book Section I.C
27 require that evaluations of significant impacts be conducted on a case-by-case basis, and the
28

1 appropriate spatial scale of an analysis varies on a case-by-case basis. In this instance, the alleged
2 impact occurred in a single 333-acre parcel (Inyo Opening Brief, Attachment 6).

3 **9. Contention:** LADWP alleges that the County did not disclose the parameters or
4 assumptions used in its statistical analyses until April 2012—two years after the County
5 commenced its evaluation of Blackrock 94 (LADWP Response Brief, page 20.)

6 **Reply:** The County has responded to LADWP's requests for information and clarification
7 as they have been received (Attachment 11 to the County's Opening Brief) and met with LADWP
8 staff and their consultants to discuss the County Analysis (Attachment 22, pages 23-24 of the
9 County's Response Brief). LADWP reported they have been able to reproduce the County's
10 analysis.

11 **10. Contention:** LADWP claims that the County's February 2, 2011 Report provides no
12 details regarding the parameters that were used in the County's statistical analysis and does not
13 provide the raw data used in the report (LADWP Response Brief, page 21.)

14 **Reply:** The County's line-point monitoring results are part of the Technical Group's
15 monitoring program (Attachments 15 and 16 to the County's Opening Brief), and the raw data
16 from the line point monitoring have been provided to LADWP every year since 1991. In fact,
17 LADWP used these data in their annual Owens Valley Report each year from 2004 through 2011
18 to satisfy mandated reporting requirements. Copious details regarding the statistical parameters
19 used in the County's analysis are provided in Attachments 10, 12 and 18 to the County's Opening
20 Brief, and in Attachment 22 to the County's Response Brief.

21 **11. Contention:** LADWP claims that the County's February 2, 2011 Report ignored the
22 Green Book's requirements for control sites as comparisons and instead arbitrarily selected parcel
23 Blackrock 99 as a control site; and that, unlike Blackrock 94, Blackrock 99 has been irrigated, has
24 had different grazing patterns, has different soil types, has a higher water table because the Los
25 Angeles Aqueduct passes through the parcel (LADWP Resp. Brief, pages 21-22.)

26 **Reply:** The choice of Blackrock 99 was not arbitrary. This issue is refuted at length on
27 page 25 of the County's Opening Brief and in Responses 5 and 6 on pages 44-50 of the County's
28 Response Brief. Blackrock 99 is an appropriate control for assessing causes of change in

1 Blackrock 94 because the proximity of the two parcels makes them subject to similar drought
2 conditions, wet/dry cycles, soil types, fire regime, grazing, and irrigation practices—but with
3 different groundwater levels due to LADWP’s groundwater pumping. See also Attachments 12,
4 (page 11), 18 (page 10) to the County’s Opening Brief, and Attachment 22 (pages 26-38) to the
5 County’s Response Brief.

6 **12. Contention:** LADWP notes that permanent monitoring site TS3 is located in Blackrock
7 95, not Blackrock 99 and that the same issues about using the Blackrock 99 as a control site apply
8 to the use of TS3 as a control site (LADWP Resp. Brief, page 22.)

9 **Reply:** Attachment 10, Figure 1, page 6 to the County’s Opening Brief, shows the correct
10 location of permanent monitoring site TS3, which is near, but not located in Blackrock 99. TS3
11 was compared with other permanent monitoring sites. TS3 is the site nearest permanent
12 monitoring site to TS1 and TS2, and has similar initial vegetation, soils, fire history, grazing, and
13 climate, but a higher water table.

14 **13. Contention:** LADWP claims that the data relied upon by the County from TS3 was not
15 collected using line point monitoring as required by Green Book Box I.C.1.a.ii (2) but instead
16 using point frame monitoring (LADWP Resp. Brief, page 23.)

