Comment Letter No. 11

BIG PINE PAIUTE TRIBE OF THE OWENS VALLEY
Big Pine Indian Reservation

January 13, 2003

Los Angeles Department of Water and Power
Attn: Mr. Clarence Martin
300 Mandich Street
Bishop, CA 93514

Re: Comments pertaining to Lower Owens River Project (LORP) Draft Environmental Impact Report / Environmental Impact Statement (DEIR/S)

Dear Mr. Martin:

The Big Pine Paiute Tribe of the Owens Valley (Tribe) would like to take this opportunity to comment on the above mentioned document. The Tribe feels the LORP has the potential to become a nationally recognized river restoration effort. The Los Angeles Department of Water and Power (LADWP) is legally obligated to compensate for severe 1970-1990 groundwater pumping damage by implementing the LORP. The LORP promises to restore 62 miles of the Lower Owens River, while maintaining, enhancing and creating hundreds of acres of new habitat for waterfowl and other wildlife while improving the warm water fishery.

11-1 It is important to explain the intent of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) which are the guiding laws in the DEIR/S. The basic goal of the California Environmental Quality Act is to develop and maintain a high-quality environment now and in the future. The CEQA process guarantees consideration to clean air, clean water, enjoyment of natural, scenic and environmental qualities, ensure sustainable habitat for fish and wildlife, and preserve for future generations representations of all plant and animal communities and examples of major periods of California history. Whereas, the basic goal of NEPA is to declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere; to stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality. It is important to understand the underlying premises of these laws as they will provide understanding as to shortcomings within the DEIR/S.

Prior to describing issues the Tribe has with the DEIR/S, it seems prudent to point out the overall goal of the LORP, as stated in the Memorandum of Understanding (MOU), is as follows: "The goal of the LORP is the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy functioning ecosystems in the other

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elements of the LORP, for the benefit of biodiversity and threatened and endangered species, while providing for the continuation of sustainable uses including recreation, livestock grazing, agriculture, and other activities", (p.1-4). After having read the document, there are several inadequacies within the DEIR/S. It seems evident that if the LORP is implemented as described in the DEIR/S, the LADWP will not fulfill its legal obligations and will not provide an honest faithful effort towards the success of the LORP, nor will the goals of CEQA and NEPA be met.

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The following paragraphs have been arranged in a numbered format to provide a clear arrangement of points of dispute the Tribe has with portions of the DEIR/S. The Tribe requests a written response from yourself on each of the following questions which are in bold.

1. The Owens Valley Paiute have been present in the Owens Valley since time immemorial and this is evident today. The Owens Valley is blessed to contain extremely rich information about prehistoric cultures which are still visible on the landscape today. Considering the increased usage of the landscape from the LORP, the Tribe is very concerned with impacts to cultural resources. Language in the DEIR/S states, "The records search identified . . . , 157 prehistoric sites, six multi-component sites, 15 isolates, ... along the Owens River corridor. . . . A total of 71 prehistoric sites, or nearly half, were located within 1,000 feet of the Owens River, . . ." (p. 4-48). In addition, further language states, "In total, ten sites . . . were identified within the survey areas of the LORP . . ." "Of the ten sites, six are prehistoric . . ." (p. 4-49). Further language from the DEIR/S states, "The following cultural resources were located in or near the sites for the new berms, ditches, and spillgates: Two prehistoric sites were identified, consisting of a large flaked and ground stone scatter, and an extensive artifact scatter" (p. 7-21). In addition, the DEIR/S states, "Installation of the power line could cause inadvertent disturbance to an isolated find, four prehistoric sites . . ." (p. S-25). This information validates the Tribe's concern about the planned protection and preservation of these irreplaceable cultural resources. The Tribe is pleased to see that project impacts on all sites and artifacts can be avoided by either access restriction or minor adjustments in alignment. However, nondescript language such as that does not provide any detailed understanding. **Please respond as to exactly how access restriction will occur and any planned minor adjustments in alignment for the LORP in consideration of archaeological resources?**

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Archaeological survey work still remains to be completed for the River Intake area. Language in the DEIR/S states, "The clearing of the channel immediately downstream of the River Intake will require establishment of access roads along about 2 miles of the western bank and several additional roads to provide access from the river to the nearest existing service road. To the extent feasible, these temporary construction roads would be formed by traveling over existing vegetation. However, minor clearing and grading may be required. This reach of the river is considered a highly sensitive archaeological area where several pre-historic sites are present. Hence, establishment and use of these construction-related roads could potentially affect archaeological sites" (p. 4-51). Further language in the DEIR/S states, ". . . there is always potential in a region with

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11-3 known pre-historic use, that cultural material could be unexpectedly encountered during construction" (p. 5-18). The Tribe will be providing qualified Tribal members to coordinate archaeological survey work for this area with Far Western Anthropological Services. The Tribe does not want to see the work end with survey action. Additional language in the DEIR/S mentions, "Excavated material will be placed directly into dump trucks, and then hauled to a permanent sediment stockpile area adjacent to the River Intake" (p. 4-52). The Tribe is concerned with cultural resources inadvertently included in sediment removal being piled up in a 'sediment stockpile area.'

As the DEIR/S already mentions this reach of the river as being a highly sensitive archaeological area, the Tribe is interested in your plans for the protection of resources found and how this protection will be monitored?

11-4 I feel it necessary to point out a definite point of concern. The DEIR/S states cultural resource studies on certain aspects of the LORP are, "available for qualified professionals and Native Americans at the offices of LADWP. These finds are not considered significant archaeological resources" (p. 5-18 and 5-19). I would like to see that wording either removed or qualified with 'currently contracted qualified professionals (archaeologists currently working on the LORP) or Tribally approved Native Americans. This type of information must be handled correctly and should not be dispersed to the general public.

11-5 The Tribe would like to make a last point of clarification about the DEIR/S language pertaining to cultural resources. The DEIR/S states, "Incidental or accidental disturbances would not be a significant impact because none of the resources are considered significant, nor eligible for inclusion on the National Register of Historic Places" (p. S-25). This sample language is frequently found in CEQA and NEPA documents in determining levels of mitigation. The Tribe holds its own definition of cultural significance and will hold LADWP responsible for not only adhering to NEPA and CEQA requirements, and other related laws, but also in recognizing the Tribe's desires concerning planned protection and preservation of cultural resources that may be potentially disturbed as a result of the LORP.

2. This leads into an additional point the Tribe has with the seeming absence of a recreation plan. The DEIR/S states that there will be a marked increase in visitor use days because of the LORP. There seem to be no plans for managing new and increased recreational uses expected to result from the LORP. With increased people on the landscape comes a much greater opportunity for disturbance of cultural resources.

11-6 The DEIR/S states, "Future increased recreational activities in the LORP project area could adversely affect biological resources, grazing, cultural resources, and recreational uses through human disturbances" (p. S-25). The Tribe is concerned with Mitigation Measure RC-1 which is meant to address the above issue. Mitigation Measure RC-1, "If recreational uses prevent attainment of the MOU goals for the LORP, future recreation management measures will be implemented to avoid conflicts. Such measures could include the installation of more signage, creation of designated trails and parking lots, and construction of barriers to prevent unauthorized or destructive off-road travel"

(p. 10-2). As I have already stated, once cultural resources have been disturbed or stolen, there is no acceptable mitigation. This measure is completely reactive rather than pro-active and that is not acceptable. **Considering the potential disastrous nature of uncontrolled or unplanned impacts from visitor usage on cultural resources and the physical environment, not to mention the fragile nature of the desert ecosystem and slow physical damage recovery time, please explain why the DEIR/S does not contain any mention of a recreation plan?**

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3. The Tribe is disappointed to see an attempt to alter the MOU by LADWP in their insistence on a 150 cubic feet per second (cfs) pump station rather that what was agreed upon in the MOU which was a 50 cfs pump station. The LADWP agreed to a maximum 50 cfs capacity pump station in 1991 to alleviate Owens Valley residents' fears that they would use the LORP to export more groundwater. As you already are aware, the Environmental Protection Agency (EPA) has determined that unless LADWP plans to increase groundwater pumping, a larger pump station is not economically or environmentally justified. The Tribe demands LADWP honor the Long Term Water Agreement (LTWA) and MOU and make the responsible decision to drop the entire 150 cfs issue and pursue the option that has already been agreed upon.

