Appendix A
Notice of Preparation and Comments Received

Appendix A contains the following materials:

- Notice of Preparation (NOP) for the Draft Supplemental Environmental Impact Report (September 2005);
- Summary of oral comments received during the public scoping meeting (held on September 14, 2005); and
- Written comments received on the NOP (four letters were received as listed in **Table A-1**).

Table A-1
List of Written Comments Received on the Notice of Preparation

Date	Commentor
9/20/2005	Michael Prather **Owens Valley Committee**
9/28/2005	Stephen Jenkins, Assistant Chief **California State Lands Commission, Division of Environmental Planning and Management**
10/6/2005	Phil McDowell, Interim Director **Inyo County Water Department**
11/1/2005	Alan Miller, Chief, North Basin Regulatory Unit **Lahontan Regional Water Quality Control Board**

Summary of Oral Comments Received at the Public Scoping Meeting

A public scoping meeting was held on September 14, 2005 at the City of Los Angeles Department of Water and Power offices in Bishop for the Lower Owens River Project Draft Supplemental Environmental Impact Report. In addition to LADWP and consultant staff, attendees included Michael Prather (Owens Valley Committee) and Greg James (Inyo County). Bird survey data were submitted at the meeting by Mr. Prather, which is included in this appendix. The following oral comments and questions were received during the meeting:

- When will document be ready?
- Who was on the mailing list for the NOP?
- Impacts would occur outside of the LORP area (on State lands).
- Concerned about depicting the existing biological conditions adequately, especially for birds. Data have been collected by Audubon, volunteers, and PRBO. Concerned that

PRBO studies were targeted for certain species such as snowy plover and PRBO studies occurred at a time when study area (for the Supplemental EIR) was dry. Study area usually dries up in May. Water does not start coming out the end till it cools down. PRBO studies looked more into the vegetated Delta because there are no outflows when they surveyed. Commentor will submit bird data that covers the study area in the winter. In addition, at least one season's worth of surveys October through May should be completed, unless there are other available data for the winter period. Commentor will ask others such as Audubon, although they do not necessarily walk out to the study area there when there is water. If there are data on birds other than PRBO report, they should be cited.

- Regarding flow conditions, photographs would be able to cover some information, but there is no gage there. Uncertain how one can quantify that flow.
- With respect to the dust control shallow flood areas, it is appropriate to say that they are part of the existing conditions. However, unless there is dedicated mitigation in perpetuity in the dust control areas, dust control zone cannot be used mitigate impacts in study area. Dust control method may be changed to gravel.
- Will Inyo County be a responsible agency?
- Nutrient flows need to be quantified (productivity for algae and flies). Dust control zones grow a lot of flies and have birds, but they don't have the nutrient load that the study area (river) gets.
- It would be important for Inyo County to know when the Supplemental EIR would be completed so that County could adopt the document.
- Will there be any primary research for algae and brine flies? David Herbst at Sierra Nevada Aquatic Research Lab would be the expert for insects.
- This year, the outflow area was under water because of the high water year. But water retreats quickly when it gets warmer then the brine flies start hatching. The importance of the area is a little bit in the fall and in the winter. There are hundreds of ducks, some shorebirds. In April, there are good numbers of shorebirds (migrants, sandpipers) when there is some outflow still.

Notice of Preparation

To: Agencies, Organizations, and Interested Parties

Subject: **Notice of Preparation of a Draft Supplemental Environmental Impact Report on the Lower Owens River Project in Compliance with Title 14, (CEQA Guidelines) Sections 15082(a), 15103, and 15375 of the California Code of Regulations**

The City of Los Angeles Department of Water and Power (LADWP) will be the Lead Agency under the California Environmental Quality Act (CEQA) for the preparation of a Supplemental Environmental Impact Report (Supplemental EIR) for the Lower Owens River Project (LORP).