17 **Reply:** The line point method involves stretching a tape along a transect and sighting
18 down the tape at regular intervals and recording the presence of plant species at each sighting.
19 The point frame method involves aligning a metal frame along a transect and recording the
20 presence of plant species that contact steel pins dropped vertically through the frame. Both are
21 recognized methods to measure plant cover. The point frame method is prescribed in the Green
22 Book for making vegetation water requirement calculations at permanent monitoring sites for
23 managing groundwater pumping (Green Book Sections III.C.1 and III.C.2). The Green Book
24 requires the Technical Group to evaluate all relevant factors when assessing vegetation change;
25 therefore, in addition to line point transect data, the County considered data from permanent
26 monitoring sites, TS1, TS2, and TS3 to be relevant, because sites TS1 and TS2 are within
27 Blackrock 94 and TS3 is near Blackrock 99.

28

1 **14. Contention:** LADWP claims that the County cited only a single journal article to explain
2 the SMA methodology instead of supplying the details of the remote sensing methodology
3 employed by the County (LADWP Response Brief, pages 23-24.)

4 **Reply:** Attachment 18, pages 13-18 to the County's Opening Brief, contains numerous
5 peer reviewed references related to the County's remote sensing analysis.

6 **C. Attributability**

7 **1. Contention:** LADWP claims that the County's February 2, 2011 Report fails to explain
8 the role of climatic conditions in the vegetation change at Blackrock 94. LADWP notes that
9 climatic conditions produced the baseline conditions in Blackrock 94 since the 1978 to 1986
10 period of high precipitation which caused the vegetation in the parcel to change from alkali scrub
11 to alkali meadow (LADWP Resp. Brief, pages 24-25.)

12 **Reply:** The County concurs that climatic conditions can produce changes in vegetation;
13 but climatic conditions were not the primary cause of the vegetation change and decrease at
14 Blackrock 94. As explained in the February 2, 2011 Report, LADWP's groundwater pumping and
15 surface water changes caused the vegetation changes. The comparison of the vegetation
16 conditions in Blackrock 94 with those in Blackrock 99 addresses climatic conditions because the
17 two parcels are subject to the same climatic conditions, but have differing groundwater levels due
18 to LADWP's groundwater pumping. This shows that climatic conditions are not the cause of
19 vegetation change and decrease in Blackrock 94. (See pages 44 through 50 of the County's
20 Response Brief.)

21 **2. Contention:** LADWP claims that the County's February 2, 2011 Report does not explain
22 how the constant pumping from the wells supplying the Blackrock Fish Hatchery, which began in
23 1972, caused a large drawdown in groundwater levels under Blackrock 94 between 1987 and
24 1990 or how the fish hatchery pumping triggered a large drawdown from 1987 to 1990 (LADWP
25 Response Brief, 25-26.)

26 **Reply:** The County made no such claim. Attachment 10 (pages 51-53) to the County's
27 Opening Brief and Attachment 22 (pages 29-32) to the County's Response Brief explain that the
28 water table changes at Blackrock 94 have resulted from pumping for Blackrock Fish Hatchery

1 (which has been relatively, but not entirely constant) and from other pumping in the Thibaut-
2 Sawmill and Taboose-Aberdeen well fields, and changes in surface water management. The
3 pumping from other wells and changes in surface water management combined with the pumping
4 for the fish hatchery caused the changes in groundwater levels at Blackrock 94. The analysis
5 presented by LADWP in its Opening Brief and Exhibit 10 is fatally flawed in that it analyzes only
6 pumping from the hatchery supply wells, without considering pumping of other wells that affect
7 the water table at Blackrock 94.

8 **3. Contention:** LADWP claims that the County's February 2, 2011 Report presents no
9 analysis of Thibaut, Division, Black Canyon, Goodale and Oak Creeks with regard to changes in
10 the groundwater levels under Blackrock 94. (LADWP Response Brief, pages 26 - 27 and page
11 31.)

12 **Reply:** The County analyzed flows and diversions from Sawmill Creek because it is the
13 nearest stream course to Blackrock 94 and because water has sometimes been diverted from
14 Sawmill Creek to Blackrock 94. Due to their distance from Blackrock 94, analyses of flow in the
15 other creeks are less relevant (Division, Oak, Goodale) and the Technical Group lacks any data
16 regarding flows in Black Canyon making analysis impossible. Although the County did not
17 specifically analyze the effects of some of the creeks, the County's groundwater model results,
18 however, do include and discuss the effect of fluctuations of recharge (primarily derived from
19 runoff in the creeks) near Blackrock 94. Attachment 22 (page 27-28) to the County's Response
20 Brief discusses this contention in greater detail.

