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PROPOSED
RESOLUTION OF THE BLACKROCK 94 DISPUTE
(4-29-14)

INTRODUCTION

LADWP and Inyo County are committed to supporting the goals of the Water Agreement and desire to foster a more cooperative and effective working relationship between the two entities. It is in both entities’ interest to establish agreeable processes by which to avoid future conflicts so that the limited resources of both entities are put to meaningful and efficient use. Therefore, the LADWP and the County desire to enter into this Resolution of the Blackrock 94 dispute (“Resolution of Dispute”).

RECITALS

Blackrock 94 is a 333 acre groundwater dependent alkali meadow parcel located southwest of the Blackrock fish hatchery. Blackrock 94 was mapped and classified as Type C alkali meadow as part of Water Agreement’s baseline vegetation inventory.

On February 3, 2011, the County presented a report to the Technical Group which alleged that “available factual and scientific data indicate that a measurable vegetation change since baseline has occurred in Blackrock 94, both in terms of vegetation cover and species composition. The County’s report states that the vegetation degradation is primarily attributable to changes in water availability resulting from groundwater pumping and reduced surface water diversions into the vicinity of Blackrock 94. LADWP’s Technical Group members disagreed with the conclusions contained in the County’s February 2, 2011 Report. For the Technical Group to find that an impact is significant, the Water Agreement requires that the Technical Group make three determinations: (1) that an alleged change in vegetation cover or composition is measurable, (2) if so, that the change is attributable to groundwater pumping or changes in surface water practices, and (3) if so, that the measurable change is significant.

1 During the following year, the Technical Group was unable to resolve the issue. On May
2 1, 2012, the County invoked the Water Agreement's dispute resolution process by requesting the
3 Technical Group to resolve issues involving vegetation parcel Blackrock 94. The Technical
4 Group was unable to resolve the issues and written reports were submitted to the Standing
5 Committee explaining the issues raised by the County and LADWP. At its September 26, 2012,
6 meeting, the Standing Committee was unable to resolve the issues regarding Blackrock 94.

7 In the months following the Standing Committee meeting, further attempts to resolve the
8 issues in dispute were unsuccessful. The Water Agreement provides that if the Standing
9 Committee is unable to resolve a dispute, a party may submit the dispute to a panel for
10 Mediation/Temporary Arbitration. By stipulation between the County and LADWP dated June
11 12, 2013, the County and LADWP informed the Standing Committee that the issues were being
12 submitted to Mediation/Temporary Arbitration under Section XXVI.C of the Water Agreement.
13 On April 26, 2013, the County notified the LADWP of its intent to seek mediation/temporary
14 arbitration. The Water Agreement provides for a three member Mediation/Temporary Arbitration
15 Panel ("Arbitration Panel" or "Panel") with one member appointed by the County, one by
16 LADWP and a third member appointed the members appointed by the parties.

17 Pursuant to the stipulation by the parties, the requests for resolution submitted to
18 Mediation/Temporary Arbitration were:

19 The County's Request:

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

1 The Requests by LADWP:

2 a. *With regard to the County's determination that there has been a measurable change*
3 *in the environment at Blackrock 94, LADWP requests that the mediators/temporary*
4 *arbitrators find that the County did not follow and conform to all the required rules,*
5 *procedures and protocols in the Water Agreement, Green Book and 1991 EIR when it*
6 *performed the vegetation monitoring, vegetation data collection, vegetation analysis*
7 *(including the selection of analytical methods, assumptions made, and inputs used*
8 *when conducting an analysis) and, therefore, the mediators/temporary arbitrators are*
9 *unable to find that there has been a measurable change in the environment at*
10 *Blackrock 94.*

11 *and/or*

12 b. *With regard to the County's determinations that a measurable, attributable, and*
13 *significant effect has occurred at Blackrock 94, LADWP requests that the*
14 *mediators/temporary arbitrators find that County did not follow and conform to*
15 *required rules, procedures and protocols of the Water Agreement, Green Book, and*
16 *1991 EIR and, therefore, the mediators/temporary arbitrators are unable to find that a*
17 *measurable, attributable and significant effect has occurred at Blackrock 94.*

18 In support of their positions, the parties submitted opening, response and reply briefs to
19 the Arbitration Panel. The Panel conducted a hearing on the dispute on October 9 and 10, 2013.
20 On October 21, 2013, the Panel issued an "Interim Order and Award" which found that the
21 parties had previously found that a measurable change in vegetation has occurred in Blackrock
22 94, but that the Technical Group had not adequately addressed the issues of "attributability" and
23 significance. Therefore, the Interim Order and Award remanded the matter to the Technical
24 Group so that it may "carry out its dispute resolution functions" and required both the City and
25 the County to provide reports to the Technical Group addressing if the measurable change was
26 attributable to LADWP's pumping operations and/or changes in LADWP's past surface water
27 management practices or if the measurable change was attributable to another factor or factors.
28 The Interim Order and Award also required the Technical Group to consider the significance of

1 the measurable change upon the vegetation of Blackrock 94 pursuant to the provisions of Water
2 Agreement Section IV.B and Green Book Section I.C.

3 The required reports were submitted to the Technical Group. At its meeting on April 11,
4 2014, the Technical Group was unable to resolve the “attributability” and “significance” issues. In
5 accordance with the Water Agreement and the Panel’s order, the issues were submitted to the
6 Standing Committee for resolution. At its meeting on April 29, 2014, the Standing Committee
7 recommended to the governing boards of LADWP and the County that each governing board
8 adopt this resolution of the Blackrock 94 dispute that was tentatively agreed to by the Standing
9 Committee.

