

SUPERIOR COURT OF CALIFORNIA

COUNTY OF INYO

CITY OF LOS ANGELES;)	CASE NO. 12908
DEPARTMENT OF WATER AND)	
POWER OF THE CITY OF LOS)	ARBITRATORS' FINDINGS AND
ANGELES,)	PARTIAL INTERIM AWARD ON
)	ISSUES SUBMITTED FOR
Plaintiffs)	DISPUTE RESOLUTION
)	PURSUANT TO STIPULATION
vs.)	AND ORDER FOR JUDGMENT
)	
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)	
)	
)	
)	

This matter came on regularly for hearing on October 9 and 10, 2013 before Arbitrators the Honorable Jack Komar(Retired), Paul N. Bruce, Esquire, and S. David Hotchkiss, Esquire. The City of Los Angeles and its Department of Water and Power (hereinafter Los Angeles, City, or LADWP) was represented by Deputy City Attorney David Edwards, Esquire. The County of Inyo was represented by Inyo County Counsel Margaret E. Kemp-Williams, Esquire and Gregory James, Esquire.

The Panel read and considered the briefs and evidence submitted, as well as the arguments of counsel and the matter having been submitted, good cause appearing, the the Arbiration Panel makes findings and a partial interim award as follows.

ISSUES

Pursuant to a revised stipulation between the parties, the following issues were submitted for dispute resolution:

The County's request:

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

The requests by Los Angeles:

- 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.

FINDINGS AND DISCUSSION

I. History of the Dispute/ LTWA Obligations.

The parties hereto entered into a stipulated judgment in the Inyo County Superior Court, Action Number 12908, settling a dispute concerning the City of Los Angeles' right to pump water from certain city owned lands in the Owens Valley. The stipulated judgment incorporated a written contract (hereinafter referred to as the Stipulated Judgement or Long Term Water Agreement[LTWA]), establishing the rights and duties of the parties, a document entitled "Green Book", and an approved Environmental Impact Report(EIR).

The Long Term Water Agreement, the Green Book, and the Environmental Impact Report, provided for the creation of a system of monitoring the consequences of Los Angeles' water well production as well as a Dispute Resolution process in the event there was disagreement among the parties as to the effects of such production. The effects of ground water pumping was to be measured by its affect on vegetation. Vegetation that experienced measurable negative changes that were significant and which were attributable to ground water pumping or surface water practices would require mitigation efforts to reduce the negative effect.

The Long Term Water Agreement called for the creation of a Technical Group comprised of an equal number of members from the City and the County and a Standing Committee similarly constituted. The Technical Group had responsibility for the ultimate monitoring of the effect of water production by the wells and was to operate as the initial dispute resolution forum for disputes between the parties. The Standing Committee was the forum to seek relief if the Technical Group failed to resolve a dispute. Failures of both Fora to reach resolution were to result in Arbitration by a panel of three arbitrators (referred to as "temporary mediator-arbitrators."¹

The Technical Group has failed to follow the Water Agreement Section IV. B and Green Book Section I.C with regard to both its monitoring function in determining whether there was a violation of the vegetation management goals of the Long Term Water Agreement as well as its dispute resolution function.

The County of Inyo prepared an in-depth analysis of the post 1991 vegetation conditions at Black Rock 94 and submitted the same to the Technical Group. The County's report analyzed the decreases and changes in vegetation in the parcel, found them measurable, significant, and attributed the observed effects to the City's groundwater pumping and/or a change in surface water management practices.

In the hearing before the Arbitration Panel, Los Angeles admitted that a measurable change in vegetation has occurred over time at Black Rock 94, but the City has performed no analysis of significance or attributability, arguing that such analysis can only be performed as a joint activity by the Technical Group, which is comprised of representatives from Inyo and Los Angeles. Los Angeles did in fact explain its disagreement with the methods used by Inyo County, but for a period of over 15 months from its receipt of the County's report, it failed to perform an analysis of significance and attributability at Black Rock 94 and to share same with the Technical Group. Los Angeles failed to perform such analysis, while agreeing that the evidence demonstrated a measurable negative effect on vegetation, apparently relying on its belief that it bore no duty to do so under the Long Term Water Agreement.

