SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF INYO

SIERRA CLUB and OWENS VALLEY COMMITTEE,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CALIFORNIA DEPARTMENT OF FISH AND GAME and CALIFORNIA STATE LANDS COMMISSION,

Real Parties in Interest and Cross-Complainants.

COUNTY OF INYO and DOES 51-100
Real Party in Interest

Case No. S1CVCV01-29768

(The Honorable Lee Cooper, Assigned)

**STIPULATION & ORDER**

**A. PURPOSE:**

The purpose of this Stipulation and Order is to resolve certain outstanding issues related to LADWP's compliance with the August 8, 2005 Order of this Court "*Order Re: Defendants' Violations of Court Orders*" (hereinafter "Court Order") pertaining to the Lower Owens River Project ("LORP"). A copy of the Court Order is attached as Exhibit "A." In so doing, this Stipulation and Order will also serve to establish certain data reporting requirements, provide criteria as to what constitutes a permanent baseflow of approximately 40 cubic feet per second ("cfs") in the Lower Owens River as required by Section II.C.1.b.i of the 1997 Memorandum of Understanding, and provide a mechanism for the enforcement of the provisions of this Stipulation and Order.

**B. THE PARTIES:**

The parties to this Stipulation and Order are: The City of Los Angeles acting by and through its Department of Water and Power ("LADWP'); the County of Inyo ("County"); State of California Department of Fish and Game ("DFG"); the State Lands Commission ("SLC"); the Owens Valley Committee ("OVC"); and the Sierra Club; all hereinafter collectively referred to as the Parties.

**C. BACKGROUND:**

In March 1997, the Parties entered into a Memorandum of Understanding ("MOU"). Among its provisions, the MOU required LADWP to implement the LORP. A copy of the MOU is attached as Exhibit "B." The LORP is compensatory mitigation for impacts related to LADWP's groundwater pumping in the Owens Valley from 1970 to 1990 that were difficult to quantify or mitigate directly. The LORP includes the restoration of flow in the portion of the Lower Owens River from which the water was diverted by LADWP in 1913. In June 2004, LADWP adopted a final environmental impact report that addressed the LORP (Final LORP EIR).

On September 26, 2003, the OVC and the Sierra Club filed a Second Amended and Supplemental Complaint for Declaratory Relief and Petition for Writ of Mandate ("Amended Complaint"). On December 3, 2004, DFG and SLC filed a Cross Complaint for Declaratory Relief and Petition for Writ of Mandate ("Cross Complaint"). Each of these actions alleged violations of the MOU and sought to enforce the provisions of the MOU.

On February 13, 2004, this Court entered an order to which the Parties had stipulated. By further stipulation of the Parties, on September 15, 2004, the February 13, 2004 order was amended by the Court ("Amended Stipulation and Order"). A copy of the Amended Stipulation and Order is attached as Exhibit "C." The purpose of the Amended Stipulation and Order was to resolve the issues raised in the Amended Complaint and the Cross Complaint.

On April 25, 2005, proceedings were commenced to hear motions that LADWP was in violation of the Amended Stipulation and Order. On June 24, 2005, this Court issued a written Statement of Decision that found that LADWP violated the Amended Stipulation and Order. The

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On April 25, 2005, proceedings were commenced to hear motions that LADWP was in violation of the Amended Stipulation and Order. On June 24, 2005, this Court issued a written Statement of Decision that found that LADWP violated the Amended Stipulation and Order. The

Court found that the imposition of immediate sanctions was necessary to force LADWP to meet its obligations under the Amended Stipulation and Order. The Court Order issued on August 8, 2005 imposed an Injunction against the use of the Second Los Angeles Aqueduct ("Injunction"). The Injunction is set forth in Section 1 of the Court Order; however, the Court Order stayed the Injunction so long as LADWP remained in compliance with several conditions ("Conditions"). The Conditions are set forth in Section 2 of the Court Order.

On February 27, 2007, LADWP moved the Court to vacate the Injunction and lift the Conditions. On March 12, 2007, this Court found that LADWP was not in compliance with all of the Conditions and denied LADWP's motion. In its March 12, 2007 Ruling, this Court strongly urged the Parties to meet and confer concerning a resolution of the issues identified in the March 12, 2007 Ruling.

**D. VACATION OF THE INJUNCTION AND THE LIFTING OF CONDITIONS:**

The Parties agree that the changes in the flow measuring stations addressed in the LORP EIR Addendum described below, together with the provisions of this Stipulation and Order, constitute an adequate substitute for compliance with the requirements of Section 2.E and Section 4 of the Court Order. This Stipulation and Order resolves all issues pertaining to LADWP's compliance with the Court Order. The Parties hereby agree that, upon entry of this Stipulation and Order as an order of the Court, the Injunction shall be vacated, and the Conditions shall be terminated and lifted.

**E. THE 40 CFS BASEFLOW CRITERIA:**

Upon the entry of this Stipulation and Order as an order of the Court, baseflows shall be deemed in compliance with this Stipulation and Order as long as each of the following conditions in the Lower Owens River exists:

1. A minimum flow of 40 cfs is released from the Intake at all times;

2. None of the 10 in-river flow measuring stations described in Section F below has a 15 day running average of less than 35 cfs;

3. The mean daily flow at each of the 10 in-river flow measuring stations must equal or exceed 40 cfs on at least 3 individual days per any continuous 15 day period, except that this

requirement shall not apply to the flow measuring stations at Reinhackle Springs and Lone Pine Narrow Gage Road between November 1 and April 30 of each runoff year;

4. The 15-day running average of the 10 in-river flow measuring stations is no less than 40 cfs.

In order to comply with the foregoing conditions, LADWP has the discretion and responsibility to augment flows as needed. Except as provided in Section I.4 ("Planned Events Resulting in an Inability to Comply"), at all times, LADWP will release a sufficient amount of water to the Lower Owens River to maintain the required baseflows.

The mean daily flow shall be the 24-hour mean of the flow data from midnight to midnight at each measuring station, or a current meter measurement if the automated gauge is not functioning. For the purpose of this Stipulation and Order, the 15-day running average is the mean of the mean daily flow for 15 consecutive days up to the date of calculation. Running averages shall be calculated daily, beginning on the 15th day after the entry of this Stipulation and Order as an order of the Court. Further, the Parties acknowledge that as temporary flow monitoring stations are taken out of service, the identified number of stations in the baseflow and monitoring/reporting criteria will be reduced accordingly. Commencing on the date that the Inyo County/Los Angeles Standing Committee ("Standing Committee") has designated 4 or more permanent flow measuring stations pursuant to Section F.2, compliance with the baseflow criteria will be based only on the designated permanent flow measuring stations.

**F. FLOW MEASURING STATIONS:**

**1. Modifications to the Configuration of the Flow Measuring Stations:**

The LORP EIR identified seventeen flow measuring stations. As constructed, there are sixteen flow measuring stations. For the reasons set forth in the "Flow Station Modification for the Lower Owens River Project, Addendum to the LORP Environmental Impact Report," ("LORP EIR Addendum") attached hereto as Exhibit "D" and incorporated by reference, six flow measuring stations that the LORP EIR identified as to be constructed in the river channel were not constructed. Instead, five of these stations were placed in ditches that convey water to augment flow in the river channel and one was eliminated. The ten in-river flow measuring

stations that have been constructed are: Intake (a permanent station), Owens River above Blackrock Ditch Return, Owens River East of Goose Lake, Owens River at 2 Culverts (formerly 5 Culverts), Owens River at Mazourka Canyon Road, Owens River at Manzanar Reward Road, Owens River at Reinhackle Springs, Owens River at Lone Pine Narrow Gage Road, Owens River at Keeler Bridge and the Pumpback Station. (For the purposes of flow criteria compliance, flow measurement at the Pumpback Station shall be considered an in-river station and shall be the sum of the outflow from the pumps' outlet pipe and releases to the Delta Habitat Area from the Langemann Gate and the overflow weir as described in the LORP EIR Addendum. Reporting of flows from the Pumpback Station shall include the three separate measurements from the outlet pipe, Langemann Gate and overflow weir along with the sum of those three flow measurements.) Six flow measuring stations for augmentation ditches are located at the Blackrock Ditch Return at Owens River, Goose Lake Return at Owens River, Billy Lake Return at Owens River, Locust Ditch Return at Owens River, George's Ditch Return at Owens River and the Alabama Gates Return.

**2. Temporary and Permanent Flow Measuring Stations:**

The MOU calls for at least 4 permanent flow monitoring stations; therefore, the Parties recognize that up to six of the 10 in-river flow measuring stations are temporary. Except as provided below, the temporary flow monitoring stations will be maintained and operated for at least 24 months after the entry of this Stipulation and Order as an order of the Court and after the 24 month period, until the Standing Committee designates the permanent flow measuring stations, as provided below.

As provided in Section II.C.1. of the MOU, the permanent flow measuring stations will be sited so that baseflows and seasonal habitat flows can be managed in each of the hydrologically varying sections of the river channel in order to meet the goals and objectives of the LORP. The Standing Committee shall notify all the Parties of the intended designations in advance of making final designations of the permanent flow measuring sites. In addition to designating the permanent sites, the Standing Committee may also designate 1 or more temporary flow measuring stations, which will continue to be monitored after the permanent stations have been

designated. The Standing Committee shall not make a final decision on the permanent flow measuring stations or on the temporary flow measuring stations that will continue to be monitored until the Parties have had at least 15 workdays to submit comments to the Standing Committee on the selection of the permanent stations. (As used in this Stipulation and Order, a workday is a day that is not a Saturday, Sunday or a legal LADWP holiday.) While the Parties shall be offered the opportunity to comment, the determination, consistent with the requirements set forth in the MOU, on the designation of the permanent flow measuring stations, and on the determination of which, if any, temporary flow measuring stations will continue to be monitored, shall rest with the Standing Committee; however, this provision does not affect Section II.C.1.b.ii of the MOU which requires the Standing Committee to consult with DFG prior to setting the amount of the seasonal habitat flow.