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In addition, the Tribe would like to know exactly why the LADWP only requested the United States Bureau of Reclamation to draw design plans for the 150 cfs pump station. The DIER/S states, "LADWP has not completed design drawings for a 50 cfs stand alone option. Completing the design would require approximately six months from the time the option is selected. Thus, a delay in project implementation of up to six months would result if this option were selected" (p. S-9). This is not an example of good faith. Design plans for the 50 cfs pump station alone should have been originally requested. Virtually, the same conditions exist for both the 50 and 150 cfs pump stations: the 50 cfs building would be smaller but the facility yard would be the same as the 150 cfs option; the electrical transformer, diversion structure, roads, temporary construction zone, 400 foot pipeline, sediment basin, electrical phasing, power line would be the same as the 150 cfs pump station; operation of the 50 cfs station would be the same as the 150 cfs station; and the archaeological and environmental work has been completed. It seems bizarre LADWP can provide cost related information (13 million for the 150 cfs pump station and 10 million for the 50 cfs pump station) when LADWP alleges it does not have design plans for the 50 cfs pump station. **How did LADWP come up with the amount of 10 million dollars for a pump station that has not even been designed? Why an additional six months for the 50 cfs pump station design plans to be formulated?**

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As stated in the DEIR/S, the "EPA has concluded that the indirect and cumulative impacts that would result if LADWP constructs the 150 cfs pump station (increased groundwater pumping, and/or a reduction in water supplied by LADWP for use in the Owens Valley) is a significant and legitimate concern" (p. 10-18). EPA notes that LADWP will be spending approximately $3 million more to construct a 150 cfs pump station than it would spend to construct a 50 cfs pump station (13 million compared to 10 million, p. 2-5). In addition, EPA believes that LADWP would also face increased

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11-10 operation and maintenance costs related to the larger pump station. EPA concludes that the extra cost will not be paid for by the additional water that could be recovered under proposed project operational use while the quantity of additional water that could be recovered would be small (J. Parrish, letter to J. Gewe, 2/27/02), (p. 10-18). The DEIR/S states, "In fact, the full capacity of the 150 cfs pump station would be utilized, at most, one day per year, every other year, on average (J. Parrish, letter to J. Gewe, 2/27/02)" (p. 10-18). In addition, the DEIR/S states, "EPA believes that this creates a strong financial incentive for LADWP to increase groundwater pumping, or to reduce the amount of water supplied for in-valley uses, and to supply the resulting water to the Lower Owens River so that it can be recovered by the pump station and used for dust abatement on Owens Lake or exported to Los Angeles" (p. 10-18). It is truly disappointing to acknowledge what the EPA has obviously pointed out. **It appears LADWP is manipulating the LORP from a mitigation project to a project to suit its own interests. If you claim this not to be the case–please specifically explain where LADWP based its interpretation of the LTWA and MOU to include a 150 cfs pump station?**

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4. The Tribe insists Funding Option #2 be chosen as the preferred alternative. This is imperative as it will provide full funding for the successful implementation of the LORP. As a point of understanding, I would like to reiterate the overall goal of the LORP, as stated in the MOU, is as follows: "The goal of the LORP is the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy functioning ecosystems in the other elements of the LORP, for the benefit of biodiversity and threatened and endangered species, while providing for the continuation of sustainable uses including recreation, livestock grazing, agriculture, and other activities" (p 1-4). There should be no mention of Funding Option #1 since it is contrary to the goals of the LORP by indicating funding deficiencies which jeopardize the successful implementation of the LORP. As you are aware, the LADWP is legally required to periodically assess how well the LORP is working and adjust management accordingly. I think everyone agrees that adaptive management is a great concept for a project such as this; however, adaptive management will not work without appropriate funding. **Please explain how LADWP can even realistically propose Funding Option #1 when it denies funding crucial to the successful implementation of the LORP as spelled out in the LTWA and MOU?**

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5. The Tribe perceives the monitoring and adaptive management to be absolutely essential to the success of the LORP. The DEIR/S states, "An underlying principle of the LORP is adaptive management" (p. 2-10). However, the DEIR/S repeatedly states that funding limitations may prevent their full implementation. A further clarification of the above referred quote, as stated in the DEIR/S, "As provided for in the MOU, the LORP will be adaptively managed. This means that, subject to funding limitations and consistency with the MOU, project management will be modified if ongoing monitoring and analysis reveal that such modification is necessary to ensure the successful implementation of the project and the attainment of the project goals" (p 1-5). In

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11-13 addition, "The LORP will be implemented with an adaptive management approach, characterized by Ecosystem Sciences in the LORP Plan as, "learn as you go and make changes as needed" (p. 2-3). Learn as you go and make changes as needed? It seems amazing a characterization like this is even mentioned when adaptive management is a key principle of the LORP success. **Considering the multitude of resources at stake, please explain why a more pro-active adaptive management plan framework was not developed, rather than just vague language referring to adaptive management?**

6. The issue of noxious weed control is seriously understated in the document. The MOU includes the following goal: "Control of deleterious species whose presence within the Planning Area interferes with the achievement of the goals of the LORP. These control measures will be implemented jointly with other responsible agency programs" (p. 10-5). The DEIR/S states, "A key LORP goal is to create an ecosystem that can be sustained in a healthy condition" (p. 2-73). All of the LORP areas and habitat goals are at risk if Saltcedar, perennial Pepperweed, Russian Knapweed and other noxious weeds are not controlled. This is obviously not in concert with the above mentioned key LORP goal of creating an ecosystem that can be sustained in a healthy condition. Noxious weeds

11-14 typically out compete native plants, alter natural ecosystems, increase fire frequency, and cause a significant decline in biodiversity of plants, insects, and animals. As I'm sure you are aware, the spread of Saltcedar presents a serious problem in the Owens Valley and the LORP must address this problem. It would seem in LADWP's best interest to control this highly evapotranspirative weed as soon as possible. The environmental degradation associated with further noxious weed infestations will only become more extreme and more expensive to control the longer they are ignored. The DEIR/S, states that if outside funding sources for Saltcedar removal are not available, then ". . . control of this exotic species in the Owens Valley will be discontinued and the impact of new Saltcedar growth resulting from the LORP would be significant" (p. 10-7). **How can the habitat goals of the LORP be achieved without a fully funded noxious weed control program designed for the LORP areas?**

These same funding issues and LORP MOU goal contradictions arise concerning beavers and their dams, tule removal, and mosquito control. This control being subject to success only if funding for such work is obtained from such sources other than LADWP or Inyo County. As stated in the DEIR/S, "The LORP will result in new open water and marsh habitats along the river. These new habitats would provide more opportunities for

11-15 mosquitoes to breed, which could result in increased nuisance and public health threats to communities and residents near these areas, and people engaged in outdoor recreation" (p. 4-32). Each of the above mentioned issues–beavers, tule removal and mosquito control need individual attention to ensure their control and the successful implementation of the LORP. Ignoring these issues is nothing short of purposefully ignoring the LORP goals. **Please explain how the argument made concerning funding deficiencies for beaver control, tule removal and mosquito control is even considered when that is in complete opposition to the MOU LORP goals?**

7. LORP goals specifically state that new habitat will be created. The DEIR/S indicates that flows onto the Delta may be significantly reduced. Not only does this fly in the face of creating new habitat, lower flows may not maintain existing Delta habitats and will definitely not create new habitat as stipulated by the LORP goals. In addition, a larger pump station would exacerbate this problem by eliminating seasonal habitat flows to the river delta. The Tribe would like to see the highest annual average baseflows to the delta to be 9 cfs. **Please explain the language in the DEIR/S that refers to Delta flows being reduced (subsequently negatively affecting habitat) while LORP goals specifically state otherwise?**

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8. As with any project in the Owens Valley, the Tribe is concerned with impacts to wildlife and supporting actions that contribute to healthy habitat for any number of species. It is well documented that multiple species of endemic and migratory wildlife utilize many riverine and riparian areas in the Owens Valley and also Owens Lake. The river delta and brine pool transition area are crucial support areas for many different species of wildlife. It was pleasing to find the pulse flows to the Delta that would maximize benefits for various birds that use the Delta by ensuring adequate water year-round to maintain wetlands, shallow flooded areas, and ponds.

