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COUNTY OF INYO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF INYO

SIERRA CLUB, and OWENS )  
VALLEY COMMITTEE )  
Plaintiffs/Petitioners )

Case No.: S1CVCV01-29768  
AMENDED STIPULATION AND ORDER

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v.

CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF WATER AND POWER; BOARD OF COMMISSIONERS OF THE DEPARTMENT OF WATER AND POWER; GERALD GEWE; GENE COUFAL; and DOES 1 - 50

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

**INTRODUCTION**

A. Memorandum of Understanding. In March 1997, City of Los Angeles Department of Water and Power (“LADWP”), the County of Inyo (“County”), the Sierra Club, the Owens Valley Committee, the California Department of Fish and Game, the California State Lands Commission, and Carla Scheidlinger entered into a Memorandum of Understanding (“MOU”).

B. Draft EIR. The MOU requires LADWP, as the lead agency, and the County, as a responsible agency, to jointly prepare an environmental impact report (EIR) for the Lower Owens River Project (LORP). Because federal funds for implementation of the LORP are being provided by the U.S. Environmental Protection Agency (“EPA”), an Environmental Impact Statement (“EIS”) must be prepared for the LORP. Therefore, a combined EIR/EIS is being prepared.

The LORP is compensatory mitigation for impacts related to LADWP’s groundwater pumping that were difficult to quantify or mitigate directly. LADWP adopted the LORP as a mitigation measure for

1 these impacts in 1991, pursuant to the California Environmental Quality Act (“CEQA”). The MOU  
2 augmented the LORP, provided additional detail, and set a schedule for implementation.

3 The MOU provides that a draft EIR addressing the LORP (“Draft EIR”) was to have been  
4 released by June 13, 2000. A Draft EIR was not released by June 13, 2000. Thereafter, the parties to  
5 the MOU agreed to several extensions for completion of the Draft EIR. The Draft EIR was not  
6 completed by the agreed-upon extensions. On December 4, 2001, Plaintiffs filed an action in Inyo  
7 County Superior Court seeking an order directing LADWP and the County to comply with the MOU  
8 provisions requiring completion of the Draft EIR. By stipulation dated May 30, 2002, it was agreed that  
9 the Draft EIR would be completed and released by August 31, 2002. The Draft EIR was not released  
10 by August 31, 2002. On September 12, 2002, the Inyo County Superior Court issued an Order  
11 directing the completion and release of the Draft EIR by November 1, 2002. On November 1, 2002, a  
12 Draft EIR/EIS was released for public review and comment. The public comment period on the Draft  
13 EIR/EIS closed on January 14, 2003.

14 C. Final EIR. The MOU requires that a Final EIR addressing the LORP be completed and  
15 presented to the LADWP Board of Water and Power Commissioners (“LADWP Board”) for  
16 certification as soon as possible following the Draft EIR.

17 D. Commencement of Baseflows and Implementation of the Other Physical Features of the  
18 LORP. The MOU requires LADWP to commence baseflows of approximately 40 cubic feet per second  
19 (“cfs”) in the lower Owens River by June 13, 2003. LADWP did not commence the baseflows on June  
20 13, 2003, and has not commenced such flows as of the date of this Stipulation and Order. The MOU  
21 requires LADWP to commence implementation of the other physical features of the LORP upon  
22 certification of the final EIR. Since the final EIR has not been certified as of the date of this Stipulation  
23 and Order, the implementation of the other physical features of the LORP has not commenced.

24 E. Additional Commitments. In addition to implementation of the LORP, the MOU requires  
25 that by June 13, 2000 (three years from the discharge of the writ), certain studies and evaluations be  
26 completed by consultants identified in the MOU (“MOU Consultants”) acting under the direction of the  
27 County and LADWP. The MOU provides that actions or projects recommended by these studies be  
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1 considered for approval and implementation by the LADWP Board. Further, the MOU provides that if  
2 the LADWP Board determines not to approve and implement all or part of any such action or project, it  
3 must set forth its reasons in a resolution of disapproval. By agreement of the parties to the MOU, the  
4 MOU Consultants were given extensions of time until September 1, 2001 to complete certain of these  
5 tasks.