It is currently anticipated by LADWP that all 10 in-river flow measuring stations will have the capability of accurately measuring the full amount of seasonal habitat flows required by the MOU and by applicable permits. However, if it is determined by LADWP, with input from the County, that a flow measuring station is not capable of accurately measuring the first full seasonal habitat flow, LADWP will, with the approval, cooperation and financial participation of the County, modify the station to accurately measure the full seasonal habitat flow prior to the first seasonal habitat flow. If, because of permitting requirements or other reasons, a flow measuring station cannot be modified before the first seasonal habitat flow, or if during the first seasonal habitat flow it is determined by LADWP, with input from the County, that a flow measuring station is not capable of accurately measuring the full seasonal habitat flow, LADWP will, with the approval, cooperation and financial participation of the County, modify the station to accurately measure the full seasonal habitat flow prior to the next seasonal habitat flow.

If prior to the time that the permanent flow measuring stations are designated by the Standing Committee, but after the first seasonal habitat flow, a temporary flow measuring station is destroyed, damaged, becomes inoperable, or is incapable of measuring the seasonal habitat flow, the Standing Committee will determine whether or not the station will be repaired, replaced, or modified. The Standing Committee shall notify all the Parties of an intended decision to not

repair, replace or modify a temporary flow measuring station in advance of making final designations of the permanent flow measuring sites. The Standing Committee will not make a final decision on the matter until the Parties have had at least 15 workdays to submit comments on the proposed decision to not repair, replace, or modify a station.

Data from a temporary flow measuring station that the Standing Committee has determined will continue to be monitored after 4 or more permanent flow measuring stations have been designated, will be reported as provided in Sections G.2.a, b, and c; however, if the electronic measuring or radio equipment at such a temporary measuring station does not function properly for 24 hours or should the integrity of a flow measuring station be compromised, LADWP is not required to commence either current meter measurements or daily manual data collection at the affected station. Moreover, such temporary stations shall not be included in the calculation of a noncompliance payment pursuant to Sections H.2 and H.3. If such a temporary station is destroyed, damaged, becomes inoperable, is incapable of measuring the seasonal habitat flow, or if it appears that monitoring at the temporary station is no longer necessary, the Standing Committee will determine whether or not the station will be repaired, replaced, modified or discontinued.

## G. MONITORING AND REPORTING:

### 1. Monitoring Requirements:

Electronic measuring devices shall be used at all temporary and permanent flow measuring stations. In the event that electronic measuring or radio equipment does not function properly for 24 hours or should the integrity of a flow measuring station be compromised, LADWP will commence either current meter measurements or daily manual data collection at the affected station(s) as soon as practical, but not later than the second workday after discovery. The site(s) will be current metered daily until the problem is resolved. The frequency of current metering can be reduced if the flows at the flow measuring stations above and below the affected measuring station are considered stable by LADWP. LADWP will provide the rationale for this consideration to the other MOU parties.

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LADWP will perform routine current metering at all the in-river flow measuring sites (except the pumpback station) on at least a monthly basis to insure that the measuring devices are properly calibrated.

**2. Reporting Requirements:**

**a. Daily Data:**

Daily LORP flow reports showing mean daily flows and summary statistics (in-river station average and running average at each station) at all in-river flow measuring stations and all augmentation stations will be posted on the LADWP website at: http://www.ladwp.com/ladwp/cms/ladwp009121.jsp. The daily LORP flow report will cover a midnight to midnight period and will be posted on the website before midnight of the following workday. If a problem with equipment or another reason prevents the mean daily flows for any day from being posted on time, then this data will be posted on the website the first subsequent workday. If there are technical problems that prevent the posting, the parties will be notified of this problem by email. LORP daily summary statistics for the previous 2 months will be displayed on the website. Data suspected to be in error will be reported as an estimated value and will be appended with an "E" with an explanation at the bottom of the page for the estimated value.

**b. LORP Real Time Data:**

Within 2 years of the entry of this Stipulation and Order as an order of the Court, real time flows will be added and posted to the current LADWP real-time website at: http://www.ladwp.com/ladwp/aqueduct/showAqueductMap.ladwp?contentId=LADWP_AQUERTD_SCID for the Intake, Owens River at 2 Culverts, Owens River at Reinhackle Springs, Keeler Bridge and Pumpback Station flow measuring stations. Currently real time data typically has a 3-hour transmission and reporting lag time. Real time data will be posted on workdays, weekends and holidays. LADWP will implement the posting of the real time data as soon as possible within the required 2-year period. While it is LADWP's intent to add the real time data to the LADWP real-time website within 1 year of the entry of this Stipulation and Order as an order of the Court, if this cannot be accomplished within the 1-year period, LADWP will report on the status of the

posting. Once 4 or more permanent flow measuring stations have been designated by the Standing Committee, real time data will be posted only from the designated in-river permanent flow measuring stations and from any of the temporary flow measuring stations identified in this paragraph that the Standing Committee has designated for continued monitoring.

**c. Monthly Reports of Final Archived Data:**

Monthly data reports will be generated and provided to all the Parties by the last workday of each month unless all the Parties agree to another schedule. The monthly data reports will report data from the month ending approximately 60 days prior to the data report. The data will be provided to all the Parties on CD and posted to the website at: http://www.ladwp.com/ladwp/cms/ladwp009121.jsp. The website will retain data for the most recent 12 months. LADWP is planning to place the data, to be included in the monthly data reports, on a public http website where the Parties may download it. Once the data is placed on such a website, the data will no longer be provided to all the Parties on CD. The monthly report will be the official record for determining compliance with the flow criteria of this Stipulation and Order and the seasonal habitat flow requirements of the MOU.

The monthly reports will include final archived data for the flow measuring stations (both in-river and augmentation ditch stations), current meter measurements, stage data, mean daily flow values, and other routinely collected data, as well as a synopsis of events for the month. Monthly reports will identify data indicating possible noncompliance with the baseflow criteria set forth in Section E.

Final archived data is defined as the dataset that has been reviewed under quality assurance and calibration procedures ("QA procedures"). The final archived data will be provided at the sampling interval at which it was recorded. LADWP will provide a description of the QA procedures that it employs to review the data (and a description of any future changes to the procedures) to all the Parties.

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The synopsis of events will describe events that occurred during the month including current metering dates, adjustments to the flow meters, maintenance to flow measuring stations, any changes to the project that affect flows, and any other information that would be helpful to allow an accurate interpretation of the final archived data and other relevant data.

**d. Measurement of Outflow from the Delta:**

Section 2.10.2 of the Final LORP EIR provides that during the first year, outflow from the Delta will be recorded hourly and collected biweekly from continuous recorders at temporary gauging stations established where the vegetation ends in the channel of the lower west branch and lower east branch.

During the first year following the completion of the pump station, LADWP will post the outflow data from the two temporary gauging stations on the LADWP website at: http://www.ladwp.com/ladwp/cms/ladwp009121.jsp within 5 workdays following the biweekly collection of the data. If outflow data is collected after the first year, the data will be posted on the LADWP website within 5 workdays following the collection of the data.

**e. Changes in Web Sites:**

Should the address of any websites described in this Stipulation and Order be changed, LADWP will notify all the Parties of the new address within three workdays.

**f. Hydrologic Data for Other LORP Components:**

Within 210 days of the entry of this Stipulation and Order as an order of the Court, the Standing Committee will adopt a reporting program for hydrologic data for the Blackrock Waterfowl Area and Off-River Lakes and Ponds. The proposed reporting program will be provided to the parties for their comments at least 15 days before the Standing Committee considers adoption of the reporting program. Provision shall be made in the reporting programs for providing the data to the MOU parties.

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**H. NONCOMPLIANCE PAYMENTS:**

**1. Noncompliance Payments are Not In Lieu of Maintaining Baseflows or In Lieu of Other Remedies:**

The payments for noncompliance described below are not intended to allow payment in lieu of meeting the baseflow requirements described in Section E or meeting the monitoring and reporting requirements described in Section G, nor are such payments intended to supersede or waive any of the other remedies which may be available to the Parties, including a motion to enforce the requirements of this Stipulation and Order.

**2. Interim Noncompliance Payments Until the Time that the Decision on Permanent Stations Is Made:**

**a. Flow Requirements at Individnal Measuring Stations and Monitoring Requirements (Sections E.1, E.2, E.3, and G.1):**

Until such time as the Standing Committee has designated 4 or more permanent stations pursuant to Section F.2, for each station that is out of compliance with the flow requirements set forth in Sections E.1, E.2, E.3, or the monitoring requirements set forth in Section G.1, LADWP shall pay into the Trust Account described in Section H.4 the following amounts:

1) $500 per day for the first 3 days for each station that is out of compliance;
2) $1,000 per day for days 4 through 6 for each station that is out of compliance;
3) $1,250 per day for days 7 through 9 for each station that is out of compliance;
4) $1,500 per day for day 10 and onward for each station that is out of compliance.

Any payments made pursuant to Sections H.2.b (for noncompliance with the average river flow requirement of Section E.4 and the reporting requirements of Sections G.2.a through G.2.d) are in addition to any payments made pursuant to this section. Provided, however, that the cumulative total payments pursuant to this section (H.2.a) and Section H.2.b for all instances of noncompliance shall not exceed $5,000 per day.