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In closing, I would like to return to the beginning of this letter where I discuss the intent of CEQA, NEPA and the MOU LORP goals. NEPA and CEQA respectively were established to guarantee the people of this Nation and the state of California a clean, functional, healthy natural environment for everyone to share in. It seems appropriate to repeat the overall goal of the LORP, as stated in the MOU, is as follows: "The goal of the LORP is the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy functioning ecosystems in the other elements of the LORP, for the benefit of biodiversity and threatened and endangered species, while providing for the continuation of sustainable uses including recreation, livestock grazing, agriculture, and other activities." This statement sums up what is necessary for the LORP to be successfully implemented: a commitment from the LADWP to own up to its responsibilities for the successful implementation of the LORP. Anything short of this is not only contradictory to the LORP goals, but also the intent of NEPA and CEQA.

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I would like to take this opportunity to thank you for allowing myself the prospect of providing constructive comment. I look forward to your response to the above mentioned points of concern.

Sincerely,

Jessica L. Bacoch

Jessica L. Bacoch
Tribal Chairperson

cc: Big Pine Tribal Council
Wayne Nastri, EPA, Region IX, Regional Administrator
Inyo County Board of Supervisors

Comment Letter No. 12

FORT INDEPENDENCE INDIAN RESERVATION
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January 13, 2003

Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Street
Bishop CA 93514

Dear Mr. Martin,

The Lower Owens River Project is getting closer to becoming a reality and we are pleased to see that our native lands are being partially restored. We fully support the release of water into the natural riverbed where the Owens River once flowed freely. The draft EIR/EIS is a good start but there remain some critical flaws that could greatly impact the Tribe's cultural resources as well as the natural habitat.

12-1 Of the greatest concern is the lack of a cultural resource management plan. A class III cultural resource inventory was performed by Far Western Anthropological Group and had identified 12 historic sites, 157 prehistoric sites, six multi-component sites, and 15 isolates. Almost half of the prehistoric sites are located within 1,000 feet of the Owens River and out of all of these sites only one was identified as being in the area of potential effect. It is hard for us to believe that these sites will not be affected as the EIS/EIR states that of the approximately 70 sites that are located within 1,000 feet of the River, "most are situated on terraces or steep banks above the river."

Our people had used the Owens River for thousands of years until the Los Angeles Department of Water and Power choked it dry leaving our people to find other sources of fresh water and food. As we had used the River so will other people for various reasons such as fishing, hunting, hiking, off-road vehicle use and many other activities. Fisherman will reap the greatest benefit from the river restoration and will be flooding to the river banks and terraces that hold the cultural information of our people. The recreational impact cannot be ignored and should be included in the Final EIS/EIR.

12-2 In Section 4.8.3 paragraph 1, the draft EIR/EIS states, "Project impacts on all sites and artifacts can be avoided by either access restriction or minor adjustments in alignment." A clarification is needed as to how the restricted access will be enforced and how minor adjustments will ensure site longevity. A Cultural Resource Management Plan to preserve

the sites is critical to stop any degradation of the prehistoric and historic places. Please include this in the Final EIR/EIS.

12-3 The Tribe has concerns with the proposed 150 cfs pump back station. We do not feel that a 150 cfs station is warranted and question LADWP's full intent of the larger station. The purpose of the LORP is to keep water in the valley for natural habitat and riparian growth. It seems to us that this is a way for the municipality to export more water and use the pump station as a vehicle for this transportation. LADWP's recent investigation, for the potential to extract additional groundwater from the valley, has given us some insight on the future uses LADWP has for the larger station. In EPA's own calculation for the larger station, "capacity of the pump station would be utilized, at best, one day every other year…even the originally proposed 50 cfs capacity pump station would be utilized only 2.5 days per year." The additional $3 million needed for the larger station cannot be justified.

12-4 The draft EIS/EIR states that design plans for the smaller station would delay the project by an additional six months. This is unacceptable because the project was already delayed to design the plans for the larger station. LADWP should be constructing these plans immediately so as not to delay the project any further if the smaller station is selected. The final EIR/EIS should address all cumulative impacts that include future plans as well.

12-5 LADWP's water exportation has seriously depleted the groundwater levels in the Owens Valley which has resulted in significant habitat decline. The return of the Lower Owens River should begin as soon as possible. We would support the alternative to start the flow at the maximum of 200 cfs. Although there is a reality that the dissolved oxygen levels will be depleted and fish will die when the water is reintroduced, we feel that the sooner the river bed is flushed the sooner the river will be restored.

12-6 The draft EIR/EIS states that certain alternatives will only be implemented if funding is available. This should not be a limiting factor as to completion of the project. Monitoring is essential to ensure the projects success. Funding must be identified and set aside now for this project or failure will be inevitable.

The Cultural Resource Management Plan, the 50 cfs pump station alternative and identifiable sources of funding should all be included in the final EIR/EIS. Please help us to make this project a success and fulfill your responsibility to the Owens Valley.

Sincerely,

Richard Wilder, Tribal Chairman

Comment Letter No. 13

Lone Pine Paiute-Shoshone Reservation

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January 10, 2003

Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Lane
Bishop, CA 93514

Dear Mr. Martin,

13-1

In the Draft EIR/EIS of the LORP in the Cultural Resources Section of the Document, Sections 5.4.1 Paragraph 2 and Sections 5.4.2 Paragraph 1 both address Cultural Resources and these resources are available to Qualified Professionals and Native Americans.

Section 7.3 states that this information is precise and locational information is not provided, as it is considered sensitive and confidential.

The language as stated in Section 7.3 addressing confidentiality should be consistent throughout the document related to Cultural Resources. Thus, this information should not be made available without the approval of an Appropriate Tribal Chairperson; and, in our particular situation this approval must be given by Rachel A. Joseph, Chairperson.

Sincerely

Rachel A. Joseph,
Tribal Chairperson

Comment Letter No. 14

Lone Pine Paiute-Shoshone Reservation

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January 14, 2003

Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Street
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RE: Lower Owens River Project Draft EIR/EIS Comments

Dear Mr. Martin:

The potential benefits of the Lower Owens River Project (LORP) can be substantial to the residents of the Owens Valley; thus, it is extremely important that the work proceed in a responsible and timely manner. The following is our position regarding the Draft EIR/EIS:

1) Delta Habitat/Pump Station: Lone Pine Paiute-Shoshone Reservation (LPPSR) supports Option 2 (50cfs pump station) as stated by USEPA.

14-1 -We believe this would result in the optimum seasonal habitat flows to maintain the existing Delta; and, benefit the Delta as described in Section 11.

14-2 -We believe the best estimates conclude that even under Option 2, 35% less water will reach the Delta; therefore, the Tribe believes 9 cfs annual average Delta baseflows will benefit, to the greatest extent, existing Delta conditions.

