



**FINAL Overview of Litigation Affecting Long Valley and Little Round Valley;
Habitat and Species Update
August 16, 2022**

A. RELEVANT HISTORY AND BACKGROUND

1. Background

The City of Los Angeles Department of Water and Power (LADWP) owns approximately 6,100 acres of irrigated pasture adjacent to Crowley Lake in the Long Valley and Little Round Valley region of Mono County (see attached map). Pasture and meadow habitat has existed in the region (collectively referred to as Long Valley) throughout known history, stewarded and utilized first by native peoples and later by western settlers. In total, Los Angeles owns approximately 50,000 acres in Inyo and Mono Counties, including these 6,100 acres, all of which it acquired in the early 20th century for the primary purpose of providing water to the growing City.

Since its acquisition in the early 1900s, LADWP has maintained the 6,100 acres as irrigated pasture, leasing the land back to local agricultural operators who perform day-to-day management. The operators ensure that the pasture remains healthy and productive – provided that LADWP delivers sufficient water for that purpose. This stewardship by LADWP and local ranchers has resulted in the creation and maintenance of important habitat, including for the Bi-State Sage Grouse, a distinct population segment of the Greater Sage Grouse, now being considered for listing under the Endangered Species Act (see discussion below). Additionally, the lush meadows provide valuable scenic, recreational and economic benefits at the southern gateway to Mono County – a vacation destination for residents of Los Angeles and visitors from around the world, and are a critical component of Mono County’s tourism and agriculture-based economy. The meadows stand in sharp contrast to the thousands of acres of LADWP land throughout the Eastern Sierra which was dried up in the early 20th century.

Irrigation water that is not consumed in Long Valley enters the groundwater and then Crowley Lake, where it joins the Los Angeles Aqueduct system and is delivered to Los Angeles.

2. LADWP’s Proposed Change in Operations

In response to its growing concern that a changing climate would reduce the amount of water available for Los Angeles from a variety of sources, in March of 2018, LADWP proposed new leases to the agricultural operators in Long Valley. Specifically, LADWP would continue to allow the operators to lease the 6,100 acres – but without any water to irrigate them. These so-called “dry leases” would eliminate the pastures that had been maintained for generations, impacting habitat for the Bi-State Sage Grouse and other species and adversely affecting the scenic, recreational and economic values of the region.

LADWP initially proposed to make these changes without conducting any review under the California Environmental Quality Act (CEQA). CEQA is a state law enacted in 1970 which requires public agencies to analyze environmental impacts, receive public input and adopt feasible mitigation measures to avoid harm prior to approving or taking an action that may have a significant effect on the environment. When Mono County brought the lack of environmental review to the City's attention in April of 2018, LADWP retracted its proposal, promising instead to conduct the required environmental review before implementing its new dry leases. The City indicated that LADWP would continue to work with the agricultural operators to maintain and irrigate the lands under existing leases in the meantime.

However, that summer LADWP provided an unexpectedly small amount of water to Long Valley, given the amount of water available in the system (it provided 0.71 acre feet (AF)/acre, compared to a historic average of approximately 4 AF/acre, despite precipitation and runoff being about 80% of normal). Although the quantity of water delivered to the lands had indeed historically fluctuated from year-to-year in relation to water availability (including in 2016, when 0.71 AF/acre was also provided), the amount LADWP said it would deliver during 2018 appeared to Mono County and others to indicate a change in LADWP's water management practices, given that 2017 had been an extremely wet year, rather than the first recovery year following a 5-year drought as had been the case in 2016.

B. MONO COUNTY'S AND THE SIERRA CLUB'S LITIGATION

1. Mono County's Reaction to the Perceived Change

Believing that LADWP was improperly using existing leases as a pretext to implement the new dry leases, on August 14, 2018, Mono County gave LADWP notice of its intent to file litigation under CEQA on the grounds that LADWP had moved forward with its plan to change water management practices in Long Valley (i.e., the proposed "dry leases" or some variant of them) without conducting the required environmental review.

Two days later, on August 16, 2022, LADWP declared its intention to prepare an environmental impact report (EIR) related to the new dry leases by issuing a notice of preparation under CEQA (the document was dated August 15, 2022). However, LADWP still did not increase the amount of water it was willing to provide to Long Valley during the summer of 2018.