The Stipulation and Order for Judgment in this matter provides in the provisions pertaining to well operations:

¹ Irrespective of the term "mediator-arbitrator" it is clear the parties have stipulated herein to "Arbitration."

“These provisions do not prohibit the Department from unilaterally implementing such mitigation consistent with these goals and principles as may be necessary to cause an increase in soil water in an area of a monitoring site prior to, or after the occurrence of a projected soil water deficit.” (Stip. And Order p. 19.)

Retaining authority for such unilateral implementation of mitigation measures implicates a duty to ascertain whether operation of the City’s wells are having a negative impact on vegetation. Once the City ascertained that a measurable impact over time was occurring at Black Rock 94, the City had an obligation to determine significance and attributability under the Long Term Water Agreement. Los Angeles did not make any such analysis. But it has advised the arbitration panel that it is prepared to do so before the Technical Group.

The obligations of both parties to monitor vegetation conditions using the measurable, significance, and attribution tests is required by the agreements of the parties. Los Angeles failed to perform its obligation in that regard. Objections to the evidence presented by Inyo does not excuse Los Angeles’ duty to satisfy its monitoring obligations.

Moreover, the Technical Group failed to perform either its joint monitoring functions or its dispute resolution functions. The duty is as follows:

“In the event that the Technical Group is unable to resolve a matter, or is unable to make a unanimous recommendation to the Standing Committee, the Technical Group shall make a written report to the Standing Committee explaining the areas of agreement, if any, the subject or subjects of disagreement, and each party’s argument in favor of its position along with supporting background.” (Stip. and Order p. 47.)

It is clear from the evidence that the Technical Group did not provide a report to the Standing Committee with sufficient evidence that would permit the Standing Committee a basis for deciding the dispute. The same is true as to the evidence presented to the Arbitration Panel. In short, the dispute resolution process was not properly carried out at any level and there is inadequate evidence for the Panel to decide all of the vegetation issues.

There is no doubt that in its current posture, there is not agreement between the parties as to all Black Rock 94 issues raised in this matter. However, they do agree that a measurable decline or change in vegetation has occurred since the baseline was established. Lacking in the record is the City’s analysis of significance and attributability of these observed changes. While some evidence has been presented by Los Angeles on these issues, the City represents that it can produce further arguments and data on the merits of these two issues. Recognizing the importance of the ultimate issues to both governmental parties, this panel makes this partial interim award as set forth below.

There were other issues and arguments made in the briefing and arguments of the parties that require discussion.

II. The 1991 Environmental Impact Report

LADWP contends that the 1991 Environmental Impact Report (1991 EIR) prohibits the Technical Group, Standing Committee, and this Arbitration Panel from considering, under the provisions of the LTWA, the impacts to vegetation in Blackrock 94 which the County of Inyo identified in its February 2, 2011 Staff Report (County's Exhibit A10 to its Opening Brief). The County contends that the 1991 EIR issue was not properly raised in the issues submitted to the Panel, and that the 1991 EIR constitutes no such prohibition.

A review of the LADWP issues submitted to this Panel for resolution fairly encompasses the contention by LADWP regarding the 1991 EIR. If the 1991 EIR identified the changes in vegetation in Blackrock 94 which form the basis for the County's February 2, 2011 Staff Report as significant impacts or future significant impacts arising from LADWP's groundwater pumping and surface water diversion project, the consideration of those impacts as significant by the decision makers in approving LADWP's project, will bar those impacts from being considered under the LTWA.