The Supplemental EIR will amend the Final EIR for the project (State Clearinghouse No. 2000011075), which was completed and published by LADWP on June 23, 2004 and certified by the City of Los Angeles Board of Water and Power Commissioners on July 20, 2004.

The description, location, and potential environmental effects of the project are summarized below. Documents related to the proposed project are available for review at LADWP offices in Bishop (see contact information below).

Project Title: Lower Owens River Project (LORP)

Project Location: The LORP area is in the Owens Valley in the eastern Sierra Nevada (Inyo County, California). The area includes approximately 62-river miles of the Lower Owens River and adjacent areas. The northern boundary of the LORP area is the River Intake structure, and the southern boundary is the Owens River Delta. The project area encompasses much of the valley floor east of the Los Angeles Aqueduct and west of the Inyo Mountains. The specific location of interest for the Supplemental EIR is the Owens Lake "brine pool transition area."

Project Description: The proposed project description for the LORP has not changed from that described in the Final EIR. LORP is a large-scale habitat restoration project that will be implemented through a joint effort by LADWP and Inyo County. The overall objective of the LORP is to establish/enhance and maintain healthy, functioning ecosystems in the four geographic areas of the LORP for the benefit of biodiversity and threatened and endangered species, while providing for the continuation of sustainable uses such as recreation, livestock grazing, agriculture, and other activities.

LORP includes: restoration of the Lower Owens River by providing flows to the river to enhance fish, wetland, and riparian habitats; creation of new wetlands through seasonal flooding at the Blackrock Waterfowl Habitat Area; release of flows to the Delta Habitat Area to maintain and enhance wetlands; and modification of grazing practices on LADWP leases adjacent to the river.

A detailed description of the proposed project is provided in the Final EIR dated June 23, 2004, which can be reviewed at the following locations: LADWP offices in Bishop (see contact information below); LADWP offices in Los Angeles (111 North Hope Street, Room 1468, Los Angeles, California 90012); and on the LADWP website at: http://ladwp.com/ladwp/cms/ladwp005749.jsp.

Background: LORP was identified in a 1991 Environmental Impact Report (1991 EIR) as mitigation for impacts related to groundwater pumping by LADWP from 1970 to 1990. The project was augmented in a Memorandum of Understanding (MOU), signed in 1997 by LADWP, Inyo County, California

Department of Fish and Game, California State Lands Commission, Sierra Club, and the Owens Valley Committee. The MOU describes the general goals of the LORP, timeframe for development and implementation, and specific actions. It also provides certain minimum requirements for the LORP related to flows, locations of facilities, and habitat and species to be addressed.

Based on further negotiations amongst the MOU parties, additional details related to the LORP project description and schedule were specified in a February 2004 Stipulation and Order (Case Number S1CVCV01-29768, Sierra Club and Owens Valley Committee v. City of Los Angeles et al., February 13, 2004).

In June 2004, LADWP completed and published the Final EIR for the LORP, and the City of Los Angeles Board of Water and Power Commissioners certified the Final EIR and adopted the project on July 20, 2004; the Notice of Determination was filed on July 22, 2004. On October 6, 2004, a lawsuit was filed by the Sierra Club challenging the adequacy of the Final EIR with respect to analysis of project impacts on an area described as the "brine pool transition area." The "brine pool transition area" is not a clearly delineated area, but is located south of the vegetated wetlands of the Owens River Delta and is a portion of the brine pool within the Owens Lake. The brine pool is a broadly concave, depressed area of barren substrate, evaporative deposits, and brine. Parts of the brine pool are intermittently flooded through flows from the Owens River Delta and other flows.

As a result of the lawsuit, in July 2005, a stipulated judgment was entered in Inyo County Superior Court (Case Number S1CVPT04-37217, Sierra Club v. City of Los Angeles et al., July 25, 2005). The stipulated judgement requires LADWP to:

- Prepare and circulate for public review and comment a focused environmental analysis that addresses the impacts of the LORP to the "brine pool transition area."
- Proceed with construction of the LORP-related facilities (including the pump station) and implementation of the LORP, but postpone the operation of the pump station pending consideration and certification of the focused environmental analysis.

