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OWENS VALLEY COMMITTEE

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF INYO

SIERRA CLUB, and OWENS VALLEY COMMITTEE	)	Case No.: _____
	)	
Plaintiffs/Petitioners	)	COMPLAINT AND PETITION FOR
	)	INJUNCTIVE RELIEF AND FOR
v.	)	RELIEF BY WAY OF MANDAMUS;
	)	AND COMPLAINT FOR
CITY OF LOS ANGELES; LOS ANGELES DEPARTMENT OF WATER AND POWER; BOARD OF COMMISSIONERS OF THE DEPARTMENT OF WATER AND POWER; COUNTY OF INYO and DOES 1 - 50	)	DECLARATORY JUDGMENT
	)	
Defendants/Respondents	)	
	)	
_____	)	
CALIFORNIA DEPARTMENT OF FISH AND GAME; and CALIFORNIA STATE LANDS COMMISSION and DOES 51-100	)	
	)	
_____	)	
Real Parties in Interest.	)	

**INTRODUCTION**

1  
2           1.       Petitioners/Plaintiffs Sierra Club and Owens Valley Committee bring this action to  
3 enforce the terms of a Memorandum of Understanding (“MOU”), entered into by the County  
4 of Inyo, the City of Los Angeles Department of Water and Power (“City” or “DWP”), the  
5 Sierra Club, the Owens Valley Committee, the California Department of Fish and Game, the  
6 State Lands Commission, and Carla Scheidlinger. The MOU requires the City to undertake a  
7 number of obligations in mitigation for damages attributable to its ground-water pumping project  
8 initiated in 1970. The principal mitigation feature of the MOU is the Lower Owens River  
9 Project (“LORP”). The City, without proper cause, has failed to implement the LORP by the  
10 date set forth in the MOU; it has neglected and unreasonably delayed the LORP, and it has  
11 failed to meet other obligations under the MOU. This suit seeks an order from the Court  
12 requiring the City to comply with its obligations under the MOU, and directing that the City  
13 honor its MOU obligations by implementing a LORP plan that will satisfy its commitment to  
14 mitigate for previous environmental harm done in the Owens Valley.

15           2.       The City has breached its promises and obligations contained in the MOU. The City  
16 has missed all the deadlines in the MOU relating to the development and implementation of the  
17 LORP. It issued a draft EIR for the LORP more than two years late, only after this Court  
18 ordered it to do so. The City certified a Final EIR for the LORP several years late and then only  
19 under Court Order. It failed to put water in the river by June 2003, as it was required to do  
20 under the MOU. Consequently, the City continues to carry out its groundwater pumping, as it  
21 has since 1970, without having implemented the mitigation required by CEQA, and the MOU.  
22 By failing to implement the LORP in a timely fashion the City has exported to Los Angeles  
23 thousands of acre-feet of water that should have been dedicated to the restoration of the Lower  
24 Owens River.

25           3.       As the City has failed to abide by its legal duties in connection with the MOU,  
26 Petitioners seek writ of mandamus and injunctive relief that require the City to comply with the  
27 MOU and to implement the LORP.

**PARTIES**

1  
2       4.       Plaintiff Sierra Club is a California nonprofit membership organization incorporated  
3 under the laws of the State of California in 1892. Currently, the Sierra Club has approximately  
4 500,000 members, approximately one-third of whom live in California. The Sierra Club  
5 functions to educate and enlist people to protect and restore the natural and human environment,  
6 to practice and promote responsible use of the earth’s ecosystems and resources, to explore,  
7 enjoy, and protect wild places, and to use all lawful means to achieve these objectives. The Sierra  
8 Club participated as an *amicus curiae* in litigation between Inyo County and the City to require  
9 the City to complete an EIR for its groundwater-pumping project (see *County of Inyo v. City of*  
10 *Los Angeles* (1977) 71 Cal.App.3d 185), and it is a party to the MOU.

11       5.       Plaintiff Owens Valley Committee is a California nonprofit corporation. The specific  
12 purposes for which the Owens Valley Committee is organized are to monitor and oversee water  
13 management activities in the Owens Valley, to educate the public on local environmental issues,  
14 and to exercise the rights and obligations as a signatory to the MOU executed during the  
15 settlement of disputes related to preparation of an EIR on Groundwater Management in the  
16 Owens Valley. The Owens Valley Committee participated as an *amicus curiae* in *County of*  
17 *Inyo v. City of Los Angeles*, and it is a party to the MOU.

18       6.       Respondent City of Los Angeles is a municipal corporation under the laws of the  
19 State of California. At all times relevant to this petition, the City exported and continues to  
20 export surface water and groundwater from the Owens Valley for use in the City. The City was  
21 a defendant in *County of Inyo v. Los Angeles* and is a party to the MOU.

22       7.       Respondent Los Angeles Department of Water and Power (“DWP”) is a political  
23 subdivision of the City. Under the City’s charter, DWP manages and controls the City’s assets  
24 in the Owens Valley. Defendant Board of Commissioners (“DWP Board”) governs DWP.  
25 DWP was a defendant in *County of Inyo v. Los Angeles*; it is a party to the MOU, and it is the  
26 lead agency under CEQA responsible for the preparation of the EIR for the LORP, for carrying  
27 out the LORP Project, and for directing and assisting the MOU consultants in preparation of the  
28 LORP Plan.





1           19.     Although the City and DWP issued EIRs in 1976 and 1979, the Third District Court  
2 of Appeals found both to be legally inadequate. (*County of Inyo v. City of Los Angeles* (1977)  
3 71 Cal.App.3d 185; *County of Inyo v. City of Los Angeles* (1981) 124 Cal.App.3d 1.)