The requirements in the law of California for the preparation and consideration of an environmental impact report is to provide the government decision makers who have project approval authority information about significant impacts on the environment that may occur if the project is approved and implemented. This is so that the project can be designed or modified, or alternative projects considered, to avoid significant impacts on the environment; and where such impacts cannot be reasonably avoided, to provide for their mitigation; or where they cannot be reasonably mitigated, to include them in a statement of overriding considerations which justifies approval of the project despite unmitigated significant impacts on the environment. Fundamental to an EIR being able to serve these purposes, is that the EIR must identify potential significant impacts with sufficient clarity so that the government decision makers are fairly informed of the impact, its significance, and how the impact can be avoided, eliminated or reduced to a level of less than significant.

The Panel has reviewed the portions of the 1991 EIR which LADWP contends identifies the significant impacts to the vegetation in Blackrock 94 that occurred before 1991 and which may occur after 1991, both in terms of vegetation cover and species composition, which resulted or may likely result from LADWP's groundwater pumping and changes in surface water diversions project. The Panel finds that the changes in vegetation which form the basis for the County's February 2, 2011 Staff Report are not identified or so clearly identified in the 1991 EIR as significant impacts or future significant impacts of the project so as to give the decision makers sufficient knowledge of their existence or future existence. This is so because the evidence establishes that the

vegetation changes which form the basis for the County's February 2011 Staff Report did not rise to a level before 1991 that they could be readily measured and identified as significant impacts resulting, or likely to result, from LADWP's groundwater pumping and surface water diversion project. The adoption of the LTWA as the mitigation measure for significant impacts on vegetation in the Owens Valley arising after 1991 from LADWP's project, which impacts were not identified clearly and specifically in the 1991 EIR, and specifically mitigated therein, or specifically identified in the statement of overriding considerations, makes the vegetation changes which form the basis for the County's February 2, 2011 Staff Report subject to the requirements of, and the mitigation processes identified in, the LTWA.

III. The Long Term Water Agreement and Green Book

A. Restrictions on Submitting Data, Analysis, or Conclusions to Technical Group, Standing Committee or Arbitration Panel

LADWP contends in its first and second issues submitted for resolution to this Panel that the LTWA and Green Book prohibit the County from submitting any data, analysis or conclusion to the Technical Group, and by implication to the Standing Committee and this Panel, which data, analysis or conclusion is within the subject matter jurisdiction of the Technical Group, but which is not the work product of the Technical Group or authorized by it. The County contends and argues in its briefs that there is no such prohibition.

The Panel has reviewed the language set forth in both the LTWA and the Green Book. There is no express language in either the LTWA or the Green Book which sets this prohibition forth, or from which this prohibition can be reasonably implied. To the contrary, reading each of these documents as a whole, and as complimentary to each other, it is clear from the express language contained therein and from reasonable interpretations according to commonly recognized rules of construction for contracts and agreements such as the LTWA and Green Book, that each party to the LTWA may independently of the other party, gather its own data, make its own analysis of such data, and arrive at its own conclusions regarding such data without such activities having to be approved by or done jointly as the Technical Group. Further, such independently gathered data, analysis and conclusions may be presented to and considered by the Technical Group, Standing Committee and this Panel.

The purpose Section XVII of the LTWA is to assist in carrying out the purposes and implementation of the LTWA. To do so, it provides for free exchange of information between the parties, and independent monitoring and inspection as is necessary to carry out the implementation of the LTWA. The parties in drafting this section of the LTWA used the term "etc." in describing things and activities that are subject to independent monitoring and inspection. Proper interpretation of this section must both include that term and give it a common and reasonable meaning so that the purpose of the section is given effect. In giving that term proper meaning, monitoring and inspection is not just