21 **4. Contention:** LADWP claims that the County's February 2, 2011 Report ignores
22 groundwater data from prior to 1986 in its hydrographs and kriging data (LADWP Response
23 Brief, page 27.)

24 **Reply:** In doing its analyses, the County focused on the cause of water table changes that
25 occurred subsequent to the establishment of the baseline conditions in Blackrock 94 and
26 Blackrock 99. The issues in this dispute relate to vegetation changes and decreases that occurred
27 after the baseline mapping in was conducted in 1986. The effects of the relatively wet period and
28 low pumping, that occurred prior to the establishment of baseline conditions, on the hydrology

1 under Blackrock 94 are discussed in the February 2, 2011 Report and in Attachments 12 and 18 to
2 the County's Opening Brief.

3 **5. Contention:** LADWP claims that the County's February 2, 2011 Report's surface water
4 balance ignores groundwater pumping to supply the Blackrock Fish Hatchery (LADWP Response
5 Brief, pages 27-29.)

6 **Reply:** LADWP's contention appears to confuse separate analyses in the County's report.
7 The County did not include groundwater pumping for the Blackrock Fish Hatchery in its water
8 balance accounting of Sawmill Creek surface water flows because the purpose of the accounting
9 was to evaluate surface water flows that could recharge Blackrock 94, not the effects of
10 groundwater pumping. LADWP's Exhibit 10 presents a water balance for the surface water
11 features at the Blackrock Fish Hatchery, concluding that most of the groundwater pumped to
12 supply the hatchery infiltrates back into the groundwater system. The water balance performed
13 by LADWP is faulty because it is based on the assumption that all of the water infiltrating from
14 the hatchery ponds and ditches is pumped groundwater, whereas the inputs of water tabulated in
15 its Exhibit 10 include surface water from Division Creek. What LADWP's Exhibit 10 shows is
16 that the operation of the Blackrock Hatchery results in an annual average outflow to the Los
17 Angeles Aqueduct of 11,843 acre-feet per year.

18 **6. Contention:** LADWP claims that the soil moisture data in the County's February 2, 2011
19 Report is flawed because it compares soil water within Blackrock 94 at permanent monitoring
20 sites TS1 and TS2 with permanent monitoring site TS3 instead of control sites, provides soil
21 water data only for the dryer months of the year (October and November) and provides data only
22 for the dry years of 1990, 1994, 2000 and 2009. Moreover, LADWP claims that TS3 is an
23 irrigated area (LADWP Response Brief, page 28.)

24 **Reply:** The soil water results presented in the February 2, 2011 Report 10 represent
25 periods and soil depths that the water table was or was not contributing to soil water recharge.
26 The data show that during dry months of dry years, the higher water table at TS3 was always
27 contributing soil water to the root zone, whereas, due to LADWP's groundwater pumping and
28 surface water changes, the depressed water table at TS1 and TS2 in Blackrock 94 was not.

1 LADWP did not refute the County's observations nor put forth different conclusions based on the
2 voluminous soil water information available to the Technical Group. LADWP and the County
3 have both presented data showing that both Blackrock 94 and Blackrock 99 have been subject to
4 intermittent supply of surface water during high runoff years that affects only portions of each
5 parcel. Neither parcel is classified as irrigated in the Water Agreement's vegetation classification
6 system (LTWA Section II and Exhibit A).

7 **7. Contention:** LADWP claims that the groundwater modeling presented in the February 2,
8 2011 Report does not consider recharge that occurs at the fish hatchery and relies on the USGS
9 model which has coarse grids. The County should have used a higher resolution groundwater
10 flow model to show the recharge from the fish hatchery (LADWP Response Brief, page 29.)

11 **Reply:** The USGS model was developed as part of an Inyo/LA cooperative study and was
12 a primary tool relied upon when the 1991 EIR was drafted. The Parties have utilized the USGS
13 model for many years. It is the County's understanding that LADWP has developed a higher
14 resolution model than the USGS model, but LADWP has not presented any results obtained from
15 that that model for consideration by the Technical Group or this panel.