6 Section III.A.1 of the MOU provides that the MOU Consultants will conduct an evaluation of the  
7 condition of Yellow-billed Cuckoo habitat in the riparian woodland areas of Hogback and Baker Creeks  
8 and will develop Yellow-billed Cuckoo Habitat Enhancement Plans for those areas. Section III.A.3 of the  
9 MOU also requires LADWP to provide additional mitigation in the form of 1600 acre-feet of water per  
10 year ("AFY"). The MOU Consultants are required to first determine the water requirements (up to 1,600  
11 acre-feet) of the on-site mitigation measure at Hines Springs identified in the 1991 EIR. Once the water  
12 supply requirements have been determined, opportunities to use any remaining water in the  
13 implementation of on-site and/or off-site mitigation at/for Fish Springs, Big and Little Blackrock Springs,  
14 and Big and Little Seely Springs, or other appropriate sites, are to be identified and evaluated by  
15 Consultants. The establishment of a shorebird and waterfowl habitat east of Diaz Lake, the enhancement  
16 of a wetland at Calvert Slough, and the establishment of a permanent water supply for Warren Lake north  
17 of Big Pine to enhance shorebird and wildlife habitat are to be included in the evaluation of off-site  
18 measures. The feasibility and the relative environmental benefits of the identified opportunities are also to  
19 be assessed. Based upon this evaluation, the MOU Consultants are to recommend reasonable and  
20 feasible mitigation measures in addition to the measure at Hines Spring and are to recommend how the  
21 water should be released and used to implement and maintain these mitigation measures.

22 Section III. H of the MOU requires that LADWP and the County prepare an annual report, to be  
23 released on or about May 1 of each year, that describes the environmental conditions in the Owens  
24 Valley and studies, projects, and activities conducted under the Inyo County/Los Angeles Water  
25 Agreement ("Agreement") and the MOU.

26 F. Capacity of the LORP Pump Station. The Agreement provides that LADWP will  
27 construct a pump station to recover water released to the LORP and convey the water to the Los  
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1 Angeles Aqueduct. LADWP contends that there is no limit on the capacity of the pump station so long as  
2 the flows established by the MOU and the goals of the LORP plan are met. The other signatories to the  
3 MOU believe that the Agreement and the MOU require LADWP to construct a pump station with a  
4 capacity of 50 cfs.

5 G. Second Amended and Supplemental Complaint and Cross Complaint. On September  
6 26, 2003, Plaintiffs filed a Second Amended and Supplemental Complaint for Declaratory and Injunctive  
7 Relief and Petition for Writ of Mandate (“Amended Complaint”). On December 4, 2003, the California  
8 Department of Fish And Game and the California State Lands Commission filed a Cross Complaint for  
9 Declaratory Relief and Petition for Writ of Mandate (“Cross Complaint”). These actions seek to enforce  
10 the terms of the MOU.

11 H. Purpose of the Stipulation and Order. The purpose of this Stipulation and Order is to  
12 resolve the issues raised in the Amended Complaint and the Cross Complaint, and to resolve the issue of  
13 the capacity of the LORP pump station.

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15 **STIPULATION**

16 It is hereby and stipulated by and between Plaintiff Sierra Club by and through Laurens H. Silver,  
17 Plaintiff Owens Valley Committee by and through Donald B. Mooney, Defendants City of Los Angeles,  
18 Los Angeles Department of Water and Power, Board of Commissioners of the Department of Water and  
19 Power, Gerald Gewe, and Gene Coufal, by and through Rockard J. Delgadillo, City Attorney, Richard  
20 M. Helgeson, Senior Assistant City Attorney for Water and Power, Arthur B. Walsh, Assistant City  
21 Attorney, Real Party in Interest County of Inyo by and through Paul N. Bruce, County Counsel and  
22 Gregory L. James, Special Legal Counsel, and Cross-Complainants California Department of Fish And  
23 Game and California State Lands Commission by and through Bill Lockyer, Attorney General, Gordon  
24 Burns, Deputy Attorney General and Daniel L. Siegel (together referred to as “the parties”) as follows:

25 1. LADWP shall build a "stand alone" (non-expandable) LORP pump station that is limited  
26 to a maximum capacity of 50 cfs. At any given time, the rate of pumping by the pump station may be up  
27 to, but shall not exceed 50 cfs. The U.S Bureau of Reclamation will design the pump station, including  
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1 such redundancy in pumping capacity as it deems necessary. LADWP will construct the pump station as  
2 designed by the U.S Bureau of Reclamation. LADWP shall continuously measure and record the rate of  
3 pumping at all times. The location of the measurement shall be at the LORP pump station or in the  
4 pipeline that connects the pump station with the existing 60-inch pipeline that leads to both the LA  
5 Aqueduct and to LADWP's Owens Lake dust control project. LADWP shall insure the accuracy of the  
6 pumping measurements by calibrating its metering device(s) on a periodic basis as per the manufacturer's  
7 recommendations. LADWP shall submit an annual pump station report to the other parties that  
8 demonstrates compliance with the above pumping limitation and shall post the flow data in real time and  
9 the average flow for the then current month to LADWP's website. The raw data associated with flow  
10 measurements shall be available for inspection and copying as a public record. LADWP will provide to  
11 the County, the California Department of Fish and Game and the California State Lands Commission  
12 reasonable access to its metering devices, control structures, etc. for the purpose of such independent  
13 monitoring and inspection as is relevant to confirming compliance with this Stipulation and Order.

14           2.       LADWP and the County shall complete and release to the public and the parties a Final  
15 EIR/EIS addressing the LORP by June 23, 2004. The Final EIR/EIS shall be prepared in accordance  
16 with the schedule attached as Exhibit A to this Stipulation and Order. In particular:

- 17       • Activity Numbers 1 through 4, on Exhibit A, shall be completed by LADWP and the County by  
18       January 23, 2004.
- 19       • Activity Number 5, on Exhibit A, shall be completed by February 20, 2004; however, if the EPA  
20       has not completed the portion of Activity Number 2 that is to be performed by EPA, Activity  
21       Number 5 shall be completed within five working days after completion of the Activity Number 2  
22       work by EPA.
- 23       • Activity Number 14, on Exhibit A, (preparation of an Administrative Draft of the Final EIR/EIS)  
24       shall be completed by May 7, 2004.

25           LADWP, as the CEQA lead agency, shall present the Final EIR/EIS and accompanying  
26 documents to the LADWP Board for consideration of certification on or before the first meeting of the  
27 LADWP Board in August 2004. The LADWP Board shall take action with respect to certification of the

1 Final EIR/EIS and approval of the project within 30 days of its presentation for certification. The Inyo  
2 County Board of Supervisors, as a CEQA responsible agency, will take action with respect to  
3 certification of the Final EIR/EIS within two weeks of action by the LADWP Board. The date for  
4 completion and release of the Final EIR/EIS, the date for submission of the Final EIR/EIS to the LADWP  
5 Board, the date for submission of the Final EIR/EIS to the Inyo County Board of Supervisors, and the  
6 dates for certification of the Final EIR/EIS may be extended by unanimous agreement of the parties, or by  
7 order of the Court upon the Court's determination that circumstances beyond the control of LADWP, or  
8 the County, justify an extension of a date(s).

9           3.       If LADWP completes, releases, submits and certifies the Final EIR/EIS  
10 as provided in section 2, the Sierra Club, the Owens Valley Committee, the California Department of  
11 Fish and Game, the California State Lands Commission, and the County will not challenge the adequacy  
12 of the Final EIR/EIS on the basis that the Draft EIR/EIS should have been re-circulated.

13           4.       After the Final EIR/EIS has been certified by the LADWP Board and that action has  
14 become final following the passage of the requisite review period by the Los Angeles City Council, and  
15 after the Final EIR/EIS has been certified by the Inyo County Board of Supervisors, and upon EPA's  
16 issuance of a Record of Decision on the EIS portion of the Final EIR/EIS (an action necessary for federal  
17 grant funds to become available), LADWP shall promptly commence implementation of the Off-River  
18 Lakes and Ponds and the Blackrock Waterfowl Habitat Area.

19           5.       The initial releases of water that will commence the ramping (increasing) of flows specified  
20 in the project description in the Final EIR/EIS adopted by LADWP and the County will be commenced  
21 by LADWP on or before September 5, 2005. LADWP will ramp the flows as rapidly as possible while  
22 attempting to avoid adverse impacts on water quality and fish. It is anticipated that LORP baseflows of  
23 40 cfs in the river channel will be fully implemented by April 1, 2006. However, if at the time of the  
24 approval of the LORP, LADWP and the County determine, upon substantial evidence, that full  
25 implementation of baseflows by April 2006 cannot occur without significant adverse impacts on water  
26 quality and/or fish, and therefore adopt an alternative to the project that allows for full implementation of  
27 baseflows after April 1, 2006, the rights, remedies, or causes of action that are available to any party in

1 regard to a failure by LADWP to implement baseflows by June 13, 2003 as required by the MOU, shall  
2 not be limited by the provisions of section 15 of this Stipulation and Order.