limited to wells, water conveyances, metering devices, and control structures, but also includes vegetation within parcels, designated permanent transect sites, control sites and anything or anywhere that is necessary for, or assists in, implementation of the LTWA. The Panel finds that it reasonably implicit in the right to monitor and inspect, that a party is free to independently analyze information gathered in authorized inspection and monitoring activities, and to independently reach conclusions about it. Further, as a part of the "...free exchange of data and information..." referred to in this section, either party is authorized and permitted, to share such data, analysis and conclusions with the other party to the LTWA by presenting it to the Technical Group, Standing Committee or this Panel. Indeed, it is an affirmative obligation to share such information. (LTWA Sec. XVII, p. 42.) Upon presentation of such to any of these bodies, they are free to use it in carrying out their duties and obligations under the LTWA and Green Book. To otherwise interpret this section as suggested would be contrary to the purposes of the LTWA and would impede its implementation.

Section I.C. of the Green Book prescribes the three step process which must be used by the Technical Group to determine significance. In the first step, the Technical Group is required to consider "all relevant factors" in determining measurability. In the second step to determine attributability, the Technical Group is required to evaluate and consider "relevant factors", which may include eight specified factors. This section of the Green Book requires the Technical Groups in the third step to consider eight identified factors in determining the degree of significance. Section IV.B. of the LTWA also requires the Technical Group to consider "Available factual and scientific data" in determining the degree of significance. The language of the LTWA and the Green Book prescribing the first, second and third steps to determine significance, does not exclude or prohibit consideration of any factor which may be relevant. Of importance, it does not exclude from Technical Group consideration any data, analysis or conclusions gathered and produced by either party independently and not as a Technical Group activity or as authorized by the Technical Group on its behalf.

Section III. D. of the LTWA imposes a variety of obligations on the Technical Group. These obligations are all related to the Technical Group's obligation to monitor as a management strategy. The Technical Group's obligations specifically include establishing vegetation monitoring sites, water table monitoring wells, and determining the type of monitoring which the Technical Group will conduct at each monitoring site. The express language of this section also provides that "All monitoring, analysis and interpretation of results shall be done by the Technical Group". There is no similar language in the Green Book. LADWP contends that this sentence requires the Technical Group to perform any and all monitoring, analysis, and interpretation of data gathered from such monitoring; prohibits either of the parties from conducting their own independent monitoring, analysis and interpretation; and prohibits the Technical Group, Standing Committee and Arbitration Panel from considering any data, analysis, or conclusion which has been not been performed as a Technical group activity, or has not been authorized by the Technical Group. Applying the commonly recognized rules for interpreting and harmonizing provisions found in contracts and agreements such as the LTWA and Green Book, requires an interpretation of various provisions of a single

document so that they are consistent with the express and implied purposes and intent of the drafting parties, to be consistent and in harmony with other provisions in the same document, and to be consistent with the provisions of complementary documents drafted by the same parties. The intent and purpose of LADWP and the County in drafting both the LTWA and the complementary Green Book was to create a long term water management plan in the Owens Valley, which plan would serve as, and meet the requirements of, a mitigation measure for LADWP's project of groundwater pumping and surface water diversions for export through the second aqueduct. As such, the LTWA and the Green Book provide a method through the Technical Group, Standing Committee, Arbitration Panel, and judicial decision making, whereby impacts on the environment caused by implementation of LADWP's project, which were not identified and mitigated in the 1991 EIR, or subject of the statement of overriding considerations, would be identified and analyzed, and if determined to be significant, would be mitigated. If the LTWA and Green Book cannot be interpreted and harmonized to serve this purpose, there will be a material failure of mitigation for LADWP's project.