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**b. Average River Flow Requirements and Reporting Requirements (Sections E.4 and G.2.a through G.2.d):**

Until such time that the Standing Committee has designated 4 or more permanent stations pursuant to Section F.2, in the event that LADWP is out of compliance with the average flow requirements set forth in Section E.4, or any reporting requirement set forth in sections G.2.a through G.2.d, it shall pay into the Trust Account described in Section H.4 the following amounts:

1) $500 per day for the first 3 days;
2) $1,000 per day for days 4 through 6;
3) $1,250 per day for days 7 through 9;
4) $1,500 per day for day 10 and onward.

Any payments made pursuant to Sections H.2.a (for noncompliance with the flow requirements of Sections E.1, E.2, E.3, or with the monitoring requirements of Section G.1) are in addition to any payments made pursuant to this section. Provided, however, that the cumulative total payments pursuant to this section (H.2.b) and Section H.2.a for all instances of noncompliance shall not exceed $5,000 per day. Additionally, any violation or simultaneous violations of Section E.4 and the reporting requirements set forth in section G.2.a through G.2.d shall only be considered as one violation for purposes of noncompliance payments under this section (H.2.b).

**3. Noncompliance Payments Commencing on the Date that the Standing Committee has Designated 4 or More Permanent Stations:**

**a. Flow Requirements at Individual Measuring Stations and Monitoring Requirements (Sections E.1, E.2, E.3, and G.1):**

Commencing on the date that the Standing Committee has designated 4 or more permanent stations pursuant to Section F.2, for each permanent station that is out of compliance with the flow requirements set forth in Sections E.1, E.2, E.3, or with the monitoring requirements set forth in Section G.1, LADWP shall pay into the Trust Account described in Section H.4 the following amounts:

1) $1,000 per day for the first 3 days for each station that is out of compliance;

2) $2,000 per day for days 4 through 6 for each station that is out of compliance;

3) $2,500 per day for days 7 through 9 for each station that is out of compliance;

4) $3,000 per day for day 10 and onward for each station that is out of compliance.

Any payments made pursuant to Sections H.3.b (for noncompliance with Sections E.4 and G.2.a through G.2.d) are in addition to any payments made pursuant to this section. Provided, however, that the cumulative total payments pursuant to this section (H.3.a) for noncompliance shall not exceed $5,000 per day.

**b. Average River Flow Requirements and Reporting Requirements (Sections E.4 and G.2.a through G.2.d)**

Commencing on the date that the Standing Committee has designated 4 or more permanent stations pursuant to Section F.2, in the event that LADWP is out of compliance with the average flow requirements set forth in Section E.4, as applicable to the permanent stations, or any reporting requirement set forth in sections G.2.a through G.2.d, as applicable to the permanent stations, it shall pay into the Trust Account described in Section H.4 the following amounts:

1) $1,000 per day for the first 3 days;

2) $2,000 per day for days 4 through 6;

3) $2,500 per day for days 7 through 9;

4) $3,000 per day for day 10 and onward.

Any payments made pursuant to Section H.3.a (for noncompliance with Sections E.1, E.2, E.3, or G.1) are in addition to any payments made pursuant to this section. Additionally, any violation or simultaneous violations of Section E.4 and the reporting requirements set forth in Sections G.2.a through G.2.d shall only be considered as one violation for purposes of noncompliance payments under this section (H.3.b). Provided, however, that the cumulative total payments pursuant to this section (H.3.b) and Section H.3.a for all instances of noncompliance shall not exceed $8,000 per day.

**4. Noncompliance Payments Payee:**

Section 2.D of the Court Order provides that LADWP will pay $5,000 per day into an escrow account to be established by LADWP and the County. Pursuant to an agreement dated September 16, 2005, LADWP and County agreed that the escrow account required by the Court Order would be established in the Inyo County Treasury as a trust account ("Trust Account"). Any noncompliance payments made pursuant to this Stipulation and Order shall be made into the Trust Account. The principal and interest in the Trust Account shall be used only for the purposes described in Section 2.D of the Court Order. With regard to the Trust Account, the County shall provide the Parties with a monthly accounting of funds received, an itemization of debits and a statement of the remaining balance.

**5. Inflation Adjustments:**

Beginning January 1, 2008, and continuing each year thereafter, the amount of each of the payment amounts described for non-compliance shall be adjusted upward or downward in accordance with the U.S. Department of Labor Los Angeles-Anaheim-Riverside All Urban Consumer Price Index or its successor. The County shall calculate the adjustment and notify the parties of the adjusted amount on an annual basis starting January 1, 2008.

**6. Waiver of Noncompliance Payment**

Within 30 calendar days after the release of Final Archived Data pursuant to Section G.2.c above that shows that the flows are not in compliance with the requirements of this Stipulation and Order, or within 30 calendar days of a failure to report monitoring data as required by Sections G.2.a, G.2.b, G.2.c, and G.2.d, LADWP may request a waiver of a noncompliance payment described in this Stipulation and Order. A waiver request shall be submitted in writing to the Parties. A failure by LADWP to request a waiver within the 30 calendar day period shall constitute a waiver of the right to seek a waiver. Each Party shall respond to LADWP's request in writing or via email within 30 calendar days. So long as LADWP's waiver request is in good faith and LADWP, using reasonable diligence and reasonable efforts, has repaired the damage, remedied the operational problem or provided the monitoring data in a reasonable and timely manner under the circumstances or has shown that LADWP will remedy the operational problem

using reasonable diligence and reasonable efforts in a reasonable and timely manner under the circumstances, the waiver request shall not be unreasonably denied. If a Party determines that it will not grant the waiver requested, that party shall specifically set forth the reasons in writing via email for its denial of the requested waiver. A failure by a Party to respond to a waiver request within the 30 calendar day period shall be deemed an approval of the requested waiver. In the event that one or more of the Parties has denied the waiver request, within 60 calendar days of submitting the written waiver request to the Parties, LADWP may apply to the Court for a waiver by way of a noticed motion. A failure by LADWP to request a waiver within the 60 calendar day period shall constitute a waiver of the right to seek a waiver from the Court.

**7. Timing of Noncompliance Payments:**

Any noncompliance payment required by this Stipulation and Order shall be made on whichever of the following dates occurs later in time: (a) not later than the 60th calendar day after the release of Final Archived Data pursuant to Section G.2.c. above that shows that the flows are not in compliance with the requirements of this Stipulation and Order; (b) not later than the 60th calendar day after LADWP waives its right to seek a waiver from the Court; or (c) not later than the 60th calendar day after a ruling by the Court that a waiver of a noncompliance payment should not be granted.

**8. Refund of Noncompliance Payments**

If, after the payment of a noncompliance payment, subsequent review by LADWP, utilizing quality assurance and calibration procedures, shows that the data upon which a noncompliance payment was based is incorrect, LADWP shall provide all Parties with the corrected data and an explanation of the quality assurance and calibration procedures that were utilized to correct the data. Under such circumstances, LADWP may request a refund of all or part of a noncompliance payment. A refund request shall be submitted in writing to the Parties. Each Party shall respond to LADWP's request in writing or via email within 30 calendar days. So long as LADWP's refund request is in good faith, the refund request shall not be unreasonably denied. If a Party determines that it will not grant the refund requested, that party shall specifically set forth the reasons in writing via email for its denial of the requested refund. A

failure by a Party to respond to a refund request within the 30 calendar day period shall be deemed an approval of the requested refund. In the event that one or more of the Parties has denied the refund request, within 60 calendar days of submitting the written refund request to the Parties, LADWP may apply to the Court for an order for a refund by way of a noticed motion. A failure by LADWP to request a refund from the Court within the 60 calendar day period shall constitute a waiver of the right to seek an order for a refund from the Court.

## I. EVENTS IMPACTING LADWP'S ABILITY TO COMPLY WITH THE 40 CFS BASEFLOW CRITERIA:

As recognized by the MOU, the goal of the LORP is in part, "the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy, functioning ecosystems in the other physical features of the LORP, for the benefit of biodiversity and Threatened and Endangered Species, while providing for the continuation of sustainable uses including recreation, livestock grazing, agriculture and other activities." The Parties recognize that implementation of flows to the Lower Owens River Project only commenced in late 2006. In all likelihood, events and conditions will be encountered in the management of LORP flows that cannot be predicted or accounted for in this Stipulation and Order. The Parties agree to cooperatively work in good faith towards addressing any such events or conditions which may impact LADWP'S ability to meet the baseflow criteria and monitoring and reporting requirements set forth in this Stipulation and Order.

### 1. Emergency Events Resulting in an Inability to Comply:

The Parties recognize emergency events may impact LADWP's ability to comply with the baseflow criteria established by this Stipulation and Order. In the event of the need for immediate emergency work necessary to protect life or property; or damage to the system due to a catastrophic emergency such as, without limitation, fire, flood, storm, earthquake, land subsidence, gradual earth movement or landslide; either of which interferes with LADWP being able to carry out the required monitoring or to maintain the baseflow criteria, LADWP shall notify via e-mail the Parties of such emergency event as soon as possible, but in no event more than 5 workdays after the emergency event, that one or more of the requirements cannot be met

due to the emergency work or damage. The notification shall set forth the nature of the emergency, the actions that LADWP is taking to remedy the situation, and how long it will take to remedy the situation. A failure of the electronic monitoring system for a gauging station shall not be considered an emergency unless daily current meter measurements are also precluded by the emergency. In the absence of a showing of good cause, a failure by LADWP to provide a notification within the required 5-workday period shall constitute a waiver of the right to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the emergency.

