



Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Street
Bishop, CA 93514
Fax: 760-873-0266

January 10, 2003

Submitted by FAX and MAIL

Subject: Comments on the Lower Owens River Project Draft EIR/EIS

Dear Mr. Martin,

I am submitting these comments on the Lower Owens River Project Draft EIR/EIS on behalf of Defenders of Wildlife. Defenders of Wildlife ("Defenders") is a 430,000 member private, non-profit, national wildlife conservation organization. Defenders works to protect all native wild animals and plants in their natural communities by advocating proactive approaches to wildlife conservation and encouraging protection of entire ecosystems and interconnected habitats. This letter is submitted on behalf of our 180,000 members in California.

I appreciate the opportunity to comment on this very important project. The LORP has enormous potential benefits. However, there are many statements in the Draft EIR/EIS which call into question the successful implementation of the project and which could result in significant project impacts that would not be mitigated. Please consider my comments on the following issues:

26-1

Pump station and Delta flows: A 150 cfs pump station violates the Inyo-LA 1991 Water Agreement. A larger pump station won't allow enough water to reach the Delta and may help LADWP to pump more groundwater from the valley. LADWP should select the 50 cfs pump station and 9 cfs annual average delta baseflows. This option allows the maximum amount of water flow to the delta under the agreements and approaches current flows. This is needed to meet the delta habitat goal of maintaining existing and new delta habitats for waterfowl and to comply with the Water Agreement.

26-2

Lack of commitment to monitoring, adaptive management and mitigation measures: Monitoring and adaptive management are absolutely essential to the success of the LORP, but the DEIR/EIS repeatedly states that funding limitations may prevent their full implementation. To meet its obligations, LADWP should select funding option 2, which is the only option that adequately funds the LORP. However, option 2 should be restated to say LADWP would fund all of Inyo County's shortfall not "*some or all of Inyo County's shortfall*," as it does in the draft document (p.2-8). Additionally, option 2 lacks funding for mitigation

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BISHOP ADMINISTRATIVE OFFICE

measures PS-2 and V-2. A commitment to fully fund these measures should also be included in funding option 2. In light of LADWP's tremendous financial resources, the project should not be compromised by lack of funding.

26-3 **Lack of funding for noxious weed control:** All of the LORP areas and habitat goals are at risk if salt cedar and other noxious weeds are not controlled. The spread of salt cedar presents a serious problem in the Owens Valley and the LORP Draft EIR/EIS must realistically address this problem. The document states that new salt cedar growth resulting from the LORP would be a significant Class I impact, but defers control of this problem to the separate pre-existing Inyo County salt cedar control program that has unsecured funding (mitigation measure V-2). 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, LADWP consultant, states it is, then it must include provisions for guaranteed funding for control of salt cedar and other noxious weeds in order to avoid significant impacts and meet the project goals.

26-4 **Recreation plan:** There is no recreation plan in the DEIR/EIS, nor is there a description of current and anticipated recreational uses of the LORP area. The document should contain a thorough assessment of current and potential recreational use in the LORP area and a plan to manage that recreation in order to protect natural habitats and cultural resources.

26-5 **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 LADWP for many years. Have they been in violation of the existing court injunction that they say would prohibit 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. LADWP 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 LADWP insists that this impact is unavoidable, they have an obligation under CEQA to explore mitigation alternatives that are feasible.

26-6 **Source of additional water to supply the LORP:** The Draft EIR/EIS fails to disclose whether or not LADWP 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 DEIR/EIS should clearly disclose LADWP's intention to replace or not replace the 16,000 acre-feet/year with groundwater pumping. The document fails to recognize the inadequacy of current pumping management to attain the vegetation protection goals of the Long Term Water Agreement. The Draft EIR/EIS therefore greatly underestimates the likelihood of potential future impacts due to any groundwater pumping associated with the LORP.

26-7

Grazing: 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.

26-8

Additionally, individual grazing lease management plans are not provided in the document and LADWP 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 commenters to evaluate proposed management, monitoring and the need for mitigation. This is inadequate.

As one of the most significant river habitat restorations in the country, the LORP represents an unprecedented opportunity if the Los Angeles Department of Water and Power properly implements the project. I hope the Final EIR/EIS will reflect a real commitment to make the project live up to its full potential.