16 **8. Contention:** LADWP claims that the County did not evaluate the extent that factors other
17 than groundwater pumping caused or contributed to the impacts at Blackrock 94 (LADWP
18 Response Brief, pages 29 to 31.)

19 **Reply:** Attachments 10, 12, 18 to the County's Opening Brief, and Attachment 22 to the
20 County's Response Brief consider at great length other factors besides groundwater pumping.
21 When data for specific factors was not available, the County refrained from speculating on the
22 effects on Blackrock 94. LADWP unjustly faults the County for not performing analysis of
23 nonexistent data or of data that LADWP has not made available to the Technical Group.

24 **D. Significance**

25 **1. Contention:** LADWP claims that the County's February 2, 2011 Report should have used
26 the Blackrock Vegetation and Wellfield Management Area as the basis for determining
27 significance instead of parcel Blackrock 94. (LADWP Response Brief, pages 32-34.)

28

1 **Reply:** LADWP is inventing a standard that does not exist in the Water Agreement. The
2 Water Agreement does not mandate any particular spatial scale at which impacts must be
3 evaluated, only that the size of an impacted area be considered as one measure of whether an
4 impact is significant. The reasons why impacts were evaluated at the scale of the 333-acre
5 vegetation parcel are explained in Response 4 on pages 55 through 57 of the County's Response
6 Brief, Attachment 10 (page 57) to the County's Opening Brief and in Attachment 22 (pages 39-
7 40) to the County's Response Brief. The County's February 2, 2011 Report (pages 59-60) does
8 show that the types of changes observed in Blackrock 94 are not occurring is isolation.

9 **2. Contention:** LADWP claims that the County's February 2, 2011 Report erroneously
10 averaged the data from all of the transects in Blackrock 94 to show a significant impact. The
11 averaged data shows that 100% of the parcel has changed. In contrast the raw data collected by
12 the County shows that some areas within Blackrock 94 have been equal to or above baseline
13 conditions in every year since 1992—and some areas have been as much as 80% higher than
14 baseline. The averaged data exaggerates the degree of change in Blackrock 94 (LADWP
15 Response Brief, page 34.)

16 **Reply:** In this contention, LADWP argues that the County should have evaluated impacts
17 at the sub-parcel scale (on a transect by transect basis), which is contradictory to the argument it
18 makes in its Response Brief at page 24 that the County should have evaluated impacts at the
19 much larger spatial scale of the Management Area. Because the locations of the samples in the
20 baseline inventory were not recorded when LADWP conducted the baseline surveys, it is not
21 possible to compare data subsequently collected from individual transects within a parcel against
22 the baseline transect data. Therefore, LADWP's comparison of data from an individual transect
23 to the baseline average representative of the entire parcel is liable to lead to erroneous
24 conclusions. The most straightforward quantitative method to assess change in the parcel is
25 comparison of the average of the baseline samples with the average of samples collected in
26 subsequent years. This is consistent with the management maps included in the Water Agreement
27 as Exhibit A which established baseline vegetation conditions at the parcel-scale based upon a
28 collection of data obtained from several transects in each parcel. Although some transects within

1 Blackrock 94 had higher vegetation cover than other transects in the parcel, using the average of
2 all the transect data from the parcel is the method that is most consistent with the method used to
3 establish the baseline for the parcel and, thus, produces the most valid comparison.

4 **3. Contention:** LADWP claims that the County's February 2, 2011 Report inappropriately
5 compares rare plants at T581, a site known to have a higher water table with Blackrock 94 which
6 does not have rare plants (LADWP Response Brief, page 35.)

7 **Reply:** The County did not reach any conclusions from the rare plant data in the February
8 2, 2011 Report, yet LADWP contends the analysis was flawed. Nevertheless, LADWP is
9 incorrect concerning the existence of rare plant in Blackrock 94, *Calochortus Excavatus* has been
10 documented at site TS2 within Blackrock 94, and the population at T581, with a higher water
11 table, is in much larger than that at TS2.

