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JUN 24 2005

INYO CO. SUPERIOR COURT  
NANCY A. MOXLEY, CLERK  
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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
COUNTY OF INYO

SIERRA CLUB, and OWENES VALLEY  
COMMITTEE,  
Plaintiffs,

vs.

CITY OF LOS ANGELES, et al,  
Defendant,

) Case No.: SICVCV-01-29768  
) STATEMENT OF DECISION RE COMPLIANCE  
) WITH COURT ORDERS

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

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1 This case is but another skirmish in the ongoing battle over water in  
2 the Owens Valley. This particular skirmish began in the early 70's because  
3 the City of Los Angeles, through its Department of Water and Power  
4 (hereinafter jointly and severally referred to as "DWP"), built a second  
5 aqueduct to export water from the Owens Valley to the City without complying  
6 with CEQA, as discussed in County of Inyo v. Yorty (1973) 32 Cal.App.3d 795.  
7 Additional litigation ensued as follows: County of Inyo v. City of Los  
8 Angeles (1977) 71 Cal.App.3d 185; County of Inyo v. City of Los Angeles  
9 (1978) 78Cal.App 3d82; and County of Inyo v. City of Los Angeles (1981) 124  
10 Cal.App.3d 1. DWP never did comply with the writ ordered in 1973 to provide  
11 an adequate E.I.R. concerning that project.

12 Instead the parties, i.e. DWP, county of Inyo (hereinafter, "Inyo"),  
13 the Sierra Club, the Owens Valley Committee (hereinafter, "OVC") the  
14 California Department of Fish and Game (hereinafter, "Dept. of F & G") the  
15 California State Lands Commission (hereinafter, "Commission") and Carla  
16 Schcidlinger, in March, 1977, entered into a Memorandum of Understanding  
17 (hereinafter, "MOU"), based upon a previously developed Long Term Water  
18 Agreement, to develop the Lower Owens River Project (hereinafter, "LORP") as  
19 a CEQA mitigation measure resulting from the construction of the second  
20 aqueduct. Pursuant to stipulation the writ previously ordered was dissolved.  
21 The MOU established deadlines for various things to be accomplished. None of  
22 those deadlines were met by DWP, even as thereafter extended by agreement of  
23 the parties.

24 On December 4, 2001, this action was commenced by Sierra Club and OVC  
25 to compel DWP and Inyo to comply with the MOU provisions requiring completion  
of a draft E.I.R. for the LORP. By stipulation dated May 30, 2002, it was

1 agreed that the Draft E.I.R. would be completed and released by August 31,  
2 2002. It was not. On September 12, 2002, this court ordered its completion  
3 and release by November 1, 2002, which was done.

4 On September 26, 2003, Sierra Club and OVC filed a second amended and  
5 Supplemental complaint for Declaratory and Injunctive Relief and for a Writ  
6 of Mandate. On December 4, 2003, Dept. of F. and G. and Commission filed a  
7 cross complaint for Declaratory Relief and for a Writ of Mandate.

8 Those actions seek to enforce the MOU.

9 On February 10, 2004, a stipulation and proposed order "to resolve the  
10 issues raised in the Amended Complaint and the Cross Complaint, and to  
11 resolve the issue of the capacity of the LORP pump station" was filed. The  
12 proposed order pursuant thereto was executed on February 13, 2004.

13 On May 19, 2004, the court denied DWP's request for more time to  
14 complete the LORP E.I.R.

15 On May 24, 2004, DWP announced that it would no longer seek to develop  
16 the E.I.R. in consultation with Inyo but, rather, would prepare its own.

17 On July 2, 2004, a document entitled "Final EIR/EIS" was released by  
18 DWP. EPA voiced objection to it within days thereafter. On July 30, 2004,  
19 the "Final EIR" was approved by DWP's Board of Water Commissions.

20 On September 15, 2004, an amended Stipulation and Order was filed and  
21 was executed by the court that day. In paragraph 4, p.5, the stipulation  
22 again recites that "The purpose of this Stipulation and Order is to resolve  
23 the issues raised in the Amended Complaint and the Cross Complaint, and to  
24 resolve the issue of the capacity of the LORP pump station."

25 On the court's own motion, on November 17, 2004, the matter was set for  
trial on April 25, 2005. Thereafter, DWP brought the language of the amended

1 stipulation and order to the court's attention, that its purpose was to  
2 "...resolve the issues raised in the Amended Complaint and the Cross  
3 Complaint...". Accordingly, the trial date was vacated and the matter was re-  
4 set on April 25, 2005, for hearing any motions the parties might bring  
5 concerning DWP's compliance with the order pursuant to the stipulation  
6 previously filed.

7 A three day hearing was held as scheduled. Closing briefs were ordered  
8 filed by May 11, 2005, at which time the matter was submitted for decision.

9 Although the focus of the hearing was DWP's compliance with the  
10 stipulated orders and whether any delays in compliance were due to  
11 circumstances beyond DWP's control, it is important to note that DWP has been  
12 and is in violation of CEQA since the early 70's because the mitigation  
13 measures it agreed to have not been accomplished as agreed and ordered.

