

POLICIES TO BE CONSIDERED FOR ADOPTION BY THE COUNTY OF INYO AND CITY OF LOS ANGELES DEPARTMENT OF WATER AND POWER CONCERNING OPERATION AND FUNDING OF THE LOWER OWENS RIVER PROJECT

DRAFT

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INTRODUCTION

Section XII of the Inyo County/Los Angeles Long Term Water Agreement provides that LADWP will fund the initial construction costs of implementing the Lower Owens River Project (“LORP”) and that the County, the State of California or other sources are responsible for contributing one-half of the costs of implementing the project, up to a maximum of \$3.75 million. The costs and activities undertaken in implementing the LORP are hereinafter referred to as “pre-implementation costs or activities.

Section XII also provides that, except for the costs of the LORP pump station, once the LORP has been constructed and completed, LADWP and the County will jointly operate and fund the project. (These costs are hereinafter referred to as “post-implementation” activities or costs.) The Agreement provides that LADWP is obligated to pay the annual cost of operating the LORP pump station less any funds received from non-County sources.

The County of Inyo (“County”) and the City of Los Angeles Department of Water and Power (“LADWP”) have adopted the following guidelines and procedures concerning the responsibilities of LADWP and the County (collectively “Parties”) during the pre-implementation period and for jointly funding and conducting post-implementation activities required to be undertaken to achieve the goals set for the LORP in the Agreement and the MOU.

PRE-IMPLEMENTATION PERIOD

1. All construction, channel modification, planning and development work, including all LORP related work of Ecosystem Sciences, Inc., and the preparation of the EIR on the project, and any other necessary work for initial operation of the project, are to be considered as costs of implementing the LORP.
2. LADWP will pay all costs of implementing the LORP that are not funded by sources other than LADWP).
3. The County's obligation to repay LADWP one-half of the costs of implementing the LORP up to \$3.75 million will be reduced by any funding provided for implementation of the LORP that is received from sources other than LADWP.

4. The County has obtained approximately \$5.92 million from sources other than LADWP that are to be used to fund the LORP. To the extent practicable, the County will allocate these funds to toward the costs of implementing the LORP.
5. LADWP, as lead agency, and the County as a responsible agency, and the U.S. Environmental Protection Agency, as the federal lead agency, are jointly preparing an environmental review of the project.

POST-IMPLEMENTATION PERIOD

A. LADWP FUNDING OF POST-IMPLEMENTATION COSTS. LADWP will have the sole responsibility for planning, operating, and/or conducting the following activities and for all costs arising from such activities.

1. The operation and maintenance of the pumping system, including the maintenance of all roads used to provide access to the pumping system, and all pipelines, electrical transmission lines, release structures, dikes, dams, and ponds associated with the pumping system.
2. Unless otherwise agreed by the Standing Committee, the intentional introduction into the LORP area by LADWP (or the introduction into the LORP area with the express consent of LADWP) of any individual (or individuals) plant or animal with special status under state or federal law, including threatened, endangered, candidate, or rare species, and the monitoring and/or management of any such introduced species.
3. All costs arising from the following activities required by Section III of the MOU which are not a part of the LORP, but which may take place in whole or in part within the LORP area:
 - a. Yellow-billed cuckoo habitat evaluations as set forth in MOU Section III.A.1
 - b. Inventory of Plants and Animals at Springs and Seeps as set forth in MOU Section III.A.2
 - c. Additional Mitigation as set forth in MOU Section III.A.3
 - d. Aerial Photo Study as set forth in MOU Section III.E.
4. Except for the costs specified in C below, the management and monitoring of livestock grazing and utilization in the project area, including the maintenance of facilities such as fences, cattle guards, and watering facilities.

B. COUNTY FUNDING OF POST-IMPLEMENTATION COSTS. The County will have the sole responsibility for planning, operating, and/or conducting the following activities (should any such activities be planned and conducted) and for all costs arising from such activities.

1. Developing a recreational use plan for the portion of the Owens River within the project area.
2. Developing any campgrounds along the Owens River within the project area.

C. **JOINT LADWP/COUNTY FUNDING OF POST-IMPLEMENTATION COSTS.**

In the event that any of the following post-implementation activities are conducted, LADWP and the County will each be responsible for one-half of the annual costs of such activities associated with, or arising out of, the implementation of the LORP. The implementation of these activities is subject to the ability to obtain necessary permits and approvals to conduct such activities.

1. A monitoring program (including each of the four elements of the LORP).
2. Tule control in limited areas as needed to remove obstructions or provide access.
3. Beaver control (including removal of beaver dams).
4. Maintenance of the following ditches that supply the project: *(Map to be added.)*
5. Maintenance of the river flow gaging stations.
6. Maintenance of any Los Angeles Aqueduct spillgate during such time (based upon the percentage of use) as the spillgate is used to augment the baseflow in the river or is used to augment the seasonal habitat flow in the river.
7. Maintenance of the dikes, berms, ponds and other features associated with the Blackrock Waterfowl Area shown on the attached map. *(Map to be added.)*
8. Maintenance of the fences erected to control livestock grazing, cattle guards, and livestock watering facilities in the project area shown on the attached map. *(Map to be added.)*
9. *(Mitigation measures)*
10. *(Adaptive management measures)*
11. Permit fees or environmental assessment costs of conducting any of the above listed post-implementation activities including, but not limited to, California Department of Fish and Game 1601 permits, Regional Water Quality Control Board 401 permits, United States Army Corp of Engineers 404 permits, and any California Environmental Quality Act compliance.
12. Other activities, including the construction and maintenance of new facilities and roads in the project area, as may be agreed upon by the Standing Committee as provided in D below

D. **OTHER POST-IMPLEMENTATION WORK.** In regard to any post-implementation cost or activity not listed above, the Standing Committee will determine whether LADWP, the County, or the two entities jointly, will plan, manage, implement and fund such post-implementation cost or activity.