12 **4. Contention:** LADWP contends that the County's February 2, 2011 Report incompletely
13 analyzes the effects of existing E/M projects because the report ignores the Lower Owens River
14 Project (LORP) which mitigates the impacts at Blackrock 94 (LADWP Response Brief, page
15 36.)

16 **Reply:** The question of whether the observed impacts to Blackrock 94 have been
17 mitigated through the LORP or other mitigation measures is addressed in the County's Response
18 Brief (pages 29-38, see pages 33 and 34 in particular) which clearly shows that the LORP is not a
19 mitigation measure for the vegetation impacts documented in the February 2, 2011 report

20 **5. Contention:** LADWP notes that the County contends that the vegetation
21 impacts at Blackrock 94 are not associated with the loss of spring flow from Big Blackrock
22 Spring. LADWP also claims that County contends that groundwater pumping from the wells that
23 supply the Black Rock Fish Hatchery lower the water levels under Blackrock 94. LADWP claims
24 that the County can't have it both ways: either the hydrology at Blackrock 94 is associated with
25 the hydrology at Big Blackrock Spring or it is not. (LADWP Response Brief, pages 36 and 37.)

26 **Reply:** The vegetation that was associated with Big Blackrock Spring died off when
27 LADWP's groundwater pumping resulted in the loss of flow from the spring. The groundwater
28 dependent vegetation located miles away in Blackrock 94 was not, and is not, associated with Big

1 Blackrock Spring (See pages 29 through 38 of the County's Response Brief.) The radius of
2 influence of the high capacity groundwater pumping wells that supply the Blackrock Fish
3 Hatchery extend well beyond the area of vegetation that was supplied with water from Big
4 Blackrock Spring. Although no spring-associated vegetation is documented in Blackrock 94, the
5 result of the groundwater modeling presented on pages 51-53 of the February 2, 2011 Report
6 shows that the water table at monitoring sites within Blackrock 94 is affected by groundwater
7 pumping at the hatchery and from other LADWP wells.

8 VII. CONCLUSION AND REQUESTED RESOLUTION

9 The County's February 2, 2011 report presents the County's analysis of conditions in
10 vegetation parcel Blackrock 94. The report provides credible evidence that a measurable change
11 in vegetation cover has occurred; that the parcel is converting from a grass-dominated community
12 to a shrub-dominated community; that the changes are attributable to LADWP's groundwater
13 pumping operations and surface water management; and that the changes constitute a significant
14 impact that has occurred since the establishment of baseline vegetation conditions in the parcel.

15 The County's analysis was conducted according to the framework and prescriptions of the
16 LTWA and Green Book for determining if a significant impact has occurred. The County
17 obtained concurrence from LADWP and the Technical Group to prepare an analysis for Technical
18 Group consideration and performed the analysis using data that had been long-accepted by the
19 Technical Group and LADWP for this purpose. Concerning the measurability of the vegetation
20 change, LADWP itself has acknowledged that a measurable vegetation change has occurred in
21 Blackrock 94. Moreover, LADWP has not presented evidence to the Technical Group or to the
22 Standing Committee that is sufficient to contradict the credible and ample evidence presented by
23 the County concerning the questions of attributability and significance.

24 LADWP blocked the issues presented herein being resolved by the Technical Group and
25 the Standing Committee. Since 2011, LADWP has successfully ignored the findings presented to
26 LADWP good faith by the County. All the while the vegetation damage that should be mitigated
27 under the LTWA and CEQA continues. The victim of the delaying tactics is the environment--
28 today and tomorrow.

1 For the reasons presented in its Opening Brief, Response Brief and this Reply Brief, the
2 County requests that the LADWP's procedural arguments be rejected and, based on the evidence
3 presented by the County, that the mediation/arbitration panel find that a significant effect has
4 occurred in Blackrock 94, and that the Technical Group is required to develop a mitigation plan in
5 compliance with LTWA Section IV.B and Green Book Section I.C.

