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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 County of Inyo's Response Brief Submitted to Mediation/Arbitration Panel Hon. Jack Komar (Ret.) Paul N. Bruce David Hotchkiss Mediators/Arbitrators

Pursuant to the Revised Stipulation of the Parties signed on July 11, 2013 ("Revised Stipulation"), the County of Inyo submits its Response Brief regarding the issues in dispute to the Mediation/Arbitration Panel.

Introduction

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

The issue in dispute submitted by the County is:

> *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 [Long Term Water Agreement]. 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.*

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

a. *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

b. *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.*

In their opening briefs, the Parties correctly identified the three issues in dispute, but LADWP's brief did not directly relate LADWP's contentions to each of the issues in dispute. To assist the Mediatiors/Arbitrators in resolving the three issues in dispute, this response brief is organized so that the County's responses to LADWP's contentions are presented with regard to each of the three issues in dispute.

Because the two issues submitted by LADWP are essentially procedural challenges to this panel's jurisdiction to hear the significance issue presented by the County; therefore, the County first addresses the two jurisdictional issues submitted by LADWP. The County then addresses a third jurisdictional issue raised by LADWP that is not encompassed LADWP first two issues—whether the impacts at Blackrock 94 were addressed in the 1991 EIR. Finally, the County addresses the issue of whether a significant impact has occurred at Blackrock 94.

In this brief, reference is made to attachments to Inyo County's Opening Brief and to attachments to this response brief. Attachments numbered 1 through 19 refer to the attachments to the County's Opening Brief; attachments numbered 20 and above are attachments to this response brief.

As both Parties acknowledged in their opening briefs, to determine whether a significant impact has occurred due to LADWP's water management activities, Technical Group must make three determinations: (1) that a measurable change has occurred, (2) that the change is attributable

to LADWP's groundwater pumping or to LADWP's changes in surface water practices, and (3) that the change is significant. LADWP's first jurisdictional issue focuses exclusively on the first determination that must be made by the Technical Group—whether a measurable change has occurred. In its first issue, LADWP asserts that the County did not conduct monitoring, data collection and analysis in accordance with the provisions of the LTWA, the Green Book and the 1991 EIR and, therefore, the panel cannot find that there has been a measureable change in vegetation in Blackrock 94.

In its second jurisdictional issue, LADWP contends that the County did not comply with the LTWA, Green Book or the 1991 EIR when it submitted its February 2, 2011 report to the Technical Group for consideration; therefore, the panel cannot find that there has been a significant effect in Blackrock 94. The County's February 2, 2011 report presents the reasons why the County believes that the Technical Group should determine that (1) there has been a measurable change in the vegetation at Blackrock 94; (2) that the vegetation change is attributable to LADWP's groundwater pumping and surface water management practices and (3) the vegetation change is significant. The Technical Group did not make such determinations; therefore, the County submitted the significance issue to dispute resolution as provided in the LTWA.

In support of both of LADWP's jurisdictional issues, LADWP contends that the County acted "unilaterally" instead of acting "jointly" with LADWP through the Technical Group. LADWP asserts that the LTWA, Green Book and the 1991 require that all activities required of the Technical Group be agreed upon in advance by the Technical Group and be jointly conducted by the Parties. Since both of LADWP's jurisdictional issues raise the overarching question of what type of action is required in order to constitute a legitimate action of the Technical Group, the first issue addressed by County is how is the Technical Group required to act.

How the Technical Group Fulfills its Responsibilities

The LTWA states that "[*T*]*he Technical Group shall be comprised of not more than five (5) representatives selected by the County and five (5) by the Department.*" Each Party has one

vote; thus, for the Technical Group to act, there must be a consensus of the two Parties. The Technical Group consists of a delegation from Inyo County and a delegation from LADWP – there is no individual or group of individuals comprising the Technical Group other than staff from LADWP and the County.

Since its inception in 1982, the Technical Group has customarily conducted its work in one of two ways. Under the first, one Party presents data or analysis to the Technical Group for consideration and requests action based upon the data or analysis submitted. The Technical Group then either reaches consensus and agrees on a course of action, or disagrees and takes no action. In the event there is a lack of consensus, under the LTWA, either Party may to submit the issue in question to the dispute resolution process (LTWA Section XXVI). The second way that the Technical Group may act is for an issue to be placed on the Technical Group agenda and Technical Group then reaches consensus on how to proceed. (Examples of the second method are that the Technical Group agreed to conduct several cooperative studies that are described in Section IX of the LTWA and the Technical Group agreed to mitigate impacts of LADWP's groundwater pumping in the 5 Bridges area of the Owens Valley.)

In the past, the most common method of Technical Group action is where when one Party is concerned with a particular issue, it presents an analysis or report to the Technical Group and requests action by the Technical Group. For example, in preparation for construction of three new production wells, in 2011, LADWP prepared reports analyzing the effects of the proposed wells for the purpose of complying with the requirements concerning new wells in the LTWA (Section VI--New Wells and Production Capacity). The County did not participate in the preparation of the reports, but the County reviewed the reports, provided comments, LADWP modified the reports, and the Technical Group formally agreed that the LTWA requirements for preconstruction evaluation of the new wells had been completed. This process was successfully completed by the Technical Group in a number of weeks.

Disregarding 30 years of precedent, LADWP now asserts that the Technical Group must agree in advance on how an action or analysis will be undertaken, on how the agreed upon

activity will be jointly conducted by the two Parties and, then, the Parties must jointly conduct the activity and/or analysis. It can readily be seen that if such a requirement were to be imposed, a Party could not conduct an investigation or analyze data unless the Technical Group were to agree in advance on the applicable procedures and on how the Parties would jointly conduct the activity or analysis. If the Technical Group did not agree, the only way for the initiating Party to move a matter forward would be to submit a matter (or each step of a multi-step process) to dispute resolution—a lengthy and expensive process. (If dispute resolution runs its full course, a dispute will take at least 189 days before a resolution is reached.) By fracturing the process into a series of discrete steps where each step is subject to dispute resolution, the Technical Group decision making process could be deliberately stalled in an interminable series of disputes were it in one of the party's interest that an issue remain unresolved. Thus, one Party would be empowered to stall Technical Group consideration which would prevent actions from being undertaken in an "expeditious fashion" as required by the applicable covenant of good faith and fair dealing.

The County acknowledges that the Technical Group has many responsibilities, including the responsibility to determine if there has been a measurable change or decrease in the vegetation that is attributable to LADWP's groundwater pumping and/or surface water management practices and to determine if the vegetation change or decrease is significant. The LTWA, the Green Book and the 1991 allow either party, as a Technical Group member, to conduct monitoring, collect data, analyze the data and present the results to the Technical Group for consideration along with a request that the Technical Group take appropriate action. The submission of a report by one of the Parties does not, as contended by LADWP, bind the Technical Group to its conclusions or prevent the other Party from providing input. The Technical Group may discuss, study and otherwise consider the request. Following consideration, the Technical Group acts by either agreeing to take the requested action, agreeing to some other action or disagreeing with the requested action. Under such situation, LADWP has not, and cannot be, deprived of its vote as a member of the Technical Group.

Section XVII of the LTWA (Exchange of Information and Access) specifically recognizes each Parties right to conduct independent monitoring. Section XVII provides as follows:

> *The County and the Department shall make any data or information in its possession that reasonably pertains to purposes of this Stipulation and Order available to the other party on reasonable notice. The County and the Department recognize that such a free exchange of data and information is essential to the purposes of this Stipulation and Order.*
>
> *The County and the Department shall provide to the other party reasonable access to its wells, water conveyance, metering devices, control structures, etc. <u>for the purpose of such independent monitoring and inspection as is necessary to carry out the implementation of this Stipulation and Order</u>.* (Underlining added for emphasis.)

As additional support of its contention that the Technical Group must agree in advance on how an action or analysis will be undertaken, on how the agreed upon activity will be jointly conducted by the two Parties and, then, the two parties must jointly conduct the activity and/or analysis, LADWP asserts that a decision in a previous dispute established the law of the case. This assertion misinterprets the previous decision. As LADWP correctly states on page 17 of its Opening Brief, on November 7, 2011, the Parties submitted the following issue for resolution by mediation/arbitration:

> *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?*

As LADWP also correctly states on page 17 of its Opening Brief, the arbitration panel decision was:

> *"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 o the Annual Operations Plan."

It is clear from the plain language of the decision that the arbitration panel only found that if a Party alleges that an Annual Operations Plan violates the vegetation goals of the Water Agreement, the Technical Group is required to undertake the three-step analysis (measurability, attributability, significance) when determining whether there is a violation of the Water Agreement. The decision does not address how the Technical Group is required to act when making these determinations; thus, the decision does not support LADWP's contention concerning the law of the case. Further, the clear implication from this prior decision is that LTWA Section IV.B and Green Book Section I.C may be invoked by a single Party submitting material to the Technical Group. Since an Annual Operations Plan is developed by LADWP, LADWP is unlikely to challenge its own plan; therefore, a challenge to an Annual Operations Plan would be raised only by the County invoking LTWA Section IV.B and Green Book section I.C.

Conclusion--How the Technical Group Takes Action

The panel should reject LADWP's proposed restrictions on what is necessary to constitute Technical Group action since such restrictions would disregard 30 years of precedent, severely limit each Party's rights under the LTWA, Green Book and 1991 EIR to propose appropriate Technical Group action based upon research and analyses conducted by a Party and would thwart the purpose of the LTWA by empowering one Party to prevent the Technical Group from acting in an "expeditious fashion."

LADWP Issue "a"

LADWP asserts that the County did not conduct monitoring, data collection and analysis that led to the County's conclusion that a measurable change in vegetation has occurred in

Blackrock 94 in accordance with the provisions of the LTWA, the Green Book and the 1991 EIR; therefore, the panel cannot find that there has been a measureable change in vegetation in Blackrock 94.

In support of Issue "a," LADWP makes several arguments or contentions. Each of these contentions is individually addressed below in Attachment 22.

Contention I.a—1. LADWP first contends that the monitoring techniques employed by the County were inconsistent with the applicable requirements because the monitoring had to be approved in advance by the Technical Group and, that once approved, the monitoring had to be jointly conducted by the Parties. For the reasons presented above, the Technical Group was not required by LTWA, the Green Book or the 1991 EIR to approve, in advance, the monitoring techniques or to jointly conduct the monitoring.

Contention I.a—2. LADWP then contends that the Technical Group never approved the monitoring program conducted by the County. This contention is without merit. The County's Opening Brief references Technical Group summaries, approved by both Parties, which clearly document that the Technical Group agreed to conduct the monitoring. This is not to say that LADWP didn't at a later time express concerns about the monitoring, but there is no question that the Technical Group agreed that the monitoring would be conducted. The Opening Brief, on pages 17 to 19, states:

> Meeting summaries from 1992 Technical Group meetings show that the Technical Group agreed that the annual vegetation measurements conducted by the County utilizing a monitoring program developed by the County with assistance from LADWP would be used for evaluating vegetation change. At the April 15, 1992 Technical Group meeting, concerning agenda item #6 – Fiscal Year 1992–93 Work Program, the meeting summary (Attachment 15) records:
>
> > *Concerning the vegetation change transects, Sally Manning* [Inyo staff], *Paula Hubbard* [LADWP staff], *and David Groeneveld* [Inyo consultant] *reported that they had met during the previous month and agreed upon an*

approach for conducting the monitoring for vegetation change. Bob Wilson [LADWP, Northern District Engineer] *said, although DWP did not disagree with the concepts, it still had concerns over the scope of work proposed and the personnel requirement.*

Greg James [Inyo Water Director] *said that in the past DWP has questioned some of Inyo's conclusions because of lack of adequate data or confounding circumstances. He suggested it would be prudent to gather as much reliable data as possible during the drought to assist in reaching valid conclusions concerning the effects of the drought and of groundwater pumping on vegetation. He also noted that the vegetation change transects provide an opportunity to compare vegetation conditions before, during and after the drought, by replicating a portion of the 1984-87 vegetation inventory. The Technical Group will also have the opportunity to test the validity of the 1984-87 vegetation inventory maps.*

Paula Hubbard asked whether this magnitude of work would be done every year. Sally Manning replied that the transects run this year would provide a good base from which a smaller set of parcels could be selected as the best indicators of vegetation conditions for future transects.