4                           **IN 1991, THE CITY AND DWP ADMITTED THAT THEIR GROUNDWATER**  
5                           **PROJECT CAUSED SIGNIFICANT ENVIRONMENTAL IMPACTS**

6           20.     In October 1991, the County, the City, and DWP approved the Inyo County/Los  
7 Angeles Long-Term Water Agreement (“Inyo-Los Angeles Agreement”) which is intended to  
8 provide environmental protection to the Owens Valley from the effects of groundwater pumping  
9 and water exports and to identify measures required to mitigate past and future damage to the  
10 environment of Inyo County as a result of groundwater pumping. The Agreement described the  
11 LORP as a mitigation measure and a feature of the augmented groundwater-pumping project,  
12 and it committed the City and DWP to implement the LORP.

13           21.     In connection with DWP’s augmented groundwater pumping project and the  
14 Agreement, the City, DWP and the County together completed a third EIR in October 1991  
15 (“the 1991 EIR”). In the 1991 EIR, the City and DWP acknowledged that the groundwater-  
16 pumping project had caused significant environmental damage.

17           22.     The 1991 EIR purported to address all water management practices and facilities  
18 associated with DWP’s second aqueduct, and projects and water management practices  
19 identified in the Agreement.

20                           **THE 1991 EIR INCLUDED THE LOWER OWENS RIVER PROJECT AS A**  
21                           **MITIGATION MEASURE FOR PAST ENVIRONMENTAL DAMAGE**

22           23.     The 1991 EIR described the LORP as a mitigation measure to compensate for  
23 significant environmental impacts caused by the City’s groundwater-pumping project between  
24 1970 and 1990, and it set forth the nature of these impacts. The LORP would restore flows to  
25 about 60 miles of the lower Owens (which has been partly dry since the City diverted the river  
26 into its first aqueduct, in 1913), and it would restore wildlife habitat along the sixty-mile riparian  
27 corridor, in the Owens Lake delta, and in other areas.

1                   **IN OCTOBER 1991, THE CITY AND DWP COMMITTED TO IMPLEMENT**  
2                   **THE LORP TO COMPENSATE FOR THE ENVIRONMENTAL DAMAGE THAT**  
3                   **THEIR PROJECT CAUSED**

4                   24.       On October 15, 1991, the DWP Board passed a resolution in which it certified the  
5                   1991 EIR and issued findings required by CEQA. On October 18, 1991, the Los Angeles City  
6                   Council passed an identical resolution. In the resolutions, the City Council and DWP Board:

- 7                   a.       committed to implement the LORP;
- 8                   b.       found that the LORP would mitigate significant environmental impacts  
9                   caused by the City's groundwater pumping project between 1970 and 1990,  
10                  including impacts to flows and vegetation at several springs, meadow and  
11                  riparian vegetation on formerly irrigated lands, and wildlife species dependent  
12                  upon destroyed or altered vegetation;
- 13                  c.       found that, as mitigated, the project would no longer have a significant effect  
14                  on the environment, under Public Resources Code section 21081(a); and  
15                  d.       adopted a mitigation "Monitoring Plan" to ensure that the mitigation is  
16                  actually implemented, pursuant to Public Resources Code section 21081.6.

17                  25.       In October 1991, the City and DWP submitted the resolutions and the 1991 EIR to  
18                  the Court of Appeal and moved for an order discharging the writ. Shortly thereafter, the Sierra  
19                  Club, the Owens Valley Committee, the Department of Fish and Game, and the State Lands  
20                  Commission, who were participating in the litigation between the County and City as *amici*,  
21                  raised concerns about the legal adequacy of the 1991 EIR. In 1994, the Court of Appeals denied  
22                  the County and City's request to discharge the writ of mandate and ordered the County and  
23                  LADWP to respond to the issues raised by the *amici* concerning the legal adequacy of the Final  
24                  EIR.

25                   **IN 1997, THE CITY AND DWP SIGNED A MEMORANDUM OF**  
26                   **UNDERSTANDING THAT REITERATED THEIR COMMITMENT TO**  
27                   **IMPLEMENT THE LORP AND SET SPECIFIC DEADLINES FOR**  
28                   **IMPLEMENTATION OF THE LORP AND OTHER MITIGATION MEASURES**

29                  26.       After three years of negotiations, in March 1997, the City, DWP, the County, the  
30                  State Lands Commission, the Department of Fish and Game, the Owens Valley Committee, the  
31                  Sierra Club, and Carla Scheidlinger signed the MOU. The City and DWP agreed that: DWP, as

1 the lead agency under CEQA, would release a draft EIR for the LORP by June 13, 2000; DWP  
2 would present a final EIR to the DWP Board for certification as soon as possible following the  
3 draft EIR; DWP would commence flows of 40 cubic feet per second (“cfs”) in the lower  
4 Owens by June 13, 2003; DWP would commence implementation of most physical features of  
5 the project immediately after certifying the final EIR

6 27. The MOU was intended to resolve concerns about the adequacy of the 1991 EIR,  
7 particularly concerns related to the adequacy of mitigation described in the 1991 EIR for impacts  
8 resulting from the City’s groundwater pumping in the Owens Valley from 1970 to 1990. The  
9 MOU required the City to develop, plan and carry out a number of measures to mitigate the  
10 adverse effects of the City’s project.

11 28. In light of the execution of the MOU, the parties and the *amici* jointly moved the  
12 Third District Court of Appeals for discharge of the long-standing (since 1973) writ of mandate  
13 requiring the City to prepare a legally adequate EIR in connection with its augmented ground-  
14 water pumping project, first initiated in the early 1970’s after completion of the City’s second  
15 aqueduct.

16 29. On June 13, 1997, the Third District Court of Appeals accepted the MOU and  
17 discharged the writ, in expectation that the provisions of the Long Term Water Agreement and  
18 the mitigation projects contemplated in the Final EIR and MOU would be timely and fully  
19 implemented. The Inyo-Los Angeles Agreement and the MOU became effective upon discharge  
20 of the Court’s writ.