Supplemental EIR Focus: The Supplemental EIR will document the focused environmental analysis required by the July 2005 judgement. The Supplemental EIR will focus on evaluation of impacts on the "brine pool transition area," and will include detailed description of the existing biologic resources and hydrologic conditions (at the time of publication of this NOP for the Supplemental EIR), detailed description of the change in hydrologic and habitat conditions expected under LORP, and analysis of potential impacts on wildlife, particularly birds.

To Agencies: We request the views of your agency as to the scope and content of the environmental information which is relevant to your agency's statutory responsibilities in connection with the proposed project. Your agency may need to use the Supplemental EIR prepared by LADWP when considering your permit or other approval for the project.

To Organizations and Interested Parties: Comments and concerns regarding the scope and content of the environmental information to be included in the Supplemental EIR are requested from organizations and individuals.

Scoping Meeting: A public scoping meeting will be held to receive oral comments on the scope and content of the Supplemental EIR. Written comments will also be accepted at this meeting. The scoping meeting will be held:

Wednesday September 14, 2005 at 6:00 p.m.
City of Los Angeles Department of Water and Power (LADWP)
Multi-Purpose Room
300 Mandich Street
Bishop, California 93514

The public review period for the Notice of Preparation is scheduled to begin on September 7, 2005 and end on October 6, 2005. Due to the time limits mandated by State law, your response must be sent at the earliest possible date but no later than 30 days after receipt of this notice. Please indicate a contact person in your response, and send your response to the address below:

Mr. Clarence Martin
City of Los Angeles Department of Water and Power (LADWP)
300 Mandich Street
Bishop, California 93514
Phone: (760) 872-1104
Fax: (760) 873-0266

Gene L Coufal — 9/1/05

Signature **Date**

Gene Coufal
Printed Name

Manger, Los Angeles Aqueduct Business Group
Title

Reference: California Code of Regulations, Title 14, (CEQA Guidelines) Sections 15082(a), 15103, 15375.

Submitted by Mike Prather at LORP SEIR NOP Scoping Meeting, 9/14/2005

Methodology:

Walking surveys from the junction of the two delta channels south following the water for as far as you can walk in the mud - approximately 1.5 miles. Equipment - 7X binoculars and 22X spotting telescope. Data sent to Manomet Conservation Center, Manomet, MA (as part of the International Shorebird Survey-Fall1999 through Spring2002.) and CADFG, Bishop Office.

Data: (fieldwork by Michael Prather)

1996Mar23 Delta outflow
- 1 Long-billed Dowitcher
- 9 Greater Yellowlegs
- 1 Snowy Plover
- 170 Least Sandpiper

1996May06 Delta outflow
- 30 American Avocet
- 12 Black-necked Stilt
- 2 Western Sandpiper
- 6 Mallard
- 30 Snowy Plover (3 chicks)
- 48 Least Sandpipers
- 62 Semi-palmated Plover
- 1 Greater Yellowlegs
- 2 Northern Pintail
- 8 Cinnamon Teal
- 9 Dowitcher spp (unidentified)
- 6 Red-necked Phalarope
- 3 Snowy Egret

1999Aug17 Delta outflow
- 2 Solitary Sandpiper
- 1 Willet
- 950 Western/Least Sandpiper (mixed flock)

1999Aug24 Delta outflow
- 1 Snowy Plover
- 6 Semi-palmated Plover
- 26 Killdeer
- 1 Solitary Sandpiper
- 1202 Western Sandpiper
- 120 Least Sandpiper
- 1 Dowitcher spp.
- 100 Western/Least Sandpipers (mixed flock)
- 2 Turnstone spp (unidentified)