Don McBride asked about the relative importance of running the vegetation change transects compared with other work. Greg James replied that certain work is required under the agreement. The vegetation change transects must be done in order to evaluate how the management program is working and to get a clearer picture of what is happening on the ground during the drought.

> *Bob Wilson asked if Inyo has the personnel to accomplish the proposed work. Greg James said the county will have to hire two temporary people for the summer. Bob Wilson said, although DWP could not afford to provide Inyo with additional funding beyond that provided under the agreement, the department agrees with the work in concept and considers it a joint effort. He said DWP will provide personnel if available to assist.* [Underline added for emphasis.]

The meeting summary from the April 15, 1992 Technical Group meeting was approved at the May 22, 1992 meeting (Attachment 15).

At the December 22, 1992 Technical Group meeting, it was further documented that vegetation data collected by the County along with data obtained from the permanent vegetation transects would be used by the Technical Group for evaluating conditions relative to the baseline conditions measured in the mid-1980s. The Technical Group meeting summary for that meeting states:

> *Don McBride* [LADWP staff] *asked what the Technical Group was doing to monitor vegetation recovery in the Owens Valley. Paula Hubbard* [LADWP staff] *responded that the regular transect record and the vegetation change transect data collected by the Water Department would be used to compare vegetation conditions with those recorded during the 1984-87 vegetation inventory*. [Underline added for emphasis.]

The December 22, 1992 meeting summary was approved by the Technical Group at the February 8, 1993 Technical Group meeting.

It is clear from these Technical Group meeting summaries that both parties agreed that in addition to the permanent transect monitoring program, the County's vegetation monitoring program would be used by the Technical Group to assess vegetation conditions relative to baseline.

Contention I.a—3. LADWP contends that even if the Technical Group approved the line point random transect based monitoring program conducted by the County, the Technical Group was without authority to approve the program. This contention is not supported by the relevant documents. On page 24-25 of its Opening Brief, LADWP notes that Box I.C.1.a.ii of the Green Book describes the vegetation transects that will be used in monitoring vegetation responses to groundwater pumping.

The last paragraph of Box I.C.1.a.ii provides as follows:

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, <u>but the technique may be modified to permit detailed statistical comparison by randomly selected transects</u>. Statistical analysis will be used to determine the measurability (statistical significance) of vegetation changes from the 1984-87 inventory maps. (Underlining added for emphasis.)

LADWP argues that the adoption of randomly selected transects employed in the County's monitoring program could not be done by the Technical Group, but instead required an agreement by LADWP and the Inyo County Board of Supervisors. LADWP bases its argument on Section XXV (Modifications) of the LTWA which provides in pertinent part that:

If, as a result of information gained from ongoing research or cooperative studies, or for other reasons as may be necessary to better achieve the goals of this Stipulation and Order, or for purposes of improving the monitoring and evaluation activities, the Department and the Inyo County Board of Supervisors,

by agreement, may modify: 1) any provision of the Green Book, including its provisions for monitoring sites, the type of monitoring, and the interpretation of monitoring results…

Without question, the LTWA requires approval from LADWP and the Inyo County Supervisors to modify a provision of the Green Book, but the quoted portion of Box I.C.1.a.ii, the Green Book expressly provides for the use of "randomly selected transects;" thus, no modification of the Green Book or its monitoring provisions was necessary in order for the Technical Group to approve the use such transects. Moreover, as described above, LADWP did not raise an objection to the use of the transects when the Technical Group agreed approximately 20 years ago to rely on results from the monitoring program.

Contention I.a—4. LADWP contends that the vegetation monitoring conducted by the County was required to be conducted jointly by LADWP and the County. The County does not disagree that the Technical Group is responsible for monitoring vegetation, groundwater and soil water conditions, but the County disagrees that the LTWA, the Green Book and the 1991 EIR require that each monitoring activity be jointly conducted in the field by the two parties.

The LTWA and the Green Book clearly state that monitoring will be conducted by the Technical Group. Section I.B of the LTWA provides:

The vegetation and groundwater conditions with management areas will be carefully monitored by the Technical Group to assure that the goals and principles of this groundwater management plan are met.

Since its inception, the Technical Group has carried out it monitoring responsibilities without requiring that each monitoring activity be jointly conducted. For example, soil water/soil moisture monitoring has been conducted by the County and the results have been reported to the Technical Group. Likewise, for many years, LADWP has monitored groundwater levels and surface water and has reported the results to the Technical Group. Moreover, as clearly shown in Table 1 below, which describes the sources of the data analyzed by the County in its February 2, 2011 report, in many instances, data has been collected by a single Party and provided to the

Technical Group and the other Party. None of the hydrologic data collected by LADWP referenced in Table 1 has been approved by the Technical Group, yet the Technical Group and Standing Committee have routinely accepted reports and based decisions on these data (e.g. Annual Operations Plan).

Table 1. Synopsis of origin and status of various data sets analyzed by the County in it February 2, 2011 Report (Attachment 10 to the County's Opening Brief).

Data set	Origin and status of data set
Permanent vegetation transects at monitoring sites.	Sites were established by the Technical Group in the late 1980's for the purpose of managing LADWP groundwater pumping. Vegetation cover and composition is measured annually by LADWP and Inyo County. Approved as part of Water Agreement in 1991. Method described in Green Book.
Line-point vegetation monitoring conducted by County.	Measurements of vegetation cover and composition conducted annually by County since 1991. Data shared with LADWP annually and used by both parties to fulfill annual reporting requirements. Technical Group agreed that these data would be used to assess conditions relative to baseline data (see Inyo County Initial Brief, page 18). Methods described in Green Book.
Line-point vegetation monitoring conducted by LADWP.	Measurements of vegetation cover and composition conducted annually by LADWP since 2004. County was not provided with data until 2010. Program never presented to or discussed by Technical Group.
Paired photos of permanent monitoring sites.	Taken annually during vegetation monitoring of permanent transects.
Vegetation cover derived from Landsat satellite imagery.	Developed annually by Inyo County working with A. Elmore of the University of Maryland. Landsat program is administered by the US Geological Survey.
Groundwater pumping records.	Measured by LADWP and provided to County pursuant to Water Agreement Section XVII.
Surface water flow measurements.	Measured by LADWP and provided to County pursuant to Water Agreement Section XVII.
Depth to water in shallow monitoring wells.	Measured by LADWP and provided to County pursuant to Water Agreement Section XVII.
Soil moisture monitoring at permanent monitoring sites.	Conducted by Inyo County. Data shared with LADWP as part of Water Agreement/Green Book methods for managing groundwater pumping, approved in 1991. Methods described in Green Book were modified by agreement of Technical Group.
Data input into USGS groundwater flow model.	Pumping and surface water flows (measured by LADWP) are used to estimate aquifer water budgets according to Appendix B of the Green Book.

As acknowledged, the LTWA and Green Book require that the Technical Group conduct monitoring, but neither document establishes requirements as to how the Technical Group is to conduct the monitoring. Since the documents are silent on this subject, the "contemporaneous construction" of the documents by the Parties is evidence of what was intended in the documents. From the foregoing, it is clear from the Parties behavior, that the Parties have not previously interpreted the documents as requiring that all monitoring be jointly conducted by the Parties.

After the Technical Group approved the vegetation monitoring that has been conducted by the County since 1991, LADWP could have jointly participated in conducting the monitoring, but for financial or other reasons, LADWP elected to not participate; however; the results from the monitoring program conducted by the County were routinely reported in an annual report on Owens Valley environmental conditions prepared by LADWP.

As further evidence that the Technical Group has not jointly conducted all monitoring, in 2004, LADWP commenced a vegetation monitoring program of which the County was not aware and which was not jointly conducted with the County and LADWP. (See page 20 of the County's Opening Brief.) Notwithstanding the fact that it was not a joint effort, when the Technical Group was considering the County's February 2, 2011 report, LADWP utilized the results of its monitoring program to argue to the Technical Group and to the County that the results of the County's monitoring should be discounted or disregarded. LADWP also uses the data to support its arguments in its Opening Brief that the data from the monitoring program should be discounted or disregarded. The use of such data by LADWP demonstrates that, as expressly provided in Section XVII of the LTWA, one Party may conduct monitoring without the other Party jointly participating in the monitoring and the results of such a monitoring program may be considered by the Technical Group, the Standing Committee and/or in dispute resolution.

LADWP's interpretation seeks to impose a double standard on the County concerning fulfillment of Technical Group responsibilities. The County's line-point vegetation monitoring was examined at length by the Technical Group in 1991-1992, and, following robust discussion, was adopted by the Technical Group as a joint program (Attachments 15 and 16). LADWP now asserts that the County "*unilaterally performed all monitoring of vegetation conditions and unilaterally collected all vegetation data*" (LADWP Exhibit 2). On the other hand, LADWP's line-point monitoring was initiated in 2004 without Technical Group input and without the County's knowledge, and the data were not even shared with the County until 2010. Yet, in a June 8, 2012 letter to the County (Attachment 17, page 2) LADWP

characterized their monitoring as "*a good faith effort to complete monitoring as described in the Green Book.*"

Contention I.a—5. LADWP contends that the analytical procedures utilized by the County in evaluating whether "…*any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred*" were required to have been agreed upon in advance by the Technical Group.

The County does not dispute that the LTWA requires that the Technical Group determine whether there has been a measureable change in vegetation. However, the LTWA, the Green Book and the 1991 EIR do not require that the Technical Group approve in advance the analytical procedures employed to determine whether a measureable change has occurred. A Party may use whatever procedures it deems appropriate to analyze whether a measureable change has occurred and then submit the results of its analysis to the Technical Group for consideration. As LADWP has done at the Technical Group, the Standing Committee and in dispute resolution, one Party may disagree with the appropriateness of the analytical procedures used by the other Party and/or argue that the procedures were not correctly applied, but there is no basis for LADWP's argument that the Technical Group must agree in advance upon such procedures before a Party can conduct an analytical procedure. If that were the case, a Party would be empowered to obstruct an analysis of measurability by simply not agreeing to each proposed analytical procedure and thereby forcing the other Party to submit the question of the appropriateness of each procedure to dispute resolution.

Contention I.a—6. LADWP contends that the LADWP and the County were required to jointly conduct agreed upon analytical procedures to determine whether "…*any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred.*" Again, there is no question that the LTWA requires that the Technical Group determine whether there has been a measureable change in vegetation, but there is no requirement in the LTWA, the Green Book or the 1991 EIR that requires the Parties to jointly conduct analytical procedures to determine whether a measureable change has occurred.

One Party may submit an analysis to the Technical Group that shows that a measureable change has occurred and the other Party may disagree with the appropriateness of the analytical procedures or argue that the procedures were not correctly applied, but there is no requirement that such analytical procedures be approved and jointly conducted before a measureability issue is submitted to the Technical Group. As with the previous contention, if that were the case, a Party would be empowered to obstruct an analysis of measurability by simply not agreeing to jointly conduct each proposed analytical procedure and thereby forcing the other Party to submit the question of the appropriateness of each procedure to dispute resolution. It also would prevent a Party from independently conducting monitoring and analysis as expressly permitted by the LTWA.