21  
22 **THE MOU PROVIDES FOR THE IMPLEMENTATION OF THE LOWER  
OWENS RIVER PROJECT**

23 30. The MOU augments the description of the LORP in the Inyo-Los Angeles  
24 Agreement and the 1991 EIR. The 1991 EIR identified the LORP as compensatory mitigation  
25 for significant adverse environmental impacts related to groundwater pumping by DWP from  
26 1970 to 1990 that were difficult to quantify. The MOU specifies the goals of the LORP, the  
27 timeframe for development and implementation, and specific actions. It also provides certain  
28 minimum requirements for the LORP related to flows, habitats and species to be addressed, and



1 adaptive management and monitoring. The MOU required DWP and the County to prepare an  
2 EIR for the LORP and issue a draft EIR within 36 months of the effective date of the MOU  
3 (June 13, 2000), and provided that flows in the river must begin within 72 months of the effective  
4 date of the MOU (June 13, 2003). Neither a Draft or Final EIR or the inception of flows in the  
5 River occurred within the time frame set forth in the MOU. Other reports and studies related to  
6 mitigation requirements at seeps and springs and creation of habitat were not completed within  
7 the time frames set forth in the MOU.

8 31. As compensatory mitigation for adverse environmental impacts attributable to the  
9 City's augmented groundwater pumping, the LORP includes the watering of a 60-mile stretch of  
10 the Lower Owens River channel below the aqueduct intake, the enhancement of environmental  
11 features along and near the river, and a pumpback facility near the Owens River Delta. The  
12 MOU provides for the development and implementation of an ecosystem management plan for  
13 the LORP that incorporates multiple resource values and provides for adaptive management  
14 based upon management of flows established in the MOU and upon land management.

15 32. Rewatering the Lower Owens River through the LORP will provide significant  
16 riparian and fresh water habitats as mitigation for the substantial and adverse environmental  
17 impacts of DWP's ground water pumping that began in 1970. Assuring water for the Owens  
18 River Delta through the LORP will provide for the perpetuation and enhancement of significant  
19 wetlands and shorebird-wading bird habitat remaining at Owens Lake.

20 33. The goal of the LORP is the establishment of a healthy and functioning Lower  
21 Owens River riverine-riparian ecosystem, and the establishment of healthy functioning  
22 ecosystems in the other physical features of the LORP, for the benefit of biodiversity and  
23 threatened and endangered species, while providing for the continuation of sustainable uses,  
24 including recreation, livestock grazing, agriculture, and other activities. The LORP is intended to  
25 create and maintain diverse natural habitat consistent with the needs of specified habitat indicator  
26 species.

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34. There are four critical physical features of the LORP set forth in the MOU:

a. A continuous flow will be established and maintained in the river channel from at or near the intake structure that diverts the Owens River into the Los Angeles Aqueduct, to the pumpback system located near the river delta. A base flow of approximately 40 cfs from at or near the intake to the pumpback system to be maintained year round, as well as seasonal habitat flows of approximately 200 cfs during years of average or above-average runoff in the Owens River watershed.

b. The establishment of the Owens River Delta Habitat Area, which is to enhance and maintain existing habitat consisting of riparian areas and ponds suitable for shorebirds, waterfowl, and other animals and to establish and maintain new habitat consisting of riparian areas and ponds suitable for shorebirds, waterfowl, and other wildlife and fishery resources within the Habitat Area.

c. The maintenance and/or establishment of certain off-river lakes and ponds to sustain diverse habitat for fisheries, waterfowl, shorebirds, and other wildlife and fishery resources.

d. Creation and maintenance of a 1,500 acre Blackrock Waterfowl Habitat Area.

35. The MOU further requires that DWP consult with the MOU Parties, other agencies, and the public concerned with the development and implementation of the LORP plan throughout the development and implementation of the LORP plan. It also requires that reports, studies, evaluations prepared pursuant to the MOU, together with supporting data, be provided to the public. As draft and final documents become available, copies of the documents or data must be provided to each party.

36. The MOU requires DWP, as the lead agency, and the County, as a responsible agency, to jointly prepare an EIR for the LORP. Under the MOU, DWP agreed to release for public review the draft EIR by June 13, 2000, and it agreed to complete a final EIR and present it for certification by the DWP Board as soon as possible following the release of the draft EIR.

1           37.     DWP did not complete the LORP Draft EIR by June 13, 2000, as required by the  
2 MOU. The parties agreed to several extensions for completion of the Draft EIR. DWP did not  
3 complete the LORP Draft EIR by the agreed upon extensions.

4           38.     On December 24, 2001, Plaintiffs filed an action in Inyo County Superior Court  
5 seeking an order directing DWP to comply with the MOU provisions requiring completion of  
6 the LORP Draft EIR. By stipulation and court order, DWP agreed to complete and release the  
7 Draft EIR by August 31, 2002. DWP failed to comply with the Stipulation and Order.

8           39.     On September 12, 2002, the Inyo County Superior Court issued an Order directing  
9 DWP to complete and release the LORP Draft EIR by November 1, 2002. On November 1,  
10 2002, LADWP finally released the LORP Draft EIR for public review and comment. The public  
11 comment period closed on January 14, 2003.

12           40.     The MOU requires DWP to commence the base flow of 40 cfs in the river channel  
13 by June 13, 2003. On June 13, 2003, DWP failed to commence the base flow of 40-cfs in the  
14 river channel.

15           41.     Pursuant to Court Order, the City released a Final EIR in June 2004.

16           42.     On July 20, 2004, the DWP Board of Commissioners adopted Resolution No. 005  
17 032 in which DWP certified the Final EIR for the LORP and approved a LORP project.

18           43.     Under the MOU's dispute resolution provisions if any party is not reasonably  
19 discharging an obligation or performing a duty which the MOU requires, prior to commencing  
20 any litigation, the complaining party must notify all the other parties of the dispute and request in  
21 writing a meeting of the signatories to discuss the dispute and resolve differences.

22           44.     By letters dated December 10, 2004, December 23, 2004 and January 7, 2005,  
23 Plaintiffs initiated dispute resolution under the MOU and requested in writing a meeting of the  
24 signatories. A meeting of the signatories to discuss the dispute was held in Bishop on January 6,  
25 2005, with respect to the issues arising under the MOU and identified in the December 10, 2004  
26 and December 23, 2004 letters. A meeting will be held on January 14, 2005 with respect to the  
27 issues raised in the January 7, 2005 letter.