**2. Non-Emergency Events Resulting in an Inability to Comply:**

The Parties recognize that operational or other reasons, such as, without limitation, beaver dams and freezing, may impact LADWP's ability to comply with the flow criteria and/or monitoring criteria. In the event that LADWP is unable to comply with the baseflow or reporting criteria, LADWP shall notify the Parties within 5 workdays of its discovery of the situation or event, describe the actions that LADWP is taking to remedy the situation, and how long it will take to remedy the situation. In the absence of a showing of good cause, a failure by LADWP to provide a notification within the required 5-workday period shall constitute a waiver of the right to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the non-emergency event.

**3. Operational Problems of Monitoring/Reporting Equipment:**

The Parties acknowledge that monitoring and reporting criteria described in this Stipulation and Order rely heavily on computers and technology. The Parties recognize that issues may arise with hardware, software, servers, other technologies or equipment, which will impact LADWP's ability to comply with the monitoring and reporting requirements. In the event LADWP encounters events that will result in an inability to comply with the monitoring or reporting criteria, LADWP shall notify the Parties within 5 workdays of its discovery of the situation or the event, the actions that LADWP is taking to remedy the situation, and how long it will take to remedy the situation. In the absence of a showing of good cause, a failure by LADWP to provide a notification within the required 5-workday period shall constitute a waiver

of the right to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the non-emergency event.

**4. Planned Events Resulting in an Inability to Comply:**

Should LADWP plan an operational or maintenance activity, or should LADWP and the County plan to implement an adaptive management measure that would result in temporary noncompliance with the baseflow criteria in this Stipulation and Order, LADWP may seek an advance waiver of noncompliance payments from the other Parties. A waiver request shall be submitted in writing to the Parties. A failure to seek an advance waiver request shall not prevent the implementation of the planned activity or adaptive management measure or prevent LADWP from seeking a waiver pursuant to Section H.6. If an activity or adaptive management measure is implemented without first obtaining an advance waiver, LADWP shall notify the Parties within 5 workdays after commencement of the temporary noncompliance with the baseflow criteria in this Stipulation and Order. In the absence of a showing of good cause, a failure by LADWP to provide a notification within the required 5-workday period shall constitute a waiver of the right to seek a waiver of the obligation to make noncompliance payments that accrue as a result of the non-emergency event.

**J. FREEZE PROTECTION GROUNDWATER PUMPING DURING THE 2006-2007 RUNOFF YEAR:**

Section 4 of the Court Order recognizes the need for emergency groundwater pumping to prevent the freezing of the Los Angeles Aqueduct. The Court Order requires that the amount of any such emergency groundwater pumping shall be deducted from LADWP's groundwater pumping during the following year. During the 2006-2007 runoff year, LADWP pumped 2,116 acre-feet of groundwater for freeze protection. The pumping of this amount of groundwater for freeze protection caused LADWP's groundwater pumping for the year to exceed the annual groundwater pumping limit of 57,412 acre-feet imposed by the Court Order by 1,218 acre-feet. LADWP will deduct 1,218 acre-feet from its groundwater pumping from the Owens Valley during the 2007-2008 runoff year.

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**K. MODIFICATION OF 2007-2008 PUMPING PLAN:**

As required by Section 2.H of the Court Order, within 45 days of the entry of this Stipulation and Order as an order of this Court, LADWP shall submit to the Parties an updated version of all applicable sections of its 2007-2008 Operations Plan that covers the portion of the runoff year that remains after the entry of the order.

**L. ANNUAL LORP MEETING:**

Section 2.10.4 of the Final LORP EIR provides that:

> *The County and LADWP will prepare an annual report that includes data collected during the habitat and flow compliance monitoring, results of analysis and recommendations on the need for adaptive management actions. The annual report will be reviewed by the Inyo/Los Angeles Technical Group and will also be made available to the public. The Technical Group meetings are open to the public, and meeting agendas are provided to the public in advance of each meeting.*

Section 2.10.5 of the Final LORP EIR provides in pertinent part:

> *The Technical Group, Standing Committee and the governing boards of LADWP and the County will make the ultimate decision on implementing adaptive management actions after reviewing the annual report and any other relevant monitoring data.*

LADWP and the County will release to the public and to the representatives of the Parties identified in the MOU a draft of the annual report described in section 2.10.4 of the Final LORP EIR. The County and LADWP shall conduct a public meeting on the information contained in the draft report. The draft report will be released at least 15 calendar days in advance of the meeting. The public and the Parties will have the opportunity to offer comments on the draft report at the meeting and to submit written comments within a 15 calendar day period following the meeting. Following consideration of the comments submitted, the Technical Group will conduct the meeting described in Section 2.10.4 of the Final LORP EIR.

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For the first 7 years following the entry of this Stipulation and Order as an order of the Court, LADWP shall reimburse the Sierra Club and the OVC for the reasonable fees and expenses, up to a collective maximum of $4,000 for scientific/technical consultants to assist Sierra Club and OVC in connection with their participation in the annual meeting. After this initial period, during 4 of the next 8 years (years 8 through 15), LADWP shall reimburse the Sierra Club and the OVC for the reasonable fees and expenses, up to a collective maximum of $4,000 for scientific/technical consultants to assist Sierra Club and OVC in connection with their participation in the annual meeting. The Sierra Club and the OVC shall decide in which years such reimbursement is to be made by LADWP. Beginning January 1, 2008, and continuing each year thereafter, the amount of each of the reimbursements shall be adjusted upward or downward in accordance with the U.S. Department of Labor Los Angeles-Anaheim-Riverside All Urban Consumer Price Index or its successor.

**M. DOCUMENTATION OF TECHNICAL GROUP ACTIONS AND PROVISION OF STANDING COMMITTEE AGENDA MATERIALS:**

In addition to the requirement of Section III.G of the MOU that all Technical Group meetings shall be open to the public, as soon as a Technical Group meeting is scheduled, LADWP shall provide the representatives of the Parties identified in the MOU with notice of the meeting. If the meeting is subsequently cancelled or rescheduled, LADWP shall provide notice of the cancellation or rescheduling to the representatives of the Parties identified in the MOU. LADWP shall provide to the representatives of the Parties identified in the MOU proposed meeting agendas of upcoming Technical Group meetings at least 48 hours prior to a Technical Group meeting.

Within 5 workdays after a Technical Group meeting, LADWP shall provide to the representatives of the Parties identified in the MOU an audio recording of the Technical Group meeting. Additionally, within 5 workdays after the scheduled Technical Group meeting, LADWP shall post on its website its understanding of any final action taken by the Technical Group at the meeting with respect to any item on the meeting agenda that pertained to implementation of the LORP. The posting shall represent LADWP's understanding of the final action taken, and shall

not be binding on the County. The County does not have an obligation to respond to the posting and a non-response by the County to the posting shall not be considered to be an agreement with its content or waiver of any objections to the content of the posting.

The Parties have made a standing request under the California Public Records Act to be provided with copies of all agenda materials that are provided to the Standing Committee in advance of a Standing Committee meeting. Up to the close of business on the last workday prior to a Standing Committee meeting, LADWP will provide such materials via email to the representatives of the Parties identified in the MOU at the same time as such materials are provided to the Standing Committee. Any agenda materials provided to the Standing Committee after the close of business on the last workday prior to a Standing Committee meeting will be distributed to the public at the Standing Committee meeting and will be provided to the representatives of the Parties identified in the MOU via email within 10 workdays after the Standing Committee meeting.

**N. NOTICES:**

Except for any motions or proceedings filed with the Court, any notice required to be given by this Stipulation and Order including requests for waivers to the Parties and responses thereto shall be given by e-mail. It shall be the responsibility of each party to notify the other Parties if there is change of individuals to receive notice, or if there is a change in the e-mail address of the designated individuals. Except for recipients of notices identified in Sections L and M, the Parties hereby designate the following individuals as those to whom notice shall be given in accordance with this Stipulation and Order.

**LADWP:**

| | |
|---|---|
| Thomas Erb: | Thomas.Erb@ladwp.com |
| Gene Coufal: | Gene.Coufal@ladwp.com |
| Joseph Brajevich: | Joseph.Brajevich@ladwp.com |

/

/

/

| | |
|---|---|
| **County:** | |
| Inyo County Administrator, Ron Juliff: | rjuliff@qnet.com |
| Director, Inyo County Water Department Tom Brooks: | tbrooks@inyowater.org |
| Inyo County Counsel, Paul Bruce: | pbruce@inyocounty.us |
| **Sierra Club:** | |
| MOU Representative, Mark Bagley: | markbagley@qnet.com |
| Coordinating Attorney for Sierra Club: | aaronisherwood@sierraclub.org |
| Attorney for Sierra Club, Larry Silver | larrysilver@celproject.net |
| **OVC:** | |
| President, Carla Scheidlinger: | carla@agarian.org |
| Derrick Vocelka | dvocelka@cebridge.net |
| Attorney for OVC, Don Mooney: | dbmooney@dcn.org |
| **DFG:** | |
| Bruce Kinney, Deputy Regional Manager, Region 6: | bkinney@dfg.ca.gov |
| Steve Parmenter, Senior Biologist: | spar@dfg.ca.gov |
| Nancee Murray, Senior Legal Counsel: | nmurray@dfg.ca.gov |
| Marian Moe, Deputy Attorney General: | marian.moe@doj.ca.gov |
| **SLC:** | |
| Barbara Dugal, Chief Land Management Division: | dugalb@slc.ca.gov |
| Jack Rump, Chief Counsel: | rumpj@slc.ca.gov |
| Marian E. Moe, Deputy Attorney General: | marian.moe@doj.ca.gov |

**O. SPECIAL MASTER:**

As provided in the Order Re: Appointment of Special Master filed October 3, 2005, upon the entry of an order as provided in this Stipulation and Order, the service of the Special Master shall be terminated.

