



(760) 878-0001
FAX: (760) 878-2552

EMAIL: mail@inyowater.org
WEB: <http://www.inyowater.org>

P.O. Box 337
135 South Jackson Street
Independence, CA 93526

**COUNTY OF INYO
WATER DEPARTMENT**

May 1, 2012

TO: James McDaniel, Senior Assistant General Manager, Los Angeles Department of Water and Power
Gene Coufal, Aqueduct Manager, Los Angeles Department of Water and Power

FROM: Bob Harrington, Water Director, Inyo County

SUBJECT: Request to the Inyo County/Los Angeles Technical Group Pursuant to Water Agreement Section XXVI.B.1 for Resolution of Issue Concerning Vegetation Parcel Blackrock 94

REQUEST FOR RESOLUTION

Pursuant to Section XXVI.B.1 of the Inyo County/Los Angeles Long Term Water Agreement (Agreement), the County of Inyo (County) requests resolution of the issues described below by the Technical Group. Further the County requests the Technical Group to meet within 14 days to consider resolution of the issue.

BACKGROUND

Inyo County has submitted extensive evidence and analysis to the Technical Group concerning conditions in vegetation parcel Blackrock 94. This documentation includes a report transmitted from the Water Department to LADWP on February 2, 2011 and responses to LADWP's inquiries concerning the Water Department's report (letters from Water Department to LADWP, September 8, 2011 and January 3, 2012).

The Water Department report concludes that available factual and scientific data indicate a measurable vegetation change since baseline has occurred in Blackrock 94 and that changes in perennial species composition from Type C to Type B are occurring. The report also concludes that the vegetation decrease and change is primarily attributable to changes in water availability

resulting from groundwater pumping and reduced surface water diversions into the vicinity of Blackrock 94. The factors prescribed in the Water Agreement and Green Book for assessing the significance of an impact were evaluated in the report and indicate that a significant change has occurred and is occurring in Blackrock 94.

The issues raised in the Water Department report have been considered on numerous Technical Group agendas, but during the past year, the Technical Group has not resolved the issue of whether a significant impact has occurred or is occurring in the Blackrock 94 parcel. The vegetation change in the parcel continues to occur. Reasonably expeditious action to adopt a mitigation plan is necessary.

Recently, by letter dated April 9, 2012, LADWP responded to the first of the three analytical steps to determine whether a significant change has occurred in the parcel--whether a measurable change in vegetation has occurred. The analyses conducted by LADWP conclude that there has been a measurable decrease in total perennial vegetation from baseline conditions and that there has been a measurable change in the vegetation community composition from baseline conditions in the parcel.

Since the technical staffs from both LADWP and the County have considered the relevant factors and both staffs have concluded that a measurable change in vegetation cover or composition has occurred, the Technical Group should formally make that determination and, as required by the Green Book, proceed with a determination of whether the change is attributable to groundwater pumping or to changes in surface water management practices and, if it is attributable to such activities, with a determination of whether the change is significant.

Despite agreement by the two technical staffs that a measurable change has occurred, LADWP has imposed a condition on moving forward. LADWP will only agree that the Technical Group can proceed with a determination of attributability if the Technical Group first adopts LADWP's analyses of measurability. In its April 9, 2012 letter, LADWP states that it is only "...willing to support the Technical Group advancement of the Green Book process as described in Section C.1.b., Determining Attributability, based on acceptance of LADWP's analyses by the Technical Group." (Italics and underlining added for emphasis.)

At the April 20, 2012 Technical Group meeting, LADWP elaborated on the condition outlined in its letter by stating that if the LADWP analyses are approved by the Technical Group, LADWP will agree that, based upon LADWP's analyses, the Technical Group should determine that a measurable change has occurred and that the Technical Group should proceed with a determination whether the change is attributable to LADWP's groundwater pumping or changes in surface water management practices. However, if the County is unwilling to agree to having the Technical Group adopt LADWP's analyses, LADWP will not agree that a measurable change has occurred and, instead of proceeding to a determination of attributability, the Technical Group will have to continue the already year-plus analysis of the measurability issue until the differences between the County's and LADWP's analyses are resolved.