E. **COMMENCEMENT OF JOINT POST-IMPLEMENTATION FUNDING OBLIGATIONS.** The commitments of LADWP and the County to jointly fund and operate the post-implementation costs and activities in regard to each of the four physical features of the LORP will commence as follows:

1. Blackrock Waterfowl Area: upon certification of the EIR/EIS on the LORP, completion of improvements to water conveyance facilities, and the commencement of releases of water to the area;
2. Off River Lakes and Ponds: upon certification of the EIR/EIS on the LORP;
3. Riverine-Riparian System: upon certification of the EIR/EIS on the LORP and the establishment of approximately a 40 cfs baseflow in the river channel from the Intake to the pumpback system;
4. Delta Habitat Area: upon certification of the EIR/EIS on the LORP and the establishment of a baseflow of 6 to 9 cfs below the pumping station.

F. **ANNUAL POST-IMPLEMENTATION WORK PROGRAM AND BUDGET.** By the 1st of December of each year following the commencement of a commitment to jointly operate and fund a physical feature of the LORP, the Technical Group shall develop and submit to the decision makers of each entity a recommended work program and budget for the post-implementation activities that will be jointly funded by the Parties. The work program and budget will identify the activities (including any necessary adaptive management modifications) for each of the four LORP physical features that will be conducted during the one-year period beginning on the 1st day of July of the following year.

The work program shall identify who will perform or oversee the work, activity or program (i.e., LADWP and/or the County and/or outside contractor), and shall include a schedule for the performance of the work, activity or program. The budget shall specify the amount of funding for each activity to be undertaken. In the event that the Technical Group is in disagreement over the work program or budget, the issues in disagreement shall be submitted to the Standing Committee for resolution. Before the work program and budget become final, the decision makers of each entity must first adopt the work program and budget.

G. **AMENDED POST-IMPLEMENTATION WORK PROGRAMS AND BUDGETS.** In the event that the need to conduct jointly funded, post-implementation work arises following the adoption of an annual work program and budget, the Technical Group shall develop and submit to the decision makers of each entity an amended work program and an amended budget which identifies the activities, that must be conducted. The amended work program shall identify who will perform or oversee the activity (i.e., LADWP and/or the County and/or outside contractor), and shall include a schedule for the performance of the activities. The amended budget shall specify the funding for each activity to be undertaken. In the event that the Technical Group is in disagreement over the amended work program or amended budget, the issues in disagreement shall be submitted to the Standing Committee for resolution. Before the amended work program and budget become final, the decision makers of each entity must first adopt the work plan and budget.

H. **POST-IMPLEMENTATION EMERGENCIES.** In the event of an emergency where it is necessary to immediately conduct work in order to protect public health or safety, or the integrity of the project, the Inyo County Administrator and the Manager of the Los Angeles Aqueduct Division will meet and attempt to agree on the need for emergency work. LADWP and/or Inyo County, as agreed by these individuals, will conduct the work (or cause the work to be conducted), and as soon as practicable thereafter, a report will be prepared and submitted by these individuals to each entity as needed which describes the work conducted, the cost of the work, and a recommendation as to the portion of the cost of the work to be funded by each agency. In the event that these individuals are in disagreement over the need for the emergency work, its cost, or the share of the portion of the work to be funded by each entity, the issues in disagreement shall be submitted to the Standing Committee for resolution.

I. **ALLOCATION OF POST-IMPLEMENTATION WORK AND COSTS.** The costs incurred by LADWP and the County of having each entity's personnel assist in the planning and development of work programs and budgets (including determinations of the need for adaptive management modifications to a physical feature of the LORP), or in any subsequent modifications thereof, shall be funded by each entity. The intent of this policy is that the responsibility for actually conducting post-implementation activities (other than the planning and development of work programs and budgets) will be shared equally by LADWP and County personnel, unless otherwise agreed by the decision makers of each entity.

J. **USE OF THIRD PARTY FUNDING FOR PRE-IMPLEMENTATION COSTS-- COUNTY CREDIT FOR POST-IMPLEMENTATION COSTS.**

The County has obtained approximately \$5.92 million (from sources other than the County and LADWP. This funding exceeds the County's obligation to repay LADWP for one-half of the costs of implementing the LORP (up to \$3.75 million) by approximately \$2.17 million. To the extent practicable, the County's additional \$2.17 million will be expended by the County on the pre-implementation costs of the LORP. Further, to the extent that these additional funds are not expended by the County on pre-implementation costs, the County will expend the remainder to cover a portion of the County's share of post-implementation costs.

Because the County will expend a portion (or all) of the additional \$2.17 million on pre-implementation costs, LADWP will match that expenditure by providing an equal amount (up to the full \$2.17 million) for post-implementation costs and, in addition to that amount, will expend \$2.17 million for post implementation costs. Therefore, at present, a total of \$4.34 million is currently available to fund post-implementation costs: \$2.17 million from the County and the City's expenditure matching the County's contribution to pre-implementation costs in excess of its \$3.75 million obligation and \$2.17 million from the City.

K. **POST-IMPLEMENTATION THIRD PARTY FUNDING.**

1. The Standing Committee may agree that the Parties will jointly seek funding from a third party for the post-implementation costs of the LORP. Any such funds obtained will be expended as agreed by the Standing Committee. If the Parties do not jointly

seek third party funding, either Party may individually seek funding from a third party to fund its share of the post-implementation costs of the LORP. The receipt of funds from a third party by one Party will not affect the post-implementation funding commitment of the other Party.

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