Sincerely,



Cynthia Wilkerson
CA Species Associate

EASTERN SIERRA AUDUBON SOCIETY
P. O. BOX 624, BISHOP, CA 93514

12 January 2003

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

Dear Mr. Martin,

Eastern Sierra Audubon Society is a organization dedicated to the preservation and enjoyment of wildlife and wildlands in the Eastern Sierra. We have over 200 members, mostly in Inyo and Mono Counties. Water issues and their concomitant relationship with wildlife have long been a concern of ESAS and this is why we are concerned with the Lower Owens River Project. And that is why we are writing to comment on the Lower Owens River Project Draft Environmental Impact Report and Environmental Impact Statement. Please consider our comments on the following issues:

27-1 **Pump station and Delta flows:** A 150 cfs pump station violates the Inyo-LA 1991 Water Agreement. A larger pump station won't allow enough water to reach the Delta and may help LADWP to pump more groundwater from the valley. LADWP should select the 50 cfs pump station and 9 cfs annual average delta baseflows. This option allows the maximum amount of water flow to the delta under the agreements and approaches current flows. This is needed to meet the delta habitat goal of maintaining existing and new delta habitats for waterfowl and to comply with the Water Agreement.

27-2 **Lack of commitment to monitoring, adaptive management and mitigation measures:** Monitoring and adaptive management are absolutely essential to the success of the LORP, but the DEIR/EIS repeatedly states that funding limitations may prevent their full implementation. To meet its obligations, LADWP should select funding option 2, which is the only option that adequately funds the LORP. However, option 2 should be restated to say LADWP would fund all of Inyo County's shortfall not "*some or all of Inyo County's shortfall,*" as it does in the draft document (p.2-8). Additionally, option 2 lacks funding for mitigation measures PS-2 and V-2. A commitment to fully fund these measures should also be included in funding option 2. The project should not be compromised by lack of funding.

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CHIEF ADMINISTRATIVE OFFICE

27-3 **Lack of funding for noxious weed control:** All of the LORP areas and habitat goals are at risk if saltcedar and other noxious weeds are not controlled. The spread of saltcedar presents a serious problem in the Owens Valley and the LORP Draft EIR/EIS must realistically address this problem. The document states that new saltcedar growth resulting from the LORP would be a significant Class I impact, but defers control of this problem to the separate pre-existing Inyo County saltcedar control program that has unsecured funding (mitigation measure V-2). 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, LADWP consultant, states it is, then it must include provisions for guaranteed funding for control of saltcedar and other noxious weeds in order to avoid significant impacts and meet the project goals. It would also seem in light of salt cedars tremendous water needs to be in LADWP's best interest to control the salt cedar.

27-4 **Recreation plan:** There is no recreation plan in the DEIR/EIS, nor is there a description of current and anticipated recreational uses of the LORP area. The document should contain a thorough assessment of current and potential recreational use in the LORP area and a plan to manage that recreation in order to protect natural habitats and cultural resources.

27-5 **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. Our membership has birded this area for years. The existing flows to this transition area have been released by LADWP for many years. Have they been in violation of the existing court injunction that they say would prohibit 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. LADWP 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 LADWP insists that this impact is unavoidable, they have an obligation under CEQA to explore mitigation alternatives that are feasible.

How does the International Migratory Bird Treaty apply to this "unmitigable impact" of drying up the brine pool transition zone. We are concerned that LADWP's currently practice of drying up the brine pool may have deleterious affects on the nesting rare Snowy Plovers. This could leave the nest and broods without water and doomed. Recent data shows the intense use of the transition to brine pool habitat by thousands of migrating shorebirds moving back and forth from North America to Central and South America each fall and spring.

27-6 **Source of additional water to supply the LORP:** The Draft EIR/EIS fails to disclose whether or not LADWP 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

27-6

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 DEIR/EIS should clearly disclose LADWP's intention to replace or not replace the 16,000 acre-feet/year with groundwater pumping. The document fails to recognize the inadequacy of current pumping management to attain the vegetation protection goals of the Long Term Water Agreement. The Draft EIR/EIS therefore greatly underestimates the likelihood of potential future impacts due to any groundwater pumping associated with the LORP.