Concerned that LADWP would not move forward with the promised environmental review and fearing that it would instead simply dry out the land under the pretext of its existing leases (with 2018 being the first year of implementation), Mono County filed litigation against the City of Los Angeles and LADWP on August 15. Shortly thereafter, the Sierra Club joined the County's suit.

2. The CEQA Litigation

Mono County's and the Sierra Club's litigation goal was to ensure that LADWP would conduct environmental review, and implement all feasible mitigation measures identified as a part of that review, prior to changing historic water management practices in Long Valley. The California Department of Fish and Wildlife (CDFW) filed briefs to support the County's and Sierra Club's position, expressing concern for the Bi-State Sage Grouse and other species dependent on the irrigated lands.

LADWP responded by assuring the trial court hearing the case (in Alameda County) that it would conduct the required environmental review. LADWP explained to the court that the amount of water provided in 2018 did not signal the start of a new program aimed at drying out Long Valley, but instead was consistent with amounts provided in prior years – including in 2016, which it claimed had been a similar water year. In other words, LADWP represented that it was not changing its practices and would continue to deliver water to the 6,100 acres – at least until it complied with CEQA. LADWP asked the trial court to admit evidence showing that it had provided significant water in both 2019 (38,000 AF total, or approximately 6.23 AF per acre) and 2020 (18,000 AF total, or approximately 2.95 AF/acre) – therefore attempting to counter the County’s and Sierra Club’s claims that it had implemented new practices commencing in 2018.

The trial court refused to admit LADWP’s evidence of water deliveries during 2019 and 2020 for procedural reasons and concluded that LADWP’s actions in 2018 showed that LADWP was indeed implementing a new water management policy in Long Valley under pretext of its old leases. Accordingly, the trial court ordered LADWP to continue to provide water consistent with its historic practices (including annual fluctuations based on availability and other factors) until such time as the required environmental review was completed.

3. The Appeal

LADWP appealed the trial court’s ruling, again insisting that it was not implementing a changed water policy and representing that it would conduct the required environmental review prior to approving the proposed dry leases. LADWP again sought to admit evidence demonstrating that it had delivered significant water to Long Valley in 2019 and 2020. However, unlike the trial court, the court of appeal found this evidence to be admissible and relied on it, together with other factors, to find that LADWP had not implemented changed water policies.

Specifically, the appellate court accepted LADWP’s representations that it had not changed its historic practices, relied on evidence provided by LADWP that significant amounts of water had been provided in both 2019 and 2020, and noted LADWP’s representation that it would conduct the required environmental review if it were to move forward with implementing proposed dry leases. On these bases, the appellate court determined it was not necessary to order LADWP to maintain past practices until its CEQA review was complete, thereby reversing the trial court’s order and, essentially, taking LADWP at its word.

However, the appellate court did memorialize in its ruling LADWP’s commitment regarding the need for environmental review prior to altering water deliveries beyond the fluctuations allowed by the 2010 leases, including prior to sharply reducing deliveries. Specifically, the appellate court wrote that: “Los Angeles concedes that a policy of not providing any irrigation water to the leased properties is a markedly different project than the 2010 Leases. We accept this concession . . .”. The court made clear that LADWP cannot “de facto convert the 2010 Leases into dry leases” without conducting environmental review under CEQA. (Page 22)¹.

¹ See *County of Mono et al. v. City of Los Angeles et al.*, 2022 WL 2952461, Case No. A162590. First Dist. Court of Appeal for the State of California.

Moreover, the ruling indicates that if LADWP were to sharply reduce water deliveries under the existing leases, then it would be embarking on a new project requiring environmental review under CEQA. “If 2018 marked the beginning of a practice of sharply reduced water deliveries to the lessees ... the correlation between the shift and the Dry Lease Proposal would be obvious and Los Angeles’ claim to be relying on the 2010 Leases would be unmistakably pretextual.” (p. 31-32.) Again, because the appellate court relied on LADWP’s representations, it did not find it necessary to order LADWP to do what it had already promised to do – and what the court memorialized on the record that it would do.

4. *The Impact of the Appellate Court Ruling*

The result of the appellate court’s ruling depends entirely on whether LADWP makes good on its promises to the court, the public and the parties in the case. Specifically, if LADWP continues to provide sufficient water to maintain Long Valley’s environmental resources and does not, in the words of the appellate court “eliminate” or “sharply reduce water deliveries”, then there is no need for the County, or any other party, to return to court.