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1                   **FOR MORE THAN 30 YEARS, THE CITY AND DWP HAVE CARRIED OUT**  
2                   **THEIR GROUNDWATER PUMPING PROJECT WITHOUT IMPLEMENTING**  
3                   **THE FEASIBLE MITIGATION MEASURES TO WHICH THEY HAVE**  
4                   **REPEATEDLY COMMITTED**

5                   45.       Plaintiffs are informed and believe, and therefore allege, that the City and DWP have  
6                   approved and carried out, and continue to carry out, features of the groundwater pumping project  
7                   that benefit them. But the City and DWP have failed, and continue to fail, to complete the  
8                   mitigation for the groundwater-pumping project.

9                   46.       Plaintiffs are informed and believe, and therefore allege, that the City and DWP profit  
10                  from the delay of the LORP and other delayed mitigation measures, including the Hines Spring  
11                  project that requires 1,600 acre-feet of water per year, by (1) diverting to their aqueduct and  
12                  otherwise using the water that otherwise would go to the mitigation measures, and (2) generating  
13                  electrical power from that water.

14               47.       Plaintiffs have a clear, present, and substantial right to the performance of City and  
15               DWP's duties. The Sierra Club and the Owens Valley Committee, as *amici* in *Inyo County v.*  
16               *City of Los Angeles* and as signatories to the MOU, have a direct and beneficial interest in  
17               enforcing the MOU's terms to ensure that the City and DWP implement the LORP in accord  
18               with the MOU and that water be placed in the river consistent with the MOU's express terms.  
19               Plaintiffs also have a direct and beneficial interest in the implementation of the mitigation  
20               measures and development of the LORP Plan required by the MOU.

21               48.       Plaintiffs have exhausted their administrative remedies and have no plain, adequate, or  
22               speedy remedy, in the ordinary course of law other than through this Complaint and Petition.

23                                   **CAUSES OF ACTION**

24                                   **FIRST CAUSE OF ACTION FOR**  
25                                   **RELIEF BY WAY OF MANDAMUS**  
26                                   **(Monitoring and Adaptive Management)**

27               49.       Plaintiffs incorporate by reference paragraphs 1 through 48, *supra*.

28               50.       The MOU establishes monitoring and adaptive management as an integral feature of  
the LORP to assure that the LORP goals will be achieved, and there will be assurance to the  
MOU signatories and the public that the City has satisfied its duties under CEQA to mitigate for  
environmental damage already caused in the Owens Valley. The MOU defines adaptive

1 management as a “method for managing the LORP that provides for modifying project  
2 management to ensure the project’s successful implementation and/or the attainment of project  
3 goals, should ongoing data collection and analysis reveal that such modifications are necessary.”  
4 (MOU I (D).) The MOU requires that “a program for data collection, analysis, and reporting  
5 (which will identify pathways to allow feedback to indicate where adaptive modifications to  
6 management are necessary) will be described” as part of the LORP Plan. (MOU II (E)  
7 (emphasis added).) There are additional provisions in the Action Plan, incorporated by reference  
8 into the MOU, that also require that the Monitoring and Reporting Plan establish “pathways to  
9 allow feedback from monitoring to adaptive management plans.” (Action Plan, Work Program  
10 VI.E.)

11 51. The monitoring and adaptive management plan presented in the FEIR (FEIR 2.10), in  
12 the LORP 2002 Plan, and in the Project approved by the City is inadequate to meet the above  
13 requirements of the MOU, because it generally fails to set standards by which determinations  
14 can be made, for adaptive management purposes, whether plan goals are being met. Particularly,  
15 with regard to land and flow management in the River-Riparian Habitat Area, no pathways are  
16 identified that allow feedback from monitoring to adaptive management measures, and no  
17 specific objective or measurable adaptive management triggers are set forth.

18 52. The LORP 2002 Plan, the FEIR, and the LORP Project (as approved), do not identify  
19 pathways to allow feedback to indicate where adaptive modifications to management are  
20 necessary to realize project goals. The LORP 2002 Plan, the FEIR, and the LORP Project, as  
21 approved, do not set forth performance criteria specific enough to satisfy the MOU’s  
22 requirements that the reported information (from data collection, analysis, and reporting) be the  
23 basis for “reveal[ing] that adaptive modifications to the LORP management are necessary to  
24 ensure the successful implementation of the project or the attainment of LORP goals.” (MOU  
25 II (E).) The LORP 2002 Plan, the FEIR and the LORP Project do not contain performance  
26 criteria definite enough to satisfy the MOU’s requirement that “adaptive modifications will be  
27 made when the reported information “reveals” that adaptive management is necessary. (MOU  
28 II(E) (emphasis added).)

1           53.     Since adaptive management is a required element of the project, and the means to  
2 ensure that the LORP attains the goals set forth in the MOU, performance criteria, and triggers  
3 for adaptive management must be set forth in the LORP Plan, so that they are required to be  
4 considered by the County and the City, when adaptive management becomes necessary in the  
5 course of project implementation. Thus, they must be embodied in a identifiable, enforceable,  
6 LORP Plan that the County and the City are required to implement.

7           54.     Although the Technical Memoranda prepared by the Consultants, contain Habitat  
8 Suitability Indices (“HSI”) for the habitat indicator species, the LORP Project contains no  
9 performance criteria that can be the basis for an assessment as to whether project goals are being  
10 met in the Lower Owens River Riverine-Riparian Habitat Area in light of needs of the indicator  
11 species set forth in the HIS indices. Part of the goal for this area is to create and sustain healthy  
12 and diverse riparian and aquatic habitats consistent with the needs of the “habitat indicator  
13 species for the riverine-riparian system.” (MOU II (C)(1)(a).)

14           55.     To meet the goal in the MOU of creating habitat for the aquatic and land-based  
15 indicator species, the plans for monitoring and adaptive management must be tailored to the  
16 needs of those species. The plan must specify standards for determining whether the different  
17 types of riverine-riparian habitat are developing sufficiently, consistent with the needs of the  
18 habitat indicator species, and must prescribe what adaptive management measures will be taken if  
19 the standards are not met.