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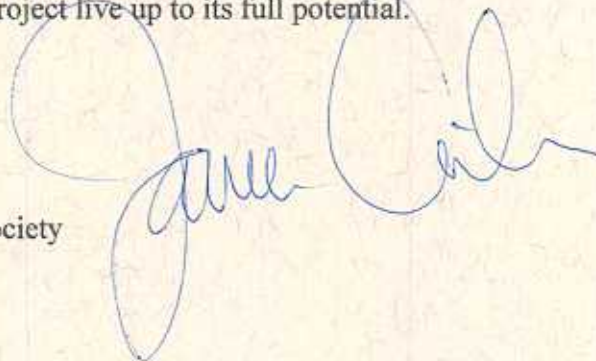
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As one of the most significant river habitat restorations in the country, the LORP represents an unprecedented opportunity if the Los Angeles Department of Water and Power properly implements the project. ESAS hopes the Final EIR/EIS will reflect a real commitment to make the project live up to its full potential.

Sincerely,

James Wilson
President
Eastern Sierra Audubon Society



EL DORADO AUDUBON SOCIETY

Post Office Box 90713

Long Beach, California 90809-0713



December 30, 2002

Los Angeles Department of Water & Power
300 Mandich Lane
Bishop, CA 93514

Comment Letter No. 28

To Whom It May Concern:

As newsletter editor of the *California Least Tern*, it was brought to my attention that the comment period for the Draft EIR/EIS for the Lower Owens River Project was rapidly approaching. My Chapter has always been pro-active when it comes to the preservation of habitat, open spaces, birds and other wildlife. After reading the proposal, I saw the need to bring this matter to the attention of our membership and to fully support the Owens Valley Committee in their quest to improve this flawed document.

To this end, I asked our members to write cards in support of the Owens Valley Committee's position on the LORP. You will find them enclosed with this letter. We all support the following issues brought up by OVC:

- 28-1 • LORP has no funding for any adaptive management measures for when they are needed.
 - 28-2 • Monitoring for the project is not fully funded.
 - 28-3 • There is also no funding for control of invasive plants and/or animals that could impact the final success of the project.
 - 28-4 • Concern over why there is no local meeting in the city of Los Angeles where most of those people who would care to comment, live.
 - 28-5 • No plan to manage current human impacts upon the site or those in the future from recreational activities.
- 28-6 | But most importantly, this plan would reduce the much needed water needed for birds in the area. Owens Valley is a designated Important Bird Area, and as such it demands our protection and continuing stewardship to maintain the area for birds and their offspring in perpetuity.

My newsletter contained an article about the situation at the LORP, and I encouraged all my members and those reading it to contact you and press for the changes the OVC has requested. My newsletter reaches approximately 1200 members in 16 cities as well as being posted in 24 libraries, a Regional Park Nature Center and our local National Wildlife Refuge. Please reconsider your position on the LORP and make this area the very best area it can be for all of us who hold the wild and natural world dear by fully implementing all the changes the OVC has recommended.

Sincerely,

Carolyn Vance, Newsletter Editor
El Dorado Audubon

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PROJECT MANAGER
BISHOP ADMINISTRATIVE OFFICE

The Mission of the El Dorado Audubon Society is the conservation of native birds and their habitats. The society provides leadership in conservation and educates its members and the community, so that they may appreciate birds and participate in the society's conservation efforts.



Comment Letter No. 29

January 9, 2003
Mr. Clarence Martin
Los Angeles Department of Water and Power
300 Mandich Street
Bishop, CA 93514

Dear Mr. Martin:

We applaud the Los Angeles Department of Water and Power (LADWP) for taking the necessary steps to restore the Lower Owens River by returning a steady flow of water from the Los Angeles Aqueduct to the Owens River as well as spreading additional water into basins to create wetlands habitat.

As delineated in the November 2002 draft Environmental Impact Report, the Lower Owens River Project (LORP) restoration approaches are scientifically sound, and will significantly enhance and restore the river's ecosystem.

However, one issue that remains outstanding is the size of the pump-back station. We strongly support the 150 cubic-foot-per-second pump station as proposed by the LADWP in the draft EIR.

Inyo County and the Environmental Protection Agency advocate installing a smaller (50 cfs) pump station, Option 2 in the EIR. This option would allow higher seasonal habitat flows to flow past the pump station to the Owens Lake Delta and beyond. However, scientific evidence presented in the EIR shows that most of the higher habitat flows would quickly pass through the Delta and end up in the brine pool in the middle of Owens Lake, providing little benefit to the project or public.