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**P. MODIFICATIONS:**

This Stipulation and Order may be modified or amended by written stipulation of the Parties and approval of the stipulation by the Court. The Parties recognize that as this project evolves modifications will likely become necessary. The Parties shall meet 24 months after the entering of this Stipulation and Order to evaluate the criteria set forth herein and to discuss any changes and modifications, including, but not limited to, the need for this Stipulation and Order to continue to require noncompliance payments. Nothing herein shall prevent a party from requesting a modification to the Stipulation and Order before the end of the 24-month period.

**Q. DURATION:**

This Stipulation and Order shall remain in effect until it is terminated by order of the Court.

**R. JURISDICTION AND ENFORCEMENT:**

The Court shall retain jurisdiction to enforce any of the terms of this Stipulation and Order and to grant or deny requests for waivers. A party to this Stipulation and Order may seek enforcement of this Stipulation and Order by filing and serving a noticed motion to set a hearing for an order to show cause why a remedy, sanctions, or other order proposed in the motion, or otherwise determined to be appropriate by the Court, should not be imposed. A party making a motion seeking to enforce this Stipulation and Order need not comply with the dispute resolution provisions set forth in Section VI of the MOU before making such a motion. This Court shall retain jurisdiction for the purpose of hearing and ruling on such motions and making and enforcing such further orders as justice may require.

**S. COUNTERPARTS**

This Stipulation and Order may be executed in counterparts by the Parties. Signature pages that have been executed by the Parties and submitted via facsimile may be attached to the Stipulation and Order that is submitted to the Court.

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Dated: July 7, 2007

LAW OFFICE OF DONALD B. MOONEY

By: Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

Dated: July , 2007

CALIFORNIA ENVIRONMENTAL
LAW PROJECT

By: Laurens H. Silver
Attorney for Plaintiff
Sierra Club

Dated: July , 2007

EDMUND G. BROWN JR.
Attorney General of the State of California

By: Marian E. Moe
Deputy Attorney General
Attorney for Real Parties in Interest
And Cross-Complaints California Department
of Fish and Game and California State Lands
Commission

Dated: July , 2007

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

By: Joseph A. Brajevich
Assistant General Counsel, Water and Power
Attorney for Defendants City of Los Angeles;
Los Angeles Department of Water and Power;
Board of Commissioners of the Department of
Water and Power

Dated: July , 2007

LAW OFFICE OF DONALD B. MOONEY

By: Donald B. Mooney
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Owens Valley Committee

Dated: July 6, 2007

CALIFORNIA ENVIRONMENTAL
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By: Laurens H. Silver
Attorney for Plaintiff
Sierra Club

Dated: July , 2007

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Attorney General of the State of California

By: Marian E. Moe
Deputy Attorney General
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And Cross-Complaints California Department
of Fish and Game and California State Lands
Commission

Dated: July , 2007

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Assistant General Counsel, Water and Power
Attorney for Defendants City of Los Angeles;
Los Angeles Department of Water and Power;
Board of Commissioners of the Department of
Water and Power

Dated: July , 2007

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By: Donald B. Mooney
Attorney for Plaintiff
Owens Valley Committee

Dated: July , 2007

CALIFORNIA ENVIRONMENTAL
LAW PROJECT

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Sierra Club

Dated: July 2, 2007

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By: Marian E. Moe
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And Cross-Complaints California Department
of Fish and Game and California State Lands
Commission

Dated: July , 2007

ROCKARD J. DELGADILLO
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By: Joseph A. Brajevich
Assistant General Counsel, Water and Power
Attorney for Defendants City of Los Angeles;
Los Angeles Department of Water and Power;
Board of Commissioners of the Department of
Water and Power

Dated: July , 2007

LAW OFFICE OF DONALD B. MOONEY

By: Donald B. Mooney
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Owens Valley Committee

Dated: July , 2007

CALIFORNIA ENVIRONMENTAL
LAW PROJECT

By: Laurens H. Silver
Attorney for Plaintiff
Sierra Club

Dated: July , 2007

EDMUND G. BROWN JR.
Attorney General of the State of California

By: Marian E. Moe
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Attorney for Real Parties in Interest
And Cross-Complaints California Department
of Fish and Game and California State Lands
Commission

Dated: July 1, 2007

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

By: Joseph A. Brajevich
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Attorney for Defendants City of Los Angeles;
Los Angeles Department of Water and Power;
Board of Commissioners of the Department of
Water and Power

Dated: July 3, 2007

County of Inyo County Counsel

Paul N. Bruce

By: Paul N. Bruce
Counsel for Real Party in Interest
County of Inyo

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF INYO

SIERRA CLUB and OWENS VALLEY COMMITTEE,

Plaintiffs,

vs.

CITY OF LOS ANGELES, et al.,

Defendants.

CALIFORNIA DEPARTMENT OF FISH AND GAME and CALIFORNIA STATE LANDS COMMISSION,

Real Parties in Interest and Cross-Complainants.

COUNTY OF INYO and DOES 51-100
Real Party in Interest

Case No. S1CVCV01-29768

[The Honorable Lee Cooper, Assigned]

**ORDER**

Good cause appearing therefore, it is hereby ordered that the above Stipulation is approved and is hereby an order of this Court.

Dated: July 4, 2007

The Honorable Lee E. Cooper
Judge of the Superior Court

**EXHIBITS TO STIPULATION AND ORDER FILED JULY 11, 2007**

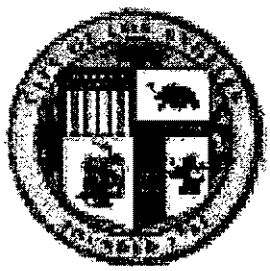
| | |
|---|---|
| EXHIBIT A: | AUGUST 8, 2005 COURT ORDER |
| EXHIBIT B: | 1997 MOU |
| EXHIBIT C: | SEPTEMBER 15, 2004 AMENDED STIPULATION AND ORDER |
| EXHIBIT D: | ADDENDUM TO FINAL LORP EIR DATED JULY 2007 |

# Flow Station Modification for the Lower Owens River Project

## Addendum to the Environmental Impact Report
## (SCH #2000011075, Certified July 20, 2004)

Los Angeles Department of Water and Power
Water Resources

July 2007



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## PROJECT LOCATION

The Lower Owens River Project ("LORP") is located in Inyo County, at the southern end of Owens Valley and eastern toe of the Sierra Nevada. The project site is located approximately 5 miles south of Tinemaha Reservoir and extends to the Owens River confluence with Owens Dry Lake, east of Highway 395 (Figure 1).

## HISTORY OF LORP AND FLOW MEASURING STATIONS

The Lower Owens River Rewatering Enhancement/Mitigation Project was initiated in 1986 by LADWP and Inyo County. The project was one of twenty-five Enhancement/Mitigation Projects jointly implemented by the two agencies between 1984 and 1990. Under the project, up to 18,000 acre-feet per year was to be released from the Blackrock spillgate to maintain a continuous flow in the Lower Owens River from the Blackrock area to the Owens River Delta. The objective of the project was to improve habitat for waterfowl, shorebirds, and fish in the river corridor and at the Delta. In addition, water was to be supplied to the project through various spillgates along the Aqueduct to support the following lakes: Upper and Lower Twin Lakes, Goose Lake, Thibaut Ponds, and Billy Lake. As stated in paragraph 3 on page 4-3 of the 2004 Final EIR for the LORP, the Lower Owens River Rewatering Enhancement/Mitigation Project was replaced by the LORP.

The original scope of the LORP was described in the 1991 Inyo County/Los Angeles Long Term Water Agreement and in the 1991 EIR that addressed the Water Agreement. The scope of the LORP was expanded and further modified by the following documents:

- 1997 MOU
- 2002 Ecosystem Management Plan for the Lower Owens River Project (LORP Plan) prepared by Ecosystem Sciences, Inc.
- 2004 FEIR for the LORP
- 2006 Final Supplemental EIR

The first document to make reference to flow measuring stations for the LORP is the 1997 MOU which specifies in Section II Lower Owens River Project C.1.c the following as it relates to flow measuring stations in the river.

> *Appropriately placed gaging stations in sufficient numbers (to include at least 4 stations) to measure and manage the flow in the river channel will be established as identified in the LORP Plan. These stations will be sited so that flow can be managed in each of the hydrologically varying sections of the river channel in order to meet the goals and objectives of the LORP.*

The LORP Plan referenced in the 1997 MOU was prepared by Ecosystem Sciences. It was completed in 2002 and is referred to as the Ecosystem Management Plan for the Lower Owens River Project. This document makes reference to the flow measuring stations in Chapter 2 Action Item 1-2 as follows:

*Action 1-2: Installation of temporary gauges and water quality sampling stations in the following locations throughout the river:*

*Permanent gauging capabilities below the Intake*
*Above Blackrock Ditch Return*
*Below Blackrock Ditch Return*
*East of Goose Lake*
*Goose Lake Return*
*Five Culverts*
*Below Billy Lake Return*
*Mazourka Canyon Road*
*Below Locust Return*
*Manzanar Reward Road*
*Below George's Return*
*Reinhackle Springs*
*Below Alabama Gates Return*
*Lone Pine Ponds*
*Lone Pine Narrow Gage Road*
*Keeler Bridge*
*Above Pumpback Station*
*Below Pumpback Station*

The project analyzed in the 2004 LORP FEIR involves restoring a water flow of approximately 40 cfs throughout approximately 62 miles of the historic Owens River channel that was dried up when the Los Angeles Aqueduct was constructed. As part of the project, it was identified that there would be several flow measuring stations located both in the rewatered river channel and on tributary ditches to the river. Chapter 2 of the LORP FEIR entitled Project Description (Proposed Action) provides a description of the proposed locations of flow and water quality monitoring stations that were proposed to be located in the river or in tributary ditches to the river. This information is provided in Section 2.3.5.2 of the LORP FEIR on page 2-16 in Table 2-6 (see below).