The distinction between the two analyses is important. While Inyo County agrees that LADWP's analysis, as well as the County's analysis, demonstrate the measurability of the change, LADWP's analysis is a constricted one. If, as LADWP has indicated, LADWP's interpretation is the only valid interpretation of the data, and that constricted interpretation carries forward into the analysis of attributability and significance of the change, the full extent of the evidence supporting attributability and significance will not be considered. It is Inyo County's position that all evidence relating to these issues must be analyzed when determining if the impacts are attributable to LADWP's activities and whether those impacts are significant. Inyo County cannot agree to base subsequent analyses on a small portion of the evidence.

LADWP's insistence that the Technical Group adopt its measurability analyses is inconsistent with the provisions of the Water Agreement and the Green Book. As can be seen from the relevant provisions presented below, neither the Water Agreement nor the Green Book require the Technical Group to agree upon analyses of measurability, it is only required that the Technical Group agree that a measurable change has occurred before proceeding with a determination of attributability.

Section IV.B of the Water Agreement sets out the procedures for determining whether or not a change or decrease in vegetation is significant. The Water Agreement states that the first step in the three-step process "is to determine whether the decrease or change can be measurably demonstrated." If so, it then must be determined by the Technical Group if it is or is not attributable to groundwater pumping and/or surface water management practices.

Section I.C.1.a of the Green Book provides that in determining whether a change in vegetation cover or composition is measurable, the Technical Group will consider all relevant factors. Section I.C.1.b then establishes the standard for a determination of measurability which is:

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

Section I.C.1.b. provides that:

Once it has been determined that there has been a measurable vegetation decrease or change, it must be determined whether the impact is attributable to groundwater pumping or to changes in surface water management practices.

The County's and LADWP's representatives to the Technical Group have both concluded that a measurable change has occurred, therefore Green Book Section I.C.1 requires that the Technical Group proceed with determining attributability of the measured change.

CONCLUSION

The County concurs with LADWP that the Technical Group should conclude that a measurable change has occurred in Blackrock 94 and move forward with determining attributability. The County does not concur that moving forward can only occur if the Technical Group first adopts LADWP's measurability analyses as the exclusive analyses regarding the impact. Consequently, the County requests the Technical Group to resolve the issue as set forth below. Also, because the determination of whether or not a significant change or decrease in vegetation in Blackrock 94 has already been underway for more than a year, the County requests that the Technical Group adopt the schedule presented below that establishes a reasonably expeditious process for resolving the remaining issues.

REQUEST FOR RESOLUTION

The County requests that the Technical Group agree to the following:

1. To find that a measurable change in vegetation at Blackrock 94 has occurred, that the change is attributable to groundwater pumping and reduced surface water diversions by LADWP, that the change is significant, and that the Technical Group will develop a reasonable and feasible mitigation plan by June 1, 2013.

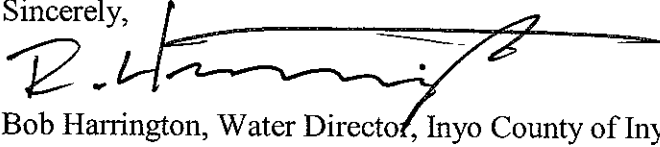
If the Technical Group is unable to agree on request 1, agree to the following:

2. To determine that a measurable change has occurred and move forward, using all available relevant information, with a determination whether the change is attributable to groundwater pumping or to changes in surface water management practices and, if so, with a determination of whether the change is significant.
3. If within 45 days of a determination by the Technical Group that a measurable change has occurred, or within 45 days of a final resolution of a dispute finding that a measurable change has occurred, whichever occurs sooner, the Technical Group has not agreed on whether or not the measurable change is attributable to LADWP's groundwater pumping or to its changes in surface water management practices, either party may initiate dispute resolution regarding the attributability issue.
4. If within 45 days of a determination by the Technical Group that a change is attributable to LADWP's groundwater pumping or to its changes in surface water management practices, or within 45 days of a final resolution of a dispute finding that a change is attributable to such activities, whichever occurs sooner, the Technical Group has not agreed on whether or not the change is significant, either party may initiate dispute resolution regarding the significance issue.

In accordance with Section XXVI of the Long-Term Water Agreement, if the Technical Group is unable to resolve this request within 14 days of its receipt, Inyo County requests that the Technical Group make a written report to the Standing Committee setting forth the areas of

agreement and disagreement within seven days after the Technical Group meeting, unless the Technical Group agrees to a longer time period.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Harrington", with a long horizontal flourish extending to the right.

Bob Harrington, Water Director, Inyo County of Inyo

cc: County of Inyo Board of Supervisors
County of Inyo Water Commission
Kevin Carunchio, CAO
Randy Keller, County Counsel