20           56.     Although the Technical Memoranda prepared in development of the 2002 Ecosystem  
21 Sciences “Ecosystem Management Plan” contain projections of future riparian vegetation  
22 conditions, the Plan sets forth no criteria to assess whether the monitoring data collection,  
23 analysis, and reporting demonstrate, in light of the Habitat Suitability Indices and the projections  
24 of future riparian vegetation along the river, that “diverse natural habitats have been created and  
25 maintained” consistent with the needs of the habitat indicator species. (MOU II(C)(I)(a).)  
26 Although vegetation projections have been made, as required by the Action Plan (Work Program  
27 II (A)(4)(5)(6)(7)), there is generally no linkage between this modeling and the monitoring  
28 information relating to habitat creation and maintenance.

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57. As the City and DWP have failed to adopt a monitoring and adaptive management plan that complies with the MOU’s requirements, the Court is requested to issue a writ of mandate directing that the City and DWP comply with the MOU by directing the consultants to prepare an adaptive management program that comports with the requirements of the MOU.

**SECOND CAUSE OF ACTION  
FOR RELIEF BY WAY OF MANDAMUS  
(Protocols for Monitoring Data Analysis)**

58. Plaintiffs incorporate by reference paragraphs 1 through 57, *supra*.

59. The 2002 Plan, the FEIR, and the LORP Project do not provide the protocols for monitoring data analysis required by the MOU. (Action Plan, Work Program VI.A.)

60. The FEIR states that spatial and numerical data on vegetation and habitat characteristics will be analyzed by trend analysis and the Habitat Suitability Index (HSI) model. (FEIR, p. 2-72.) However, the FEIR fails to make clear the methodology (protocols) for establishing the habitat suitability index, and at what mapping level the data will be analyzed.

61. Protocols for “trend analysis” are not adequately described in the 2002 Plan, the FEIR, or the LORP Project as required by the MOU. The FEIR (p.2-73) states “...various habitat variables measured by the LORP monitoring program will be analyzed using several statistical methods to identify the direction and magnitude of change over time. To illustrate trends at individual sites, values of habitat variables will be plotted by time. Site-specific habitat losses and gains as well as long-term overall net change of the riparian/wetland habitat in the LORP area will be tracked.” There is no detail concerning the statistical methods that would be used, the standards for determining whether a statistically significant change has occurred, and the method for determining whether the trend measured is consistent with reaching project goals). Additionally, the habitat variables that will be included in the analysis are not identified.

62. As the City and DWP have failed to provide the protocols for monitoring data analysis required by the MOU, the Court should issue a writ of mandate directing the City and DWP to comply with the MOU.

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**THIRD CAUSE OF ACTION  
FOR RELIEF BY WAY OF MANDAMUS  
(Seasonal Habitat Flows)**

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3       63.     Plaintiffs incorporate by reference paragraphs 1 through 62, *supra*.

4       64.     The LORP Project approved by the City restricts the purpose and use of seasonal  
5 habitat flows in a manner inconsistent with express goals of the MOU. (MOU II (C)(1)(b)(ii).)

6       65.     The MOU requires the City to release seasonal habitat flows of up to 200 cfs. The  
7 seasonal habitat flows will proceed past the pump station to the delta to the extent they are in  
8 excess of 50 cfs. These flows are intended to create a “natural disturbance regime.” (MOU,  
9 p.12.) The seasonal habitat flows will mimic periodic episodes of floods that change the river,  
10 overflow the banks, and distribute seeds and muck throughout the river and delta. (See, MOU,  
11 pp. 12-13 and Action Plan, pp 2-3.)

12       66.     The MOU requires that the LORP Plan must recommend “flows of sufficient  
13 frequency, duration and amount” to serve seven purposes: (1) minimize muck on the river  
14 bottom and redistribute it to the river banks and the delta to benefit vegetation; (2) fulfill the  
15 wetting, seeding, and germination needs of riparian vegetation, particularly willow and  
16 cottonwood; (3) recharge the groundwater; (4) control tules and cattails; (5) enhance the fishery;  
17 (6) maintain water quality standards and objectives; and (7) enhance the river channel. (MOU, p.  
18 13.) Second, the MOU makes clear that the seasonal habitat flows are intended to benefit both  
19 the river system and the delta. (MOU, pp. 13, 15.)

20       67.     Each of the seven specific MOU goals for seasonal habitat flows (above) has  
21 parameters that can be objectively measured, whether qualitatively or quantitatively. The FEIR  
22 and the Project approved by the City, set no baseline performance criteria, emergency triggers, or  
23 at least one relatively objective or scientific threshold that triggers some adaptive management  
24 response for most of these goals.

25       68.     The Project adopted by the City, however, minimizes the use of this important tool in  
26 a manner that frustrates the achievement of project goals. The FEIR expressly states that the  
27 flows will not be used to control tules, which is one of the express purposes for the flows in the  
28 MOU. (Compare, FEIR, p. 4-10 [“The magnitude of the seasonal habitat flows was not



1 defined... to scour tules”] and the MOU, p. 13 [“the plan will recommend habitat flows...that  
2 will...control tules”].)

3 69. The provisions for adaptive management indicate that the ramping of flows would  
4 only be increased to meet habitat goals on the river system. (FEIR, p. 2-79.) Nothing in the  
5 Delta Habitat Area would trigger increases (FEIR, p. 2-81), despite the fact that, under the MOU,  
6 the flows are intended to be a management tool for both the river and the delta. (MOU at pp. 13,  
7 14-15.)

8 70. As the City and DWP have approved a LORP Project restricting the use of seasonal  
9 habitat flows in a manner inconsistent with the MOU, the Court should issue a writ of mandate  
10 directing compliance with the MOU.

11 **FOURTH CAUSE OF ACTION**  
12 **FOR RELIEF BY WAY OF MANDAMUS**  
13 **(Seasonal Habitat Flows as Adaptive Management)**

14 71. Plaintiffs incorporate by reference paragraphs 1 through 70, *supra*.