A larger pump station (150 cfs), described as Option 1, which is preferred by the LADWP, would capture excess flows before they pass to the brine pool and deliver the water onto Owens Lake for dust mitigation, or to Los Angeles for much-needed public use. LADWP has identified its first priority for this excess water as the dust control project, with flows above capacity to be diverted to the Los Angeles Aqueduct. Scientific evidence shows that the Delta habitats will flourish through conservative water allocations and advanced water management techniques. The proposal provides water to the Delta during key periods for wetland needs and wildlife. The 150 cfs pump station would simply recover water that is not necessary to achieve environmental goals in the LORP Delta habitat area.

Sincerely,


Rick Llewelyn
FedEx Contract Advisor

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JAN 13 2003

AQUEDUCT MANAGER
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Friends of Placer County Communities, Inc.

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"I know of no safe depository of the ultimate powers of society but the people themselves."

Thomas Jefferson

Board of Directors

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Gary A. Allen • Al Clark • Joe Jones • Noah Mackenroth • Mary Sue Monahan

Monday, January 06, 2003

Comment Letter No. 30

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

Lower Owens River Project Draft Environmental Impact Report/Enviro. Impact Statement

Dear Mr. Martin,

As a native son of the Owens Valley, I am writing to comment on the Lower Owens River Project Draft Environmental Impact Report and Environmental Impact Statement. While my birthplace is Pomona, I am every bit an Owens Valley boy. I was only born in Pomona because my Dad was in Southern California undergoing treatment for a broken leg while in service with LADWP. Of course my Mom was with him. Grover V. Smith worked for years with LADWP and also ran a dairy farm. Many times his job was spreading water on the desert when there was too much to send south. I am well aware of the history of the valley and what LADWP did to that wonderful mountain and valley paradise.

The Lower Owens River Project (LORP) is a wonderful project, but there are some fatal flaws in the DEIR/EIS. Indeed, the LADWP is legally obligated to compensate for severe 1970-1990 groundwater pumping damage by implementing the LORP. The project has enormous potential for enhancing recreation and improving local economies as it restores 62 miles of the lower Owens River to maintain, enhance and create hundreds of acres of new habitat for waterfowl and other wildlife and to greatly improve that warm water fishery.

The *Friends of Placer County Communities, Inc.*, often takes an interest in projects out of our area, particularly when one of our members has first hand information, as we do in this case. We are coming alongside our sister organization, the Owens Valley Committee. We are vitally concerned about that the DEIR/EIS fails to describe essential components of the project and presents project alternatives that directly violate the 1991 Long Term Water Agreement and the established project goals. These comments are cursory because of time limits.

In addition to my concern as a member of the *FPCC* I also express concern as a long term member of *CALTROUT*. Much of what has been accomplished in restoring Mono and Inyo county streams has been through the leadership of *CALTROUT*.

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Our greatest concern is the enforcement of the California Environmental Quality Act, CEQA and what appears to us to be a possible circumvention of these laws that could lead to litigation and further delay the LORP. Specifically we refer to several applicable CEQA Guidelines:

15231 Adequacy of EIR or Negative Declaration for Use By Responsible Agencies

“A final EIR prepared by a Lead Agency or a Negative Declaration adopted by a Lead Agency shall be conclusively presumed to comply with CEQA for purposes of use by Responsible Agencies which were consulted pursuant to sections 15072 or 15082 unless one of the following conditions occurs:

- (a) The EIR or Negative Declaration is finally adjudged in a legal proceeding not to comply with the requirements of CEQA, or
- (b) A subsequent EIR is made necessary by Section 15162 of these Guidelines.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Sections 21080.1, 21166, 21167.2, and 21167.3, Public Resources Code.

This Guideline section limits the conclusive presumption that an EIR complies with CEQA to situations where the Lead Agency consulted with the Responsible Agency. The statutory presumption was based on the idea that the Responsible Agency had been consulted and had an opportunity to make its views known to the Lead Agency. There are reasons to believe that this provision has not been completely followed in this instance.” Furthermore we refer to section:

15151 Standards for Adequacy of an EIR

“An EIR should be prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.”

Note: Authority cited: Sections 21083 and 2108-, Public Resources Code. Reference: Sections 21061 and 21 1 00, Public Resources Code; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal.App.3d 584.

“The basic goal of the California Environmental Quality Act (CEQA) (Pub. Res. Code §21000 et seq.) is to develop and maintain a high-quality environment now and in the future.

CEQA applies to "projects" proposed to be undertaken or requiring approval by State and local government agencies.

The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects which a proposed project is likely to have and to list ways which the significant environmental effects may be minimized and indicate alternatives to the project.