## TABLE 2-6 (LORP FEIR)

## June 2004

## FLOW AND WATER QUALITY MONITORING STATIONS

| Station (all temporary except for the River Intake, Keeler Bridge, and the Pump Station) | Distance from River Intake (miles) | Monitoring | |
|---|---|---|---|
| | | Water Quality | Flows |
| Below River Intake (permanent station) | 0 | | X |
| 1. Above Blackrock Ditch Return | 5.6 | | X |
| 2. Below Blackrock Ditch Return | 5.7 | | X |
| 3. East of Goose Lake | 12.1 | | X |
| 4. Goose Lake Return | 15.1 | | X |
| 5. 5 Culverts | 17.3 | | X |
| 6. Below Billy Lake Return* | 23.6 | | X |
| 7. Mazourka Canyon Road* | 24.1 | X | X |
| 8. Below Locust Ditch Return* | 30.7 | | X |
| 9. Manzanar Reward Road* | 32.9 | X | X |
| 10. Below Georges Ditch Return* | 36.9 | | X |
| 11. Reinhackle Springs* | 39.2 | X | X |
| 12. Below Alabama Gates Return* | 44.2 | | X |
| 13. Lone Pine Narrow Gage Road* | 50.7 | | X |
| 14. Keeler Bridge* (permanent station) | 56.4 | X | X |
| 15. Above pump station* | 61.0 | | X |
| Pump station* (permanent station) | 61.7 | | X |

*Stations in the currently wetted reach

**Currently Proposed Project Modifications**

Upon a field evaluation of the proposed flow measuring locations, conducted prior to construction, by representatives of Ecosystem Science and LADWP staff, it was determined that several of the temporary flow monitoring sites could be relocated to improve flow measurements, reduce vulnerability to damage by high in-river flows, or reduce the environmental impacts from their construction. In the 2004 FEIR, flow measurements were in most cases contemplated in the river below the confluence of the tributaries. It was determined that in order to maintain a more consistent flow of 40 cfs throughout the river it would be beneficial to measure in river flows at a distance further away form the tributary/augmentation point. It was also determined that measuring the amount of water being augmented by the tributary would be of comparable value for river flow management as in river stations and would have fewer environmental impacts from the construction because most of the tributary return stations already existed.

The preferred approach is to utilize a measuring station in the river with one in the return ditch (or tributary). This approach provides equivalent information as the layout provided in the FEIR:

- If the in-river station is immediately above the confluence, then the flow below the confluence is the sum of the in-river station and the return ditch flows.

- If the in-river station is below the confluence, then the minimum amount of flow in the river reaching the confluence is the in-river station less the contribution from the return ditch.

In general, the benefits of this approach are:

- Reduced environmental impacts: The in-river stations are larger and must be constructed for the high-volume seasonal habitat flows. Reducing the number of in-river stations reduces the environmental impact caused by construction. In addition, many of the return ditch stations are pre-existing and, therefore, do not pose an environmental impact.

- Improved reliability: The measuring stations in the return ditches are not subject to the seasonal habitat flows, making them less likely to be damaged.

- Greater data integrity: The in-river stations are more subject than tributary stations to silting-up, washouts, channel collapses above or below the station, etc.., particularly during the habitat flows. These types of conditions will affect the calibration and, therefore, the integrity of the data. Moving stations into the return ditches effectively shields those measuring stations from these effects.

With the exception of elimination of the monitoring station above the pump back station (number 15 on Table 2-6 of the LORP FEIR), the rationale for the relocation of the flow measuring stations was presented to the Inyo County Water Department by LADWP at the May 1, 2006 Inyo/Los Angeles Technical Meeting. As a result of the information provided, the Inyo/Los Angeles Technical Group agreed to the relocation of the flow monitoring stations as provided in Revised Table 2-6 and shown in Figure 2, subject to compliance with CEQA. The Technical Group did not consider the elimination of the monitoring station above the pumpback station; the elimination of

this station is included in the detailed rationale for the modifications to the flow measurement stations provided on pages 6 through 11 of this addendum.

## REVISED TABLE 2-6 FLOW AND WATER QUALITY MONITORING STATIONS

| Station (all temporary except for the River Intake) | Distance from River Intake Location (miles) | Monitoring | |
|---|---|---|---|
| | | Water Quality | Flows |
| Intake Release Strueture (permanent station) | 0 | | X |
| 1. Above Blackrock Ditch Return | 5.6 | | X |
| 2. Blackrock Ditch Return (40 ft from river) | 5.65 | | X |
| 3. East of Goose Lake | 12.1 | | X |
| 4. Goose Lake Return (300 ft. from river) | 13.0 | | X |
| 5. 5 Culverts (Now 2 Culverts) | 17.3 | | X |
| 6. Billy Lake Return (2500 ft from river) | 23.6 | | X |
| 7. Mazourka Canyon Road | 24.1 | X | X |
| 8. Loeust Ditch Return (200 ft. from river) | 30.6 | | X |
| 9. Manzanar Reward Road | 32.9 | X | X |
| 10. George's Diteh Return* (100 ft. from river) | 36.8 | | X |
| 11. Reinhackle Springs | 39.2 | X | X |
| 12. Alabama Gates Return (400 from river) | 44.0 | | X |
| 13. Lone Pine Narrow Gage Road | 50.7 | | X |
| 14. Keeler Bridge | 56.4 | X | X |
| 15. Pump Station<br>a) Outlet Pipe<br>b) Langemann Gate (Release to the Owens Delta Habitat)<br>c) Overflow weir (Release to the Owens Delta Habitat) | 61.7 | | X |

**Rationale for Proposed Changes in Locations of Flow Measuring Stations**

The following is a discussion on the rationale for locating the temporary flow measuring stations selected for the LORP as identified in the revised Table 2-6 above. Figure 2 shows the location of measuring stations as constructed and measuring stations relocated. In the fall of 2005 an on-site inspection of each of the proposed monitoring sites was conducted by Mark Hill of Ecosystem Sciences, Steve Keef, Chief Hydrographer LADWP, and Randy Jackson hydrologist with ICWD. The purpose of this on-site inspection was to discuss the criteria listed below and review first hand the best location for each monitoring site. The locations that were proposed in the LORP FEIR were based on observations from the flow study performed in 1993 which provided insight into the water losses and gains in reaches of the river from the Intake to Keeler Bridge, albeit under non-equilibrium conditions.

The flow monitoring sites were evaluated based on five primary factors: 1) How much would data collected from the site contribute to determining the losing and gaining reaches of the river and ultimately contribute to the siting of the permanent flow measuring stations; 2) The hydraulics of the site and whether a station could be installed that would provide reliable values; 3) The stability of the site to the higher habitat flows; 4) The maintenance required at the site to maintain its functionality; and 5) The degree amount of environmental impact to the area where the station would be installed.

**Intake Release Structure (permanent station):** This location is part of the release structure and is identified as a permanent flow measuring location. Releases will normally be maintained and controlled by the use of an automated gate at this structure.

**1. Owens River Above Blackrock Return**: This site is located approximately 5.6 river miles below the Aqueduct Intake structure. Physical characteristics of the river channel in this area dictated the location for this measuring station upstream of the Blackrock Ditch Return to Owens River to allow for proper measurement. The site was selected for its steep high banks and straight channel which will confine the flows of 40 cfs while maintaining a depth of water more than the 1.2 feet required for proper operation of the area velocity meter which is used to measure flows. Consideration of the 200 cfs seasonal habitat flows and how the site would be affected were taken into account. It is important that the habitat flow pass without requiring extensive amounts of work to restore the integrity of the measuring station. The placement of the station at the location was determined to have the fewest impacts to the adjacent area during construction and has existing access for long-term maintenance.

**2. Blackrock Ditch Return to Owens River:** This measuring structure is being installed in lieu of the **Owens River Below Blackrock Return** and is located in the return ditch approximately 40 feet above the confluence with the river. This station will measure the flow being augmented to the river at this location. The return functions as an augmentation point for the river and will be monitored and used to determine the amount of augmentation that will be required to maintain approximately 40 cfs in the river reaches at and below this point.

**Owens River Below Blackrock Return:** This station was originally identified in Table 2-6 and it was planned to place this station immediately below the Blackrock return ditch in the river. However upon field review it was determined that a measuring station below the augmentation point was of little or no value if the flow of water being augmented was measured. This was based on the fact that the flow at this location could be calculated by simply summing the flows recorded at **Owens River Above Blackrock Return Station** and the **Blackrock Ditch Return to Owens River Station.** In effect, this station was relocated to the **Blackrock Ditch Return to Owens River** Flows within the 40 cfs range are required to be maintained throughout the river reaches below the Blackrock augmentation point to the next augmentation point **Billy Lake Return** and the flow measuring station furthest from the Blackrock augmentation point (Five Culverts) which is approximately 11.5 river miles downstream of this point. As an example, if the flows in the river upstream of the Blackrock Return indicated 37 cfs, it could require as much as 10 cfs augmentation at Blackrock to achieve the flows within the acceptable range of approximately 40 cfs in the Owens River at the Five Culverts station below this site considering there are no augmentation points between these areas.