The language of Section III.D. in question is in the part of the LTWA governing Management Strategy, and the sub part on "Monitoring" It places an obligation on the Technical Group to perform specific monitoring, and analysis and interpretation of the results of those required monitoring activities. Section II at page 7 of the LTWA provides that the Technical Group and Standing Committee can only make a determination or recommendation with the agreement of both LADWP and the County. To interpret the language in the LTWA Section III.D. that "All monitoring, analysis and interpretation of results shall be done by the Technical Group" in the manner contended by LADWP, would be contrary to the following: (1) the purpose for which the LTWA was drafted; (2) the intent of the parties in drafting and approving the LTWA as a mitigation measure; (3) other express language in the LTWA giving each party a right to independently gather its own data, make its own analysis and conclusions from such data, and present it to the Technical Group, Standing Committee, and Arbitration Panel where such gathering, analysis and conclusions are necessary for or assist in implementing the LTWA, and (4) the language found in the LTWA and the Green Book which requires the Technical Group in applying the three step process to consider "All relevant" data, "relevant factors" and "available factual and scientific data". Finally, interpreting Section III.D as creating the prohibition LADWP argues for, would give either party to the LTWA a de facto veto in the Technical Group and Standing Committee which would prevent the LTWA from operating as the mitigation measure it was designed to be, and would make the Dispute Resolution Process set forth in the LTWA superfluous. Interpretations of provisions of agreements which eviscerate the agreement's ability to operate as intended, or which make major provisions of such agreement unnecessary, are to be avoided. Based upon the above, the Panel finds the language in Section III.D. of the LTWA does not create the limitations or prohibitions as contended by LADWP. It merely creates an obligation on the Technical Group to perform certain specified monitoring and perform analysis and interpretation of the data resulting from such monitoring. Such obligation places no limitation or restriction on either party which would prohibit them from independently monitoring and collecting data, or independently analyzing and reaching their own conclusions from such data or data

gathered by the Technical Group or other party. Any such independently gathered data, or independent analysis and conclusions may be provided to the Technical Group, Standing Committee or Arbitration Panel for their consideration.

B. The Three Step Process under the LTWA and Green Book to Determine Significance

Both the LTWA and the Green Book require the Technical Group to make a determination of significance when it is presented with relevant evidence indicating that there may have been a measurable change in vegetation cover or composition. This determination is made on a case by case basis using a three step process set forth in the LTWA and Green Book. There is no requirement that each step be determined independent of the analysis conducted in any other step, or that a determination on any single step is in and of itself subject to the dispute resolution process of the LTWA. An analysis of the three step process and the inter relationship of the steps, is necessary to correctly implement the three step process.

The language of the LTWA and Green Book pertaining to the three step process repeatedly refers to the measurable decrease or change in vegetation; the decrease or change; degree of decrease, change or effect; and the impact. It appears that the intent of the parties in drafting the LTWA and the Green Book was that the three steps comprising the process should be interrelated- by identifying in the first step a common data set for analysis in step two and three. A careful reading and analysis of this language and its context, confirms that all of the relevant data showing even a small documentable change in vegetation defines and identifies the “decrease”, “change” and “impact” for purposes of determining attributability and significance. Thus, any of the data considered in the first step which establishes even a small documentable change in vegetation, is the data that must be considered in the second and third steps to identify and quantify the change, effect, decrease, and impact referred to in steps two and three.

A reasonable reading of the express language of the LTWA and Green Book prescribing the three step process, clearly indicates that the data to be considered in the first step(measurability) is that which is related to the specifically enumerated factors and all other relevant factors. The threshold for the Technical Group to determine measurability is relatively low- if any of the relevant factors considered indicate even a small documentable change in vegetation cover or composition has occurred. If this threshold is met, the identified change in vegetation cover or composition is deemed measurable. Once a determination is made that the change of vegetation in question is either measurable or not measurable, the step is complete. If the change in question is determined to be measurable, the Technical Group proceeds to step two. The second step is the determination of attributability. This step determines if the measurable change in vegetation identified in step one, is the result of LADWP’s groundwater pumping or change in surface water diversions. This determination is based on evaluation and consideration of all relevant factors which may include eight identified factors. The threshold of attributability is if the decrease, change, or effect would not have occurred but for groundwater pumping and/or a change in past surface water management

practices. If this threshold is met, the change of vegetation in question is deemed to be attributable. Once a determination that the change of vegetation in question is either attributable or not attributable, the second step is complete. If the change in question is determined to be attributable, the Technical Group then proceeds to step three. Step three is the determination of significant. The governing language requires the Technical Group to consider nine factors to determine if the impact is significant. Other factor may also be considered. No threshold for this step is set forth. If the determination is made that the impact on the change of vegetation in question is significant, then the three step process is complete, significance has been established, and the requirement of the LTWA for mitigation is triggered. If in the third step the impact is determined not to be significant, then significance has not been established, the three step process is complete, and no requirement for mitigation has been triggered.