Conclusion: LADWP Issue "a." As shown above, (1) the line point monitoring program conducted by the County which provided some of the data relied upon by the County in its February 2, 2011 report was approved in advance by the Technical Group, (2) there is no requirement that LADWP and the Inyo County Board of Supervisors would have to approve the monitoring program employed by the County, (3) the monitoring program did not have to be jointly conducted by the Parties, (4) the analytical procedures employed by the County did not have to be approved in advance by the Technical Group and (5) the Parties did not have to jointly conduct the analytical procedures. Therefore, the Mediators/Arbitrators are not procedurally precluded from determining whether credible evidence has been provided by the County to show that a measureable change in vegetation has occurred in Blackrock 94.

Regarding the issue of credible evidence, section I.C.1.a of the Green Book provides that: "*A determination of measurability will be made if any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred*." As explained above, LADWP commenced a vegetation monitoring program in 2004. In its February 2, 2011 report (Page 10), the County considered the results of LADWP's data regarding Blackrock 94 as relevant and analyzed LADWP's data. The County concluded that the results of LADWP's data show that there has been a measurable change in vegetation in Blackrock 94.

Further, in its letter dated April 9, 2012 (Attachment 13 to the County's Opening Brief), LADWP admits that: "…*there are years where both the data collected by LADWP and ICWD suggest that there are measurable differences in total cover from the initial inventory*…."

LADWP's vegetation data as interpreted by both the County and by LADWP "indicate even a small documentable change in vegetation cover or composition has occurred" in Blackrock 94; therefore, the Mediators/Arbitrators, notwithstanding all of the other credible evidence provided by the County, should find that, as defined in the Green Book, a measurable vegetation change has occurred in Blackrock 94.

LADWP's Issue "b"

In its second jurisdictional issue, LADWP contends that the County was not in compliance with the LTWA, Green Book or 1991 EIR when it submitted its February 2, 2011 report to the Technical Group for consideration; therefore, the panel cannot find that there has been a significant effect in Blackrock 94.

In support of Issue "b," LADWP presents many of the same arguments as LADWP presents in support of Issue "a." In Issue "b," LADWP raises the issue of how the Technical Group takes action, whether the Parties must agree in advance on how an issue will be analyzed by the Technical Group, and whether the Parties must jointly conduct agreed upon analyses. Since these contentions were fully addressed in response to Issue "a," they will not again be addressed in response to Issue "b."

As with Issue "a," LADWP makes several arguments or contentions. Each contention is individually addressed below.

Contention I.b—1. LADWP contends that a decision in a previous dispute established the law of the case that supports an argument by LADWP that the County's February 2, 2011 report was found by the previous panel to not be a Technical Group action and, thus, this panel must disregard the report. This contention misinterprets the previous decision.

As explained in the response to Issue "a," the plain language of the previous decision is clear that the arbitration panel only found that if a Party alleges that an Annual Operations Plan

violates the vegetation goals of the Water Agreement, the Technical Group is required to undertake the three-step analysis (measurability, attributability, significance) when determining whether there is a violation of the Water Agreement. The decision did not address whether the County's February 2, 2011 report was a Technical Group action and does not preclude this panel from considering the evidence presented in the County's report.

Contention I.b—2. LADWP contends that the three-step procedure for determining significance (measurability, attributability, and significance) prevents the County from submitting to the Technical Group a report like the County's February 2, 2011 report because such a report addresses all three significance factors instead on only the first factor. The basis for LADWP's contention is that because the Technical Group must first determine whether there has been a measurable change before it determines whether the change is attributable to LADWP's activities, and it must make determine that the change is measurable and attributable before it can determine whether the change is significant, the County is not permitted to submit a report to the Technical Group that addresses all three factors.

The County agrees that the LTWA and the Green Book require the Technical Group to engage in a three step process to determine measurability, attributability and significance; however, neither document prevents a Party from analyzing all three factors and, if it believes that the analysis shows that a significant effect on vegetation has occurred, from submitting a report describing its analysis to the Technical Group together with a request that the Technical Group decide whether such a significant effect has occurred. Not only do the documents allow the submission of such a report, but a reasonable, common sense interpretation of the documents supports the submission of such a report.

As LADWP notes on page 32, lines 13 and 14 of its Opening Brief, "…*the Technical Group may proceed with its measurability analysis regardless of the underlying cause of the vegetation impact*." Under LADWP's proffered procedural interpretation of the LTWA and the Green Book, regardless of whether there is any indication of whether or not the measurable change is attributable to LADWP's activities or whether or not the change is significant, a Party

in under an obligation to first request the Technical Group to determine whether there has been a measurable change in vegetation.

Under LADWP's interpretation, once such a measurability request is received, the Technical Group would have to: (1) agree on the analytical procedures to be employed to determine measurability, (2) agree upon how the agreed upon analysis would be jointly conducted, and then (3) jointly conduct the analysis. If the Technical Group is unable to agree on one of these three matters, the matter would have to resolved through the lengthy dispute resolution process. (If all three matters had to be disputed, since each dispute could take 189 days or more, there could be a resulting delay of more than 2 years before an analysis could even be conducted.) Moreover, if at the conclusion of the analysis, there were to be disagreement over whether there is has been a measureable change, another lengthy dispute would have to be conducted.

Additionally, under LADWP's proffered procedural interpretation, if the Technical Group or dispute resolution determines that there has been a measureable vegetation change, the Technical Group would have to follow the same protracted three-step process in determining attributability and significance. Consequently, under LADWP's interpretation, the 3-step process outlined in the LTWA and the Green Book for determining whether a significant effect on vegetation has occurred would be transformed into a nine step process which could take more than 10 years to complete--if dispute resolution were to be required at each step of the process. Consequently, the Technical Group would only begin to develop a mitigation plan if, after the conclusion of the lengthy process, it were to be found that a significant impact to vegetation has occurred. Further, assuming that there was no dispute over the mitigation plan, the plan would not be implemented until up to one-year after the determination that a significant impact to vegetation has occurred.

As the decision in the previous dispute acknowledged, "[*E*]very *contract imposes on each party a duty of good faith and fair dealing in its performance and enforcement*." Further, the decision found that "…*the Technical Group must apply the Significance-Mitigation*

Determination process in an expeditious fashion to allow cooperative resolution or dispute resolution timely." (See County's Opening Brief, pages 8 and 9.) LADWP's proffered procedures clearly would not result in application of "…*the Significance-Mitigation Determination process in an expeditious fashion to allow cooperative resolution or dispute resolution timely*."

Not only is LADWP's interpretation inconsistent with the requirement to determine significance in a "expeditious fashion," but also it is inconsistent with the "…*duty of good faith and fair dealing in its performance and enforcement"* of the LTWA and Green Book since its interpretation would require the Technical Group and the Parties to engage in an inefficient use of time and effort and defies common sense. If a Party believes that a measurable change in vegetation has occurred, a reasonable Party would not request the Technical Group to determine whether such a change has occurred unless the Party had first analyzed the facts and concluded that the measureable change is likely both attributable to LADWP's action and is significant. Requiring a Party to request the Technical Group to determine whether a measurable change in vegetation has occurred if the Party does not have evidence that the change is attributable and significant, defies common sense and would result in inefficient and wasteful use of the Party's and the Technical Group's time and effort.

As previously noted, either Party may conduct investigations and analyses of whether or not a significant impact on vegetation has occurred and may submit the results to the Technical Group along with a request that the Technical Group follow the 3-step significance determination procedure to determine if such a significant impact has occurred. By following such a procedure, the Technical Group would avoid the inefficient the process of determining whether a change in vegetation is measurable, when, at the inception of the process, there is no basis to believe that the change is also attributable and significant.

For the foregoing reasons, LADWP's interpretation of the procedures to be employed by the Technical Group in determining whether a significant effect on vegetation has occurred should be rejected by the panel. Further it is requested that the panel expressly find that neither

the LTWA nor the Green Book prevents a Party from analyzing all three factors and, if a Party believes that the analysis shows that a significant effect on vegetation has occurred, that a Party is not barred from submitting a report describing its analysis to the Technical Group together with a request that the Technical Group decide whether such a significant effect has occurred.

Contention I.b—3. In this contention, LADWP contends that the Technical Group must determine that there has been a measurable change in vegetation before the Technical Group can determine whether the change is attributable to LADWP's activities. Further, the Technical Group must determine that change is attributable to LADWP's activities before the Technical Group can determine whether the change is significant. The crux of this contention is that LADWP asserts that if the Technical Group is in disagreement on one of these sequential determinations, the disagreement must be resolved through dispute resolution before the Technical Group can consider the next determination in the 3-step process. Based upon the foregoing, LADWP argues that under the LTWA, because each of these determinations of measurability and attributability have not been agreed upon by the Technical Group or resolved through dispute resolution, the panel is barred from considering the County's February 2, 2011 report.

As described in the previous contention, under LADWP's interpretation, a determination of measurability could take many years—especially if each of the steps in the process advocated by LADWP had to be resolved through dispute resolution. Similarly, the same amount of time would be required for a determination of attributability. Even if LADWP's proffered 9-step process for determining significance is rejected in favor of the 3-step process set forth in the LTWA and Green Book, if each of the measurability and attributability steps had to resolved through dispute resolution, it could be more than 2 years before the Technical Group could even address significance, and if the significance issue is disputed, more than 3 years could elapse before there is a determination of whether a significant change in vegetation has occurred.

As described in the response to the previous contention, a delay of several years in determining whether a significant vegetation change has occurred is inconsistent with the duty to

resolve the "…the Significance-Mitigation Determination process in an expeditious fashion…." For that reason, the panel should reject LADWP's argument that the determinations of measurability and attributability must be agreed upon by the Technical Group or resolved through dispute resolution before a Party may submit the issue of whether a significant vegetation change has occurred to dispute resolution. Further, County requests that the panel expressly find that if a Party submits a report to the Technical Group that sets forth reasons why the Technical Group should find that a significant vegetation change has occurred, and if the Technical Group is unable within a reasonable time to agree that such a change has occurred, the Party may submit the three-step significance issue to dispute resolution.

Contention I.b—4. LADWP contends that the Technical Group has been afforded an opportunity to consider the question of whether there has been a significant vegetation change in Blackrock 94; therefore, this panel should refrain from determining that such a significant change has occurred. This contention is without merit.

During the period from June 2009 through February 2011 the Technical Group agenda reflects that the Technical Group considered the vegetation conditions in Blackrock 94 on these dates: February 13, 2009; April 13, 2009, June 19, 2009; August 17, 2009; December 11, 2009; January 21, 2010; June 10, 2010; September 24, 2010; October 18, 2010; and February 3, 2011.

By letter dated October 13, 2009, LADWP agreed that the Technical Group should conduct an evaluation of whether there has been a significant effect in vegetation at Blackrock 94. (See County Opening Brief, page 6.) In the letter, LADWP stated:

> *LADWP assents to your request that the Technical Group conduct an evaluation of the Blackrock Wellfield Management Area and to determine if a new significant effect on the environment, which was not considered under the 1991 EIR, may have occurred as determined by the procedure prescribed under Water Agreement Section IV.B.*

At its October 18, 2010 meeting, the Technical Group had the following discussion concerning Blackrock 94, transcribed from a recording of the meeting (50:21 – 54:49):

Gene Coufal (LADWP Aqueduct Manager): OK, move on to item 7, Blackrock parcel 94 report status.

Bob Harrington (County Water Director): Yeah, the Water Department we're still working on the analysis of the vegetation change in the parcel and comparisons to the nearby parcel. We've made some progress cleaning up the data base and putting it in Access. That's the Water Department's line point data base. It has been considerably more of an effort than we anticipated initially both the working with Access to get it in the database as well as the cleaning up some issues with the data themselves. Meredith was also put off onto a lot a more work on the LORP work this summer than anticipated but she is back on it now. Anything to add there?