14 Relative to DWP's compliance with the stipulated order, the evidence is  
15 clear, convincing and overwhelming that DWP is in violation of its agreements  
16 set forth in the stipulations and the court's orders pursuant thereto.  
17 Whether the violations were inadvertent, negligent, or intentional seems to  
18 me to be irrelevant. A procedure is set forth in the stipulations for DWP to  
19 advise the parties in advance of inability to comply, for modification  
20 pursuant to agreement, or pursuant to court order. With rare exception, DWP  
21 has not utilized the procedures it agreed to and as ordered by the court.

22 It appears that DWP needs the threat of immediate sanctions before it  
23 gets busy on the LORP.

24 The evidence in this matter does not support a finding or conclusion  
25 that DWP's violations of the stipulated orders and consequential delays for  
completion of the LORP were due to circumstance beyond DWP's control.

1 In fact they appear to be more likely caused by the delay by litigation  
2 practice described by Gerald Gewe, Chief Operating Officer- Water System,  
3 until 2005, who has bragged about the amount of money and water DWP had saved  
4 by litigation delay. DWP now responds that it's not in business to make a  
5 profit, etc. and that its officers do not benefit financially from such a  
6 policy. Be that all as it may, saving money and water benefits the City and  
7 makes the officers look good for whatever benefits that may bring.

8 DWP candidly concedes that it cannot meet the stipulated deadline of  
9 September 5, 2005 for the initial flows of water in the river.

10 DWP is in violation of the stipulated orders because it did not provide  
11 an Administrative Draft of the Final EIR/EIS to the parties and the EPA as  
12 required by the Final EIR/EIS schedule, items 14-16. DWP's explanation that  
13 it does not know what an administration draft is, and that such a draft is  
14 not required by CEQA is disingenuous, it not mendacious. It agreed to  
15 provide one and did not in violation of the order. If it had complied,  
16 perhaps water could be in the river as ordered.

17 In fact a review of that schedule shows that DWP was required to work  
18 closely with EPA and it obviously did not.

19 The stipulated order provides that "LADWP and the county shall complete  
20 and release to the parties a Final EIR/EIS addressing the LORP by June 23,  
21 2004." DWP is in violation of the order because:

- 22 1. Its "Final EIR/EIS" was done only by DWP.
- 23 2. The document is not a final EIR/EIS because EPA did not approve  
24 it as an EIS and has not yet approved it.

25 DWP says that approval of an EIS by EPA is beyond its contract. So  
What? DWP agreed to provide a Final EIR/EIS by June 23, 2004. If it had not

1 piddled around trying to play bureaucratic games with EPA and with the  
2 parties, about the capacity of the pump back station, for example, thereby  
3 losing a year or more, it appears likely they could have complied with the  
4 order.

5 DWP is also in violation because it went alone to complete the EIR by  
6 June 23, 2004.

7 To my mind the issues of adaptive management and the need for a QAPP  
8 are intertwined. The stipulation clearly reflects the fact that Inyo needs  
9 the EPA grant funds to meet its obligations to the LORP. The evidence  
10 discloses that EPA's QAPP concerns are about the same problem areas as are  
11 the parties adaptive management concerns. DWP argues otherwise, however. It  
12 appears to me that DWP's failure to develop a QAPP on a timely basis violates  
13 the stipulation by failing to proceed with due diligence.

14 DWP argues that many delays were attributed to its consultants. No  
15 evidence, however, is before the court as to what efforts DWP made to  
16 encourage its consultants to meet deadlines. No explanation has been offered  
17 as to why NWH was not utilized sooner or more fully.

18 DWP's explanations about why it did not meet with EPA and share its  
19 concerns and learn EPA's concerns appear to be excuses and not reasons.  
20 Certainly, when I made inquiry about what EPA's position was regarding the  
21 "EIR/EIS" and was advised that it was unknown since no meeting had yet  
22 occurred, I was misinformed. The record, however, is now replete with  
23 correspondence from EPA expressing its concerns.

24 DWP is in violation of the stipulated order because within seven days  
25 of certification by its Board of the "EIR/EIS" it did not submit a "complete"  
application to Lahonton Regional Water Quality Control Board. The argument

1 that they thought it was "complete" and were sandbagged when Lahonton said it  
2 would enforce all its regulation is not persuasive. Recent correspondence to  
3 Lahonton suggests that more delay by litigation may be in the offing.

4 DWP contends correctly that it still has the right to seek an  
5 extension of the September 5, 2005, deadline. Their failure to do so long  
6 ago is inexplicable. DWP, however, cannot rely on problems or excuses it  
7 failed to report to the court and parties on a timely basis.

8 In sum, I find DWP in violation for the reasons stated and because it  
9 obviously did not proceed with due diligence.

10 The evidence shows that its approach to the LORP was on an ad hoc basis  
11 with no real planning involved.

12 Regarding the Yellow Billed Cuckoo and Hines Springs issues, we are  
13 finally seeing some progress. But again, DWP had not complied with agreed  
14 deadlines and no explanation has been presented.

15 The conduct of some of the other parties is worthy of comment. There  
16 is scant evidence, if any, that the Sierra Club or OVC made any effort to  
17 support timely completion of the LORP with any of the permitting agencies  
18 involved. Such failure is reprehensible.

19 The question of sanctions will be heard on July 25, 2005, at 9:30 a.m.  
20 All position papers in that regard must be served and filed by July 20, 2005.

21  
22 Dated: June 24, 2005

  
Lee E. Cooper, Jr., Judge