A determination that the identified change in vegetation is measurable is not subject to dispute resolution until the other two steps have been completed and a final determination of significance has been made by the Technical Group. A determination that the identified change in vegetation cover or composition is not measurable is subject to dispute resolution because it ultimately results in a final determination of not significant. It follows that a Technical Group determination that the identified change in vegetation is not attributable or not significant, is likewise subject to dispute resolution because such determinations ultimately result in a final determination of not significant. A determination that identified vegetation changes are attributable is not subject to dispute resolution until the third step has been completed and a final determination of significance has been made. In cases where the Technical Group is unable to make the determination required in one or more steps, the issue is subject to dispute resolution because, absent dispute resolution, the de facto determination is not significant.

C. Baseline Data

Both the LTWA and the Green Book clearly express that the 1984-87 vegetation inventory performed by LADWP staff is the baseline for comparisons with vegetation data gathered after 1991. Both parties to the LTWA knew how the 1984-87 vegetation inventory was done and under what climatic conditions it was made. Knowing this and the uncertainties and risks involved, the parties established the 1984-87 inventory without adjustments or modifications for how it was made, or for the climatic conditions under which it was made. To modify or adjust the 1984-87 inventory as baseline would require modification as provided for in Section XXV of the LTWA. Neither party has submitted evidence that the baseline has been so modified. The 1984-87 vegetation inventory is the baseline. This Panel will not consider any changes to the baseline to take into consideration how it was made, or for the climatic conditions under which it was made.

IV. Technical Group Monitoring Data.

LADWP in their briefs contends that the vegetation monitoring and data collection activities performed by the County beginning in 1991, were not performed on behalf of, or authorized by the Technical Group, and were not performed in accordance with the procedures, and protocols established by the Technical Group for vegetation monitoring and data collection. The County contends that their vegetation monitoring and data collection was authorized and on behalf of the Technical Group and was performed in compliance with the Technical Group established procedures and protocols for such monitoring and data collection.

The Panel has carefully reviewed all of the relevant evidence submitted by both parties on this issue. Such evidence clearly establishes that the County and LADWP as members of the Technical Group, at Technical Group meetings in 1992, implicitly authorized the County to monitor vegetation in the Owens Valley on behalf of the Technical Group, agreed that the vegetation data gathered by the County would be used to compare vegetation conditions to the baseline data, and that the staffs of both members of the Technical Group had agreed upon the procedures and protocols for such activities. LADWP has in their briefs repudiated such actions by the Technical Group, as well as LADWP's own actions as members of the Technical Group. LADWP's repudiation and contentions are not supported or justified by the evidence. The Technical Group meetings minutes reflect the actions taken by the Technical Group on this issue. LADWP knew what activities were being undertaken by the County on behalf of the Technical Group, but despite clearly being considered a "joint effort" by LADWP, LADWP choose not to participate in these activities because of manpower and other considerations. For a period of over ten years, each year after the County had performed the vegetation monitoring and gathered the data, LADWP used this data without comment or objection, in the Annual Report on Conditions in the Owens Valley The County's Report on Blackrock 94 came before the Technical Group in February of 2011, and was based on the vegetation monitoring and data collection it had performed on behalf of the Technical Group. There is no evidence submitted to this Panel that until then LADWP ever raised any concerns that the County's activities in monitoring vegetation and gathering data based upon such monitoring, was not authorized by the LTWA or Green Book, or not authorized by the Technical Group to be conducted on its behalf; or was not in accordance with the requirements of the LTWA, Green Book or procedures and protocols approved by the Technical Group. There is no evidence that LADWP proposed to the Technical Group a different monitoring and data collection procedure or protocol to be substituted for the one previously approved by the Technical Group under which the County would perform monitoring and data collection on behalf of the Technical Group. With regard to the manner in which the County conducted the vegetation monitoring and data collection, there is no evidence that before the County provided the Technical Group with the Blackrock 94 report in February of 2011, LADWP ever made a formal complaint to the County or Technical Group about it. LADWP did not provide the County or Technical Group with the written reports of LADWP's employees and consultants documenting the dates, times, and places they had observed alleged defects in the County's field work in monitoring vegetation and collecting vegetation data. There is no evidence submitted to this Panel that the Technical Group was ever asked to consider whether the vegetation monitoring and data collection done on its behalf by the County, was defective, flawed,

