

This Calendar Item No. C40 was approved as Minute Item No. 40 by the California State Lands Commission by a vote of 3 to 0 at its 2/2/04 meeting.

CALENDAR ITEM

C40

A 34

02/02/04

S 18

W 503.1921

J. Rump

G. Burns

**CONSIDER EXECUTION OF A STIPULATION AND ORDER REGARDING THE LOWER OWENS RIVER PROJECT IN THE CASE OF SIERRA CLUB ET AL V. CITY OF LOS ANGELES ET AL, SUPERIOR COURT, INYO COUNTY**

**PARTIES:**

California State Lands Commission, California Department of Fish and Game, City of Los Angeles, City of Los Angeles Department of Water and Power, Board of Commissioners of Department of Water and Power, Gerald Gewe, Gene Coufal, County of Inyo, Sierra Club, and Owens Valley Committee

**BACKGROUND**

The proposed stipulation in the case, Sierra Club, et al. v. City of Los Angeles, et al, Inyo County Superior Court No. SICV01-29768, stems from the latest developments concerning the restorations of flows to an approximately sixty-mile stretch of the Lower Owens River and related delta habitat. The State Lands Commission has actively participated in this issue since the early 1990's. The earlier litigation led to a Memorandum of Understanding (MOU) in 1997, between the Commission and the City of Los Angeles, the Los Angeles Department of Water and Power (DWP), Inyo County, the State Department of Fish and Game, the Sierra Club, and the Owens Valley Committee. The MOU required the restoration of flows by June of 2003.

The MOU provided that DWP would compensate for environmental damage by restoring flows to the river, enhancing delta habitat on an area of the Owens Lake bed owned by the Commission, and establishing several other environmental projects. DWP failed to meet the MOU deadlines, including the June 2003 deadline for river flows. The project is about three years behind schedule.

After several extensions without progress, two environmental groups that are parties to the MOU (Sierra Club and the Owens Valley Committee) filed a lawsuit against DWP and the city of Los Angeles in September 2003 to have the Inyo Superior Court set new deadlines for the project. On December 4, 2003, the Commission and the Department of Fish and Game filed a similar complaint. With the assistance of the judge assigned to the case, the attorneys drafted a proposed stipulation that would resolve the delay and put the project back on track.

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If approved by all the parties, the stipulation would be entered as a formal court order, and the court would retain jurisdiction to enforce its provisions. The stipulation provides:

- DWP would construct a small (50cfs) pump station.
- The Environmental Impact Report will be completed by June 2004.
- DWP will meet other interim deadlines for the project and provide progress reports to the parties and the court.
- Assuming necessary permits are issued as expected, DWP will begin releasing flows into the river by September 5, 2005, and will increase the flows to the full amount by about April 2006, depending on water quality restraints.
- DWP will contribute matching funds of up to \$1.5 million to a County program to remove salt cedar trees in the project area.
- As long as DWP meets key deadlines in the stipulation, the other parties will not seek a court order to limit DWP's groundwater pumping or require DWP to release water to the river. If DWP meets the deadline for the final environmental impact report, the other parties will not request that DWP circulate another draft of the report for comments.
- If DWP misses a key deadline, any party may request a court order to enforce the stipulation and seek sanctions, possibly including groundwater pumping restrictions.
- Unless and until the deadlines are met, the case will remain pending.

All other parties have indicated that they plan to sign the stipulation. Therefore, the staff and the Office of the Attorney General recommend that the Commission authorize execution of the stipulation.

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**OTHER PERTINENT INFORMATION**

Pursuant to the Commission's delegation of authority and the State CEQA Guidelines [Title 14, California Code of Regulations, section 15060 (c) (3), the staff has determined that this activity is not subject to the provisions of the CEQA because it is not a "project" as defined by the CEQA and the State CEQA Guidelines.

Authority: Public Resources Code Section 21065 and Title 14, California Code of Regulations, sections 15060 (c) (3) and 15378.

**IT IS RECOMMENDED THAT THE COMMISSION:**

1. FIND THAT THE ACTIVITY IS NOT SUBJECT TO THE REQUIREMENTS OF CEQA PURSUANT TO TITLE 14, CALIFORNIA CODE REGULATIONS, SECTION 15060 (c)(3) BECAUSE THE ACTIVITY IS NOT A PROJECT AS DEFINED BY PUBLIC RESOURCE CODE SECTION 21065 AND TITLE 14, CALIFORNIA CODE REGULATIONS, SECTION 15378.
2. AUTHORIZE EXECUTION OF THE STIPULATION AND ORDER IN THE CASE OF SIERRA CLUB ET AL. v CITY OF LOS ANGELES ET AL. AND AUTHORIZE STAFF AND THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY IN REGARD THERETO.