10 By agreeing to this Resolution of Dispute, LADWP does not admit or agree that any
11 significant adverse decreases or changes to vegetation or the environment have occurred within
12 vegetation parcel Blackrock 94 that are attributable to its groundwater pumping activities or
13 attributable to any changes in surface water management practices by LADWP. LADWP does
14 not agree and does not believe that Inyo County provided any evidence that any changes in
15 surface water management practices have occurred in the area of Blackrock 94. Further, LADWP
16 does not endorse the findings contained in Inyo County’s February 2, 2011 report titled “Analysis
17 of Conditions in Vegetation Parcel Blackrock 94.”

18 AGREEMENT

19 The County and LADWP (collectively the “Parties”) agree as follows.

20 **I. Off-Site Enhancement to Preserve Alkali Meadows**

21 A. To enhance certain alkali meadows by reversing the encroachment of woody
22 shrubs into such meadows, LADWP will perform prescribed burns on approximately 665 acres of
23 shrub encroached alkali meadows in the Owens Valley.

24 B. The Technical Group will identify areas of alkali meadows where the woody shrub
25 proportion has increased to the point that the area will carry a burn and where sufficient grasses
26 exist on the site that would make a burn beneficial. From the areas identified by the Technical
27 Group, the Technical Group will select the 665 acres that will be burned.

1 C. Recognizing CALFIRE and GBAPCD will require that regulatory permits be
2 issued prior to burning, burning the entire 665 acres may take several years; however, if permits
3 and conditions allow, LADWP will conduct the burning of the 665 acres within 5 years of the
4 date of this Settlement Agreement.

5 D. The burning of the 665 acres will be conducted as described in LADWP's land
6 management plans.

7 **II. Groundwater Pumping From Wells W351 and W356**

8 LADWP will immediately reduce the level of pumping from wells W351 and W356,
9 which supply the Blackrock Fish Hatchery, to a total amount not to exceed approximately 8,000
10 acre-feet per year.

11 **III. Vegetation Monitoring - Measurability**

12 The Parties will enter into a facilitated process with the Ecological Society of America
13 (ESA) to develop and implement vegetation monitoring procedures and detailed analytical
14 procedures for determining if a measurable change in vegetation has occurred, is occurring, or
15 will occur. The monitoring methods and procedures shall be able to compare vegetation cover and
16 composition to the vegetation cover and composition obtained during LADWP's initial vegetation
17 inventory between 1984 and 1987. The monitoring methods and analytical procedures shall also
18 be able to distinguish and recognize trends in vegetation cover and composition. The Parties shall
19 use the vegetation monitoring and analytical procedures in determining if any change in
20 vegetation cover or composition is measurable pursuant to Water Agreement IV.B and Green
21 Book Section I.C.

22 **IV. Blackrock 94 — Time Out on New Disputes**

23 Both Parties agree not to initiate a dispute involving a decrease or change in vegetation
24 type at Blackrock 94 for a period of at least four (4) years.

25 **V. Arbitrators Decision**

26 The October 21, 2013 Interim Order and Award of the Arbitration Panel shall be deemed
27 a final decision by the Parties, the Parties waive their right to submit the decision to the Superior
28 Court Judge as provided in section XXVI.D of the Water Agreement and, as provided in section

1 XXVI.C of the Water Agreement, the Parties shall implement and follow the decision of the
2 Arbitration Panel.

3 **VI. CEQA**

4 LADWP will prepare and certify all appropriate documents in compliance with California
5 Environmental Quality Act (CEQA). LADWP shall act as the CEQA lead agency and the County
6 of Inyo shall be the CEQA responsible agency. At least ten (10) days prior to consideration by the
7 LADWP Board of Water and Power Commissioners, LADWP will provide a draft of its CEQA
8 document to the County for review and comment.

9 **VII. Effective Date**

10 Approval of this Resolution of Dispute by the Standing Committee shall be deemed
11 provisional and will become final following its approval by the Inyo County Board of Supervisors
12 and the LADWP Board of Water and Power Commissioners. In the event that this Resolution of
13 Dispute is not approved by June 30, 2014 by both the Inyo County Board of Supervisors and by
14 the LADWP Board of Water and Power Commissioners, the Parties shall notify the Arbitration
15 Panel. Upon notification, the Arbitration Panel shall immediately schedule a final hearing on the
16 Blackrock 94 Dispute to be held at its earliest convenience.

17 **VIII. Successful CEQA Challenge**

18 In the event that the CEQA document addressing this Resolution of Dispute is found to be
19 legally inadequate by a court, or this Resolution of Dispute is successfully challenged by a third
20 party in court under any other legal basis, this Resolution of Dispute shall be deemed
21 unenforceable and its terms deemed null and void, unless otherwise agreed upon by the Parties. In
22 such an event, the Parties shall request that the Arbitration Panel schedule the Blackrock 94
23 Dispute for a final hearing. The decision of the Arbitration Panel shall be fully appealable as
24 provided in the Dispute Resolution procedures contained in the Water Agreement, including the
25 appeal of any interim orders issued by the Arbitration Panel.

26 **IX. Defense of CEQA Challenge**

27 In the event that the legal adequacy of the CEQA document addressing this Resolution is
28 challenged in Court, the Parties shall cooperatively work together in the defense of the document,

1 each Party shall bear its own legal costs, and in the event that a court finds the document to be
2 legally inadequate and awards attorney's fees and other costs, each Party shall pay one-half of the
3 award.

4 **X. Termination of Blackrock 94 Dispute**

5 Upon approval of this Resolution by the Board of Water and Power Commissioners and
6 by the Inyo County Board of Supervisors, subject to Section VIII, the Parties will inform the
7 Arbitration Panel that the issues in dispute concerning Blackrock 94 have been resolved.

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