1999Aug29 Delta outflow
- 1 Semi-palmated Plover
- 150 American Avocet

400 Western Sandpiper
32 Phalarope spp.
700 Western/Least Sandpiper (mixed flock)

1999Sept12 Delta outflow
1 Black-bellied Plover
1 Snowy Plover
20 Killdeer
30 Black-necked Stilt
1000 American Avocet
10 Long-billed Curlew
80 Western Sandpiper
30 Least Sandpiper
1 Pectoral Sandpiper
7 Red-necked Phalarope
5000 Western/Least Sandpiper (mixed flock)

1999Sept26 Delta Outflow
1 Black-bellied Plover
500 American Avocet
2 Greater Yellowlegs
1 Willet
2 Bairds Sandpiper
4 Dowitcher spp.
11 Phalarope spp.
7000 Western/Least Sandpiper (mixed flock)

1999Oct17 Delta outflow
4 Black-bellied Plover
31 Killdeer
1 American Avocet
20 Greater Yellowlegs
4 Long-billed Curlew
70 Least Sandpiper
180 Dunlin
1770 Western/Least Sandpipers (mixed flock)

1999Oct23 Delta Outflow
3 Snowy Plover
51 Killdeer
85 American Avocet
11 Long-billed Curlew
15 Western Sandpiper
1200 Least Sandpiper
1050 Duck spp. (a distance on wet playa)
82 Snow Goose

2000Jan03 Delta outflow
33 Killdeer
1 Long-billed Curlew
762 Least Sandpiper

8 Dunlin
1 Prairie Falcon
950 Snow Goose
1000 Duck spp.

2000Mar25 Delta outflow
7 Black-bellied Plover
4 Snowy Plover
50 American Avocet
80 Least Sandpiper
1 Dowitcher spp.

2000April02 Delta outflow
9 Snowy Plover
7 Killdeer
202 American Avocet
1 Long-billed Curlew
8 Dowitcher spp.
1 Wilsons Snipe
39 Western/Least Sandpiper (mixed flock)

2000April09 Delta outflow
691 American Avocet
2 Killdeer
2 Whimbrel
1 Long-billed Curlew
10 Western Sandpiper
55 Least Sandpiper
8 Dowitcher
4000 Western/Least Sandpiper (mixed flock)

2000April12 Delta outflow
10 Black-necked Stilt
1 Whimbrel
2 Long-billed Curlew

2000April21 Delta outflow
2 Black-billed Plover
8 Snowy Plover
6 Semi-palmated Plover
24 Killdeer
1000 American Avocet
3700 Western/Least Sandpiper (mixed flock)

2000May20 Delta outflow (central channel dry)
12 Snowy Plover
1 Killdeer adult w/ 4 chicks
4 American Avocet
11 Phalarope spp.
1 Peregrine Falcon

2000June03 Delta outflow (no water reaching transition or brine pool)
4 Killdeer

2000July24 Delta outflow (small flow from delta channel junction for 300 meters. This is within the LORP Delta Habitat Area)

0 birds

2000Aug01 Delta outflow (water braiding out from delta 30-40 meters wide for approximately 1.0 mile; few flies)

4 Killdeer

2000Aug14 Small flow of water reaching the playa. Few brine flies, few shorebirds.

2000Aug22 Delta outflow (water flowing from delta ~1.5 miles; few brine flies)

1 Solitary Sandpiper
6 Least Sandpiper
1 Peregrine Falcon

2001Apr101 Delta outflow

3 Snowy Plover
254 American Avocet
2 Greater Yellowlegs
40 Western/Least Sandpiper (mixed flock)

2001April15 Delta outflow

16 Snowy Plover
2 Killdeer
500 American Avocet
2000 Western/Least Sandpiper (mixed flock)

2001April22 Delta outflow

7 Snowy Plover
1 Semi-palmated Plover
1 Greater Yellowlegs
72 Western/Least Sandpiper (mixed flock)
1 Peregrine Falcon

2001May06 Delta outflow

2 Snowy Plover
1 Black-necked stilt
7 American Avocet
6 Western Sandpiper

2001May20 No water reaching the playa from the delta. PRBO had several snowy plover nests immediately west of west side delta road within the LORP delta habitat area.