3           6.       The County shall seek new grant funds (from agencies other than LADWP and the  
4 County) that will allow the County to continue to conduct its salt cedar control program in the area of the  
5 LORP. LADWP will provide funds to the County in an amount not to exceed \$500,000 per year, that  
6 matches the amount of any grant funds obtained by the County for the continuation of its salt cedar  
7 control program in the LORP up to a total maximum of \$1,500,000. The County will provide to  
8 LADWP a copy of each monthly invoice(s) submitted by the County to a granting agency(s) for  
9 reimbursement of expenses incurred by the County. Within ninety days of receipt of written notification  
10 from the County that all or part of the invoiced funds have been received by the County from the granting  
11 agency, LADWP will provide to the County an amount of funds equal to the amount of the funds received  
12 from the granting agency (up to a maximum of \$500,000 per fiscal year). If LADWP has provided  
13 \$500,000 to the County in a fiscal year, the difference between \$500,000 and the amount of any  
14 unmatched grant funds (up to the \$500,000 maximum for the following fiscal year) will be provided to the  
15 County by LADWP during the following fiscal year. LADWP and the County will agree on the  
16 procedures and specific schedules for providing the matching funds to the County. LADWP will  
17 cooperate with the County and assist the County in its attempts to obtain such grant funds. If the County  
18 fails to obtain such grant funds, the provisions of this Stipulation and Order shall not require the County to  
19 continue its salt cedar control program in the area of the LORP.

20           7.       LADWP will conform to each of the following deadlines:

21           (a)       Not later than 7 days from certification of the Final EIR/EIS by the LADWP Board,  
22 LADWP shall submit complete applications for all permits necessary to allow implementation of the  
23 LORP. LADWP shall provide evidence to the other parties to this Stipulation and Order that the  
24 applications were timely submitted.

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1 (b) LADWP shall initiate the Phase 1 flows as described on page 2-21 of the LORP Draft  
2 EIR not later than six (6) months from the granting of all permits necessary to allow the implementation of  
3 Phase 1 flows.

4 (c) For information purposes only, LADWP shall, within 45 days of the entry of this  
5 Stipulation and Order, develop and submit for review to the other parties a schedule that: (1) identifies the  
6 various tasks which are to be undertaken by outside contractors that are prerequisites to implementing the  
7 Phase 1 flows, and are prerequisites to completing other LORP pre-implementation work, (2) provides  
8 the anticipated dates for LADWP to release Requests for Proposals for each of those tasks, (3) provides  
9 the anticipated starting and completion date for each task, (4) identifies the work that will be undertaken  
10 by LADWP that is prerequisite to completing other LORP pre-implementation work, and (5) provides  
11 the anticipated starting and completion dates for each of those tasks. All tasks and work described in (1)  
12 through (5) shall be structured by LADWP so that the schedule for commencing the releases into the river  
13 implementing the Phase 1 flows described in section 7b, and the schedule for releasing baseflows into the  
14 river described in section 5 are attained. LADWP will report on its adherence to the schedules described  
15 in (1) through (5), and, if it deems it necessary, will submit modifications to the schedule to the other  
16 parties.

17 8. Section III. A. 1 of the MOU is amended to read as follows (the amended language is  
18 shown in italics):

19 1. YELLOW-BILLED CUCKOO HABITAT. Consultants, *in*  
20 *accordance with a work plan developed by Consultants and approved by DWP and*  
21 *the County, and with the assistance of a subcontractor(s) recommended by the*  
22 *County and acceptable to Consultants, will conduct an evaluation of the condition of*  
23 *Yellow-billed Cuckoo habitat in the riparian woodland areas of Hogback and Baker*  
24 *Creeks shown on Figure 5. Based on that evaluation, Consultants will develop, as they*  
25 *deem warranted, Yellow-billed Cuckoo Habitat Enhancement Plans for these areas.*  
26 *Each habitat enhancement plan will identify reasonable and feasible actions or projects*  
27 *to maintain and/or improve the habitat of the Yellow-billed Cuckoo. In developing the*

1 plans, the Consultants *and the subcontractor(s)* will consider the recommendations for  
2 these areas that were identified in the *Distribution of Breeding Riparian Birds in*  
3 *Owens Valley, Inyo County, California* (Laymon and Williams 1994) and will confer  
4 with DWP, the lessee for each area and the Parties.