14-3 -We believe that despite the MOU goals, maintaining existing and new Delta habitats is paramount. LADWP is required to stay in compliance with the Clean Water Act (CWA). Three goals of the CWA are: 1) "Restore and maintain the chemical, physical, and biological integrity of the Nation's waters (Delta)." 2) "Provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water" and, 3) "Zero discharge of pollutants to navigable (Delta) waters." In section 6.2.1 of the DEIR/EIS, it states, "The area of wetlands in 2002 is projected to be about 971 acres (White Horse Associates, unpublished data)." Compliance with the CWA requires that existing use of the Delta cannot be "downgraded." Existing use is defined as any use that has been attained or has occurred in a waterbody since November 1975.

14-4 -We believe that because it is adjacent to the Delta, and identified in the DEIR/EIS Table S-1, adverse impacts to the brine pool transition area must be avoided. The brine pool is recognized by the National Audobon Society as a Nationally Significant Important Bird Area and is part of the US Shorebird Conservation Plan. The **existing** flows are currently allowed to the brine pool transition area by LADWP and should be maintained.

14-5 -We believe a six month delay, to complete a design drawing for a 50 cfs pump station, is unnecessary if Option 2 is chosen; and, this assertion of the need for a six month delay

may be a LADWP stall tactic since all aspects of design are similar except utilizing a smaller building, less pumps, and using a smaller air chamber.

14-6 **2) Grazing:** The Draft EIR/EIS does not adequately address grazing since grazing lease management plans have not been provided for review or comment. The lack of an evaluation of present lease conditions or what effects these lease agreements have on the LOPR/Delta habitat may be detrimental to the success of the Project. Best management practices are necessary to ensure that there is protection of the Delta Habitat Area since that Area is considered highly suitable for calving (Lone Pine elk herd) by the BLM. This should require full funding support from LADWP.

14-7 -As stated in section 6.1.2, "No grazing is authorized in the Delta Habitat Area proper, except for this narrow band of the LADWP lease. However, grazing appears to occur in the Delta Habitat Area between the east and west branches, and east of the east branch due to an absence of fences. "
-There should be no authorization to graze the State Lands Commission lands (majority of Delta) since continued grazing on SLC lands may be detrimental to the health of the Delta. In addition, unauthorized grazing must be stopped. During severe drought years, the Lone Pine elk herd may find themselves competing with cattle.

14-8 -Grazing may promote a significant sum of a Non-Point Source which may be detrimental to the Delta Habitat Area.

14-9 -Monitoring the grazing practices in the Delta is necessary; and, in section 6.3.2.4 it states "There is a low-lying area along the western bank of the river channel, about 900 feet upstream of the "Y" (figure 6-1). The Bank appears to have been manually breached to allow flows from the river channel to move to the west, possibly to enhance cattle grazing."

14-10 -Section 9.3.1 states, "BLM is concerned that restrictions in grazing of riparian pastures and the relocation of water sources to areas away from the river (but nearer to BLM lands) could encourage cattle drift onto public lands that are adjacent to LADWP leases in the river corridor." This emphasizes again that necessary resources are required to properly manage grazing and the effects grazing may have on public lands.

14-11 **3) Cultural Resources:** The LORP and areas adjacent to the LORP are rich in cultural resources and need to be protected. LPPSR is in agreement with section 7.3 regarding cultural resources, where it states that "Precise locational information is not provided as it is considered sensitive and confidential." This statement should be consistent throughout the DIER/EIS despite what it says in sections 5.4.1 and 5.4.2.

14-12 -We believe mitigation requires coordination with LPPSR.
-We believe all earth moving activities should be coordinated with LPPSR with oversight by approved Native American Monitors.

14-13 -We believe that because of the expected increase in recreational activities, a recreational plan is needed to ensure the safeguard of **all** cultural resources.

14-14 **4) Recreation:** There is no recreation plan! A recreational plan is imperative to facilitate the success of the LORP. This would ensure the protection of natural habitats and cultural resources instead of waiting until the damage has been done.

14-15 **5) Public Health and Safety:** With the anticipation of an increase in the mosquito population due to new open waters, marsh habitats, at Blackrock, and at the Delta, it is necessary for LADWP to adhere to Mitigation Measure PS-1 and/or PS-2.
-Because of the anticipated spread of the West Nile Virus to the Owens Valley, all necessary control measures should be implemented and **not** subject to funding as described in section 10.8

14-16 **6) Pepperweed, Saltcedar, and Other Noxious Weeds:** As stated in the MOU, "Control of deleterious species whose presence within the Planning Area interferes with the achievement of the goals of the LORP. These control measures will be implemented jointly with other responsible agency programs." Control of the above stated species should **not** be subject to funding limitations as described in section 10.8.

14-17 The DEIR/EIS repeatedly states that the LORP will be "adaptively managed," which is defined as "subject to funding limitations and consistency with the MOU, project management will be modified if ongoing monitoring and analysis reveal that such modification is necessary to ensure the successful implementation of the project and the attainment of the project goals." The Tribe is concerned with the qualification "subject to funding limitations" being added to the definition of adaptive management. It appears from the discussion on Project Funding, that post-implementation monitoring may be limited or eliminated due to future funding shortfalls. The Tribe finds this unacceptable. It must be remembered that the LORP is compensatory mitigation for impacts caused by years of Department of Water and Power's (DWP) ground water pumping. DWP should be committed to perform all post-implementation monitoring, regardless of Inyo County's ability to meet its financial obligations for such monitoring. Without monitoring of the ongoing impacts and effects on this re-watering project, there can be no effective "adaptive management" or successful management.

We believe that LORP can provide environmental and water quality benefits for the Tribes in Owens Valley; and, we respectfully request that the parties involved in the DEIR/EIS process consider the long term interests of our Tribe.

Respectfully Submitted,

Rachel A. Joseph
Chairperson

Comment Letter No. 15

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January 14, 2003

Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Street
Bishop , CA 93514

Re: Comments on Draft Environmental Impact Report and Environmental Impact Statement for Lower Owens Valley River Project

Dear Mr. Martin:

The following comments on the Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for Lower Owens Valley River Project (LORP) are submitted on behalf of the Owens Valley Indian Water Commission (OVIWC). The OVIWC is a consortium of three (3) Tribes here in the Owens Valley: the Bishop Paiute Tribe, the Big Pine Paiute Tribe of the Owens Valley and the Lone Pine Paiute-Shoshone Tribe. The OVIWC is dedicated to not only protecting the tribal environment and water resources but all resources of the Owens Valley. The OVIWC is pleased that the water starved Lower Owens River is finally being addressed and is optimistic that the LORP can be success if all principle players honor their legal commitments and the project is properly monitored.

The OVIWC has several comments on the Draft EIR/EIS. OVIWC comments are general and specific and are as follows:

A. General Comments:

15-1 *1. Pump Station:* The OVIWC strongly supports Option 2, introduced in section 2.4.3. and provides for a 50 cfs capacity pump station. Option 2, also the preferred option for both the Environmental Protection Agency (EPA), the lead agency for the EIS and the Inyo County Water Department, a responsible agency for the Draft EIR/EIS, is recommended by the OVIWC for the following reasons:

a. The 50 cfs capacity pump station is the legally agreed upon size under the 1991 Inyo County /Los Angeles Long Term Water Agreement (Agreement);

b. With a 50 cfs capacity pump station and flows of 200 cfs reaching the pump station from the River Intake, the theoretical maximum of the seasonal habitat flow s to the Delta will be 150 cfs. This is a significantly greater amount of cfs flowing to the Delta as compared to Option 1. Under Option 1, which calls for a 150 cfs capacity pump station, only 50 cfs will flow to the Delta if flows of 200 cfs reach the pump station.