incorrect, or not in accordance with the requirements of the LTWA, Green Book, or any Technical Group approved procedure or protocol. The evidence produced by LADWP critical of the Black Rock 94 Report goes to the weight of the evidence produced by the County, but not to the admissibility of the report itself.

It is the finding of this Panel that the evidence establishes that the vegetation monitoring and data collection done by the County since 1991 was done on behalf of, and authorized by, the Technical Group; and that such vegetation monitoring and data collection was done in substantial compliance with all of the requirements of the LTWA, Green Book, and procedures and protocols approved by the Technical Group. Given this, the vegetation data gathered by the County as a result of its monitoring activities in Blackrock 94 from 1991 through 2009, may be given due weight by this Panel as Technical Group data resulting from Technical Group monitoring and data collection activities; and that such monitoring and data collection was performed in accordance with the requirements of the LTWA, Green Book, and procedures and protocols approved by the Technical Group, subject to further evidence which may be provided to the Technical Group and this Panel in accordance with the decision below.

V. Blackrock 94: Determination of Significance

The County and LADWP agreed in 2009 that based upon the 2007 letter from the California Native Plant Society regarding changes in vegetation in the Blackrock 94 parcel, that the Technical Group would conduct an evaluation of the alleged vegetation changes in accordance with the requirements of the LTWA and Green Book for determining significance. At the October 18, 2010 Technical Group meeting, the County and LADWP agreed that the County would prepare the initial report on whether there was or is a significant impact on the Blackrock 94 vegetation using the three step process set out in the LTWA and the Green Book, and submit the report to the Technical Group for its consideration. LADWP did not request to participate or assist in preparing the report. On February 3, 2011, the County presented the report to the Technical Group (Exhibit A10 to the County's Opening Brief). Thereafter, LADWP largely disengaged as a member of the Technical Group on the Blackrock 94 issues, and the Technical Group was unable to proceed with making a determination regarding significance using the three step process required by the LTWA and Green Book. The matter was sent to the Standing committee, which was unable to make any determination. The matter was sent to this Arbitration Panel in accordance with provisions of the LTWA. This Panel now has jurisdiction to resolve the issues presented to it by the parties, including the determination of significance. The Panel will make such determination using the three step process set forth in the LTWA and Green Book.

The February 2, 2011 Staff Report prepared by the County and submitted to the Technical Group on February 3, 2011, concerning decreases in vegetation cover and changes in species composition in the Blackrock 94 parcel, sets forth relevant Technical Group vegetation data required to be considered in the three step process for determining significance under the LTWA and Green Book. Additionally, it contains the analysis and