**3. East of Goose Lake:** There is no change in location of this measuring device. This station is located approximately 6.4 river miles downstream of Blackrock and is the first in-river flow measuring point below Blackrock. This site was selected based on the physical characteristics of the river channel in this area. The site has steep high banks and a straight channel which will confine the flows of approximately 40 cfs while maintaining a depth of water more than the 1.2 feet required for proper operation of the area velocity meter which will be used to measure flows. Consideration of how the 200 cfs habitat flows might affect the site was taken into account. It is important that the habitat flow pass without requiring extensive amounts of work to restore the integrity of the measuring capability. The placement of the station at this location has the fewest impacts to the adjacent area during construction and allows access for long-term maintenance.

**4. Goose Lake Return:** This site is located approximately 2.5 river miles downstream of the East of Goose Lake Station. This station is located in the return from Goose Lake and is approximately 300 feet above the confluence with the river. This site will have minimal flow returning to the river and will not be used as an augmentation point to the river.

**5. Owens River at Five Culverts:** This station is located approximately 5.1 river miles downstream of Owens River East of Goose Lake and is the furthest in-river measuring station from the augmentation point at Blackrock. This site was selected because of the culverts that are required at this location. The culverts are a permanent physical feature in the river channel and allow for the placement of area velocity meters inside them. This is a predisturbed area that will result in the least amount of impacts from installation and long-term maintenance.

**6. Billy Lake Return to Owens River:** This site will be monitored in lieu of the **Owens River Below Billy Lake Return** site. This station is an already existing flow measuring station located approximately 6.3 river miles below **Owens River at Five Culverts Station.** This measuring station is located in the return ditch approximately 2,500 feet above the confluence with the river. The Billy Lake return ditch functions as the next augmentation point for the river below Blackrock. Information from this station will be monitored and used to determine the amount of augmentation required to maintain flows in the approximate 40 cfs range in the reaches below this point.

**Owens River Below Billy Lake Return**: This flow measuring station was not built. This decision was based on the field evaluation of this site and the close proximity of the downstream **Mazourka Canyon Rd. Station** flow measuring site. It was determined that a measuring station in the river below the Billy Lake return augmentation point was redundant and had little value when another flow measuring station would be installed less than 0.5 miles downstream of this point at **Mazourka Canyon Rd.** In effect, this station was relocated to the **Billy Lake Return to Owens River.**

**7. Owens River at Mazourka Canyon Road:** This station was constructed at the location identified in the 2004 FEIR. This station is located approximately 6.8 river miles below Owens River at Five Culverts and approximately 0.5 miles below Billy Lake Return which serves as an augmentation point. This site meets the criteria needed to obtain good flow measurements utilizing area velocity meters installed in the culverts under the roadway. Again the culverts are in a predisturbed area that will result in the least amount of impacts from installation and long-term maintenance. This site is also the first water quality measuring site identified in the river.

**8. Locust Ditch Return to Owens River**: This site will be monitored in lieu of the **Owens River Below Locust Ditch Return** site. This station is an already existing flow measuring station located approximately 6.6 river miles below Mazourka Canyon Road, and approximately 200 feet above the confluence with the river. The return functions as an augmentation point for the river and will be monitored and used as a guide to determine the amount of augmentation required to maintain flows in the approximate 40 cfs range in the reaches below this point.

**Owens River Below Locust Ditch Return:** This flow measuring station was not constructed. Based on the field evaluation of this site it was determined that a measuring station in the river below this augmentation point had little value when the information it would provide was compared to 1) the impacts and cost to place a new road and measuring station in a wetted reach containing riparian vegetation; and 2) maintenance of the station that from a flow management perspective offered little if any value. This decision was also based on the fact that a measuring station would be installed less than 2 miles downstream of this point at Manzanar Reward Rd. Again the need to maintain flows in the approximate 40 cfs range at river gaging stations below this augmentation point diminish the value of this station. In effect, this station was relocated to **Locust Ditch Return to Owens River.**

**9. Owens River at Manzanar Reward Road:** This station was constructed at the location identified in the 2004 FEIR. This station is located approximately 8.8 river miles below Owens River at Mazourka Canyon Road and 2 miles below Locust Ditch Return which serves as an augmentation point. This site meets the criteria needed to obtain good measurements utilizing area velocity meters installed in the culverts under the roadway. Again the culverts are in a predisturbed area that will result in the least amount of impacts from the installation and the long-term maintenance. This is the second water quality measuring site.

**10. Georges Ditch Return to Owens River**: This site will be monitored in lieu of the **Owens River Below Georges Ditch Return** site. This station is an already existing flow measuring station located approximately 4.0 river miles below **Owens River at Manzanar Reward Road**. This measuring station is located in the return ditch approximately 100 feet above the confluence with the river. The return functions as an augmentation point for the river and will be monitored and used as a guide to determine the amount of augmentation required to maintain flows in the approximate 40 cfs range in the reaches below this point.

**Owens River Below Georges Ditch Return**: This flow measuring station was not constructed. Based on the field evaluation of this site it was determined that a measuring station in the river below this augmentation point had little value when the information it would provide was compared to 1) the impacts and cost to place a new road and measuring station in a non-confined wetted reach containing riparian vegetation; and 2) maintenance of the station that from a flow management perspective offered little if any value. This decision also considered the fact that a measuring station would be installed approximately 2.0 miles downstream of this point at Reinhackle Springs. In effect, this station was relocated to **Georges Ditch Return to Owens River.**

**11. Owens River at Reinhackle Springs**: This station was constructed at the location identified in the 2004 FEIR. This station is located approximately 6.3 river miles below Owens River at

Manzanar Reward Road and 2.0 river miles downstream of Georges Ditch Return to Owens River. This site was selected based on the physical characteristics of the river channel in this area. The site has steep high banks and a straight channel which will confine the flows of approximately 40 cfs while maintaining a depth of water more than the 1.2 feet required for proper operation of the area velocity meter which will be used to measure flows. Consideration was given to how the site would be affected by the 200 cfs flushing flows. It was important that the flushing flow pass without requiring extensive amounts of work to restore the integrity of the measuring station. The placement of the station at this location has the fewest impacts to the adjacent area during construction and has existing access for long-term maintenance. Adjacent river reaches are not suitable for construction of a flow measuring station because they are unconfined which would prevent accurate measurements. In addition construction of a measuring station in an unconfined area would require construction of a new access road. This is the third location where water quality sampling will occur.

**12. Alabama Gates Return to Owens River:** This site will be monitored in lieu of the **Owens River Below Alabama Gates** site. This station is located approximately 1.4 river miles below Owens River at Reinhackle Springs and is 400 feet above the confluence with the river. The return functions as an augmentation point for the river and will be monitored and used to determine the amount of augmentation required to maintain flows with in the approximate 40 cfs range in the reaches below this point. Currently the gates that release flow from the aqueduct have been individually rated. In order to determine flow rates, gate position and depth of water are required. The depth is monitored electronically and gate position will be done manually. In the future, it is anticipated that an existing pipe siphon from the aqueduct may be used to augment the 40 cfs flows. The flows in the pipe will be metered. During the first seasonal habitat flow the existing gates on the structure will be used to measure the augmentation to the seasonal habitat flow. As this is the last augmentation point to the river, releases from here will be used to maintain flows in the range of approximately 40 cfs flow down to the pumpback station.

**Owens River Below Alabama Gates:** This flow measuring station was not constructed. Based on the field evaluation of potential locations for this measuring station it was determined that a measuring station in the river below this augmentation point would have to be installed considerably down stream of the augmentation point. This is due to the physical characteristics of the river channel in this area (extremely low gradient and no defined channel or confinement) and the impacts associated with maintaining the station and access to it. This in combination with the fact that there is no augmentation point to the river below the Alabama Gates led to the more logical approach. It was determined that the environmental impacts associated with its installation, and the costs of installation and future monitoring and maintenance, outweighed the value of the information that this monitoring station would provide. In effect, this station was relocated to **Alabama Gates Return to Owens River.**

**13. Owens River at Lone Pine Station Road:** This station was constructed at the location identified in the 2004 FEIR. This station is located approximately 11.5 river miles below **Owens River at Reinhackle Springs** and 10.1 river miles downstream of **Alabama Gates Return to Owens River** which serves as an augmentation point. This site meets the criteria needed to obtain good measurements utilizing area velocity meters installed in the culverts under the roadway. Again the culverts are in a disturbed area that will result in the least amount of impacts from the installation and long-term maintenance.

**14. Owens River at Keeler Bridge:** This station was constructed at the location identified in the 2004 FEIR. This station is located approximately 5.7 river miles below **Owens River at Lone Pine Station Road** and 15 river miles downstream of **Alabama Gates Return to Owens River** which serves as an augmentation point. The station will be reconfigured to allow measurement of approximately 40 cfs utilizing an area velocity meter and safely pass the seasonal habitat flows. This is the fourth location where water quality samples will be measured.