6 **Specific Findings Requested by the County**

7 The County requests that the panel make the following findings:

8 **Concerning request "a" submitted by LADWP:**

- 9 1. The vegetation monitoring program conducted by the County was done in accordance
10 with the provisions of the LTWA, Green Book and 1991 EIR.
11 2. The analysis of the vegetation data conducted by the County was done in accordance
12 with the provisions of the LTWA, Green Book and 1991 EIR.
13 3. There is and was measureable change and decrease in vegetation occurring at
14 Blackrock 94 as reflected in the February 2, 2011 Report grounded in the County's
15 vegetation monitoring program and analysis of data collected therefrom.

16 **Concerning request "b" submitted by LADWP:**

- 17 4. That the LTWA, Green Book, and 1991 EIR allow the Technical Group or the
18 Standing Committee to consider any monitoring data or analytical results deemed
19 relevant and presented to the Technical Group by either Party.
20 5. That the LTWA, Green Book, and 1991 EIR do not prevent a Party from conducting
21 monitoring, collecting data, analyzing data, reporting to the Technical Group on the
22 results of the analysis and requesting the Technical Group to take appropriate action.
23 6. That the County's February 2, 2011 Report which presented evidence to the Technical
24 Group that there has been a measureable, attributable and significant change and
25 decrease in vegetation at Blackrock 94 was prepared and submitted to the Technical in
26 accordance with the provisions of the LTWA, Green Book and 1991 EIR.
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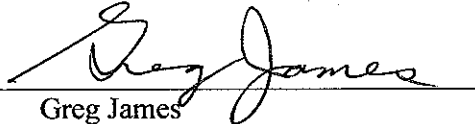
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Concerning the request submitted by Inyo County:

- 7. That a measureable and significant change and decrease in vegetation has occurred or is occurring at Blackrock 94 that is attributable to LADWP's groundwater pumping and to its changes in surface water management practices.
- 8. That the panel direct the Technical Group to develop and commence implementation of a mitigation plan within one year for the impacts at Blackrock 94 in compliance with LTWA Section IV.B and Green Book Section I.C.
- 9. That an expeditious resolution of an issue involving whether a significant impact exists that is presented to the Technical Group by either party to the LTWA requires a resolution of the issue to be completed within one year.

Respectfully submitted this 20th day of September, 2011

Margaret Kemp-Williams, County Counsel
Steven Porter, Deputy County Counsel
Greg James, Special Legal Counsel

By: 
Greg James

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

CITY OF LOS ANGELES; DEPARTMENT)	CASE NO. 12908
OF WATER AND POWER OF THE CITY)	
OF LOS ANGELES,)	(JAMS REFERENCE NO.
)	1110016067)
Plaintiffs,)	
)	Declaration of Service
vs.)	County of Inyo's Reply
)	Brief Submitted to
BOARD OF SUPERVISORS OF THE)	Mediation/Arbitration
COUNTY OF INYO; THE COUNTY OF)	Panel
)	
INYO; JOHN K. SMITH, COUNTY)	Hon. Jack Komar (Ret.)
ADMINISTRATIVE OFFICER; INYO)	Paul N. Bruce
COUNTY WATER COMMISSION; AND)	David Hotchkiss
DOES 1 THROUGH 50,)	
)	Mediators/Arbitrators
Defendants)	
_____))	

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I am employed in the County of Inyo, I am over the age of 18 years and I am not a party to the within entitled action. My business address is 163 May Street, Bishop, CA 93514.

On **September 20, 2013**, I served the foregoing document(s) described as follows:

DECLARATION OF SERVICE COUNTY OF INYO'S REPLY BRIEF SUBMITTED TO
MEDIATION/ARBITRATION PANEL

on all parties in said action, by causing a true copy thereof to be transmitted as shown attached,


AND:

(By Mail) I personally deposited said envelope(s) with the United States Postal Service at **Bishop**, California, with first class postage thereon fully prepaid.

(By email) a true copy to party(ies) listed.

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

DATED: SEPTEMBER 20, 2013



Debra J. Gonzalez

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Mediator

SUPERIOR COURT OF CALIFORNIA
COUNTY OF INYO

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

CASE NO. 12908

Plaintiffs

v.

BOARD OF SUPERVISORS OF THE COUNTY OF INYO;
THE COUNTY OF INYO, et al.,

Defendants

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