0 birds

2001June02 No water reaching playa. Snowy plover seeps on west side are dry.

0 birds

2001June14 No water reaching playa. Snowy plover seeps on west side are dry.

0 birds

2001June22 No water reaching playa. Snowy plover seeps on west side are dry.

0 birds

2001Aug20 Delta completely dry top to bottom. No water reaching playa.

0 birds

2001Sept01 Delta completely dry top to bottom. No water reaching playa.

0 birds

2001Sept15 Water reaching end of vegetation (near junction of two channels). No water on playa.

2 Killdeer

2001Oct26 Delta outflow

0 birds

Zone 2 was operational November, 2001. Zone 1 was operational in the winter of 2002 (December 2002 or January 2003?)

2002Jan13 Delta outflow - transition to brine pool area within LORP and 0.5 miles south of convergence of the two delta channels (~2,000feet south of LORP Delta Habitat Area boundary).

20 Snowy Plover adults.
17 Dunlin
87 Least Sandpipers
12 Western Sandpipers
200 Snow Goose
40 Duckspp. (unidentified)

2002Feb02 Delta outflow

1 Snowy Plover
34 Mallard
8 Greater Yellowlegs
40 American Avocets
800 Least Sandpipers
2 Northern Harrier
300 Snow Goose
63 Duck spp. (unidentified)

2002Mar11 Delta outflow

2 Black-bellied Plover

2002April25 Delta outflow

2 Killdeer
11 American Avocet
134 Least Sandpiper

2002May03 Delta outflow

1 Black-bellied Plover
13 Snowy Plover
14 Semi-palmated Plover
1 Willet
1 Spotted Sandpiper
600 Western Sandpiper
35 Least Sandpiper
2 Pectoral Sandpiper
75 Western/Least Sandpiper (mixed flock)
32 California Gull

2003Oct26 Water seen leaving the delta and braiding across the playa. No birds. Not sure when water began flowing from the delta.

END OF DATA

Additional information regarding the value of the delta outflow

1.) "The Owens River Delta is very important for shorebirds and waterbirds when it has water, however there was no outflow during most of the fall 2001 survey period. In spite of a paucity of water, Owens River Delta had the highest number of birds during spring surveys and the second highest during fall surveys for all years combined."
Contribution 984 Point Reyes Bird Observatory

2.) Two nests found close to the delta western edge and within the LORP Delta Habitat Area.
Summary of Snowy Plovers at Owens Lake, April-August, 2000
October 2000 Point Reyes Bird Observatory

3.) One nest found within the Delta Habitat Area
Summary of Surveys of Snowy Plovers at Owens Lake; Preliminary Results for March 15-May 31, 2001.Point Reyes Bird Observatory

4.) 1 nest found in area immediately south (outside) of LORP Delta Habitat Area boundary.
10 broods found in same locatio
Summary of Surveys for Snowy Plovers at Owens Lake 2001. Point Reyes Bird Observatory, October 15, 2001

OVC
Owens Valley Committee

September 20, 2005

Subject: Owens Valley Committee and Sierra Club comments for the NOP of the Draft Supplemental Impact Report on the Lower Owens River Project.

Comments:

1.) There is a gap in the data needed to adequately describe the existing biological condition particularly for birds. Previous surveys took place when the study area was dry and were directed at a narrow range of species. We have included our bird data and methodology, but suggest that further surveys occur from October 2005 through May 2006. We suggest the use of the Point Reyes Bird Observatory.
2.) There is a gap in the hydrological data needed to describe the existing condition. Flows from the delta should be measured.
3.) Dust control Zones 1 and 2 are part of the current biological condition, but aren't a mitigation for delta outflow (transition to brine pool) impacts unless appropriate acreages are dedicated in perpetuity for wildlife as well as dust.
4.) No physical components of the LORP provide comparable offsetting mitigation for the impacts to wildlife in delta outflow area (transition to brine pool).
5.) The study area is entirely on State Lands.
6.) Inyo County should be listed as the Responsible Agency.