15 72. The City has approved a LORP Project that has removed augmentation of the 200 cfs  
16 seasonal habitat flows as an adaptive management tool, which was included in the DEIR/EIS and  
17 the 2002 LORP Ecosystem Management Plan as an adaptive management prescription.  
18 Abandonment of augmentation of the habitat flows as a modality of adaptive management  
19 occurred despite evidence in the FEIR and the Technical Appendix that lack of augmentation of  
20 habitat flows could lead to a project that does not meet project goals set forth in the MOU, II  
(C)(1)(b)(ii), II (C)(2).

21 73. Flow and land management were specified in the MOU as the management tools to  
22 achieve the project goals (MOU, II (B)(1)), and adaptive management was prescribed to assure  
23 attainment of project goals. (MOU, II (E).) Since the base flow of 40 cfs is required to be  
24 throughout the river year-round, the only flow management that can be employed in adaptive  
25 management is an adjustment to the seasonal habitat flow. Removal of the option of flow  
26 augmentation below the intake takes away one of the few available adaptive management tools, is  
27 a violation of the MOU II (B)(1) and II (E), and in light of evidence in the FEIR, jeopardizes the  
28 success of the project in meeting LORP goals.



1 required by the MOU, the Court should direct the City and DWP to comply with section II(c)(2)  
2 of the MOU.

3 **SIXTH CAUSE OF ACTION**  
4 **FOR RELIEF BY WAY OF MANDAMUS**  
5 **(Release of Documents)**

6 79. Plaintiffs incorporate by reference paragraphs 1 through 78, *supra*.

7 80. As draft and final documents prepared pursuant to the MOU have become available  
8 they have not all been provided to OVC and Sierra Club, in violation of the MOU, III (I).

9 81. Since the LORP FEIR was released on June 23, 2004, several documents have come  
10 to light that were not released as they became available, as required by MOU section III (I).  
11 Prior to release of the LORP FEIR Sierra Club and OVC were not aware these documents had  
12 been prepared. These documents are listed in the December 10, 2004 letter from OVC and  
13 Sierra Club, initiating dispute resolution, which is incorporated herein by reference.

14 82. The Sept. 2003 Baseline Data Methodologies report (item A,) was requested by  
15 Sierra Club on July 16, 2004 and provided to Sierra Club on July 30, 2004. However, a copy  
16 was never provided to OVC. The other items (B-E,) were provided to the MOU Parties by  
17 Ecosystem Sciences on October 28, 2004 owing to the September 15, 2004 order by Judge  
18 Cooper.

19 83. Data and two draft reports prepared pursuant to the MOU, III (A.1), were not  
20 released to the MOU Parties when they became available. The existence of the two documents  
21 was revealed in a November 9, 2004, letter from Greg James to Gene Coufal. Sierra Club  
22 requested these documents on November 19, 2004 and Sierra Club and OVC have not received  
23 them. The reports in question include:

24 A. Draft Yellow-billed cuckoo Phase I reports and accompanying data.

25 B. Progress report on the Yellow-billed cuckoo work, provided by Ecosystem  
26 Sciences to LADWP and ICWD on March 8, 2004.

27 84. Violation of MOU provision III (I), to timely provide draft and final documents to  
28 the MOU Parties, as they become available, has been a recurring problem for several years.  
The recent violations that are the basis of the current dispute, cited above, were preceded by

1 other instances where documents prepared pursuant to the MOU were not brought to the  
2 attention of the other MOU Parties until some significant time had passed since they were  
3 first available to LADWP and/or Inyo County. Past documents that were not provided to  
4 OVC, Sierra Club, DFG, and/or SLC when they became available are listed in the December  
5 10, 2004 letter initiating dispute resolution, which is incorporated herein by reference.

6 85. Respondents have a clear and present duty to make all documents available to  
7 plaintiffs as required by the MOU, without first being requested to do so by the Plaintiffs. As  
8 such, the court should issue a writ of mandate directing the City and DWP to comply with  
9 section III(I) of the MOU.

10 **SEVENTH CAUSE OF ACTION**  
11 **FOR RELIEF BY WAY OF MANDAMUS**  
12 **(Failure to follow Recommendations of Consultants)**

13 86. Plaintiffs incorporate by reference paragraphs 1 through 85, *supra*.

14 87. The Project approved by the City is not consistent with the recommendations of the  
15 consultants contained in the August 2002 LORP Plan prepared by the consultants, in violation of  
16 MOU Section II(I), which provides in relevant part that “the Parties shall not seek through any  
17 ...approval...to alter the recommendations of the consultants with respect to the LORP...”

18 88. The August 2002 Plan prescribes “modification of the magnitude of seasonal habitat  
19 flows” through adjusting the amount of “seasonal habitat flow released at the River Intake  
20 and/or release water from spill-gates.” This measure has been eliminated from Table 2-19 in the  
21 FEIR. Although other measures allow an adjustment in the duration of peak flow of the habitat  
22 flow released from the River Intake, no adaptive management option is listed in which water  
23 would be released lower in the river to help flush sediments, imitate a more natural flow pattern,  
24 or achieve LORP goals (other than as a short term measure to provide a refuge for fish at spill-  
25 gates during the first three habitat flow releases.)

26 89. The MOU provides in Section IIA that “DWP and the County will direct and assist  
27 consultants in the preparation of the LORP ecosystem management plan.” In certifying the  
28 FEIR, which contains the Project Description that the City intends to implement, the City did not

1 adopt the recommendations of the consultants embodied in the August 2002 LORP Plan, in  
2 violation of MOU Section II(I).

3 90. As the City and DWP have approved a project that is not consistent with the  
4 Consultants' recommendations, the Court should issue a writ of mandate directing that the City  
5 and DWP comply with the MOU by approving a project consistent with the Consultants'  
6 recommendations.

