



C. *No reduction of in-valley water supply.* The City shall not reduce the amount of water that it provides for uses in the Owens Valley pursuant to Section IV. A of the Long Term Water Agreement including water for Los Angeles-owned lands in Inyo County, for Enhancement/Mitigation Projects and mitigation measures. Certain baselines for in-valley water supply have been established pursuant to Section IV. A of the Long Term Water Agreement and are based on the 1981-82 runoff year. The parties recognize that the in-valley water use figures presented in LADWP's Annual Report are projections and the actual amount of water supplied for such uses has been greater than the projections in some years and less than the projections in others. A reduction of actual amount of water supplied from projected figures shall not be treated as or constitute a reduction of in valley uses under this provision as long the amount of water supplied is consistent with applicable baselines established pursuant to section IV. A of the Long Term Water Agreement.

D. *Payment of \$5,000 per day.* Effective September 5, 2005, and until the City has established permanent baseflows of approximately 40 cfs throughout the Lower Owens River, the City shall pay \$5,000 per day into an escrow account established by the City and the County. The City shall make these payments monthly, beginning October 5, 2005, and continuing on the fifth day of each subsequent month thereafter until such time as they are terminated pursuant to this Order. The proceeds of the account (including accrued interest) are to be used for the following purposes: (1) to pay the expenses of the Special Master described below; (2) to pay Inyo County's share of post-implementation costs for the LORP, (3) to pay the cost of monitoring habitat indicator species at the direction of the California Department of Fish and Game for a five year period in an amount not to exceed a cumulative total of \$100,000, and (4) to pay the costs of the escrow account. The account shall be maintained until the funds are expended.

E. *Commencement of river flows.* On or before January 25, 2007, the City shall commence the Phase 1 releases of water into the Lower Owens River described in the City's June 2004 environmental impact report for the LORP.

F. *Establishment of base flows.* On or before July 25, 2007, the City shall establish the permanent baseflow of approximately 40 cubic-feet-per-second (cfs) in the river that is described in Section II.C.1.b(i) of the 1997 LORP Memorandum of Understanding.

G. *Monthly reports.* Beginning October 5, 2005, and on the fifth day of each month thereafter, the City shall file with the Court a report on: (1) the total amount of groundwater that the City pumped in the Owens Valley the month immediately preceding the prior month (i.e. the October 5, 2005 report would contain the information for August 2005); the amount of groundwater that was pumped from each well during the month immediately preceding the prior month, and the cumulative amount of groundwater pumped in the runoff year up to the month immediately preceding the prior month; (2) the amount of water supplied by the City for groundwater recharge pursuant to condition 2B during the month immediately preceding the prior month and, also, cumulatively for the runoff year up to the month immediately preceding the prior month; (3) the amount of water supplied by the City for irrigation and/or stockwater to lessees (collectively) of the City in the Owens Valley, supplied to recreation, wildlife, supplied to tribal uses in the Owens Valley, supplied to each Enhancement/Mitigation Project, and supplied collectively to mitigation measures during the month immediately preceding the prior month and, also, cumulatively for the runoff year; provided however, that the monthly amounts of water supplied to these uses will initially be reported as an unverified preliminary amounts, and the actual verified amounts will be reported within sixty days of the preliminary report; if any of the information to be reported per 1, 2 and 3 above, is unavailable at the time of the report, the report shall explain why it is unavailable and when it will be provided; and (4) the City's progress or lack thereof, in implementing the LORP, including whether the City's progress is consistent with the deadlines established by this order and, if not, what the City has done, or plans to do, to meet those deadlines. The General Manager of the Los Angeles Department of Water and Power shall verify each progress report as to its accuracy and completeness. The City shall provide copies of the reports to the parties, the special master, and real-party-in-interest.

H. *Annual Operations Plan.* By September 30, 2005, the City shall submit to the court, the parties, the special master, and real-party-in-interest, its proposed plan for groundwater pumping operations and water recharge operations for the remainder of the 2005-06 runoff year. In each subsequent runoff year, until these conditions are lifted, the City shall submit an Annual Operations Plan on or before May 15 that describes its planned groundwater pumping operations and planned water recharge operations. Section I of the Court Order provides in pertinent part: *“Under the direction and supervision of the Court, a special master shall monitor compliance with these conditions. By August 31, 2005 the parties shall file a recommendation for a special master....”* On August 31, 2005, the parties submitted Mr. Walt Pachucki’s name as a consensus recommendation for appointment as Special Master and on September 13, 2005 he was appointed on a provisional basis pending the preparation of this Order. The Court having considered the qualifications of Mr. Pachucki, hereby appoints Mr. Walt Pachucki as Special Master.

#### **Duties of the Special Master**

The duties of the Special Master shall be as described below.

- a. To the extent that he deems necessary for the purposes of completing his duties to monitor compliance of the conditions set forth in the Court Order, the Special Master shall become familiar with LADWP’s groundwater and surface water operations in the Owens Valley, including the water uses on Los Angeles-owned lands in the valley. The Special Master may request an initial meeting with the Parties to assist him in becoming familiar with such operations. Further, as part of the familiarization process, or as the Special Master may otherwise deem necessary for the performance of his duties (see below), the Special Master may request a field tour of LADWP’s facilities. Any field tour shall include representatives of Parties as deemed necessary by the Special Master.