This concludes our comments,

Michael Prather

Michael Prather
Policy Coordinator
Owens Valley Committee

Drawer D
Lone Pine, CA 93545
760.876.1845 ovc@lonepinetv.com

	A	B	C	D	E	F	G
1	DATE	LOCATION	SPECIES	NUMBER	NOTES/OBSERVERS: Michael Prather et al - Drawer D Lone Pine, CA 93545 prather@gnet.com 760. 876 . 5807		
2	96.03.23	Delta outflow	LBDO	1			
3			GRYE	9			
4			SNPL	1			
5			LESA	170			
6							
7	96.05.06		AMAV	30			
8			BNST	12			
9			WESA	2			
10			LESA	48			
11			SNPL	30	3 CHICKS		
12			SPPL	62			
13			GRYE	2			
14			XXDO	9			
15			MALL	6			
16			NOPI	2			
17			CITE	8			
18			SNEG	3			
19			RNPH	6			
20							
21	99.08.17		SOSA	2			
22			WILL	1			
23			PEEPS'	950	WESA/LESA MIXED FLOCK		
24							
25	99.08.24		SNPL	1			
26			SPPL	6			
27			KILL	26			
28			SOSA	1			
29			WESA	1202			
30			LESA	120			
31			XXDO	1			
32			PEEPS'	100	WESA/LESA MIXED FLOCK		
33			TURNSTONE S	2			
34							
35	99.08.29		SPPL	1			
36			AMAV	150			
37			WESA	400			
38			XXPH	32			
39			PEEPS'	700	WESA/LESA MIXED FLOCK		
40							
41	99.09.12		BBPL	1			
42			SNPL	1			
43			KILL	20			
44			BNST	30			
45			AMAV	1000			

	A	B	C	D	E	F	G
46			LBCU	10			
47			WESA	80			
48			LESA	30			
49			PESA	1			
50			RNPH	7			
51			PEEPS'	5000	WESA/LESA MIXED FLOCK		
52							
53	99.09.26		BBPL	1			
54			AMAV	500			
55			GRYE	2			
56			WILL	1			
57			BASA	2			
58			XXDO	4			
59			XXPH	11			
60			PEEPS'	7000	WESA/LESA MIXED FLOCK		
61							
62	99.10.17		BBPL	4			
63			KILL	31			
64			AMAV	1			
65			GRYE	20			
66			LBCU	4			
67			LESA	70			
68			DUNL	180			
69			PEEPS'	1770	WESA/LESA MIXED FLOCK		
70							
71	99.10.23		SNPL	3			
72			KILL	51			
73			AMAV	85			
74			LBCU	11			
75			WESA	15			
76			LESA	1200			
77			SNGO	82			
78			DUCK SP	1050			
79							
80	00.01.03		KILL	33			
81			LBCU	1			
82			LESA	762			
83			DUNL	8			
84			PRFA	1			
85			SNGO	950			
86			DUCK SP	1000			
87							
88	00.03.25		BBPL	7			
89			SNPL	4			
90			AMAV	50			