Meredith Jabis (County Vegetation Scientist): No, that's OK.

Gene Coufal: Can we get a time frame there when we'll see something?

Meredith Jabis: I'm hoping by the end of this week [unintelligible]

Bob Harrington: [unintelligible] ...that discrepancy.

[Unintelligible, laughter]

Gene Coufal: So we'll probably see it November.

[Unintelligible]

Gene Coufal: OK, well it's in the County's court, so we'll wait for your response back. [Pause] All right, Daniel, you have a comment?

Daniel Pritchard (California Native Plant Society): Daniel Pritchett with the California Native Plant Society. I was wondering at the Standing Committee, Bob you said that the Technical Group is analyzing the conditions, is that what you're talking about, the work that Meredith has been doing?

Bob Harrington: Uh huh.

Daniel Pritchett: OK, so in other words, is the Water Department doing something on its own or is there somehow is this being done jointly in some way?

Bob Harrington: Um yeah, like a lot of the projects the technical group conducts one side takes the lead and the other....

Daniel Pritchett: I'm definitely just curious why, I mean I can see down the road, you'll write the report and then LADWP will say oh well we don't like it and so then we have to bring in a consultant to write another report? I mean I… is this really a joint process? I just want to clarify and get that on the record. So in other words, we're not going to have the County submit a report and then LADWP says sorry this is your report, we didn't write it. This is going to be something that's truly a joint report.

Gene Coufal: I probably need to see the report first, before I can really…

Daniel Pritchett: But I think the process is my point.

Gene Coufal: We're in a going back and forth phase right now discussing this. Looking at the data, looking what's available.

Daniel Pritchett: I'm trying to clarify this is acknowledged as a joint process here. This is not going to be just one side saying here's our report and then you guys throwing stones at it [unintelligible] this is a joint effort and you acknowledge that.

Gene Coufal: We are going back and forth.

Bob Harrington: Following that process, yes.

Aaron Steinwand (County Science Coordinator): The way we got here, we exchanged a bunch of letters back and forth and then it was we said we should do the analysis and then they said OK you do the analysis and tell us what you think and if there's a problem we will address it then. We had a pre-meeting and they said they thought they addressed the problems or issue whatever and we said let's do the analysis and they said go ahead and show us what you think. So that's where we're at.

Daniel Pritchett: Show us what you think then?

Aaron Steinwand: Well, we're taking the first crack at what we think the vegetation data say. They haven't reviewed [unintelligible]

Gene Coufal: Somebody's got to take a first effort at [unintelligible].

Daniel Pritchett: Well now, I… I must admit that that meeting [unintelligible]

Gene Coufal: We'll look forward to your analysis.

It is clear from this transcript that LADWP knew the County was preparing a report using the County's line point data to analyze conditions in Blackrock 94, that LADWP was aware and agreeable to the County preparing the report, and that LADWP was relying on the County to produce the report. (The recording of meeting is Attachment 20.)

On February 3, 2011, the County presented its February 2, 2011 report to the Technical Group. (See County Opening Brief, page 3.) Following the submission of the report to the Technical Committee, on August 19, 2011, LADWP sent a letter to the County acknowledging that the Technical Group was considering the question of whether there was a significant effect on vegetation in Blackrock 94. (See Attachment D to Exhibit 3 to LADWP's Opening Brief.) The letter from LADWP stated:

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

It was not until 16 months after the submission of the County's February 2, 2011 letter to the Technical Group that the County submitted the question of whether there has been a significant effect on vegetation at Blackrock 94 to dispute resolution. During the sixteen months between the County's issuance of the report, and the County's May 1, 2012 request for resolution, the Technical Group's agendas reflect that vegetation conditions in Blackrock 94 were on the Technical Group's agenda six times.

Finally, following the submission of the matter to dispute resolution, the Technical Group met on May 9, 2012 and again on June 14, 2012 to consider the question of whether there has

been a significant effect on vegetation in Blackrock 94. (See LADWP's Opening Brief, page 4, lines 12 to 15.)

From the foregoing, there is ample evidence that LADWP and the Technical Group were afforded a reasonable amount of time and opportunity to address the issues and analysis raised by the County. Further, the agendas, the transcript, and the letters referenced above provide abundant evidence that the Technical Group frequently considered the question of whether there has been a significant vegetation change in Blackrock 94 and has been unable to make a determination. The panel should reject LADWP's contention that the panel should refrain from determining that such a significant change has occurred.

Contention I.b—4. LADWP contends the County is not permitted to invoke dispute resolution on the issue of whether a significant effect on vegetation in Blackrock 94 has occurred and that such an action seeks to deprive LADWP of its vote on the issue. These contentions are without merit.

Section XXVI.2 of the LTWA (Dispute Resolution) specifically provides that the question of whether a significant effect on vegetation has occurred is subject to dispute resolution. Section XXVI.2 states that the subjects of dispute resolution include but are not limited to: "[*W*]*hether a significant decrease or change in vegetation or a significant effect on the environment has occurred*." Clearly, the County had the right to submit its issue to dispute resolution as provided in the LTWA.

Assuming the County was within its rights to submit its issue to dispute resolution, the submission of the issue did not deprive LADWP, as a Technical Group member, of its vote on the issue. As explained above, the Technical Group considered the issue several times before and after the issue was submitted to dispute resolution. As admitted on page 8, lines 7 and 8 of LADWP's Opening Brief, after the submission of the County's February 2, 2011 letter to the Technical Group, the Technical Group met, but was unable to resolve the issues raised in the County's report. The reason that there was no resolution was that LADWP declined to vote on the County's request that the Technical Group determine that there had been a significant effect on

vegetation in Blackrock 94. Since each Party to the Technical Group has only one vote, whether or not LADWP voted "No" on the County's request or did not elect to vote, LADWP exercised its vote on the issue. Dispute resolution over subjects within the Technical Group's responsibilities cannot be forestalled by one of the parties refusing to vote.

Section XXVI.B of the LTWA describes how disputes between the parties arising out of the LTWA or the Green Book are to be submitted to the Technical Group and Standing Committee. Since the Parties were in disagreement over the issue raised in the County's February 2, 2011 letter, as provided in Section XXVI.B.1 the County submitted the issue to dispute resolution on May 1, 2012. In accordance with Section XXVI.B.1, following the receipt of the County's dispute, the Technical Group met on May 9, 2012 and again on June 14, 2012 to consider the question of whether there has been a significant effect on vegetation in Blackrock 94. LADWP did not vote in support of the County's issue at either meeting. Section XXVI.B.1 further provides that "[I]n the event that the Technical Group is unable to resolve a matter…" the matter in dispute shall be submitted to the Standing Committee. The County's issue was submitted to the Standing Committee and at the September 26, 2012 Standing Committee meeting, LADWP elected to vote "No" on the County's issue.

As can be seen from the foregoing, LADWP elected to exercise its vote on the Technical Group and at the Standing Committee to vote "No" on the County's requests to the entities to find that there was a significant effect on vegetation in Blackrock 94. As also can be seen, under such circumstances, LTWA clearly provides the County with the right to submit the issue of whether there has been a significant effect on vegetation at Blackrock 94 to dispute resolution. The submission of the issue to dispute resolution by the County does not deprive LADWP of its vote on the Technical Group or on the Standing Committee. To the contrary, the panel is being requested to carry out a responsibility clearly vested in the panel by the LTWA. Therefore, the panel should reject this contention by LADWP.

LADWP Contention: The 1991 EIR Considered the Impacts of Groundwater Pumping at Blackrock 94

In addition to the two jurisdictional issues identified in the Revised Stipulation, in its Opening Brief, LADWP raises a third jurisdictional issue. In this contention, LADWP claims that the impacts of its groundwater pumping on groundwater dependent vegetation at Blackrock 94 were addressed in the 1991 EIR; therefore, LADWP asserts that the County is foreclosed from alleging impacts to vegetation at Blackrock 94.

1991 EIR Contention 1. LADWP contends that 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*." (See LADWP's Opening Brief, page 50, lines 7 to 11. As shown below, the 1991 EIR did not identify or address any of the vegetation impacts in Blackrock 94 that are at issue in this dispute and did provide for mitigation of such impacts.

In support of its contention, LADWP first identifies several mitigation measures described in Chapters 9 of the 1991 EIR. (It is important to note that the measures in Chapter 9 cited by LADWP address the project's impacts on water resources—these measures do not address impacts on vegetation.) LADWP then discusses the mitigation measures identified in Chapter 10 of the 1991 EIR which addresses vegetation impacts.

As acknowledged by LADWP in on page 51, lines 1 to 9 of its Opening Brief, the 1991 EIR identified impacts resulting from the pumping of the wells that supply the water to the Blackrock Fish Hatchery. LADWP then asserts that the impacts which are the subject this dispute are limited to impacts caused by the pumping of only the well that supply water to fish hatchery. In this regard, LADWP states: "[*T*]*he current dispute involves alleged impact to vegetation at vegetation parcel Blackrock 94 resulting from LADWP's groundwater pumping for the Blackrock Fish Hatchery*." (See LADWP's Opening Brief, page 50, lines 4 to 7.) In contrast to LADWP's

assertion, the impacts at Blackrock 94 were caused by several factors, including the pumping of the fish hatchery wells. As stated on page 12 of the County's Opening Brief:

> *Groundwater pumping and episodic surface water spreading affect the depth to groundwater at Blackrock 94. Groundwater pumping from wells supplying the Blackrock Fish Hatchery and groundwater pumping by LADWP from other wells in the Thibaut-Sawmill and Taboose-Aberdeen wellfields have affected the water table in parcel Blackrock 94. Surface water diversions by LADWP to supply Eight-Mile Ranch and water spreading by LADWP from Sawmill and Thibaut Creeks during high runoff have also affected the water table at Blackrock 94.*

The County does not disagree that the 1991 EIR addresses the impacts caused by the pumping of the fish hatchery wells, but, as shown below, the EIR did not address the impacts at issue in Blackrock 94.

LADWP states that three mitigation measures for water resource impacts that are discussed in Chapter 9 of the 1991 EIR (Impacts 9-11, 9-13 and 9-9-17) address the impacts at Blackrock 94; however, these mitigation measures only address the impacts on water resources caused by the pumping of the fish hatchery wells and do not address the impacts at Blackrock 94.

LADWP notes that Impact 9-11 identified "*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…,"* With regard to Impact 9-13, LADWP notes that in the vicinity of the Blackrock Hatchery, "*the continuous pumping to supply the hatcheries, even in above average runoff 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.*" After analyzing these impacts, the 1991 EIR deemed that the changes in water resources identified in Impacts 9-11 and 9-13 caused by the pumping for the fish hatchery were not significant and no mitigation of the impacts was required. Turning to Impact 9-17, LADWP states that: "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).*

Impact 9-17 identifies a depletion in groundwater storage and a unspecified reduction in vegetation cover. Mitigation Measure 9-17 concluded that no mitigation was required for the depletion in groundwater storage and did not discuss the unspecified impacts to the vegetation cover since such a discussion was deferred to Chapter 10. Mitigation Measure 9-17 states in pertinent part: "[*I]mpacts to vegetation are discussed in Chapter 10."* (1991 EIR, page 9-84.)

Contrary to the contentions in LADWP's Opening Brief, it is clear that Impacts 9-11, 9-13, and 9-17 did not address the vegetation impacts in Blackrock 94 that are at issue, but, instead, only addressed impacts to water resources caused by groundwater pumping from the wells that supply the Blackrock Fish Hatchery. Despite LADWP's assertion, Impact 9-17 did not provide a nexus between pumping for the Blackrock Fish Hatchery and the vegetation impacts at Blackrock 94.