7 **EIGHTH CAUSE OF ACTION**  
8 **FOR RELIEF BY WAY OF MANDAMUS**  
9 **(Final Monitoring Plan)**

10 91. Plaintiffs incorporate by reference paragraphs 1 through 90, *supra*.

11 92. The 2002 LORP Plan, and the Project as approved do not contain a final monitoring  
12 plan that commits the City and the County to a specific monitoring program. The Monitoring  
13 Methodologies are still in draft form, subject to review by ICWD and LADWP. Both Baseline  
14 Methodologies documents that have been given to OVC and Sierra Club have been labeled  
15 "Draft."

16 93. The MOU requires that the LORP must include Monitoring and Adaptive  
17 Management as an integral feature of the Project.

18 94. In the absence of a definitive description of monitoring program, and an express  
19 commitment to perform that monitoring as part of project approval, the Project does not comport  
20 with the requirement of the MOU that there be a monitoring and reporting plan that identifies  
21 monitoring sites and specifies a "program for data collection, analysis, and reporting which will  
22 identify pathways to allow feedback to indicate where adaptive modifications to management are  
23 necessary." (MOU II (E).) The monitoring and reporting plan "*will be described as part of  
24 this plan.*" (*Id.* (emphasis added).)

25 95. As the City and DWP have approved a Project that does not contain a final  
26 monitoring plan as required by MOU, and the 2002 LORP Plan does not contain a final  
27 monitoring plan, the Court should issue a writ of mandate directing the City and DWP to adopt a  
28 monitoring plan as required by section II (E) of the MOU.

1 **NINTH CAUSE OF ACTION**  
2 **FOR RELIEF BY WAY OF MANDAMUS**  
3 **(Failure to District and Assist Consultants)**

4 96. Plaintiffs incorporate by reference paragraphs 1 through 95, *supra*.

5 97. Respondents City and County have failed to direct the consultants in the preparation  
6 of the an adequate LORP Plan that meets the requirements of the MOU, particularly with respect  
7 to the requirements of the LORP Action Plan (MOU, Attachment A), which prescribes  
8 procedures to be followed in preparation of the Plan.

9 98. MOU Section II(A) provides that it is the responsibility of LADWP and the County  
10 to direct and assist Consultants in the preparation of the LORP Plan and that such plan will be  
11 prepared using the procedures described in the Action Plan which is Attachment A to the MOU  
12 and incorporated by reference. The 2002 LORP Plan produced by the Consultants does not  
13 conform to the procedures described in the Action Plan and does not comport with the MOU  
14 requirements.

15 99. As stated in the LORP FEIR (Section 2.1.2), the Consultants produced a revised  
16 LORP Plan in August 2002, a document titled "Lower Owens River Project Ecosystem  
17 Management Plan." The FEIR further states that the "LORP Plan draws from various studies  
18 conducted by Ecosystem Sciences, which were incorporated into the LORP Plan." In a  
19 September 9, 2004 memo from Mark Hill, Ecosystem Sciences, to Joe Brajevich, Greg James,  
20 and Gene Coufal, Mr. Hill stated that the LORP Plan consists of the Technical Memoranda, the  
21 2002 Ecosystem Management Plan, and a Monitoring Methodologies document.

22 100. The LORP Plan, as identified above, does not comport with the MOU requirements,  
23 as set forth below.:

24 a. It fails to meet the requirements of MOU Section II (E) and the MOU Action  
25 Plan Work Program (VI) because it generally fails to set any standard by which a determination  
26 can be made, for adaptive management purposes, whether plan goals are being met. Further,  
27 particularly with regard to land and flow management in the River-Riparian Habitat Area, no  
28 pathways are identified that allow feedback from monitoring to adaptive management measures

1 and no specific adaptive management triggers are included in the adaptive management  
2 component of the project description.

3 b. The LORP Plan does not provide the protocols for monitoring data analysis  
4 required by the MOU (Action Plan, Work Program VI.A). Although the Monitoring  
5 Methodologies draft report does select monitoring sites and does establish protocols for data  
6 collection it does not have protocols for data analysis. The 2002 LORP Plan does not contain a  
7 full description of the monitoring sites and does not establish protocols for data collection,  
8 analysis and reporting.

9 c. The LORP Plan similarly restricts the purpose and use of seasonal habitat  
10 flows in violation of MOU Section II (C)(1)(b)(ii).

11 d. The FEIR Plan does not contain a final monitoring plan that commits the City  
12 and the County to a specific monitoring program. The 2002 LORP Plan does not comply with  
13 the MOU Action Plan Work Program (VI) in that it does not contain a full description of the  
14 monitoring sites and does not establish protocols for data collection, analysis and reporting. The  
15 Monitoring Methodologies are still in draft form, subject to review by ICWD and LADWP.  
16 Both Baseline Methodologies documents that have been given to OVC and Sierra Club have  
17 been labeled “Draft.”

18 101. The MOU requires that the LORP Plan must include monitoring and adaptive  
19 management plans as integral features of the project [MOU Section II(a)(2), Section II(E),  
20 Action Plan Work Program (VI)]. The MOU requires a final monitoring and reporting plan  
21 [MOU Action Plan Work Program (VI)(G)]. In the absence of a final monitoring and reporting  
22 program the LORP Plan does not comport with the requirement of the MOU that there be a  
23 monitoring and reporting plan that identifies monitoring sites and specifies a “program for data  
24 collection, analysis, and reporting which will identify pathways to allow feedback to indicate  
25 where adaptive modifications to management are necessary.” (MOU II (E).) The monitoring  
26 and reporting plan “will be described as part of this plan.” (*Id.*)

27 102. As the LORP approved by the City is not consistent with consultants’  
28 recommendations as required by the MOU, the Court should issue a writ of mandate directing

1 the County and the City to cause to be prepared a LORP Plan consistent with the requirements  
2 of the MOU.

3 **TENTH CAUSE OF ACTION**  
4 **FOR DECLARATORY JUDGMENT**  
5 **(Breach of Memorandum of Understanding)**

6 103. Plaintiffs incorporate by reference paragraphs 1 through 102, *supra*.