The LORP will result in 35% reduction in flow to the Delta habitat from the proposed baseflows and pulse flows. This being the case every effort should be made to increase the flow to the Delta during the seasonal habitat flows and to increase the annual average baseflow to the Delta to its maximum , or 9 cfs;

15-1

c. A 50 cfs capacity pump station may also result in a new aquatic and wetlands habitats from an overflow from a seasonal habitat flow of 150 cfs at the Delta as noted under Section 11.4.1 on p. 11-14;

d. A 50 cfs capacity pump station is feasible;

e. A 50 cfs pump station will discourage or at least delay further ground water pumping by Los Angeles Department of Water and Power (DWP) on lands downhill of the Los Angeles Aqueduct.

2. *Recreational Plan and Cultural Resources:* The Owens River corridor is rich with archaeological sites, with 157 prehistoric sites, 6 multi-component sites, and 15 isolates (See EIR/EIS, Section 4.8.1., p. 4-48). Of the 157 prehistoric sites, 71sites are within 1000 ft. of the Owens River. It is anticipated that the LORP will bring increased recreational use of the River, which will necessarily bring increased vehicle and foot traffic. (See Section 10.1, pp. 10-2 and 10-3.) There is increased potential for people accessing the River to encounter archaeological sites within the Owens River corridor.

15-2

OVIWC recommends that a Recreational Plan be developed with attention to avoidance of archaeological sites within the Owens River corridor and sites identified within the "surveyed areas of the LORP" discussed in Section 4.8.3., p. 4-49. The OVIWC objects to a "wait and see" approach before developing a Recreational Plan. Valuable archaeological resources, as well as habitat, may be destroyed before effective recreational planning is designed and implemented. A Recreational Plan is needed and should be made part of the Final EIR/EIS.

15-3 As a final comment, the OVIWC requests that Native American Monitors be on site during any earth moving activities associated with the LORP project. Such monitoring can be coordinated through either the OVIWC or the Tribes directly.

3. *LORP Funding and Future Monitoring:* The LORP is identified in a 1991 EIR, prepared in support of the Inyo County/Los Angeles Department of Water and Power Agreement, as "compensatory" mitigation for impacts associated with DWP ground water pumping from 1970 to 1990 that were difficult to quantify or mitigate directly. Said another way, DWP's ground water pumping from 1970 to 1990 has caused environmental impacts that are difficult to quantify and mitigate, therefore DWP will be allowed to implement the LORP as a means of meeting its mitigation responsibilities under the 1991 Agreement. The later 1997 Memorandum of Understanding (MOU) between the parties and others in no way modifies or lessens DWP's LORP mitigation obligation, legally or financially.

Payment of the LORP, according to the Agreement and statements within the EIR/EIS are to be as follows: Inyo County is responsible for $3.75 million of the implementation costs of the LORP, which is estimated to be $10 million for a 50 cfs capacity pump station and $13
15-4 million for a 150 cfs pump station. DWP has is responsible for all LORP implementation costs that exceed $3.75 million. The County has furthered obligated itself to pay one half of the post-implementation costs of the LORP, estimated to be $6.7 million (over a 15 year period.) Post-implementation costs include costs associated for LORP operation, maintenance, and *monitoring* during a 15 year period.

Currently the County has been able to commit $5.9 million to the LORP, with approximately $3.75 million going toward implementation of the LORP and approximately $2.17 million to operational costs (See Table 2.2., p. 2-7) . Given the County's contribution, DWP is responsible for implementation costs of $6.25 million in the case of a 50 cfs capacity pump station or $9.25 million in the case of a 150 cfs capacity pump back station. Additionally, DWP is responsible for $3.35 million for post-implementation costs.

Given the legal commitments made between the County and DWP, the OVIWC find it disturbing and is troubled by statements through the EIR/EIS and Appendix C that suggest DWP will not abide by its legal financial obligations for the LORP, leaving the LORP in jeopardy of failure.

On p.2-7, Section 2.2.2.3, it states that DWP is committed to contribute the same amount as the County ($ 2.17 million) for post-implementation costs. OVIWC asks why? Per the
15-5 Agreement we are told that DWP is committed to pay 50% share of post-implementation costs, which is $3.35 million, how can it now say it is only matching the County's contribution?

DWP offers two alternatives to address the County's shortfall for post-implementation costs: Alterative #1, DWP will only match of the County's current contribution, which will result in not all of the LORP goals and objectives being met, most importantly monitoring, or Alternative #2, DWP will cover the County's shortfall, with a commitment for reimbursement but will not perform mitigation measure V-2, p. 10-8 which is saltceder control after 2004 and measure PS-2 , p. 10-4, which addresses mosquito abatement.

15-6 The OVIWC recommends that DWP first commit itself to 50% of post-implementation costs ($3.35 million). DWP should absorb any shortfall from the County for post-implementation costs ($1.18 million) and make whatever arrangements necessary for future reimbursement. In no event should LORP monitoring be adversely impacted by DWP's failure to properly fund post-implementation. DWP must be mindful that the LORP is responding to the adverse impacts caused by *its* ground water pumping. Nowhere in the 1997 MOU does it provided that the goals of the LORP may not be met if funding is unavailable. Indeed the MOU in Section II, H., states that:

"In the event it becomes apparent that, due to circumstances beyond DWP's control, the LORP cannot be implemented substantially as described in this MOU, *DWP's obligation, pursuant to California Environmental Quality Act (CEQA), to mitigate for impacts described in the [1991] EIR is not excused."*

15-7

The Draft EIR/EIS should not limit any mitigation or future monitoring of the LORP to funding availability.

4. Noxious Weed Control: All of the LORP areas and habitat goals are at risk if saltceder and other noxious weeds are not controlled. The spread of saltceder presents a serious problem in the Owens Valley and the LORP must realistically address this problem. It is in DWP's best interest to control this water-demanding weed as soon as possible. The environmental degradation associated with further weed infestations will only become more extreme and more expensive to control the longer they are ignored. If the LORP is truly to be "one of the most environmentally significant river habitat restorations ever undertaken in the United States," as Mark Hill, DWP consultant, states it is, then it must include provisions for guaranteed funding for control of saltceder and other noxious weeds.

15-8

5. Impact To Brine Pool Transition Area: The Class I impact to shorebird habitat in the brine pool transition area, identified in Draft EIR/EIS Table S-1, can and must be avoided. This is an area that is used by thousands of ducks and geese and hundreds of thousands of shorebirds. It is in an area that has been recognized by the National Audubon Society as a Nationally Significant Important Bird Area and is part of the U.S. Shorebird Conservation Plan. This is a very important wildlife habitat. The existing flows to this transition area have been released by DWP for many years. Have they been in violation of the existing court injunction that they say would prohibit

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15-9 mitigation of this impact? If the current flows are allowable, it is inappropriate to argue that maintaining those flows under the project is not feasible. DWP can and must avoid this impact by maintaining existing flows and by not allowing this area to dry up in late spring and summer as currently happens. Additionally, if DWP insists that this impact is unavoidable, they have an obligation under CEQA to explore mitigation alternatives that are feasible.

15-10 *6. Grazing Management Plan:* Understory impacts as a result of current grazing are severe in riparian habitats in much of the LORP area. In many places there is no understory and there are no young willows or cottonwoods. Several habitat indicator species such as the yellow-breasted chat are dependent on habitats with trees and a dense understory in the riparian zone. Unless the diversity of habitat provided by understory growth significantly improves, the habitat goals for the river system will not be met. Monitoring for understory development as described on p. 2-78 will not be conducted unless the need for it is determined in some unspecified future time by unspecified means. Whether or not this important monitoring function is needed should not be left to some future decision. There should be a clear commitment to conduct this monitoring as the need for it is obvious. Protocols for this monitoring data collection and analysis should also be included in the EIR/EIS.