LADWP then turns to Chapter 10 of the 1991 EIR which addresses the impact of the project on Owens Valley vegetation. With respect to Chapter 10, it should be noted that it is organized into separate sections. One of the sections addresses "Groundwater Pumping-Lowering of the Water Table 1970-1990" and a separate section addresses "Groundwater Pumping-Springs and Seeps 1970 to 1990." The section that addresses the lowering of the water table identifies areas of groundwater dependent vegetation that were affected by LADWP's groundwater

pumping from 1970 to 1990 and provides three mitigation measures for such impacts (Mitigation Measures 10-11, 10-12, and 10-13); however, the impacts to the groundwater dependent vegetation in Blackrock 94 are not addressed in these three mitigation measures for the impacts of groundwater pumping on groundwater dependent vegetation.

LADWP states that "*Chapter 10 of the 1991EIR 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…*" Before addressing Impact 10-14 in detail, it should be noted that Impact 10-14 addresses the impacts of LADWP's groundwater pumping from 1970 to 1990 on springs and seeps as distinguished from the separate section which addresses the impacts of pumping on groundwater dependent vegetation.

The portion of Impact 10-14 quoted by LADWP provides:

> *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. 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.* (Underlining added for emphasis.)

LADWP then quotes two separate parts of Mitigation Measure 10-14 which provide mitigation for the impacts described in Impact 10-14. The first part of Mitigation Measure 10-14 quoted by LADWP provides:

> *"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 lnyo County.*

The mitigation provided by the first part of Mitigation Measure 10-14 quoted by LADWP provides mitigation for elimination on spring flow at Blackrock Spring and for impacts to vegetation dependent on the springflow; however, it does not address impacts at Blackrock 94 or

provide mitigation for the impacts to groundwater dependent vegetation at Blackrock 94. This can be seen from Table VE-2 on page 2-43 of Volume 1 of the Final 1991 EIR which shows that the area mitigated by Mitigation Measure 10-14 is only 6 acres. 6 acres is significantly less than the more than 300 acres impacted at Blackrock 94. The impacts at Blackrock 94, shrub encroachment and loss of cover in an alkali meadow, differ distinctly from the loss of riparian, marsh, and pond habitat mitigated by Mitigation Measure 10-14. Moreover, the impacted vegetation identified in Mitigation Measure 10-14 is located adjacent to Big Blackrock Spring while the impacted groundwater dependent meadows at Blackrock 94 are located from 1.3 to 2.3 miles from Big Blackrock Spring. Finally, the fish hatchery, the pond and the fish rearing facilities are not located on Blackrock 94. The foregoing clearly demonstrates that the first part of Mitigation Measure 10-14 is not mitigation for the vegetation impacts at Blackrock 94.

The second part of Mitigation Measure 10-14 quoted by LADWP states:

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).

With respect to the second part of Mitigation Measure 10-14, it must be emphasized that, by its terms, it only provides compensatory mitigation for "*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…" Thus, the Lower Owens River Project is not intended to mitigate the impacts of groundwater pumping on groundwater dependent vegetation (such as at Blackrock 94) that was not caused by the "*elimination of spring flow due to groundwater pumping*." Additional support of this fact is that loss of riparian and meadow vegetation mitigated by the Lower Owens River Project which was caused by the elimination of spring flow is estimated to be less than 100 acres while the impacts at Blackrock 94 are in excess of 300 acres.

As stated on page S-11 of the 1991 EIR, "[*A*]*ll known areas of significant adverse impact on vegetation have been identified in this EIR*." The information presented above conclusively shows that that the impacts to groundwater dependent vegetation at Blackrock 94 were not known and were not addressed in Chapters 9 and 10 of the 1991 referenced by LADWP.

After discussing the mitigation measures identified in Chapters 9 and 10 of the 1991 EIR, LADWP then observes that "*the general effects of Los Angeles' water gathering activities on vegetation were also discussed in the 1991 EIR…*" and references a report by Griepentrog and Groeneveld as evidence that the groundwater dependent vegetation impacts at Blackrock 94 were addressed in the 1991 EIR. As shown on page 19-3 of the 1991 EIR, Griepentrog and Groeneveld's work was completed in 1981. The impacts to groundwater dependent vegetation at Blackrock 94 occurred after the completion of the report; therefore, it is not possible that adverse impacts discussed by Griepentrog and Groeneveld included impacts to groundwater dependent vegetation at Blackrock 94 at issue in this proceeding.

LADWP then asserts that the EIR analyzed groundwater pumping to supply the Blackrock Fish Hatchery at the rate of 26.7 cfs (19,296 acre-feet per year) and that the actual pumping has not exceeded 15,275 acre-feet per year. Based upon this observation, LADWP claims that the impacts at Blackrock 94 were analyzed in the 1991 EIR.

In response to this contention, LADWP relies on the first paragraph of page 5-15 of the 1991 EIR. This paragraph does not support LADWP's interpretation. The first paragraph of page 5-15 provides:

Between 1970 and 1990, 36 wells were constructed with a total capacity of 160 cfs. Included among these are 16 wells that supply enhancement/mitigation projects with a capacity of 67.8 cfs, and two wells with a capacity of 26.7 cfs that supply the Blackrock Fish Hatchery. <u>These wells may be operated in the future, subject to the provisions of the Agreement</u>. Also during this period, ten wells with a total capacity of 31.9 cfs were abandoned. (Underlining added for emphasis.)

To provide perspective as what amount of groundwater pumping was analyzed in the 1991 EIR, as stated on page S-8 of the 1991 EIR:

…for the purposes of analysis in this Draft EIR, the average amount of pumping under the Agreement is projected to be 110,000 AFY.

The combined capacity of the new wells (including the two hatchery wells) constructed between 1970 and 1990 plus the additional capacity of the wells that were in existence prior to 1970 and of the wells which were constructed after 1990 (a total for all wells of approximately 544,000 acre-feet per year) greatly exceeds the 110,000 acre-feet per year analyzed in the 1991 EIR. (See page 9-58 of the 1991 EIR for a description of LADWP's total groundwater pumping capacity.)

As noted on page 5-15 of the 1991 EIR, there is a commitment that the two hatchery wells will be operated subject to the provisions of the LTWA. Because the 1991 EIR assumed that the wells would be operated in accordance with the provisions of the LTWA, it did not specifically analyze the impacts of pumping the two hatchery wells at 19,262 acre-feet per year—or at any other amount. LADWP cannot to point to where such impacts are addressed or analyzed in the 1991 EIR since the EIR does not address or analyze such impacts. Therefore, LADWP's contention that the impacts of pumping 19,262 acre-feet per year from the two wells was analyzed in the EIR is without merit.

In its final argument in support of its contention, LADWP asserts that the County's February 2, 2011 report concludes that the significant impact to vegetation at Blackrock 94 occurred between the establishment of baseline conditions in 1987 and 1991; therefore, LADWP

alleges that any such impacts were addressed in the 1991 EIR. LADWP cites pages 4, 56 and 66 or the County's report in support of its assertion. LADWP's assertions are not supported by the facts.

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

On page 56 of the report, it is stated that "[P]umping induced declines in the water table 1987-1991 corresponded to decreases in vegetation cover and change in species composition." As previously noted, the report states that such measurable decreases and changes were caused by groundwater pumping by 1991, but due to continued groundwater pumping and reduced surface water diversions in the vicinity of Blackrock 94 such changes became significant since the 1987-1991 period. Although the February 2, 2011 report admits that there was a measurable change in vegetation prior to 1991, and that such change was caused by groundwater pumping, the February 2, 2011 report does not support LADWP's contention that the significant impacts at Blackrock 94 were addressed in the 1991 EIR.

LADWP may contend that the impacts at Blackrock 94 need not be mitigated because on pages 20 and 21 of Resolution C-83803 adopting the 1991 EIR, the City of Los Angeles City Council adopted a statement of "overriding considerations" (Attachment 21). Under the California Environmental Quality Act, when an agency approves a project with significant environmental impact that will not be avoided or substantially lessened, if it wants to proceed with the project, it must adopt a statement that, because of the project's overriding benefits, it is approving the project despite its environmental harm. (14 Cal Code Regs, section 15403.) The pertinent language of Resolution C-83803 states:

To the extent a determination could be made that replacement or compensatory mitigation does not adequately mitigate the impacts of the proposed Project, this Council, fully cognizant of the impacts as described in the Final EIR and listed herein, and having considered the mitigation measures and alternatives, nevertheless determines to adopt the Project as proposed without further mitigation and without adoption of any of the proposed alternatives, and hereby adopts and approves this Project and adopts and approves the EIR on this Project as authorized by Public Resources Code sections 21002 and 21081(c) for the following reasons:" Underlining added for emphasis.)

As has been explained, the 1991 EIR does not address or provide mitigation for the impacts at Blackrock 94. Further, Resolution C-83803 does not identify the impacts at Blackrock 94. Therefore, the Los Angeles City Council was not "fully cognizant" of such impacts at the time of the adoption of Resolution C-83803; thus, its statement of overriding considerations is inapplicable to such impacts. Such a statement is legally inadequate if it does not accurately reflect the significant effects of the project. (See *Woodward Park Homeowners Ass'n v City of Fresno* (2007) 150 CA 4th 683.)

With regard to the commitment to mitigate the impacts at Blackrock 94, in item 3 of a letter of comment on the Draft 1991 EIR (Letter C-1 in Volume 1 of the Final EIR) the League of Women Voters of the Eastern Sierra, Inc. stated in pertinent part that: "[*T*]*he EIR should allow for mitigation of areas damaged since 1970 that are discovered after this process has concluded*." The Final EIR responded to this comment on page C1-1 that "[*I*]*f in the future, it is determined that an area has been significantly affected since 1970, mitigative actions would be implemented under the Agreement*." As discussed above, the 1991 EIR did not address or provide mitigation for the impacts at Blackrock 94. As indicated in the response to comment to the League, even if the impact at Blackrock 94 occurred between 1970 and 1990, since it was not addressed in the 1991 EIR, if the impact is found to be significant subsequent to the 1991 EIR, LADWP has agreed that it will be mitigated as provided in the LTWA.

As shown, the impacts at Blackrock 94 were not addressed in the 1991 EIR and, consequently, the statute of limitations does not bar the panel from considering the County's February 2, 2011 letter.

MEASURABILITY, ATTRIBUTABILITY AND SIGNIFICANCE

In the final few pages of its Opening Brief, LADWP addresses the issue raised by the County. The County requests the panel to find that there has been a measurable change and decrease in vegetation in Blackrock 94 that is attributable to LADWP's groundwater pumping and changes in surface water diversions that is significant. LADWP asserts that the County's February 2, 2011 report is scientifically flawed and does not support the County's conclusions.

In its brief, LADWP's outlines the reasons why LADWP contends that the County's report does not establish that a measurable, attributable and significant vegetation decrease and change has occurred at Blackrock 94. Below, the County has identified each of LADWP's contentions and provides a response to the contention.

LADWP's brief frequently references a report by "Martin" and a "Jorat memorandum." These documents contain additional criticisms of the County's report that are not made in LADWP's Opening Brief. Rather than responding to each of these additional criticisms in this brief, in Attachment 22, the County presents a response to each criticism made in the Martin and Honda report and the Jorat memorandum.