However, if LADWP uses the 2010 leases to implement “a practice of sharply reduced water deliveries to the lessees” or to “convert the 2010 Leases into dry leases”, then it will have demonstrated that its representations to appellate court, Mono County, the Sierra Club and CDFW, and upon which the appellate court relied, were hollow. In that event, the County or another party could return to court for relief.

5. *Status of LADWP’s Environmental Review of the Proposed Dry Leases*

As noted above, on August 16, 2018, LADWP released a notice of preparation (NOP) under CEQA announcing the preparation of an Environmental Impact Report (EIR) to analyze the impacts of its proposed dry leases. A scoping meeting took place in Mammoth Lakes on September 26, 2018, and numerous oral and written comments were presented. The existence of the project is memorialized on the Office of Planning and Research’s CEQA website at <https://ceqanet.opr.ca.gov/2018082034>, but there is no public information from LADWP regarding the status of or any progress made on the EIR since the 2018 scoping meeting.

C. FEDERAL LITIGATION REGARDING THE BI-STATE SAGE GROUSE

In late 2020, four conservation groups, Desert Survivors, Center for Biological Diversity, WildEarth Guardians and Western Watersheds Project, challenged the U.S. Fish and Wildlife Service’s (USFWS) and the Department of Interior’s March 31, 2020, decision to withdraw the 2013 proposed listing of the Bi-State Sage Grouse as threatened under the Endangered Species Act.² LADWP’s irrigated lands in Long Valley provide important habitat for the Bi-State Sage Grouse, supporting nearly 40% of California’s population, according to the *2020 Bi-State Sage Grouse Accomplishment Report*.³

² See *Desert Survivors et al. v. United States Department of Interior et al.*, (Desert Survivors II). 2022 U.S. Dist. LEXIS 87794, 2022 WL 1539530, Case 3:20-cv-06787-JSC (N.D. Cal. May 16, 2022).

³ This report was prepared by the Bi-State Local Area Working Group (LAWG). See <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.bistatesagegrouse.com/sites/default/files/fileattachments/general/page/947/2020accompreport-final-compressed.pdf> (at p. 9).

On May 16, 2022, the Federal District Court for the Northern District of California issued a decision in favor of the conservation groups, setting aside the 2020 withdrawal decision because the USFWS made specific errors. The Court ordered the 2013 proposed listing decision reinstated. Under the ESA statutory timeline, the USFWS must issue a new final listing decision within 12 months.

D. ADAPTIVE MANAGEMENT PLAN FOR THE BI-STATE SAGE GROUSE

In 2020 and early 2021, a subset of the Bi-State Sage Grouse Local Area Working Group (LAWG) consisting of representatives of LADWP, USFWS, CDFW, Audubon Society and Mono County, in consultation with the Inyo National Forest, Bureau of Land Management and U.S. Geological Survey collaborated in the development of an adaptive management plan (AMP) to guide irrigation on land owned by LADWP in the Convict Creek area of Long Valley (see attached map). This AMP was adopted by LADWP in the Spring of 2021.

The AMP provides for maintenance of minimum in-stream flows of 10 cubic feet per second (cfs) in Convict Creek while providing a 100-meter band of green vegetation (specific standards for vegetation are defined in the plan) along irrigation ditches through Sage Grouse habitat. When sufficient water is not available (i.e., during drought conditions), the ditches are prioritized based on utilization by/importance to the Sage Grouse and water is provided based on those priorities.

The 2021 season was a drought year with limited water availability, and the highest priority ditches received as much water as possible while maintaining 10 cfs in Convict Creek. At the close of 2021, irrigation management during the season was evaluated and LADWP prepared a year-end report (available by contacting 760-924-1800 or commdev@mono.ca.gov). Based on lessons learned, the proposed water distribution was adjusted slightly for this 2022 irrigation season. A mid-season field visit was conducted in July and vegetation improvement was noted over last field season.

E. STATUS OF THE BI-STATE SAGE GROUSE

Resource agencies count sage grouse at breeding leks every spring to estimate bird populations. The past several years indicated declines in various areas of the Bi-State range, including the Long Valley population. Preliminary data from the 2022 lek counts in Long Valley indicate a minor population increase of approximately 3%. Additional information about potential causes of populations changes and predictive population models can be found in various USGS reports and studies at <https://www.bistatesagegrouse.com/general/page/conservation-and-management-tools>.