In reviewing many projects over the past seven years, the *FPCC* has found the following 14 points taken from CEQA to be invaluable guides in evaluating a project. We submit these general suggestions prior to expressing our specific concerns about the LORP DEIR/EIS. In particular we ask that you give extra consideration to those items marked with a ☛:

§§ 21000, 21001, 21002, 21003 General Legislative Policies

CEQA identifies the specific policies that motivated the Legislature to enact it. Among them are the following:

1. to maintain a quality environment for the people of California;
2. to provide an environment that is healthful and pleasing to the senses;
3. to understand the relationship between a high quality environment and the general welfare of the people of California;
4. to identify critical thresholds for the health and safety of the people of California;
- ☛ 5. to demonstrate that every citizen has a responsibility to contribute to the preservation of the environment;
- ☛ 6. to encourage systematic and concerted efforts between the private and public sectors for the interrelationship of policies and practices for management of natural resources and waste disposal;
- ☛ 7. to require all agencies that regulate activities to give major consideration to preventing environmental damage while providing a decent home and satisfying living environment for every Californian;
- ☛ 8. to take all action necessary to protect, rehabilitate, and enhance the environmental quality of California;
9. to provide the people of the State with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise;
10. to prevent the elimination of fish and wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history;

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11. to ensure that the long-term protection of the environment, consistent with the provision of a decent home and suitable living environment for every Californian, shall be the guiding criterion in public decisions;

12. to create and maintain conditions under which man and nature can exist in productive harmony to fulfill the social and economic requirements of present and future generations;

← 13. to require governmental agencies at all levels to develop standards and procedures necessary to protect environmental quality; and

← 14. to require governmental agencies at all levels to consider qualitative factors as well as economic and technical factors and long-term benefits and costs, in addition to short-term benefits and costs and to consider alternatives to proposed actions affecting the environment.

Our specific comments on this project, perhaps these are “fatal flaws.”

Size of the pump station and delta flows:

30-1

A 150 cfs pump station violates the Inyo-LA 1991 Water Agreement. LADWP has not justified using a larger pump station that is three times larger than the water agreement allows. A larger pump station won't allow enough water to reach the Delta and may help LADWP to pump more groundwater from the valley. LADWP should select the 50 cfs pump station and 9 cfs annual average delta baseflows. This option allows the maximum amount of water flow to the delta under the agreements and approaches current flows. This is needed to meet the delta habitat goal of maintaining existing and new delta habitats for waterfowl and to comply with the Water Agreement.

Recreation plan:

30-2

There is no recreation plan in the DEIR/EIS, nor is there a description of current and anticipated recreational uses of the LORP area. The document should contain a thorough assessment of current and potential recreational use in the LORP area and a plan to manage that recreation in order to protect natural habitats and cultural resources. This relates to point 10 above: **to prevent the elimination of fish and wildlife species due to man's activities, ensure that fish and wildlife populations do not drop below self-perpetuating levels, and preserve for future generations representations of all plant and animal communities and examples of the major periods of California history.**

Does this apply in this case? Will Rogers said it best writing in the San Francisco Call in the late 20's in **The Valley of Broken Hearts** - *"Ten years ago this was a wonderful valley with one-quarter of a million acres of fruit and alfalfa. But Los Angeles had to have more water for its Chamber of Commerce to drink more toasts to its growth, more water to dilute its orange juice and more water for its geraniums to delight the tourists, while the giant cottonwoods here died. So, now this . . . is a valley of desolation."*

FPCC Comments - Lower Owens River Project DEIR/EIS – 1.6.2003 - 5 of 9

Lack of commitment to monitoring, adaptive management and mitigation measures:

Over the years we have seen in many projects, what we consider a very FATAL FLAW, that of not providing sufficient mitigation and monitoring of said mitigation. Even when there seems to be the right mitigation, the lack of solid, enforceable monitoring standards leads to the failure of the whole process. We perceive that the monitoring and adaptive management are absolutely essential to the success of the LORP, but the DEIR/EIS repeatedly states that funding limitations may prevent their full implementation.

30-3

To meet its obligations, LADWP should select funding option 2, which is the only option that adequately funds the LORP. However, option 2 should be restated to say LADWP would fund all of Inyo County's shortfall not "*some or all of Inyo County's shortfall*," as it does in the draft document (p.2-8). Additionally, option 2 lacks funding for mitigation measures PS-2 and V-2. A commitment to fully fund these measures should also be included in funding option 2. In light of LADWP's tremendous financial resources, the project should not be compromised by lack of funding.