15-11 Additionally, individual grazing lease management plans are not provided in the document and DWP has denied requests by reviewers to see them. Without these critical documents and with no evaluation of the present lease condition and trend presented in the Draft EIR/EIS there is no way to compare change over time when evaluating whether the goals of the project are being met. There is no way for the public to evaluate proposed management, monitoring and the need for mitigation. This is inadequate.

15-12 7. *Non-Disclosure of Future Water Needs:* The Draft EIR/EIS fails to disclose whether or not DWP will attempt to recover the additional 16,000 acre-feet/year of water that the project will require beyond the current releases. Where will the additional 16,000 acre-feet/year of water that the LORP will require come from? Will there be increased groundwater pumping? Will there be new wells drilled? Will it come from existing aqueduct supplies? What will be the impacts of the need for 16,000 acre-feet/year more water?

The Draft EIR/EIS should clearly disclose where the 16,000 acre-feet/year needed for the project will come from and whether this will involve additional groundwater pumping. The document fails to recognize the inadequacy of current pumping management to attain the vegetation protection goals of the Long Term Groundwater Agreement. The Draft EIR/EIS therefore greatly underestimates the likelihood of potential future impacts due to any groundwater pumping associated with the LORP.

B. Specific Section Comments:

15-13 *1.B. Clarification of Section 2.3.5.1*: The last sentence of the third paragraph in this section states that the variability in the 40 cfs baseflow would be about 5 cfs. It should be clarified whether that means an estimated range of 35 cfs to 45 cfs or a range of 37.5 cfs to 42.5 cfs.

2.B. Water Quality Monitoring and Spillgate Releases (Section 2.3.5.2, paragraph 3): The Draft EIR/EIS provides that the operation of the three spill gates to create refuges for fish should be wholly contingent on the first two conditions described in this paragraph, whichever occurs earlier, and not on time and flow factors which are included in the last two conditions. What is the basis for ending the spillgate releases after a 6-month period or when a 40 cfs baseflow is achieved throughout the river, whichever occurs earlier, rather than when water quality improves or when fish stop exhibiting signs of stress?

15-14

3.B. Water Quality Monitoring for Seasonal Habitat Flows

a. Section 2.3.5.4, Paragraph 2: This paragraph states that after the first 3 seasonal habitat flow releases, water quality monitoring will be discontinued. This seems imprudent given that only the first seasonal habitat release is guaranteed to be a 200 cfs release. If the second and third year of the project have less than average predicted runoff in the valley, the seasonal habitat flow releases during those years will be less than 200 cfs, or may not occur at all if runoff is predicted to be 50% of normal or less (Chart 2-1). Because the Draft EIR/EIS states that it is uncertain how long degraded water quality effects will last, especially those due to periodic disturbances by the higher seasonal habitat flows (4.4.3.1, Impact Conclusions, paragraph 1), it would be prudent to continue water quality monitoring during the seasonal habitat flow releases for as many years as it takes to see a trend toward stabilization of water quality during several 200 cfs releases.

15-15

b. Section 2.3.5.4., paragraph 4 : Under this plan, it seems that operation of the three spill gates to create *Section 2.3.5.4,Section 2.3.5.4, Section 2.3.5.4,* refuges for fish should be wholly contingent on the first two conditions described in this paragraph, whichever occurs earlier, and not on time as stated in the third condition. What is the basis for ending the spillgate releases one month after the commencement of the seasonal habitat flow, rather than when water quality improves or when fish stop exhibiting signs of stress?

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4.B. Potential Impacts – Game and Native Fish: Fish Kills due to Initial Releases (Section 4.6.2. Short Term Impacts, paragraph 3): This paragraph states that the potential adverse impacts to fish during the initial releases represents a significant and unmitigable Class I impact that could cause substantial fish kills during the initial years of the project until water quality conditions improve. The third sentence in this paragraph states "To reduce the impacts of poor water quality during the initial flow years, LADWP would ***consider*** (bold italics, mine) implementing Mitigation Measure F-1 (see below) which involves releases of high quality water from spill gates for an extended period of time." When one reads Mitigation Measure F-1, one sees that in

15-17

15-17 it DWP commits only to ***considering*** releasing higher quality water from spillgates beyond periods already identified. In other section 4.6.2 DWP agrees only to ***consider considering*** releasing higher quality water from spillgates beyond periods already mentioned. This language is more than a little mushy, and commits DWP to nothing in mitigating this Class I impact.

15-18 *5.*B. *Mitigation Under F-1 and F-2:* The mitigation measures described here, F-1 and F-2, are to mitigate potential adverse impacts to fish during the initial water releases in the LORP project which represent a significant and unmitigable Class I impact that could cause substantial fish kills downstream of Mazourka Canyon Road during the initial years of the project until water quality conditions improve (4.6.2 - paragraph 3). In F-1 the suggested mitigation for this Class I impact is that "LADWP shall ***consider*** releasing higher quality water from spillgates beyond those periods already identified…if it appears that the supplemental water will adequately improve water quality conditions for fish". It is not a mitigation measure for DWP to simply say that they will consider an action. To be considered a mitigation measure and listed as such, this paragraph must be worded more strongly by eliminating the word consider and change the word releasing to release in the sentence cited above, and delete the last sentence of this paragraph. In addition, DWP must commit to conducting water quality monitoring activities during seasonal habitat flow releases for more than the first three releases (see comment 2.3.5.4 above) or no data will be available for deciding if this mitigation is necessary. This mitigation measure should be included in the final EIR/EIS document as a necessary mitigation.

15-19 *6.B. Water Quality Degradation and Fish Kills (Section 11.3.1: Two Class I Impacts):* This section discusses alternative water release schemes for the LORP that may affect two Class I impacts including short-term water quality degradation downstream of Mazourka Canyon due to probable flow interaction with organic sediments that have accumulated over time in the river channel, and fish kills that may be caused by the short-term degradation of water quality. Under the Proposed LORP Implementation Schedule (Table 2-3) Phase I water releases will be initiated as soon as the diversion construction is completed in the river bed, and will be ramped up to achieve the 40 cfs baseflows at the end of construction of the pump station (planned to begin ramping by July 1, 2004). Under the proposed project the first seasonal habitat flow of 200 cfs is planned for release in May or early June 2005. Three alternatives to the proposed water releases were described in Section 11.3.1.

15-20 After careful consideration of the proposed LORP Implementation Schedule, the three alternatives suggested in Section 11.3.1, and the data contained in the 1993 Lower Owens River Planning Study (Jackson, 1994) OVIWC finds that neither the proposed project, nor any of the three alternatives described in the Section 11.3.1 of the LORP EIR/EIS, adequately minimize the water quality impacts. Neither the proposed project nor the three alternatives in Section 11.3.1

minimize either the period of time when short-term water degradation may occur due to flow interaction with the organic sediments deposited below Mazourka Canyon or the fish kills that may be caused by this short-term water quality degradation. OVIWC recommends that
15-20 considering a different alternative strategy for minimizing the period of time when short-term water quality degradation and a fish kill impact is possible. OVIWC outlines its alternative strategy below, which will be referred to as Alternative Initial Release Regime 4, following the naming convention of the Alternatives in Section 11.3.1 of the EIR/EIS.

Alternative Initial Release Regime 4 follows the Proposed LORP Implementation Schedule (Table 2-3); but adds to that schedule a 200 cfs, or higher, flushing flow to be released during the first winter of LORP implementation. This 200 cfs, or higher, flushing flow must be
15-21 of an adequate volume and duration to scour the organic sediments out of the river channel and redistribute them on banks, floodplain and terraces within the riverine-riparian system and the Owens River delta for the benefit of vegetation. This proposed flushing flow is different and separate from the first seasonal habitat flow.