5 *Any inquiries, requests for guidance, reports, drafts, memoranda, data,*  
6 *draft recommendations, whether oral or written, and whether made or provided by*  
7 *Consultants and/or any subcontractors to DWP or the County, made or provided*  
8 *by DWP to Consultants and/or subcontractors, or made or provided by County to*  
9 *Consultants and/or subcontractors, will be provided to County and/or DWP in the*  
10 *same manner and at the same time.*

11 *The plans will include schedules for implementing the plans. Projects*  
12 *recommended by these studies and evaluations will be presented to the Board of*  
13 *Water and Power Commissioners for approval and implementation as soon as*  
14 *possible after compliance with CEQA.*

15 *The parties acknowledge that the process of utilizing subcontractor(s)*  
16 *recommended by the County could result in delays such that the above completion*  
17 *dates cannot be met, and the parties agree to extend the completion dates to the*  
18 *extent that the subcontractors cause such delays to occur.*

19 9. Section III. A. 3 of the MOU is amended to read as follows (the amended  
20 language is shown in italics):

21 3. **ADDITIONAL MITIGATION.** A total of 1600 AFY will be supplied  
22 by DWP for (1) the implementation of the on-site mitigation measure at Hines Spring  
23 identified in the EIR, and (2) the implementation of on-site and/or off-site mitigation that is  
24 in addition to the mitigation measures identified in the EIR for impacts at Fish Springs, Big  
25 and Little Blackrock Springs, and Big and Little Seely Springs.

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Consultants, *in accordance with a work plan developed by Consultants and approved by DWP and the County, and with the assistance of a subcontractor(s) recommended by the County and acceptable to Consultants*, will determine the water requirements of the mitigation measure at Hines Spring. Once the water supply requirements have been determined, opportunities to use any remaining water in the implementation of on-site and/or off-site mitigation at/for Fish Springs, Big and Little Blackrock Springs, and Big and Little Seely Springs, *or additional mitigation measures at Hines Springs*, will be identified and evaluated by Consultants. The establishment of a shorebird and waterfowl habitat east of Diaz Lake, the enhancement of a wetland at Calvert Slough, the establishment of a permanent water supply for Warren Lake north of Big Pine to enhance shorebird and wildlife habitat, *and other appropriate sites identified by the County* will be included in the evaluation of off-site measures. The feasibility and the relative environmental benefits of the identified opportunities also will be assessed.

*Consultants will independently evaluate the recommendations and report(s) of the subcontractor(s).* Based upon this evaluation, Consultants will recommend reasonable and feasible mitigation measures in addition to the measure at Hines Spring and will recommend how the water should be released and used to implement and maintain these mitigation measures. *The recommendations shall include schedules for implementing the mitigation measures.* Reasonable and feasible measures will be recommended which will provide the most environmental benefits that can be achieved with the available water. On-site mitigation measures will be preferred unless off-site measures are found to be more environmentally beneficial than identified on-site measures. In considering whether to recommend a measure, Consultants will confer with DWP, the lessee for each affected area and the Parties. Mitigation measures recommended by the Consultants, within the water limits of 1600 AFY, will be implemented by DWP in accordance with the recommended schedules, and will be

1 maintained by DWP and/or the County. *Projects recommended by these studies and*  
2 *evaluations will be presented to the Board of Water and Power Commissioners for*  
3 *approval and implementation as soon as possible after compliance with CEQA.*

4 *Any inquiries, requests for guidance, reports, drafts, memoranda, data,*  
5 *draft recommendations, whether oral or written, and whether made or provided by*  
6 *Consultants and/or any subcontractors to DWP or the County, made or provided*  
7 *by DWP to Consultants and/or subcontractors, or made or provided by County to*  
8 *Consultants and/or subcontractors, will be provided to County and/or DWP in the*  
9 *same manner and at the same time.*

10 *The parties acknowledge that the process of utilizing subcontractor(s)*  
11 *recommended by the County, could result in delays such that the above completion*  
12 *dates cannot be met, and the parties agree to extend the completion dates to the*  
13 *extent that the subcontractors cause such delays to occur.*