This and other such flaws certainly could lead to problems as we cited above in compliance with CEQA Guidelines #-15231 - Adequacy of the EIR. This is precisely why the DEIR and public comment process exists to catch these problems, call them to the attention of the lead agency and ask for adequate treatment of the problem.

Noxious weed control is an excellent example of necessary mitigation funding:

30-4

All of the LORP areas and habitat goals are at risk if saltcedar and other noxious weeds are not controlled. The spread of saltcedar presents a serious problem in the Owens Valley and the LORP Draft EIR/EIS must realistically address this problem. The document states that new saltcedar growth resulting from the LORP would be a significant Class I impact, but defers control of this problem to the separate pre-existing Inyo County saltcedar control program that has unsecured funding (mitigation measure V-2).

If, as has been promoted by Mark Hill, LADWP consultant, the LORP is truly to be "*one of the most environmentally significant river habitat restorations ever undertaken in the United States*," then it must include provisions for guaranteed funding for control of saltcedar and other noxious weeds in order to avoid significant impacts and meet the project goals.

Once again we come back to the provisions of CEQA with regard to -- 15204. Focus of Review

"In reviewing draft EIRs, persons and public agencies should focus on the sufficiency of the document in identifying and analyzing the possible impacts on the environment and ways in which the significant effects of the project might be avoided or mitigated. Comments are most helpful when they suggest additional specific alternatives or mitigation measures that would provide better ways to avoid or mitigate the significant environmental effects. At the same time, reviewers should be aware that the adequacy of an EIR is determined in terms of

what is reasonably feasible, in light of factors such as the magnitude of the project at issue, the severity of its likely environmental impacts, and the geographic scope of the project. CEQA does not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors. When responding to comments, lead agencies need only respond to significant environmental issues and do not need to provide all information requested by reviewers, as long as a good faith effort at full disclosure is made in the EIR.”

To be sure, those vitally interested in this project will be looking for this “**good faith effort at full disclosure**” when they review the final EIR/EIS.

Another Area of Like Concern – The 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 LADWP for many years.

30-5

The question which must be answered – has LADWP been in violation of the existing court injunction that they say would prohibit 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.

LADWP 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 LADWP insists that this impact is unavoidable, they have an obligation under CEQA to explore mitigation alternatives that are feasible.

Summary of the Project: Courtesy of the Owens Valley Committee

Since 1913, Los Angeles' surface water diversions and groundwater pumping in the Owens Valley have destroyed springs and seeps, dried the Owens Lake and the lower Owens River, and caused incalculable harm to migrating and endemic wildlife. The LA Department of Water and Power is legally obligated to compensate for severe 1970-1990 groundwater pumping damage by implementing the Lower Owens River Project (LORP).

The LORP promises to restore 62 miles of the lower Owens River; to maintain, enhance and create hundreds of acres of new habitat for waterfowl and other wildlife; and to greatly improve the warm water fishery. The project has enormous potential for enhancing recreation and improving local economies.

FPCC Analysis and Conclusions:

It is very clear that the DEIR/EIS fails to describe essential components of the project and presents alternatives that directly violate the 1991 Long Term Water Agreement. This is, in our opinion one of the more serious of the **fatal flaws** found in the document.

LORP DEIR/EIS in section 3.0 - **OVERVIEW OF IMPACT ASSESSMENT** states:

“The LORP is a mitigation measure for impacts identified in the 1991 EIR. The courts have determined that this mitigation is adequate for the purposes of the 1991 EIR. CEQA requires that mitigation measures be feasible and effective, and that they be fully implemented. In the EIR/EIS, potential obstacles that could hinder the successful implementation of the LORP as a mitigation measure are identified.”

Note the statement -- **CEQA requires that mitigation measures be feasible and effective, and that they be fully implemented.**

CEQA Section 15204 (f) says in part:

“If mitigation measures are submitted, the responsible or trustee agency shall either submit to the lead agency complete and detailed performance objectives for the mitigation measures, or shall refer the lead agency to appropriate, readily available guidelines or reference documents which meet the same purpose.”

It is our contention that the LORP DEIR/EIS does not meet this requirement, another part of this problem we referred to earlier in this document.