7 104. Respondents City and DWP, have breached their duties and obligations under the  
8 MOU as identified in this Petition and Complaint, to which Plaintiffs are signatories.

9 105. A present and continuing controversy exists between Plaintiffs and Respondents City  
10 and DWP concerning whether Respondents have breached their respective obligations and  
11 duties identified in the First through Tenth Causes of Action.

12 106. Plaintiffs seek a declaration that the Respondents City and DWP, under the terms of  
13 the MOU, are in breach of all or part of their obligations and duties under the MOU as identified  
14 in the First through Ninth Causes of Action.

15 107. Plaintiffs seek a declaration by this Court of their rights under the MOU and that  
16 Respondents City and DWP have breached their obligation under the MOU.

17 **ELEVENTH CAUSE OF ACTION**  
18 **(Injunctive Relief)**

19 108. Plaintiffs incorporate by reference paragraphs 1 through 107, *supra*.

20 109. Plaintiffs respectfully request that this Court issue an injunction limiting and/or  
21 enjoining the City and DWP from exporting groundwater from the Owens Valley for use in the  
22 City, unless and until the City and DWP fully comply with the MOU. If the Court deems that a  
23 complete ban on the export of groundwater is not appropriate, then Plaintiffs respectfully  
24 request that the Court issue an injunction reducing the quantity of groundwater exported from  
25 the Owens Valley in such a manner to ensure that the City and DWP do not continue to benefit  
26 from the delay of the commencement of the Lower Owens River Project and the 1600 acre-  
27 feet/year mitigation commitment, and to ensure that the City and DWP comply with the MOU  
28 and their mandatory duties, and to ensure that in-valley uses of water are not curtailed as a result  
of such injunction.



**PRAYER FOR RELIEF**

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1. As to the First Cause of Action, Plaintiffs pray that this Court direct the City and DWP adopt a monitoring and adaptive management plan that complies with the MOU requirements, and/or to order the respondents to direct the MOU consultants in preparing a LORP Plan that meets MOU requirements with respect to monitoring and adaptive management and that will ensure that through, adaptive management the habitat and other goals of the LORP project will be accomplished.

2. As to the Second Cause of Action, Plaintiffs pray that this Court direct the City and DWP to provide protocols for monitoring data analysis required by the MOU, and/or to order respondents to direct the MOU consultants in preparing a LORP Plan that contains monitoring protocols consistent with the requirements of the MOU.

3. As to the Third Cause of Action, Plaintiffs pray that the Court require that the City and DWP to implement the LORP in a manner that ensures that seasonal habitat flows will be managed in a manner that will control tules in the river corridor and that will expressly allow use of the habitat flows as an adaptive management tool to promote achievement of habitat goals in the Delta and/or to order respondents to direct the MOU consultants in producing a Plan that will ensure that seasonal habitat flows be managed in a manner that will control tules in the river corridor and that will expressly allow use of the habitat flows as an adaptive management tool to promote achievement of habitat goals in the Delta.

4. As to the Fourth Cause of Action, Plaintiffs pray that the Court, require that the City and DWP have a duty, through adaptive management, to consider augmentation of the 200 cfs seasonal habitat flows releasing water from downstream spill-gates as a part of the LORP Project.

5. As to the Fifth Cause of Action, Plaintiffs pray that the Court require that the City and DWP enhance and maintain Delta Habitat (including the brine pool transition area) consistent with requirements of the MOU and/or to order respondents to direct Consultants in preparing a LORP Plan that contains adaptive management measures to ensure that maintenance and enhancement of Delta Habitat (including the brine pool transition area) will occur.

1           6.       As to the Sixth Cause of Action, Plaintiffs pray that the Court require that the City and  
2 DWP, as they become available, to provide draft and final documents, prepared pursuant to the  
3 MOU, to MOU Parties.

4           7.       As to the Seventh Cause of Action, Plaintiffs pray this Court issue a writ directing the  
5 City to adopt as part of the LORP the recommendations of the Consultants in the 2002 Plan  
6 concerning augmentation of habitat flows by releases from the spill-gates as an adaptive  
7 management measure.

8           8.       As to the Eighth Cause of Action, Plaintiffs pray that the Court require that the City  
9 and DWP prepare a final monitoring plan that complies with the MOU and that commits the City  
10 and the County to a specific monitoring program; and/or to require respondents to direct the  
11 MOU consultants in the preparation of a final monitoring plan.

12           9.       As to the Ninth Cause of Action, Plaintiffs pray this Court issue a writ of mandate  
13 requiring respondents to direct the consultants in the preparation of a LORP Plan using the  
14 procedures described in the Action Plan (Attachment A to the MOU), as set forth and  
15 particularized in the Ninth Cause of Action.

16           10.      As to the Tenth Cause of Action, Plaintiffs pray that this Court issue a declaratory  
17 judgment, pursuant to Code of Civil Procedure section 1060, that the City and DWP have  
18 violated their duties and obligations contained in the MOU as identified in the First through  
19 Ninth Causes of Action.

20           11.      As to the Eleventh Cause of Action, Plaintiffs pray that this Court issue an injunction  
21 forbidding the City and DWP from exporting groundwater from the Owens Valley unless and  
22 until the City and DWP come into complete and full compliance with the MOU. If the Court  
23 deems that a complete ban on the export of groundwater is not appropriate, then Plaintiffs  
24 respectfully request that the Court issue an injunction reducing the quantity of groundwater  
25 exported from the Owens Valley in such a manner to ensure that the City and DWP do not  
26 benefit from any further delay of the commencement of the Lower Owens River Project and the  
27 1600 acre-feet/year mitigation commitment and to ensure that in-valley uses of water are not  
28 curtailed as a result of such injunction.

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12. For such other relief including attorneys' fees, pursuant to Code of Civil Procedure section 1021.5, as is just and proper.

Dated: January 13, 2005

Respectfully submitted,

By: \_\_\_\_\_  
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Attorney for Plaintiff Sierra Club

By: \_\_\_\_\_  
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Owens Valley Committee