14 10 (a) Work Plans. The County and LADWP have agreed upon a work plan for developing  
15 the Yellow-billed Cuckoo Habitat Enhancement Plans pursuant to Section III.A.1 of the MOU (as  
16 revised in section 8), and have agreed upon a work plan for developing the mitigation measures to be  
17 recommended pursuant to Section III.A.3 of the MOU (as revised in section 9). The agreed upon work  
18 plans, together with the accompanying budgets and schedules are Exhibits B and C hereto. The other  
19 parties to the MOU have reviewed the schedules for the two work plans and are in agreement with the  
20 schedules. LADWP and Inyo County shall direct the MOU Consultants to complete the activities  
21 described in each work plan in accordance with the schedule attached to each work plan. This Stipulation  
22 and Order incorporates the schedules for developing the Yellow-billed Cuckoo Habitat Enhancement  
23 Plans and for developing the mitigation measures as enforceable orders of the Court.

24 (b) Schedules. If any party disagrees with a schedule approved by the Board of Water and  
25 Power Commissioners for implementing a Yellow-billed Cuckoo Habitat Enhancement Plan, or disagrees  
26 with a schedule approved by the Board of Water and Power Commissioners for implementing a  
27 mitigation measure that is recommended pursuant to Section III.A.3 of the MOU (as revised in section

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1 9), if the Court receives a written request from that party within thirty days of the Board of Water and  
2 Power Commissioners' action approving a schedule, the Court shall schedule a mandatory settlement  
3 conference or conferences for the purpose of attempting to reach agreement on schedules for conducting  
4 the work. If the parties are in agreement on some or all of the schedules approved by the Board of  
5 Water and Power Commissioners, the parties shall amend this Stipulation and Order to incorporate those  
6 schedules as enforceable orders of the Court. If some or all of the schedules are made the subject of a  
7 mandatory settlement conference as described in the preceding paragraph, any alternative schedules  
8 agreed to by the parties shall be incorporated into this Stipulation and Order by amendment as  
9 enforceable orders of the Court. If, following a mandatory conference or conferences, there is no  
10 agreement on a schedule(s) for implementing the work, any party to this Stipulation and Order may  
11 pursue its rights, remedies, or causes of action against any Defendant as provided in section 14 below. A  
12 failure to reach agreement on a schedule shall not in anyway alter or modify this Stipulation and Order, or  
13 the rights of the parties under this Stipulation and Order.

14 11. By May 31, 2004, LADWP shall complete and release to the other parties and to the  
15 public, an annual report for 2003 that is in conformance with section III.H of the MOU. Further, on or  
16 about May 1 of each year thereafter, LADWP and the County shall complete and release an annual  
17 report that is in conformance with section III.H of the MOU. These annual reports may be filed jointly or  
18 separately by the two entities.

19 12. The deadlines described in sections 2, 4, 5, 7, 8, 9 and 11 may be extended by  
20 unanimous agreement of the parties, or by order of the Court upon the Court's determination that  
21 circumstances beyond the control of LADWP, or the County, justify an extension of the deadlines.

22 13. Prior to the completion and release of the Final EIR/EIS, on January 23, 2004, February  
23 20, 2004, March 26, 2004, April 23, 2004, May 21, 2004, and every two weeks thereafter until  
24 certification of the Final EIR, LADWP and the County will provide progress reports to the parties and  
25 will file the progress reports with the Court. After certification of the Final EIR, on the last court day of  
26 each month until the LORP baseflows have been implemented, LADWP and the County shall provide  
27 progress reports to the other parties and shall file the reports with the Court. These reports may be filed

1 jointly or separately by the two entities. The reports shall identify progress, or lack thereof, in  
2 implementing the Stipulation and Order, including whether the progress is consistent with the schedules  
3 established by the Stipulation and Order, and if not consistent with the implementation schedule, the facts  
4 and circumstances regarding the inconsistency, and the planned action that will be taken to meet the  
5 implementation schedule.

6 14. A party or parties to this Stipulation and Order may seek enforcement of this Stipulation  
7 and Order by filing and serving a noticed motion to set a hearing for an order to show cause why a  
8 remedy, sanctions, or other order proposed in the motion, or otherwise determined to be appropriate by  
9 the court, should not be imposed.