Measurability

In response to LADWP contentions concerning measureability, first, it should be reiterated that the Parties have both documented that there has been a measurable change in vegetation at Blackrock 94. Green Book Section I.C establishes the following standard that the Technical Group must apply when determining whether a change is measurable:

> *A determination of measurability will be made if any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred.*

The County's February 2, 2011 report presents ample evidence from multiple relevant data sources that a measurable decrease and change in vegetation conditions in comparison to the established baseline conditions has occurred in Blackrock 94. As previously discussed, LADWP conducted its own vegetation monitoring program and produced its own analysis of vegetation conditions at Blackrock 94 using a much narrower range of data, analytical techniques, and statistical parameters contrived to minimize the chance of finding a measurable change. Based upon this work, in its April 9, 2012 letter concerning LADWP's analyses (Attachment 13), LADWP concluded that:

> *…LADWP has conducted additional analyses (enclosed) utilizing all of the available data and a variety of analytical methods. These analyses indicate that there are years where both the data collected by LADWP and ICWD suggest that there are measurable differences in total cover from the initial inventory. … Because these analyses have indicated that there are some years where vegetation cover may have differed from the initial inventory, LADWP is willing to support the Technical Group advancement of the Green Book process … based on the acceptance of LADWP's analyses by the Technical Group.* (Underlining added for emphasis.)

Since both Parties have documented that there has been a measurable change in the vegetation conditions when compared to the baseline conditions, it has been established that the Green Book's low standard for determining measurability, that "*a small documentable change in vegetation cover or composition has occurred"* has been met. Therefore, since a measurable change has occurred, the measurability issue need not be further considered by the panel.

Despite the fact that the Parties have both documented that a measurable change in vegetation has occurred in Blackrock 94, below, the County addresses each of the contentions concerning measurability that are presented in LADWP's Opening Brief.

Criticism 1. Data from the two permanent monitoring sites in Blackrock 94 do not represent the parcel as a whole.

Response 1. LADWP rejects data from the permanent monitoring sites on the basis that they do not represent the parcel as a whole. Monitoring at the permanent transects has been conducted jointly by Inyo and LADWP staff since 1987 exactly as described in the Green Book. The Technical Group has used these data for over twenty years to manage groundwater pumping. Monitoring sites TS1 and TS2 are located within parcel Blackrock 94 and, because they are the longest records of annual vegetation cover and composition, and they are a joint Technical Group effort, they are relevant to the question of whether a change in vegetation has occurred in the parcel.

Criticism 2. The annual re-randomized placement of transects hinders the ability to detect vegetation change.

Response 2. LADWP rejects the County's annual measurements of vegetation cover in the parcel. The County's line point monitoring program contains all the elements described in Green Book Box II.C.1.a.ii (line point methods, randomly placed transects, statistical comparison with baseline). As shown conclusively in the County's Initial Brief (pages 17-20), Attachments 15 and 16 and in this brief, the Technical Group in 1992 approved the monitoring program that has been conducted by County staff since 1991 expressly for the purpose of evaluating vegetation change. Data from the County's program have been provided to the Technical Group and have been used by LADWP in its annual reports to fulfill mandated reporting requirements from 2006-2012.

The locations of the transects used during the baseline inventory were not recorded by LADWP. When designing a long term monitoring program for such a situation, it is advantageous to select locations to revisit randomly in order to obtain an unbiased estimate of vegetation cover and species composition in the parcel. In contrast, LADWP's monitoring program uses permanent transects. Because of the use permanently located transects, if there is a persistent change in cover from baseline is detected over several years, it cannot be determined whether it is due to a real change in vegetation or to a bias resulting from the permanent transect locations which are different from the baseline transect locations. By using annually re-

randomized transects, the County's program avoids a false detection of a persistent interannual systematic increase or decrease (a bias) in vegetation that may can occur as a result from the use of LADWP's permanently located reinventory transects. Also, in previous letters and presentations to the Technical Group, the County has shown that re-randomized transect data are more amenable to statistical testing of the comparison with baseline.

Annual randomization of transects is a valid technique chosen specifically by the County to address the situation where the original baseline sampling points are unknown; thus, the County's methods are aimed specifically at assessing changes from the 1984-1987 baseline data set. Annual randomization provides a valid sample of the vegetation parcel without unintentionally introducing a permanent bias that cannot be distinguished with certainty from an actual vegetation change.

Criticism 3. The data collected by the County using annual re-randomized transects cannot be compared to the baseline conditions established by the 1986 initial inventory data.

Response 3. LADWP characterizes the baseline as "...not designed nor conducted to serve as a baseline…" and that "[T]he initial inventory was defined as "a" baseline, not "the" baseline." This is a gross mischaracterization of the LTWA and Green Book requirements for concerning the baseline inventory data. The LTWA (Section II) includes color coded management maps which show Owens Valley vegetation classified by management type and states that, "[*T*]*he Department's vegetation inventories that were conducted between 1984 and 1987 were used in compiling these maps. Section IV of the LTWA provides the management goals for each vegetation type*."

The Green Book (Section I.A) clarifies the meaning of the overall goal for managing water resources based upon the baseline line vegetation conditions:

> *This means that groundwater pumping and changes in surface water management practices will be managed with the goal of avoiding significant decreases and changes in Owens Valley vegetation from conditions documented in 1984 to 1987, and of avoiding other significant environmental impacts.*

The Green Book Box I.C.1.A.ii also states,

> *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 changed, 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.*

Moreover, several statements in the 1991 FEIR specify that the 1984-87 inventory will serve as the baseline for purposes of the Agreement (e.g. Summary, p. S-6; Mitigation measure 10-13; Response to Comment B13-31, Response to Comment D60-7). For brevity, only the referenced statement in the 1991 FEIR Summary is provided below,

> *One of the primary goals of the Agreement is to manage Owens Valley groundwater and surface water resources to avoid significant decreases in the live cover of groundwater dependent vegetation (management Types B, C, and D), to avoid a change of a significant amount of such vegetation from one management type to vegetation in other management type which precedes it alphabetically, and to avoid other significant adverse effects in Owens Valley. The vegetation conditions documented during the 1984-87 vegetation inventory serve as the base for comparison for determining whether decreases and changes have occurred.*

Without question, the 1984-87 inventory is the baseline upon which management is based.. Limitations in the quality of the baseline data were acknowledged, but the data was adopted because it was the only inventory "*...of sufficient accuracy to permit comparison.*" LADWP now refutes the LTWA, the Green Book and the 1991 EIR with its assertion that "[*A*]*ny statistical comparison involving "baseline" data may well be invalid.*" Clearly, this assertion must be rejected.

Criticism 4. Results from the ICWD multivariate analyses must be taken with caution because a number of potential variables were ignored, the results can be greatly influenced depending on data standardization/transformation, inclusion or exclusion of rare species and a type of distance matrix. Further, the multivariate analysis results were not properly interpreted.

Response 4. LADWP asserts:

PERMANOVA is designed to analyze multivariate data (multiple dependent variables or species composition data), not univariate data (one dependent variable or mean perennial cover data). Therefore, it is not appropriate to analyze mean perennial cover data. ICWD has also converted mean cover data into a distance matrix using the Bray-Curtis distance measure. LADWP cannot accept the use of this distance measure because the Bray-Curtis distance measure was designed to summarize "community" data (Gauch 1992).

The County's response consists of two parts. First, the routine Permutational ANOVA and MANOVA (PERMANOVA) is suitable for testing the simultaneous response of one or more variables to one or more factors in an analysis of variance (ANOVA) experimental design on the basis of any resemblance measure using permutation methods. The PERMANOVA manual software is replete with examples of using PERMANOVA for univariate data. The County's analysis was conducted correctly and LADWP's assertions are simply false. Second, since 2010, the County has been using a weighted ANOVA with a Dunnet's comparison to baseline year to analyze perennial cover data (Attachments 12 and 25). Both PERMANOVA and weighted ANOVA yield the same results, and the choice of the weighted ANOVA was deemed to be a simpler method. The Dunnet's multicomparison procedure is one of several methods developed to reduce the chance of falsely detecting a change when one does not exist when making multiple comparisons, in our case comparing each year with baseline.

LADWP also asserts:

LADWP has argued that multivariate data are highly manipulative such that results can vary greatly depending on how an analysis is performed. Results from

> …[multivariate analyses] *can vary greatly depending on data transformation and standardization and inclusion or exclusion of rare species (or outliers)…the rerandomization of transect placement makes very difficult to define rare species. Species can be rare simply because the area where this "rare" species frequently occur does not get sampled consistently. There are many different combinations of a data transformation/ standardization and a distance measure type. LADWP has performed PERMANOVA under six different scenarios of a data transformation and distance measure using perennial species cover from ICWD line point data. LADWP used only perennial species in order to be consistent with ICWD's Blackrock Report. Not only overall F-statistics vary, but also a number of years which are significantly different from the initial inventory at α = 0.01…SAMT is the scenario using relative covers of species as defined by the Green Book, and at α = 0.01 there is no year with significantly different species composition from the 1986 composition. The Technical Group must determine these details even before the analysis is performed.*

In the preceding assertion, LADWP demonstrates how a contrived analysis can support a result that the analyst is seeking. The most stringent analysis that LADWP reports surely has no power to detect small changes in vegetation cover, and is used to somehow demonstrate that a standard method with a traditional alpha level of 0.05 as used by the County is suspect. The Green Book states that "*A determination of measurability will be made if any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred*". LADWP's conclusions neglect this principle and seek to substitute a statistical analysis designed with very little power to detect "even a small documentable" vegetation change.

Criticism 5. Blackrock 99 should not have been used as a control site.

Response 5. As described in the County's report, data collected within Blackrock 94 were compared with data collected from an adjacent parcel Blackrock 99. specifically because of

similar vegetation, soil/landscape position, and proximity. In LADWP's Exhibit 9, Martin and Honda imply that the County's analysis should have been restricted to data collected at control sites listed in Table 1.A of the Green Book. Table 1.A lists wellfield and control sites established as part of the LTWA's groundwater program to project the soil-to-plant water balance for the well turn-on or turn-off provisions. Data from these sites were not included in the County's analysis because; they are located many miles from Blackrock 94, most occur east of the Los Angeles Aqueduct, and all have entirely different vegetation, soils, grazing and fire history, and precipitation conditions than Blackrock 94. Martin and Honda's recommendation contradicts their recommendation elsewhere that the Green Book requires controls have similar conditions and similar scale (e.g. parcels should be compared to parcels).

Criticism 6. Blackrock 99 and Blackrock 94 differ in four ways: (1) irrigation, (2) grazing, (3) fire history and (4) soil types.

Response 6. Below the County responds to each of alleged differences.

Irrigation. During periods of high runoff, LADWP diverts excess water from creeks and spreads the water in various areas in Owens Valley for irrigation and to recharge the groundwater system. Martin and Honda at various points contend that the County (1) ignored the effect of water spreading, (2) that different water spreading practices between Blackrock 94 and 99 account for vegetation differences at the parcels, and (3) that spreading differences accounts for change from baseline in Blackrock 94 (it should be noted that in this contention, LADWP admits a change in vegetation while elsewhere, LADWP's argue there is no measureable change). Each of these main points is addressed below.

The County evaluated and recognized spreading affects at site TS1 and Blackrock 94 and concluded that *"Hydrographs of monitoring wells and remote sensing imagery show that the parcel has been affected by episodic water spreading during periods of high runoff"* (Inyo Initial Brief Attachment 10). As described in the County's report, however, quantitative data on the amounts of water spreading are only available for Sawmill Creek, and complete mapping of the locations affected by spreading each year cannot be prepared due to lack of data. For example,

LADWP contends that water spreading from Black Canyon affects the areas, but the amount of water reaching parcels Blackrock 94 and 99 from Black Canyon is completely undocumented. The County refrained from speculating on the effects of factors for which data are lacking, and merely noted that the parcel has been affected by spreading. The analysis of Sawmill Creek data is discussed in more detail in the Groundwater Pumping and Spreading section below.

LADWP's submittals concerning surface water spreading are contradictory. LADWP's Initial Brief (page 58) states that "*Blackrock 99 is irrigated; Blackrock 94 is not*." In contrast, Martin and Honda (page 44) discuss "*the high temporal and spatial variability in water spreading across Blackrock 094*" and that after 1983, a majority of the flow of Black Canyon flowed north toward Blackrock 94, and also that "*water diversion at different locations results in water spreading over different parts of Blackrock 094*" (page 44) and "*Surface water spreading over Blackrock 094 from Black Canyon Creek is clearly shown by the 1993 and 1996 aerial photos*" (page 35).