conclusions by qualified County experts which are relevant to the determinations which must be made in the three step process. It purports to having been prepared and presented to the Technical Group in substantial compliance with the requirements of the LTWA and Green Book. The County's Staff report submitted data, analysis and conclusions supporting the request to the Technical Group for it to make the findings of measurability, attributability, and significance using the three step process. The County Staff Report submitted data, analysis and conclusions relating only to changes in vegetation cover and species composition in the Blackrock 94 parcel. The use of the Blackrock 94 parcel as an area of type C vegetation in the three step process was appropriate and in accordance with the LTWA and Green Book. There is nothing in either of these two documents which restricts the application of the three step process to only Vegetation and Wellfield Management Areas, inter alia. There are numerous references in these two documents relating to parcels as areas of similar vegetation, soil types, and other characteristics which make them suitable for determining vegetation conditions, hydrologic conditions and changes in vegetation type. The evidentiary value of the said report must be weighed by the Technical Group and this Panel.

INTERIM ORDER AND AWARD

This matter is remanded to the Technical Group forthwith so that it may properly carry out its dispute resolution functions. On or before December 18, 2013, Los Angeles shall prepare and submit a written report with supporting evidence to the Technical Group with copies to the arbitrators addressing the issues of whether LADWP's pumping operations and/or surface water management practices have had a "significant" and "attributable" impact upon the vegetation of Black Rock 94 as defined by the Stipulation and Order.

Inyo County is ordered to provide Los Angeles and the Technical Group all data collected pertaining to Black Rock 94 sufficient to allow Los Angeles to repeat Inyo's calculations and analysis as to significance and attributability.


All data prepared or obtained by Los Angeles in preparation of its report shall be shared with Inyo County so that the County can reproduce Los Angeles' calculations and analysis as to significance and attributability.

Upon receipt of the City's report, Inyo County shall file a response to the City's report with the Technical Group with copies to the arbitrators on or before February 14, 2014. The parties are ordered to cooperate fully in this process and provide prompt and complete responses to inquiries from either side pertaining to any raw data, data sets, assumptions, statistical models and other information necessary to form a reasoned, scientific analysis of the impacts to vegetation at Black Rock 94 pursuant to the Long Term Agreement, Green Book and EIR.

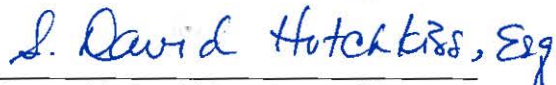

The arbitrators shall retain jurisdiction of this matter pending compliance with this partial interim award. A further hearing will be scheduled following receipt of the ordered report and response.

IT IS SO ORDERED.

Dated: October 21, 2013


Hon. Jack Komar (Ret.)
Chair Arbitrator (For the Panel)


Paul Bruce, Esq. Arbitrator 


S. David Hotchkiss, Esq. Arbitrator 

SERVICE LIST

Case Name: City of Los Angeles, et al. vs. Board of Supervisors of the County of **Hear Type:** Arbitration
Reference #: 1110016067 **Case Type:** Business/Commercial
Panelist: Komar, Jack ,

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Defendant
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Margaret E. Kemp-Williams

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Party Represented:
County of Inyo

Steven Porter

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Defendant
Phone: 760-878-0229
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Party Represented:
County of Inyo

Julie C. Riley

Los Angeles Department of Water & Power
Julie C. Riley
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Plaintiff
Phone: 213-367-4513

Party Represented:
City of Los Angeles Department of
Water and Power

PROOF OF SERVICE BY EMAIL & U.S. MAIL

Re: City of Los Angeles, et al. vs. Board of Supervisors of the County of Inyo, et al.
Reference No. 1110016067

I, Josephine Care, not a party to the within action, hereby declare that on October 21, 2013 I served the attached Arbitrators' Findings and Partial Interim Award on Issues Submitted for Dispute Resolution Pursuant to Stipulation and Order for Judgment on the parties in the within action by Email and by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the United States Mail, at San Jose, CALIFORNIA, addressed as follows:

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I declare under penalty of perjury the foregoing to be true and correct. Executed at San Jose,
CALIFORNIA on October 21, 2013.



Josephine Care
jcare@jamsadr.com