10 15. As long as LADWP is in compliance with the deadlines described in sections 2, 4, 5, 7 a,  
11 7b, 8, 9 and 11, has submitted the schedule described in section 7c, and has provided matching funds  
12 pursuant to section 6, no party to this Stipulation and Order may seek an order from any Court that  
13 compels a reduction in LADWP's groundwater pumping in the Owens Valley, and no party to this  
14 Stipulation and Order may seek an order from any court to compel the commencement of flows in the  
15 river (LADWP shall be deemed in compliance with any of the above-described deadlines if it is in  
16 compliance with the deadline as extended by unanimous agreement of the MOU Parties or by order of  
17 the Court.) However, if LADWP fails to comply with any of these deadlines: (1) this Stipulation and  
18 Order shall not limit the rights, remedies, or causes of action of any party to this Stipulation and Order  
19 against any Defendant, including rights, remedies, and causes of action that have not yet been filed,  
20 provided that the party pursues such rights, remedies or causes of action in Inyo County Superior Court;  
21 (2) Defendants agree to toll any and all applicable statutes of limitations and other procedural  
22 requirements and limitations from the date of the filing of this Stipulation and Order for all such rights,  
23 remedies, and causes of action, and (3) any and all claims of laches are waived by Defendants, with  
24 respect to such rights,  
25 remedies, and causes of action, except that no right, remedy or cause of action which would have expired  
26 or been barred prior to the date of this Stipulation and Order is revived by this paragraph.

1 If a party pursues such rights, remedies, or causes of action in a new action, Defendants shall not  
2 oppose coordination or consolidation with the current action. The parties intend this provision to maintain  
3 the status quo and avoid any prejudice to the parties for granting Defendants additional time to implement  
4 the LORP. This section shall not bar or affect any dispute that has been, or may be, brought by the  
5 County against LADWP under the dispute resolution provisions of the Agreement. Moreover, this  
6 section is intended to limit a parties' remedies only for Defendants' failure to meet the MOU deadlines  
7 that have been extended herein; it is not intended to apply to other breaches of the MOU or other legal  
8 duties, such as disputes about the project's design.

9 16. If, the current judge (Denton, J.) assigned to this case is no longer available for any  
10 reason, then this Stipulation and Order will be enforced by a disinterested judge from a neutral county  
11 assigned by the chairperson of the Judicial Council pursuant to Code of Civil Procedure section 394(a).

12 17. Nothing in this Stipulation and Order shall be interpreted as changing or modifying any  
13 provision or provisions of the MOU or any obligation in the MOU unless such change or modification is  
14 expressly identified. Nothing in this Stipulation and Order shall alter any legal obligation, duty or  
15 commitment by any party, including but not limited to obligations, duties and commitments under CEQA,  
16 the Agreement, and the findings and resolutions adopted by the Los Angeles City Council on October 18,  
17 1991, and by LADWP on October 15, 1991, in which they committed to implement the LORP and  
18 other mitigation measures. Nothing in this Stipulation and Order constitutes an admission by any party  
19 that the delays in preparation of a Final EIR/EIS or in implementation of the baseflows were or were not  
20 attributable to circumstances beyond the control of the Defendants.

21 18. Nothing in this Stipulation and Order shall be construed to (1) bar LADWP from coming  
22 before this Court to pursue any claimed legal rights or remedies that it may have to change the terms of  
23 Section 1 in the event of a subsequent change of circumstances, or (2) imply that LADWP is entitled to  
24 change the terms of Section 1.

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26 \_\_\_\_\_  
Date

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Laurens H. Silver, Esq.  
Attorney for Plaintiff  
Sierra Club

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Date

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Donald B. Mooney  
Attorney for Plaintiff  
Owens Valley Committee

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Date

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Gordon B. Burns  
Deputy Attorney General  
Attorney for Real Parties in Interest/Cross  
Complainants  
California Department of Fish and Game  
California State Lands Commission

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Date

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Arthur B. Walsh  
Special Counsel  
Joseph Brajevich  
Attorney for Defendants  
City of Los Angeles; Los Angeles  
Department Of Water And Power;  
Board of Commissioners of The  
Department Of Water and Power;  
Gerald Gewe and Gene Coufal

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Date

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Paul N. Bruce  
County Counsel  
Gregory L. James  
Special Legal Counsel  
Attorneys for Real Party in Interest  
County of Inyo

**SECTION 3**  
**ORDER**



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Good cause appearing therefore, the Amended Stipulation set forth above is the order of this Court.

Dated: \_\_\_\_\_ 2004 \_\_\_\_\_

Judge of the Superior Court