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- b. To review the monthly reports submitted by LADWP concerning LADWP's compliance with the Court Order and to submit a monthly report to the Court and to the parties to the MOU (collectively "Parties" or individually "Party") as to whether LADWP is in compliance with the Court Order. If a Party believes that a monthly report is not in compliance with the Court Order, or if a Party believes that the monthly report reveals that LADWP is not otherwise in compliance with the Court Order, within five court days of submittal of the report by LADWP, that Party shall submit the reasons for the alleged non-compliance to the Special Master, to the other Parties and to the Court. Within five court days of such a submittal by a Party, LADWP may submit to the Special Master, the other Parties and the Court information rebutting the alleged non-compliance. If a Party submits an allegation of non-compliance, the Special Master shall not file his monthly report until after LADWP has had the opportunity to respond to the allegation(s). If the Special Master determines in his monthly report that LADWP is not in compliance with the Court Order, the Special Master shall in his report to the Court specifically identify the non-compliance and set forth the basis of that determination. LADWP shall submit to the Special Master, the other parties and the Court, a written response to any such report of non-compliance within ten court days.
- c. To review allegations of non-compliance made in good faith by a Party subject to procedures set forth below. However, if a Party believes that LADWP is not in compliance with the Court Order and that there is no need for a review by the Special Master, that Party shall not be required to request such a review, and may file an appropriate motion directly with the Court.
1. A Party, who in good faith, requests the Special Master to review an allegation of non-compliance shall present the Special Master with a request for such a review in writing with copies to the other parties and the Court. The requesting party must specifically identify the alleged non-compliance, set forth a detailed basis for said allegation and describe how the allegation directly pertains

to the matters to be monitored by the Special Master. Within five court days of such a request by a Party, LADWP may submit to the Special Master, the other Parties and the Court information rebutting the alleged non-compliance and requesting that the requested review not be conducted.

2. At the Special Masters' discretion, he may either accept or decline the request for a review. The Special Master shall notify the Parties and the Court no later than fifteen calendar days, but not earlier than ten calendar days, of the submittal of the request as to whether he will or will not review the allegation. If the Special Master declines to review the allegation, within 15 court days of a notification that the Special Master will not review an allegation, the Party(s) making the allegation of non-compliance may then file a written motion with the Court requesting the Special Master be directed to conduct such a review. If, by either his own discretion or upon the Court's direction, the Special Master conducts a review of the allegation, he shall request from LADWP a response to the allegations and may make further inquiry necessary for his review of the allegation. After the completion of said review the Special Master shall submit a report to the Parties and the Court setting forth the results and conclusions of his review.

- d. To request information from LADWP and the other Parties and to conduct field observations as necessary for him to monitor LADWP's compliance with the provisions of the Court Order which he was appointed to monitor. LADWP and/or another Party(s) shall timely provide the Special Master with the requested information. Provided however, that if LADWP believes the requested information extends beyond the scope and purpose of the Court Order, it may file, within five court days of receipt of the request, a motion that the requested information need not be provided.
- e. To retain such outside assistance as is approved by the Court.

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- f. To perform such additional duties as requested by the Court related to the monitoring of compliance with the conditions of the August 8, 2005 Order; provided, that the parties shall be notified of those additional duties prior to their performance. Any party seeking to object to the additional duties, must do so within five court days of receiving notice.

#### **Communications with the Special Master**

The Parties shall only initiate communication with the Special Master in writing with copies provided to the other parties and the Court. A return telephone call to the Special Master from a Party shall not be treated as the initiation of a communication by the Party, provided however that the Party shall not initiate communication with the Special Master on matters different from, or in addition to, those matters which were the subject of the Special Master's telephone call to the Party. The Special Master may initiate communication with any Party or the Court in a manner of his choosing.

The Special Master's monthly report shall identify all communications with the Parties and the Court, shall include copies of any such written or electronic communications, and shall provide a summary of communications with the Parties and the Court, including a description of any instructions or directions given to the Special Master by the Court.

#### **Service by Facsimile**

All reports, notices, objections or requests filed or provided in accordance with this Order shall be concurrently sent via facsimile to counsel for the Parties, to the Special Master and to the Court.

#### **Establishment of Trust Fund**

Section 2. D. of the Court Order provides that LADWP shall pay \$5,000.00 a day into an escrow account established by the City of Los Angeles and the County. The two entities have agreed that in lieu of an escrow account, a Trust Account will be established in the Inyo County Treasury to hold and administer the funds in accordance with Section 2.D to be paid by LADWP. The Court approves the establishment of such a Trust Account in lieu of an escrow account.

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**Compensation of the Special Master**

The Special Master shall be compensated at the rate of \$240.00 per hour and shall be reimbursed for the costs of travel, meals, lodging and incidental expenses incurred while performing the duties of Special Master. Necessary costs related to performing the duties of the Special Master shall be invoiced at the rate of actual cost incurred plus fifteen percent. Incidental clerical support related to performing the duties of the Special Master shall be billed at the rate of \$ 80.00 per hour. Once a month, the Special Master shall submit an invoice for his services and costs to the Court and shall provide copies of the invoice to the Parties. Within twenty days of receipt of direction from the Court, the County shall pay the Special Master from the Trust Account in the amount directed by the Court.

**Term of the Special Master**

The Special Master shall serve from the date of his appointment to the date of the Court's vacation of the injunction and its lifting of the conditions.

Dated \_\_\_\_\_

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Hon. Lee E. Cooper, Jr.