The 200 cfs, or greater, flushing flow should be released during the first winter of LORP implementation during the coldest winter months (December-February), regardless of whether the baseflow has been fully ramped up to 40 cfs at that time or not. The flushing flow should be released during the coldest winter months, when the surface water temperature is at its coldest, so that the flow can scour the river system below Mazourka Canyon of organic sediments during the
15-22 time of year when it would cause the least harm to water quality and to the fish population. A release of a 200 cfs, or greater, flushing flow during winter is likely to reduce the water quality degradation that may kill fish during LORP implementation because colder water temperatures with higher oxygen solubility lead to higher oxygen concentration in the water to begin with. At the same time colder temperatures slow biochemical reactions with the stirred up organic sediments and reduce microbial oxygen consumption, and so these processes will remove far less oxygen from the river water during the winter.

In addition, using high flows to flush the river of the organic sediment during the winter will be less harmful to the fish because fish metabolic rates are slowed by the cold water temperatures, so that fish oxygen consumption is reduced during winter months, and fish feed at lower rates during winter. For the river flushing to be as effective as possible, 200 cfs, or greater,
15-23 flows should be maintained throughout the river system below Mazourka Canyon for a long enough period of time to flush the river channel of the organic sediments. This will necessitate either releasing higher flows at the River Intake, or supplementing flows down river as necessary from various spillgates. This first 200 cfs, or greater, flow should be allowed to by-pass the pumpback station to allow the organic rich sediment (muck) to be transported and deposited on

banks, floodplain and terraces within the riverine-riparian system and the Owens River delta for the benefit of the vegetation. Such a redistribution of "muck" is an objective directly provided for in the MOU (Section I. C. 1. B. ii second paragraph. (1)).

15-24 It is important that the flushing flow be released during the first winter of LORP implementation so that, if fish kills do occur during the flushing event, fish can be planted during the first spring and summer season of LORP implementation, which will ultimately result in the earliest possible re-establishment of a healthy warm water fishery in the LORP. Flushing the sediments during the first winter of LORP implementation also serves to minimize the period of time when short-term water quality degradation downstream of Mazourka Canyon due to flow interaction with the organic sediments is possible, thus minimizing this significant impact. Because the flushing flow is different from the seasonal habitat flows and has a different objective, during May-June of the first year of LORP implementation the first seasonal habitat flow should be released as scheduled in the proposed LORP Implementation Schedule (Table 2-3) to benefit the riverine-riparian and delta systems as provided for in the MOU (Section I. C. 1. b. ii).

15-25 Under OVIWC's proposal Alternative Initial Release Regime 4, the Tribes see no need to delay initiating the baseflow of 40 cfs, as described in the EIR/EIS Section 2.3.5.2. The baseflow should be initiated as soon as possible, without regard to its timing with respect to the release of the winter flushing flow for the following reasons. The Inyo County Water Department report entitled "Lower Owens River Planning Study: Transient Water Quality in the Lower Owens River During Planning Study Flow Releases in July and August of 1993" (Jackson, 1994) is cited in Section 4.4.3 of the EIR/EIS in describing the potential effects to water quality that could result from the release of flows as proposed under the LORP.

15-26 Unfortunately this study is of limited use for predicting the effects of initiating baseflows of 40 cfs on water quality in the LORP because very little water quality data was collected during the ramping up period in this study. As reported in Jackson, 1994, Inyo County and LADWP conducted an experimental study between July 6 and August 12, 1993 in which a flow of 20 cfs was initially released to the Lower Owens River and then rapidly increased to 155 cfs by day 15 of the study. The flows were then subsequently reduced to the normal summer flow regime of 1-5 cfs at Keeler Bridge by day 40 of the study. When one looks at the data presented in Appendix A, Table 1 of the report, we see that very little crucial water quality data was gathered prior to day 10 of the study, when the flows (LAA Intake) had already been increased to 115 cfs. At Mazourka Canyon no dissolved oxygen (D.O.) readings were reported until day 11. On that day the D.O. was 6.3 mg/l, but the flow was not recorded. However on day 12 the flow was recorded as 29 cfs at that station. D.O. was not read again at Mazourka Canyon until day 15 when the

flow had increased to 59 cfs and the D.O. was 3.1 mg/l. At Manzanar Reward Road, D.O. was not measured until day 18 when flows were 55 cfs and D.O. was 2.4 mg/l. At Reinhackle Spring D.O. was not measured until day 15 when the flow was 14 cfs and D.O. was 5.5 mg/l. By day 18 at Reinhackle Spring the flow had increased to 49 cfs and the D.O. was 2.4 mg/l. At Lone Pine Ponds, no water quality data were recorded to document initial water quality conditions in the ponds; the first water quality readings were not recorded until day 14 when D.O. was below 1 mg/l., where it stayed until day 39 of the study. At Lone Pine Station Road the first water quality readings were not taken until day 11 when flow was 14 cfs and D.O. was 4.2 mg/l. Another reading was not taken at Lone Pine Station until day 14 when the flow had increased to 73 cfs and D.O. was 0.9 mg/l. At Keeler Bridge the first water quality readings were taken on days 9 & 11 when flows were less than 0.1 cfs and D.O. concentrations were 5.2 and 6.5 mg/l, respectively.

The next water quality data from Keeler Bridge was taken on day 14 then the flow had already increased to 63 cfs and D.O. was 3.7 mg/l. Table 4-10 in Section 4.4.3.1 of the EIR/EIS contains mean values of the water quality data measured at the various stations throughout the 1993 study, however these values have no value for estimating the effects of releasing the 40 cfs baseflows on water quality in the LORP because most of the measurements were taken after flows had been increased to above 40 cfs. It is more instructive to look at the few data points that were gathered during the earliest parts of the 1993 study, before flows had increased to above 40 cfs. Jackson, 1994, Appendix A Table 1 reports the following: at Mazourka Canyon Road when flow was 59 cfs, D.O. was 3.1 mg/l; at Manzanar Reward Road when flow was 55 cfs, D.O. was 2.4 mg/l; at Reinhackle Spring Station when flow was between 34 and 55 cfs, D.O. was 3.8 mg/l; at Lone Pine Station Road when flow was 14 cfs, D.O. was 4.2 mg/l and then no data were taken until after the high stage had been reached in the river flow (73 cfs); at Keeler Bridge when flow was 63 cfs, D.O. was 3.7 mg/l. The data from Lone Pine Ponds is useless for this analysis because no initial conditions were recorded. In Jackson, 1994, Figure 2. shows that at dissolved oxygen concentrations of 1-5 mg/l warm water pond fish survive, but their growth is slowed with prolonged exposure. D.O. levels above 5 mg/l are the desirable range for these fish and levels below 1 mg/l can be lethal if the exposure is prolonged.

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As seen from the data from Jackson, 1994, Appendix A, Table 1, dissolved oxygen levels can be expected to remain well above 1 mg/l during initial releases of the 40 cfs baseflows, and most likely they will remain above 2.5 to 3 mg/l. Though the Jackson, 1994, report is inconclusive as to what exactly killed the fish during the 1993 release, we see no evidence presented or referenced in the report that would lead to the conclusion that initiating a baseflow of 40 cfs in the LORP will lead to fish kills. The fish kill impact is most likely to be associated with release of the higher seasonal habitat flows unless the organic sediment is removed from the

river channel by a wintertime flushing flow as suggested in our Alternative Initial Release Regime 4.