Despite LADWP's claim that Blackrock 94 is not irrigated, it is evident from the County's Attachment 10, as well as information provided by Martin and Honda, that episodic water spreading has occurred in both Blackrock 94 and 99; that the sources of water may be Black Canyon Creek, Sawmill Creek, or tail water issuing from Eight-Mile Ranch; and that the availability of surface water has varied with runoff availability in both parcels. Overall, the parcels have the same vegetation classification (neither is classified as Type E, which is the classification for irrigated parcels) and similar histories of intermittent irrigation; therefore, Blackrock 99 is an appropriate control site for assessing vegetation changes due to contrasting groundwater availability, because all other relevant factors are similar between the parcels.

Martin and Honda present insufficient evidence to conclude that spreading practices account for changes since baseline. LADWP's observations of ditches and berms and on the role of spreading since baseline are of little value because most observations occurred after the baseline conditions were established. Spreading locations and presumably spreading amounts vary considerably and the affected areas of Blackrock 94 visible on the air photos were small; but,

it is unlikely that sporadic water spreading in Blackrock 94 since baseline caused the loss of cover and grasses. Martin and Honda present only one figure (Exhibit 9 Attachment 1, Figure 7b) showing that a small portion of Blackrock 94 exhibited relatively high cover in 1986 near a defunct ditch (which LADWP located using the County's SMA data which LADWP argue are unacceptable to LADWP). The area in question occupies approximately 6% of the parcel area, and the vegetation cover in the subject area was still less than other portions of the parcel to west and south. It is impossible based on LADWP's evidence to ascribe the vegetation changes documented by the County for the entire parcel are due to changes in water spreading irrigation practices. Furthermore, Martin and Honda assert that, "*LADWP's surface water spreading practices have remained consistent since the City of Los Angeles began importing water from the Owens Valley in the early 20th century."* On the one hand Martin and Honda argue that changes in spreading may have caused a change in vegetation while, one the other hand, simultaneously asserting spreading practices have not changed – yet another contradiction within LADWP's discussion of surface water management in the area.

Regression results presented by Martin and Honda contradict their earlier statements regarding causation vs. correlation. It is important to select variables the may have a potential causal relationship as the County did in its analysis (e.g., depth to water and vegetation cover). LADWP obtained the most significant result using a variable, Sawmill Creek runoff, which they admit "*does not directly influence vegetation*." We disagree that Sawmill Creek runoff is necessarily a good surrogate for water spread in the parcel because the measurements also include the amount of creek water delivered to the Los Angeles Aqueduct and exported from the area. Finally, runoff affects depth to water, which along with precipitation, are the hydrologic variables for which quantitative data are available that can most directly affect vegetation cover.

Grazing. LADWP asserts that the County failed to consider grazing effects on the permanent monitoring site transects. The permanent monitoring sites TS1, TS2, and TS3 are all fenced and have not been grazed except infrequently for short periods when the fences failed. It

did not seem pertinent to evaluate the effect of grazing within the permanent transects since there is a complete lack of grazing data and almost no grazing pressure.

Martin and Honda point out that approximately half of Blackrock 94 is grazed by horses and mules and half by cattle. They fail to mention that all of Blackrock 99 is grazed by cattle. As explained in its report (Inyo Initial Brief, Attachment 10), the County refrained from speculating about the effects of grazing because of the lack of quantitative data. The County observed similar vegetation changes in fenced permanent monitoring sites and for the parcels Blackrock 94 and 99 despite differences in grazing pressure. Blackrock 94 and TS1 and TS2 experienced loss of cover, loss of grasses and increased shrub proportion; Blackrock 99 and TS3 exhibited high cover dominated by grasses. The most notable trend that differs between the transects and the surrounding parcels is the increase in shrub cover within the fenced exclosures. LADWP does not challenge this observation nor provide any supporting data or analysis showing how the different grazing practices affect the parcels.

Fire History/Wildfire. Martin and Honda suggest that the permanent monitoring sites and two parcels are not comparable due to different fire histories. The 1990 fire was approximately 37 acres of Blackrock 94 and field notes recorded in 1991 state,*" a large section of parcel burned in 1990; shrubs are gone but grasses are doing well"* (LADWP's Opening Brief, Exhibit 9, Attachment 6). Furthermore, removing from the dataset the transects that County field staff noted as in or near the burn in 1991 (T11 and T12) and 1992 (T8) changes the recalculated average cover of the parcel by less than 1% each year. LADWP has not provided sufficient evidence that the County's conclusions concerning vegetation decrease and change are due to the 1990 fire.

With regard to the 2007 Inyo Complex fire, LADWP suggests the different vegetation response of Blackrock 99 and Blackrock 94 was due to irrigation, grazing and low runoff. First, because the parcels are adjacent, both were subject to similar runoff and precipitation conditions following the burn. Second, because of a higher water table, grass at monitoring site TS3 in Blackrock 99 began to regrow almost immediately after the fire in late 2007 (Inyo Initial Brief Attachment 10, Figure 20), but because of pumping induced declines in the water table, TS1 in

Blackrock 94 did not. Neither site was irrigated during this period. In addition, LADWP did not show that Blackrock 99 was irrigated in 2008 and 2009 (the last year for which monitoring data were included in the County's report) to account for the overall recovery in Blackrock 99 compared to Blackrock 94. LADWP reported they had ordered the lessee to discontinue the irrigation (LADWP Initial Brief, Exhibit 20).

Soil Types. Martin and Honda contend that the County's comparison of sites TS1 and TS2 was flawed because of differing soils. They are in error; the County did not compare TS1 to TS2 except to note that the sites initially had similar vegetation cover and composition. In its attributability analysis, the County did compare TS1 and TS2 in Blackrock 94 to TS3 in Blackrock 99. LADWP introduced the NRCS soils and ecological site description in its initial response to the County's report (Inyo Initial Brief Attachment 10). Monitoring sites TS1 and TS3 occur in the same soil map polygon; TS2 occurs on a different soil type, but one that also should support high cover native vegetation. All three sites had high cover dominated by grasses in 1987-88 suggesting the soil differences were not sufficient to support differing vegetation when water table conditions were favorable.

In support of its contention, LADWP presented a partial description of the soils underlying the two parcels to exaggerate the actual differences. Shondow and Winterton are the dominant soils in both parcels. Together these comprise 82% of the area of Blackrock 94 and 92% of the area of Blackrock 99. In fact, 55% of Blackrock 94 (including TS1) and 90% of Blackrock 99 (including TS3) occur within the same soil map polygon (a contiguous area with similar soil properties and classification). Further, Martin and Honda failed to disclose that the different soils can support similar vegetation. When the Ecological Site descriptions for the soils underlying the parcels are compared, the similarity of the two parcels is more apparent. Saline Meadow and Saline Bottom should support a high cover meadow in the Owens Valley (Tallyn, 2002). The dominant vegetation for Saline Meadow (Shondow) is alkali sacaton (*Sporobolus airoides*), inland saltgrass (*Distichlis spicata*), saltbush (*Atriplex* sp.), and rabbitbrush (*Ericameria* sp.). Approximate vegetation cover (basal and crown) for this Ecological site is 40

to 80 percent. The dominant vegetation for Saline Bottom (Winterton) is alkali sacaton, inland saltgrass, black greasewood (*Sarcobatus vermicuatus*), shadscale, and Parry saltbush (*Atriplex parryi*). Approximate vegetation cover (basal and crown) for this Ecological Site is 20 to 40 percent. These two Ecological Site descriptions comprise 100% of Blackrock 99 and 82% of Blackrock 94.

Based on soils and the vegetation they naturally would support, Blackrock 99 is an appropriate comparison for Blackrock 94. Soil differences cannot account for the large discrepancy in the measured vegetation changes between the two parcels.

Attributability

Criticism 1. The County failed to establish a causal relationship between depth to water (DTW) and vegetation change.

Response 1. The parties have introduced extensive material into the record related to causes of vegetation change in Blackrock 94 (Attachments 10, 11, 12, 13, 18, and 22; LADWP Exhibits 9 and 10). LADWP correctly asserts that the County concluded that "*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's brief asserts that there is no significant statistical or graphical causal relationship between pumping at the Blackrock Fish Hatchery and depth to groundwater. This conclusion is flawed for two reasons. First, Attachment 10, Figure 9, of the County's Initial Brief shows that numerous other LADWP wells are located near Blackrock 94. The County concluded (Attachment 10, page 56) that "…*the water table at Blackrock 94 was affected by pumping from both hatchery and non-hatchery wells*…" Thus, LADWP's presentation concerning causes of water table change does not address the full contention made by the County – that groundwater pumping from both hatchery and non-hatchery well and changes in surface water practices reduced the water available to vegetation in Blackrock 94. LADWP's analysis is incomplete, because LADWP did not consider other pumping stresses on the system caused by the pumping of wells that are in addition to those wells pumped to supply the Blackrock Hatchery.

Second, LADWP's premise of seeking a "*statistical or graphical causal relationship*" between pumping and depth to water is flawed. As LADWP notes elsewhere, correlation does not imply causation, so their whole premise of seeking a statistical or graphical causal relationship is flawed. The County used a more rigorous physically based simulation of groundwater flow – a groundwater model – to simulate the relative effects of pumping for the Blackrock Hatchery, non-hatchery pumping, and recharge to assess the causes of water table change beneath Blackrock 94. Attachments 10 and 22 discusses the use of the groundwater flow model.

LADWP claims that the County did not consider role of water spreading on water table fluctuations and vegetation. This is false. The County evaluated and recognized spreading affects at site TS1 and Blackrock 94 and concluded that *"Hydrographs of monitoring wells and remote sensing imagery show that the parcel has been affected by episodic water spreading during periods of high runoff"* (Inyo Initial Brief Attachment 10). As described in Attachment 10, quantitative data on the amounts of water spreading are only available for Sawmill Creek, and complete mapping of locations affected by spreading each year cannot be prepared due to lack of data. LADWP's submittals concerning surface water spreading are contradictory. LADWP's Initial Brief (page 58) states that "*Blackrock 99 is irrigated; Blackrock 94 is not*." In contrast, LADWP's Exhibit 9 (page 44) discusses "*the high temporal and spatial variability in water spreading across Blackrock 094*" and that after 1983 a majority of the flow of Black Canyon flowed north toward Blackrock 94, and also that "*water diversion at different locations results in water spreading over different parts of Blackrock 094*" (page 44) and "*Surface water spreading over Blackrock 094 from Black Canyon Creek is clearly shown by the 1993 and 1996 aerial photos*" (page 35). Despite LADWP's claim that Blackrock 94 is not irrigated, it is evident from the County's Attachment 10 and LADWP's Exhibit 9 that episodic water spreading has occurred in both Blackrock 94 and 99. Overall, both parcels have the same vegetation classification and similar histories of intermittent irrigation; therefore, Blackrock 99 is an appropriate control site for assessing vegetation changes due to contrasting groundwater availability. Blackrock 94 and

99 have similar exposure to drought, wet/dry cycles, and precipitation, and have similar soils, vegetation communities, and baseline conditions.

LADWP faults the County for not quantitatively comparing other factors (drought, wet/dry cycles, grazing, wildfire, and succession) to vegetation change. In the case of drought and wet/dry cycles, Attachment 10 addresses these factors through (1) use of Blackrock 99 as a control site, where drought, wet/dry cycles, and precipitation have been similar, and therefore cannot be the cause of change, and (2) groundwater modeling to evaluate the relative effects of pumping and recharge. Recharge is affected by drought, wet/dry cycles, and precipitation, so the effect of these factors is considered through variable recharge to the groundwater system. Other factors such as fire and grazing were evaluated qualitatively since no quantitative data are available to the Technical Group.