**Above Pump Station:** This station has been eliminated as part of the LORP FEIR addendum. The LORP FEIR in Section 2.3.5.2, page 2-16, Table 2-6, refers to flow measuring Station 15, "Above pump station". The intent of this station was to document the flow in the river prior to entering the pump station to insure approximately 40 cfs was achieved at that point. The elimination of this station was based on the following:

1) The reach between the Keeler station and the pump back station has little confinement and the environmental damage that would be needed to place such a facility would be significant.
2) The original location of this measuring station was 0.7 miles upstream of the pump station facility. The forebay for the pump station creates a backwater effect for a significant distance upstream in the river. This backwater effect would swamp the station, and compromise the flow measurements.
3) The last augmentation point to the river is Alabama Gates. Flow deficiencies at the Keeler station would drive augmentation needs from this point.
4) If there is ~ 40 cfs at both Keeler Bridge and at the pump station location then it is reasonable to conclude that a flow of ~40cfs exists between the two sites.
5) It was determined that a measuring station immediately above the pump station location was of little or no value if the flow of water at the three measuring stations at the pump station location were measured (see discussion under "15 Pump Station" below) Measurements derived from the pump station will functionally replace this station. The average flow at this location could be calculated by simply summing the flows of the three measuring stations since the storage change in the pump station forebay is net zero over time (see discussion under "15 Pump Station" below).

Based on the above it was concluded that the Keeler Bridge and Pump Station flow measurements would accurately represent the amount of flow in this section of the river and that there was no need to construct this station considering the value of the information that would be obtained relative to the impacts associated with constructing and maintaining the station. In effect this station was relocated to the Pump Station location and its related three measuring stations.

**15. Pump Station:** The design of the pump station allows for an accurate determination of flows reaching the pump station. This is accomplished by conducting three separate measurements: 1) the flow of water that is pumped through the pump station discharge pipe is measured continually with an ultrasonic meter, 2) the water released to the Owens Lake Delta (below the pump station) is controlled and measured by a Langemann automated gate which is located on the south side of the pump station structure, and 3) a weir located on the spillway of the pump station structure will measure flow when pond elevations exceed 3589.00 ft. The combination of these three measurements yields the average amount of water in the river that reaches the pump station forebay. For example, if 44 cfs is measured in the pump station discharge pipe, the Langemann automated gate indicates a flow of 6 cfs is released to the Delta, and spill over the weir is 1 cfs, a resulting flow of 51 cfs would be reaching the pump station. The instantaneous amount of water reaching the pump station forebay may differ slightly because of increasing and decreasing water storage. However because of the small forebay elevation operating range (+/- 0.5 feet) the change in storage is estimated to be less than 1 acre-foot or only about 1.0% of the water reaching the pump station. The forebay elevation will cycle from maximum to minimum water storage several times each day resulting in essentially no net change in storage on any given day.

## IMPACT ANALYSIS

### Summary of Impacts iu 2004 FEIR

Because of the locations and temporary nature of the proposed flow measuring stations it was determined that there would be minimal environmental impact associated with the installation and maintenance of the temporary flow measurement stations.

### Analysis of Impacts from the Currently Proposed Project Modifications

The field review of the proposed locations of the flow measuring station locations demonstrated that there would be environmental impacts associated with the installation and maintenance of the 5 relocated stations and the one eliminated station. The analysis of the modifications:

- Based on the Spring 2006 field review as described above, it was determined that the value of the flow information that would be obtained from these 6 stations was of minimal value as previously discussed in the rationale section. In fact, the new monitoring network was considered to be superior to the original design because it will be better able to handle real-world conditions. Therefore, no additional modifications or mitigation are needed to maintain data integrity.

- The relocation of 5 measuring stations from the river channel to tributaries to the river reduced the environmental impacts of the project.
    - One station, Blackrock Return, is a significantly smaller structure and has significantly reduced construction impacts as compared to a station located in the river.

  - The remaining four are pre-existing stations, and the use of these stations avoids construction impacts altogether.
  - The relocation of 5 stations from the river channel to stations located in tributaries to the river, has caused no significant environmental impacts and, thus, no new mitigation measures have been implemented.

- The elimination of the Above Pumpack station will avoid environmental impacts without compromising the ability to adequately monitor the river; therefore, no additional mitigation measures are needed.

The combination of in-river and river tributary measuring stations allows LADWP to monitor both the required flows in the river and the flows that are needed to augment the river. By doing this LADWP will be better able to determine where the gaining and losing reaches of the river are located and provide the flow data for the management that is required to meet the 1997 MOU goals.

## CONCLUSION

Based on the environmental analysis prepared for the currently proposed project modification, the LADWP has demonstrated that the proposed project modification qualifies for an addendum to the previously certified 2004 EIR.

## BASIS FOR DECISION TO PREPARE ADDENDUM

The LADWP was the lead agency responsible for preparing the July 2004 FEIR and is the public agency that has the primary responsibility for approving the currently proposed project modifications. Therefore, the LADWP is the appropriate lead agency to evaluate the potential environmental effects of the currently proposed project modifications that are the subject of this Addendum.

CEQA Guidelines §15164(a) allows a lead agency to prepare an Addendum to a EIR as follows:

> *The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but not one of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.*

CEQA Guidelines §15162 states:

> *(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:*

*(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;*

*(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or*

*(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the Negative Declaration was adopted, shows any of the following:*

*(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;*

*(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;*

*(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or*

*(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.*

Based on the environmental analysis of the currently proposed project modifications, the LADWP has concluded none of the conditions described in CEQA Guidelines §15162 calling for the preparation of a subsequent EIR or negative declaration has occurred.

Therefore, it can be concluded that pursuant to CEQA Guidelines §15164(a), the proposed project modifications are only minor technical changes or additions, and as such, an addendum to the 2004 EIR for the Lower Owens River Project may be prepared.

## REFERENCES

Ecosystem Sciences Inc. 2002, Lower Owens River Project Ecosystem Management Plan

Los Angeles Department of Water and Power 2004, Final Environmental Impact Report for the Lower Owens River Project

1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power the County of Inyo, the California Department of Fish and Game, the California State Lands Commission, the Sierra Club, and the Owens Valley Committee

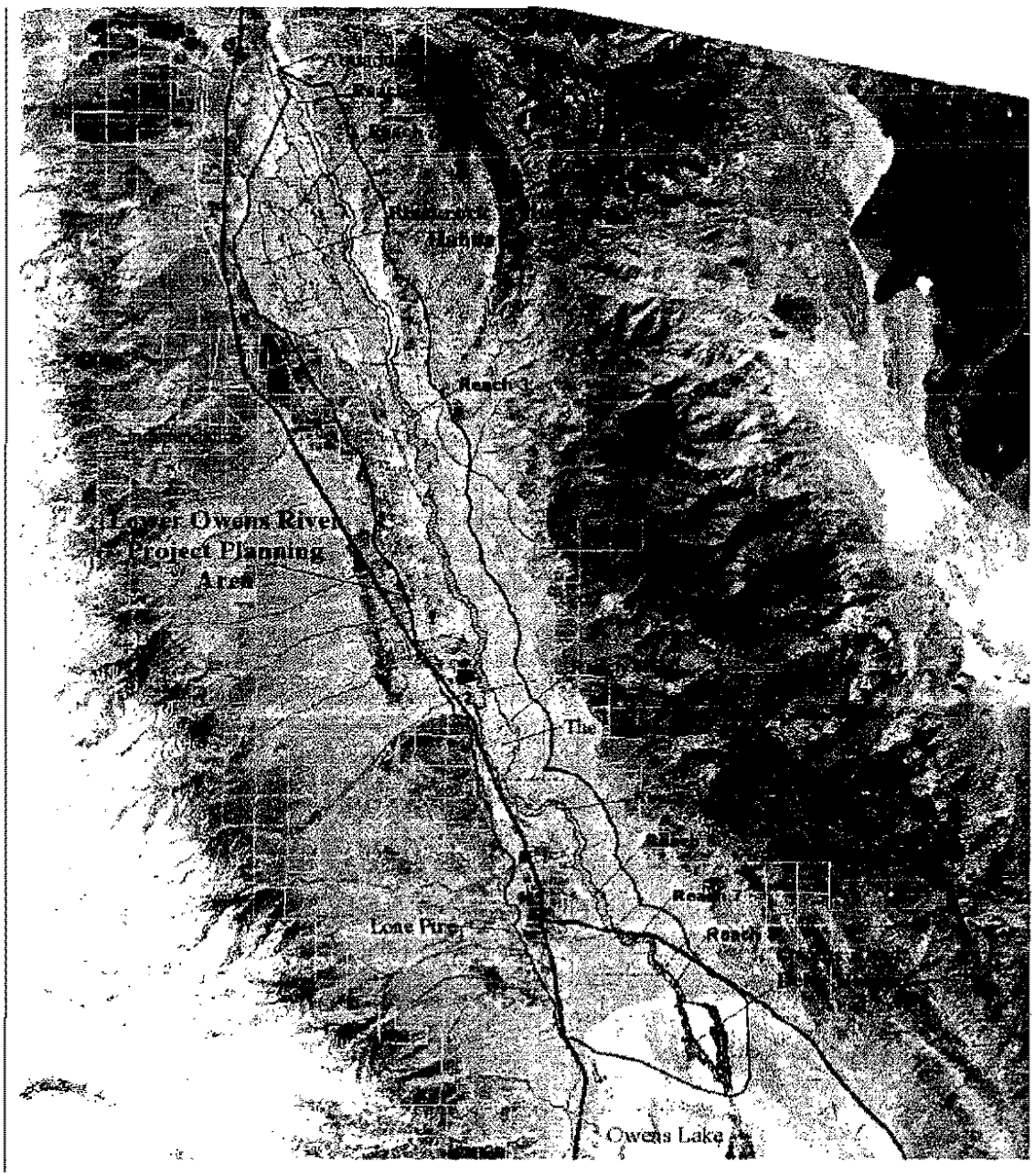
Reach 3
Lower Owens River
Project Planning
Area
Lone Pine
Owens Lake

**Figure 1**