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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.: SICV CV 08-46888
)	
Plaintiffs/Petitioners	)	PLAINTIFFS' RESPONSE TO
	)	DEFENDANTS' SEPARATE
v.	)	STATEMENT OF UNDISPUTED
	)	FACTS IN SUPPORT OF
	)	DEFENDANTS' MOTION FOR
	)	SUMMARY ADJUDICATION
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	)	Date: TBA
	)	Time: TBA
	)	Dept.: TBA
)	
_____ Defendants/Respondents _____	)	Judge: The Hon. Lee Cooper
)	
CALIFORNIA DEPARTMENT OF FISH AND GAME; and CALIFORNIA STATE LANDS COMMISSION and DOES 51-100)	
)	
_____ Real Parties in Interest. _____)	

Petitioners/Plaintiffs Sierra Club and Owens Valley Committee submit the following response to Defendants' Separate Statement of Undisputed Facts in Support of Motion for Summary Adjudication:

FACTS

EVIDENCE

<p>Issue 1: Plaintiffs/Petitioners First Cause of Action has no merit as the April 28, 2008 Lower Owens River Project Monitoring Adaptive Management and Reporting Plan is in compliance with the 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power, County of Inyo, California Department of Fish and Game, California State Lands Commission, Sierra Club and the Owens Valley Committee sets forth the criteria for the Adaptive Management Plan.</p>	
<p>1. The 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power, County of Inyo, California Department of Fish and Game, California State Lands Commission, Sierra Club and the Owens Valley Committee sets forth the criteria for the Adaptive Management Plan.</p>	<p>Undisputed.</p>
<p>2. The April 28, 2008, Lower Owens River Project Monitoring Adaptive Management and Reporting Plan is in compliance with the 1997 MOU.</p>	<p>Disputed on the grounds that this is not a fact, but a conclusion of law. Also, see Declaration of Duncan Patten file in Support of Plaintiffs' Motion for Summary Adjudication. Declaration of Donald B. Mooney in Support of Plaintiffs' Motion for Summary Adjudication and Exhibits attached thereto.</p>
<p>Issue 2: Plaintiffs/Petitioners Second Cause of Action has no merit as the April 28, 2008 Lower Owens River Project Monitoring Adaptive Management and Reporting Plan is in compliance with the 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power, County of Inyo, California Department of Fish and Game, California State Lands</p>	

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Commission, Sierra Club and the Owens Valley Committee sets forth the criteria for the Adaptive Management Plan.	
3. The 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power, County of Inyo, California Department of Fish and Game, California State Lands Commission, Sierra Club and the Owens Valley Committee sets forth the criteria for the Adaptive Management Plan.	Undisputed.
4. The April 28, 2008, Lower Owens River Project Monitoring Adaptive Management and Reporting Plan is in compliance with the 1997 MOU.	Disputed on the grounds that this is not a fact, but a conclusion of law. Also, see Declaration of Duncan Patten file in Support of Plaintiffs' Motion for Summary Adjudication; Declaration of Donald B. Mooney in Support of Plaintiffs' Motion for Summary Adjudication and Exhibits attached thereto.
Issue 3: Issue 2: Plaintiffs/Petitioners Third Cause of Action has no merit as there is provision for consultation with the Department of Fish and Game in the setting of the amount of seasonal habitat flows in accordance with the 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power, County of Inyo, California Department of Fish and Game, California State Lands Commission, Sierra Club and the Owens Valley Committee sets forth the criteria for the Adaptive Management Plan.	2008 Lower Owens River Project Monitoring Adaptive Management and Reporting Plan is in compliance with the 1997 Memorandum of Understanding between the City of Los Angeles Department of Water and Power
5. The LORP Post Implementation Agreement between DWP and the County will include procedures for consultation with the Department of Fish and Game regarding the setting of the amount of the seasonal habitat flows.	Disputed. This statements asserts as fact something that has not happened and which requires the approval of two public agencies.

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<p>Issue 4: Plaintiffs/Petitioners Fifth Cause of Action has no merit as the addendum to the LORP EIR will amend the project description to include the possible augmentation of seasonal habitat flows as an adaptive management measures as outlined by the MOU consultants in the April 28, 2008 Lower Owens River Project Monitoring Adaptive Management Reporting Plan.</p>	
<p>6. A pending addendum to the LORP EIR will amend the project description to include the possible augmentation of seasonal habitat flows as an adaptive management measure in the April 28, 2008, adaptive management measure as outlined by the MOU consultant will become part of the project description.</p>	<p>Disputed. This statements asserts as fact something that has not happened and which requires the approval of two public agencies. To become part of the Project Description requires more than preparation of an Final EIR Addendum. (See Plaintiffs Opposition at pp. 7-9.)</p>

Dated: April 3, 2009

Respectfully Submitted,

CALIFORNIA ENVIRONMENTAL LAW PROJECT

By _____
Laurens H. Silver
Attorney for Sierra Club

LAW OFFICE OF DONALD B. MOONEY

By _____
Donald B. Mooney
Attorney for Owens Valley Committee