OVIWC's discussion and analysis of the three Initial Release Regime alternatives listed in Section 11.3.1 is as follows:

a. 11-5, Alternative Initial Release Regime 1 – Gradual Baseflows and Deferred Seasonal Habitat Flows: Recommendations by Jackson (1994) and Ecosystems Sciences (Technical Memorandum No. 11, no date) are referenced in this section of the EIR/EIS. Their recommendations are for slow and gradual ramping of the initial water releases to achieve the baseflows in order to reduce the magnitude of water quality and fish kill impacts. Alternative Initial Release Regime 1 in the EIR/EIS is designed to follow these recommendations. However, the Jackson (1994) report contains absolutely no data or references that support his conclusion that gradual flow increases made over a period of weeks, months, or years is necessary to avoid water quality degradation and fish kills when initiating the 40 cfs baseflow, or that such a scheme would avoid these impacts when higher seasonal habitat flows are eventually released.

Jackson, 1994, does show that water quality degradation did occur during the July-August, 1993 water releases to the lower Owens River, but the data in the report shows that severe water quality degradation did not occur until the flows reached their highest levels during the study (155 cfs at the LA Aqueduct Intake). The few oxygen readings that were taken during the critical ramping up period indicate that dissolved oxygen concentrations stayed above 2.5 mg/l until the flows increased to more than about 55 cfs (Jackson, 1994, Appendix A, Table 1). Moreover, the report is inconclusive as to what exactly killed the fish during the 1993 release. We see no evidence presented or referenced in the Jackson, 1994, report that would lead to the conclusion that gradually increasing the flow in the Owens River is necessary to avoid fish kills, or would mitigate the impact when the flow is increased to 200 cfs during the first May-June seasonal habitat flow.

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OVIWC is concerned that Alternative Initial Release Regime 1 will only work to lengthen the period of time when there will be a possibility of poor water quality and resultant fish kills due to implementation of the LORP. Higher flows in the river will cause a disturbance of organic sediments, no matter whether the flow occurs during the first year or the sixth year of the project, as long as the sediments remain in place to be disturbed. The best course is to remove the sediment with flushing flows during the cold winter season when water quality is likely to be least degraded and fish are likely to be least severely impacted, as described above in our proposed Alternative Initial Release Regime 4.

The data in Jackson, 1994, indicate that taking up to 36-months to reach the 40 cfs baseflow as described in Regime 1 is unnecessary. It is highly speculative that a slow release of the 40 cfs baseflow will have anything to do with improving water quality during the first 200 cfs flow release when water quality is most likely to be the most severely degraded. This gradual increase in baseflow seems more likely to draw out the water quality degradation problem for a longer period of time and will only delay the fish kill that is likely to happen when higher seasonal flows are released during the first springtime seasonal habitat flow which would not occur until two or three years after the baseflow is finally established under Regime 1 as described in the EIR/EIS. Ultimately the alternative presented in Regime 1 will only cause a several year delay in the re-establishment of a stable fishery in the LORP. This alternative would just serve to delay implementation of the LORP at the same time that it is likely to extend the period of poor water quality in the lower river and delay the re-establishment of a healthy fishery.

15-27

b. 11-6, Alternative Initial Release Regime 2 – Begin with Seasonal Habitat Flows to Flush the System: It is the OVIWC position that flushing the river with high flows is a good idea, but that these flows should be released during the first winter of the LORP implementation as described in our proposed Alternative Initial Release Regime 4, instead of during summer 2004, as described in Alternative Initial Release Regime 2. Because disturbance of organic sediments during high seasonal habitat flows in the river is inevitable, the best alternative is to flush these sediments out of the river channel during the season when they are likely to cause the least water quality degradation and damage to the fish population. If the flushing flows are released in the winter season it is possible that the organic sediments can be removed from the river channel without causing massive fish kills. This flushing should be done sooner, rather than later during LORP implementation, so that in case there are any fish kills, the job of restocking the river and re-establishing a healthy fishery can begin as early in the process as possible.

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If Alternative Initial Release Regime 2 is adopted for the LORP as written in Section 11.3.1, the 200 cfs flushing flow would be released during July 2004 during the time of year when water temperatures are highest and dissolved oxygen concentrations are lowest; and microbial oxygen consumption and fish metabolic rates, oxygen consumption and feeding rates are highest. In short, Regime 2 would maximize the negative impacts that will occur when the first 200 cfs flow is released into the LORP. OVIWC's proposed Alternative Initial Release Regime 4 would garner all of the positive aspects of using high flows to flush the organic sediments out of the river channel, while minimizing the possible negative impacts on water quality and fish mortality by releasing the flows during the first winter season of LORP implementation.

c. 11-6, Alternative Initial Release Regime 3 – Delay Releases for Baseflows Until Winter 2004-2005: An argument similar to that presented in the discussion for Regime 1 also holds for Regime 3. While Jackson, 1994, does show that water quality degradation did occur during the July-August, 1993 water releases to the lower Owens River, the data in the report shows that severe degradation did not occur until flows were increased to the highest levels during the study period. Unfortunately, DWP and Inyo County did not take many dissolved oxygen readings in the river during the ramping up period in July 1993. The few readings that were taken during the critical ramping up period indicate that dissolved oxygen concentrations stayed above 2.5 mg/l until the flows in the river were increased to more than 55 cfs (Jackson, 1994, Appendix 1, Table 1).

Furthermore, the 1993 study was done during July and August, the warmest summer months, and so the data record the worst case scenario as far as impacts to dissolved oxygen concentrations go. The data in the report indicate that there is likely to be little water quality degradation at the proposed baseflow of 40 cfs, regardless of when the initial baseflows are released. Though the report is inconclusive as to what exactly killed the fish during the 1993 release, we see no evidence presented or referenced in Jackson, 1994, that would lead to the conclusion that dissolved oxygen concentrations will be reduced to a lethal level for warm water fish (Jackson, 1994, Figure 2) at flows up to the proposed baseflow of 40 cfs no matter what time of year they are released. The plan in Alternative Initial Release Regime 3 would only work to lengthen the period of time when there will be a possibility of poor water quality and resultant fish kills due to implementation of the LORP, because in this alternative release of the initial 200 cfs seasonal habitat flow would not be released into the river until late May or early June one year after the establishment of the 40 cfs baseflow. Higher flows in the river will cause a disturbance of organic sediments, as shown in Jackson, 1994, no matter whether the flow occurs during the first year or the sixth year of the project, as long as the sediments remain in place to be disturbed. The best course is to remove the sediment with flushing flows during the cold winter season when water quality is likely to be least degraded and fish are likely to be least severely impacted, as described in our proposed Alternative Initial Release Regime 4. Alternative Initial Release Regime 3 seems more likely to draw out the water quality degradation problem for a longer period of time and will only delay the fish kill that is likely to happen during the first seasonal habitat flows, if the river is not first flushed to remove organic sediments during the colder winter season as described in our Alternative Initial Release 4. In addition, because of the delays that have already occurred in the LORP and the additional 6-month delay that DWP has built into this document by neglecting to have plans already drawn up for a 50 cfs pumpback station, we feel that adopting Regime 3 would cause an unnecessary further delay in implementation of this project with little or no benefit. We agree that Alternative Initial Release Regime 3 is infeasible because it would result in a delay in the establishment of the 40 cfs

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baseflow even beyond that of the proposed project. Delaying the first seasonal habitat flow for a year after delaying the establishment of the 40 cfs baseflow, as described under Regime 3, would only serve to postpone the time when the high flows will disturb the organic sediments and effect water quality and perhaps cause fish kills in the river. Ultimately it seems that this strategy will only delay the re-establishment of a healthy warm water fishery in the Lower Owens River, which should be avoided.

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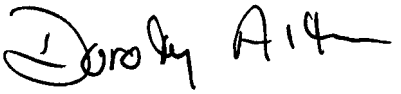
The OVIWC appreciates this opportunity to submit and comment on the LORP. The OVIWC hopes that all lead agencies and Inyo county will give the Commission's comments full consideration. Thank you on behalf of the OVIWC.

Sincerely yours,



DOROTHY ALTHER

cc: Teri Cawelti, Executive Director OVIWC