We find it disconcerting to hear from OVC that the EPA has already determined that unless LADWP intends to increase groundwater pumping, a larger pump station is not economically or environmentally justified. LADWP has already hired a consultant to explore more groundwater pumping, but asks the public to simply trust them not to use the larger pump station to export more water.

This is part of what we expressed earlier when we questioned the adequacy of the DEIR/EIS in terms of not only stated “mitigation” but the monitoring and enforcement mechanisms needed to make it work properly. We remind you that LADWP is legally required to periodically assess how well the LORP is working and adjust management accordingly. But the DEIR/EIS states that “monitoring and adaptive management,” which are critical to the success of the project, will only be adopted if funding is available.

LADWP has made hundreds of millions of dollars in profits from Owens Valley water and will spend more on public relations in one year than the predicted 15-year budget shortfall for the LORP. Adaptive management requires sufficient funds. We join others in demanding that LADWP meet its legal obligations and commit to funding the full project by choosing funding option two.

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We agree with the Owens Valley Committee when they say: “The LORP has enormous potential for enhancing recreation, improving local economies and restoring habitats. That potential will not be achieved if LADWP does not ensure full funding of the project. The EPA has already determined that unless LADWP intends to increase groundwater pumping, a larger pump station is not economically or environmentally justified.”

Having grown up in a LADWP home in the Owens Valley it is not difficult to see that the LADWP’s chief purpose in the Eastern Sierra is the export of water to Los Angeles. It was that way 71 years ago when I was born and my father worked for LADWP, and it will always be that way. It has only been through the efforts of many groups and individuals; several mentioned in this letter, that this monolithic entity has been brought to this stage.

30-9 | The Draft EIR/EIS makes it clear that LADWP is not fully committed to making the LORP live up to its enormous potential. There is no assessment of current conditions in the lower Owens River area so that changes in usage can be noted and managed. The lack of provisions for controlling beavers, tules and saltcedar; insufficient funding for an adaptive management plan, etc., all indicate that there are serious fatal flaws in the DEIR/EIS. This is a matter of law, CEQA and all other pertinent LORS (local laws, ordinances, regulations and statutes).

Early in this document we wrote about “a possible circumvention of these laws that could lead to litigation and further delay the LORP.” The time to cure this process is now, especially when various organizations have submitted comments, building an excellent administrative record in case it is necessary to once again, go to law on this matter.

As we have done throughout this document we turn once again to the provisions of CEQA.

15021. Duty to Minimize Environmental Damage and Balance Competing Public Objectives

(a) CEQA establishes a duty for public agencies to avoid or minimize environmental damage where feasible.

(1) In regulating public or private activities, agencies are required to give major consideration to preventing environmental damage.

(2) A public agency should not approve a project as proposed if there are feasible alternatives or mitigation measures available that would substantially lessen any significant effects that the project would have on the environment.

(b) In deciding whether changes in a project are feasible, an agency may consider specific economic, environmental, legal, social, and technological factors.

(c) The duty to prevent or minimize environmental damage is implemented through the findings required by Section 15091.

(d) CEQA recognizes that in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian. An agency shall prepare a statement of overriding considerations as described in Section 15093 to reflect the ultimate balancing of competing public objectives when the agency decides to approve a project that will cause one or more significant effects on the environment.

Note: Authority cited: Sections 21083 and 21087, Public Resources Code; Reference: Public Resources Code Sections 21000, 21001, 21002, 21002.1, and 21081; *San Francisco Ecology Center v. City and County of San Francisco*, (1975) 48 Cal. App. 3d 584; *Laurel Hills Homeowners Association v. City Council*, (1978) 83 Cal. App. 3d 515.

30-10 | Finally, the part the public plays in this process and why the FPCC is making these comments. The people of this State do not yield their sovereignty to the agencies that serve them. We the people, in delegating authority, do not give our public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. The basis for this position is in the California Government Code § 54950 *Courtesy, California First Amendment Coalition.*

A vigilant, informed, and well-prepared citizenry is the key to the enforcement of CEQA and better environmental decision making by state and local officials. It is a two way street as shown in the following CEQA policy:

15201. Public Participation

Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities. Such procedures should include, whenever possible, making environmental information available in electronic format on the Internet, on a web site maintained or utilized by the public agency.

The *Friends of Placer County Communities, Inc.* respectfully request that you carefully and thoroughly consider these comments we have submitted. For purposes of the legal record we reference all other public comments and include them in this document for purposes of establishing the administrative record for this project.



Dr. V. Dale Smith
Vice Chairman/Executive Director