The County has presented credible evidence that the decreases and changes in vegetation in Blackrock 94 are attributable to changes in water availability resulting from groundwater pumping and reduced surface water diversions into the vicinity of Blackrock 94. LADWP's assertions do no discredit this evidence.

Significance

In its February 2, 2011 report, the County examined each of the eight factors required by the Green Book Section I.C. (Attachment 2) to be analyzed in determining significance, and found that the impact in Blackrock 94 is significant. In its Opening Brief, LADWP presents seven criticisms of the County's determination of significance. Below, the each of the 7 criticisms is addressed.

Criticism 1. The County failed to detect cyclic changes of vegetation according to wet/dry climatic cycles.

Response 1. LADWP claims that the County did not account for drought or wet/dry cycles (LADWP Initial Brief, page 59; Martin and Honda, pages 4, 45, 47, 51). The County addressed drought and wet/dry cycles through groundwater modeling of the water table at Blackrock 94, and by comparing Blackrock 94 to nearby parcel, Blackrock 99, that has been

subjected to similar droughts and wet/dry cycles, but has had a higher water table. This approach is fully consistent with the Green Book's requirement that changes in vegetation will be assessed by comparison to sites with similar vegetation, soil, and precipitation conditions (Green Book, page 21-24).

The USGS groundwater model for Owens Valley described above includes the effect on the water table of recharge from various hydrological processes including stream channel percolation, precipitation, irrigation return flows, recharge along the mountain front, and canals and ditches. These recharge sources vary according to the amount of surface water runoff, linking the groundwater system to drought and wet/dry cycles. Droughts and wet/dry cycles since 1963 were represented in the County's groundwater modeling analysis of water table fluctuations beneath Blackrock 94 (Inyo Initial Brief Attachment 10, pages 51-53).

The County compared Blackrock 94 and Blackrock 99 to show that the two parcels, each with similar exposure to drought, wet/dry cycles, grazing, and soil type, but with different accessibility of plant roots to groundwater, to show that the availability of groundwater was the primary cause of vegetation contrasts between the parcels. These contrasts consist of chronically low cover and transition from a grass-dominated community to a shrub-dominated community in Blackrock 94, and cover near baseline values and a sustainable grass-dominated community in Blackrock 99. The suggestion that the vegetation changes identified by the County in Blackrock 94 are part of the natural cycle is not defensible. Neighboring parcel Blackrock 99 has experienced the same wet and dry cycles since 1984-87, yet vegetation cover and composition have been maintained (even following wildfire). The County has shown that the primary difference between the parcels are water table depth and fluctuation.

Regarding the permanency of change measured by the County, perennial cover and grass cover in Blackrock 94 have been persistently below baseline since 1991. The County has shown that cyclical climatic conditions cannot account for the decline in vegetation and that the decline in vegetation is significant.

Criticism 2. Since 2000, there has not been a wet cycle lasting more than 2 years thus the current climatic cycle should be considered "drought" in comparison to the inventory establishing baseline conditions which was conducted in a 9 year "wet cycle.

Response 2. LADWP seems to be arguing that because the inventory that established baseline conditions was conducted during a "wet" period, that a change in vegetation from the baseline conditions during a drier period should not be considered as evidence that the change is significant. This argument is inconsistent with the overall goal of the LTWA as clarified by Green Book Section I.A which states:

> *This means that groundwater pumping and changes in surface water management practices will be managed with the goal of avoiding significant decreases and changes in Owens Valley vegetation from conditions documented in 1984 to 1987, and of avoiding other significant environmental impacts.*

The fact that the baseline conditions were established during a "wet" period was entirely intentional. As stated on page 10-70 of the 1991 EIR:

> *…because of an extremely wet period between 1983 and 1986, the water table recovered to pre-1970 levels in all areas of the Valley except around the Fish Springs and Blackrock fish hatcheries and in portions of the Laws area. During this same period, because of high runoff, precipitation and the restored water tables, vegetation recovered to greatest vigor since 1970. Under the provisions of the Agreement, the goal is to manage groundwater and surface water to avoid significant decreases and changes from these vegetation conditions; therefore, these provisions of the Agreement are themselves a mitigation measure.*

From the foregoing, it is clear that a change in vegetation in comparison to baseline conditions is evidence of significant change if it can be ascribed to groundwater pumping or surface water management, even if the change is occurring during a "drought" period.

Criticism 3. The amount of shrubs not only increased in Blackrock 94 but shrubs also shrub increase is observable throughout the Owens Valley—most specifically at 6 of the 8 permanent monitoring sites.

Response 3. Section IV.B of the LTWA provides that a determination of whether a decrease or change in vegetation conditions as compared to baseline conditions is significant will be made on a case by case basis. As stated in Response 3, the goal is to avoid "*significant decreases and changes in Owens Valley vegetation from conditions documented in 1984 to 1987.* In accordance with the requirement to analyze conditions on a case by case basis, the County analyzed the conditions in Blackrock 94 based upon the conditions in Blackrock 94 and found decreases and changes in comparison to baseline conditions. The fact that shrubs have increased in permanent monitoring sites which are not located in Blackrock 94 does not make the decreases and changes in vegetation conditions in Blackrock 94 less significant.

Criticism 4. The County improperly substituted analysis of vegetation parcel Blackrock 94 for analysis of control sites and for analysis of the Blackrock Vegetation and Wellfield Management Area.

Response 4. The County compared Blackrock 94 to control sites. The LTWA provides that vegetation cover in parcels potentially affected by pumping (wellfield parcels), are to be compared to parcels unaffected by pumping, (control parcels). The results of such an evaluation conducted by the County show that throughout the Owens Valley, vegetation in wellfield parcels is generally below baseline measurements while cover in control parcels is generally above baseline cover. Wellfield parcel cover is negatively correlated with changes in depth to groundwater caused by groundwater pumping while control parcel cover is unaffected; this indicates that groundwater pumping adversely affected wellfield parcels throughout the Owens Valley. The results of the comparison between wellfield parcels and control parcels throughout the valley indicate that the decreases and changes documented at Blackrock 94 are not occurring in isolation. (See page 15 of the County's Opening Brief.)

LADWP asserts that the County's analysis should have been restricted to data collected at control sites listed in Table 1.A of the Green Book. Table 1.A lists wellfield and control sites established as part of the program to project the soil-to-plant water balance for the well turn-on or turn-off groundwater management provisions of the LTWA. Data from these sites were not included in the County's analysis because; they are located many miles from Blackrock 94, most occur east of the Los Angeles Aqueduct, and all have entirely different vegetation, soils, grazing and fire history, and precipitation conditions than Blackrock 94. LADWP's position contradicts its assertion elsewhere that the Green Book requires that controls have similar conditions and similar scale (e.g. parcels compared to parcels, with similar precipitation and drought exposure, etc.).

With respect to an analysis of the Blackrock Vegetation and Wellfield Management Area instead of an analysis of Blackrock 94, it is clear that monitoring at sites and wells within Management Areas is required; however, the LTWA, the Green Book, and 1991 FEIR do not direct the Technical Group to base its analysis or a determination of significance on the relative percentage of the area impacted or on conditions within a wellfield management area. With regard to analysis on a parcel level, the 1991 FEIR Response to Comment C13-5 states,

> *The 1984-87 inventory was based on transect data done by LADWP personnel. As indicated in the Green Book, data gathered include the percent live cover and the percent composition for each species in a given parcel. Community names were then given to each parcel, parcels were subsequently assigned to a management category. Parcels would be constantly monitored for change through both field surveys and aerial photography as provided under the Green Book.*

As shown, there is no requirement that in determining whether a decrease or change in vegetation is significant, that vegetation change at a control parcel or in a wellfield management area be analyzed. Baseline vegetation conditions were established on a parcel by parcel basis; thus, vegetation decreases or changes from the baseline conditions is a valid indicator of whether a decrease or change is significant. The Technical Group must evaluate cases where impacts are

suspected, and in some cases this may indeed by at the management area scale, but there is no prescription that all such analyses must be done at that scale.

Criticism 5. The area of Blackrock 94 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.

Response 5. The 1991 EIR identifies numerous significant impacts to vegetation due to groundwater pumping. Several of the specific impacts identified are on a areal scale similar to that of parcel Blackrock 94.

Impact 10-11 identified 655 acres of vegetation die-off and mitigated for this by irrigating the affected area. Impact 10-12 identified approximately 300 acres of impacted vegetation due to pumping wells W385 and W386, and mitigated for the impact by revegetation, water spreading, and cessation of pumping. Impact 10-13 identified that groundwater pumping affected approximately 60 acres in the Symmes-Shepherd wellfield, with mitigation comprising revegetation and water spreading as necessary. Impact 10-14 identified that groundwater affected spring flow and vegetation at spring vents in an area less than 100 acres, and various off-site mitigations were undertaken. Impact 10-18 identified vegetation decrease and change on approximately 640 acres in Laws, which was mitigated by 140 acres of revegetation and 541 acres of irrigation.

These affects and mitigations documented in the 1991 EIR indicate that impacts to areas of vegetation of similar size to parcel Blackrock 94 were considered significant in the 1991 EIR and a variety of strategies and actions were implemented to mitigate for the impacts.

Representation of the acreage of Blackrock 94 as a fraction of the entire wellfield Management Area is not prescribed in the LTWA, Green Book, or 1991 FEIR. It is a contrivance by LADWP to support its argument that the impact at Blackrock 94, which is comparable in size to significant impacts previously identified in the 1991 EIR, is not significant.

CONCLUSION

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

The County's analysis was conducted according to the framework and prescriptions of the LTWA and Green Book for determining if a significant impact has occurred. The County obtained concurrence from LADWP and the Technical Group to prepare an analysis for Technical Group consideration and performed the analysis using data that had been long-accepted by the Technical Group for this purpose. LADWP has not refuted the findings presented by the County. The LTWA requires that significant impacts be mitigated; therefore, based upon the substantial evidence presented by the County, the mediation/arbitration panel should find that the Technical Group is required to prepare a mitigation plan according to the requirements of the LTWA.

LADWP's contentions that the County did not follow the rules, procedures, and protocols of the LTWA have no basis. Concerning measurability of the change, LADWP itself has acknowledged that a measurable vegetation change has occurred in Blackrock 94. LADWP has not presented evidence to the Technical Group or to the Standing Committee that is sufficient to contradict the credible and substantial evidence presented by the County concerning the questions of attributability and significance.

The Technical Group and the Standing Committee have not been able to resolve this issue. For the reasons presented in its Opening Brief and in this Response Brief, the County requests that the LADWP's procedural arguments be rejected and, based on the substantial evidence presented by the County, that the mediation/arbitration panel find that a significant effect has occurred in Blackrock 94, and that the Technical Group is required to develop a mitigation plan in compliance with LTWA Section IV.B and Green Book Section I.C.

LIST OF ATTACHMENTS

Attachments 1 through 19 are the attachments to Inyo County's Initial Brief

Attachment 20: Audio recording and transcript of October 18, 2010 Technical Group meeting, agenda item #7.

Attachment 21: Los Angeles City Council resolution C-83803

Attachment 22: Inyo County's response to LADWP Exhibit 9 (Martin and Honda) and Exhibit 10 (Jorat)

Attachment 23: E-mail concerning setting up meeting with LADWP consultant Dr. David Wester

Attachment 24: Inyo County Water Department report "Depth to Water Beneath Vegetation Reinventory Parcels," Robert Harrington and Chris Howard, June 15, 2000.

Attachment 25: Vegetation cover and composition results for permanent monitoring sites and parcels Blackrock 94 and Blackrock 99 through 2012.