	A	B	C	D	E	F	G
91			LESA	80			
92			XXDO	1			
93							
94	00.04.02		SNPL	9			
95			KILL	7			
96			AMAV	202			
97			LBCU	1			
98			WESA	10			
99			LESA	55			
100			XXDO	8			
101			PEEPS'	4000	WESA/LESA MIXED FLOCK		
102							
103	00.04.12		BNST	10			
104			WHIM	1			
105			LBCU	2			
106							
107	00.04.21		BBPL	2			
108			SNPL	8			
109			SPPL	6			
110			KILL	4			
111			AMAV	1000			
112			PEEPS'	3700			
113							
114	00.05.20		SNPL	12	CENTRAL CHANNEL DRY		
115			KILL	5	1ad. 4 chicks		
116			KILL				
117			AMAV	4			
118			XXPH	11			
119			PEFA	1			
120							
121	00.06.03		KILL	3	NO WATER REACHING		
122							
123	00.07.24		NO BIRDS		SMALL FLOW FROM DELTA, ~300 METERS		
124							
125	00.08.01		KILL	1	WATER BRAIDING, 30-40 METERS WIDE FOR ~1 MILE, FEW FLIES		
126							
127	00.08.14		UN ID SP.		SMALL FLOW REACHING PLAYA, FEW FLIES		
128							
129	00.08.22		SOSA	1	WATER FLOWING ~1.5 MILES, FEW FLIES		
130			LESA	6			
131			PEFA	1			
132							
133	01.04.01		SNPL	3			
134			AMAV	254			
135			GRYE	2			

	A	B	C	D	E	F	G
136			PEEPS'	40	WESA/LESA MIXED FLOCK		
137							
138	01.04.15		SNPL	16			
139			KILL	2			
140			AMAV	500			
141			PEEPS'	2000	WESA/LESA MIXED FLOCK		
142							
143	01.04.22		SNPL	7			
144			BNST	1			
145			AMAV	7			
146			WESA	6			
147							
148	01.05.20		NO BIRDS		NO WATER REACHING PLAYA		
149							
150	01.06.02		NO BIRDS		NO WATER REACHING PLAYA, SNOWY PLOVR SEEPS ON WEST SIDE ARE DRY		
151							
152	01.06.14		NO BIRDS		NO WATER REACHING PLAYA, SNOWY PLOVR SEEPS ON WEST SIDE ARE DRY		
153							
154	01.06.22		NO BIRDS		NO WATER REACHING PLAYA, SNOWY PLOVR SEEPS ON WEST SIDE ARE DRY		
155							
156	01.08.20		NO BIRDS		DELTA COMPLETELY DRY TOP TO BOTTOM. NO WATER REACHING PLAYA		
157							
158	01.09.01		NO BIRDS		DELTA COMPLETELY DRY TOP TO BOTTOM. NO WATER REACHING PLAYA		
159							
160	01.09.15		KILL	2	WATER REACHING END OF VEGETATION. NO WATER ON PLAYA		
161							
162	01.10.26		NO BIRDS				
163							
164	02.01.13		SNPL	20	0.5 MLES SOUTH OF DELTA CHANNEL CONVERGENCE		
165			DUNL	17			
166			LESA	87			
167			WESA	12			
168			SNGO	200			
169			DUCK SP.	40			
170							
171	02.02.02		SNPL	1			
172			GRYE	8			
173			AMAV	40			
174			LESA	800			
175			NOHA	2			
176			SNGO	300			
177			DUCK SP.	63			
178			MALL	34			
179							
180	02.03.11	Delta Outflows	BBPL	2			

	A	B	C	D	E	F	G
181							
182	02.04.25		KILL	2			
183			AMAV	11			
184			LESA	134			
185							
186	02.05.03		BBPL	1			
187			SNPL	13			
188			SPPL	14			
189			WILL	1			
190			SPSA	1			
191			WESA	600			
192			LESA	35			
193			PESA	2			
194			PEEPS	75	WESA/LESA MIXED FLOCK		
195			CAGU	32			
196							
197	03.10.26	Delta Outflow	NO BIRDS		WATER FLOWING FROM DELTA, BRAIDNG.		

Michael Prather
Drawer D
Lone Pine, CA 93545
760.876.5807
prather@qnet.com
FAX 760.876.1845
www.ovcweb.org

- Resident of Inyo County since 1972.
- Actively working on land and water issues in the Owens Valley since 1980 with the Owens Valley Committee, Eastern Sierra Audubon and Sierra Club.
- Retired public school teacher - taught in Death Valley and Lone Pine for 30 years.

1970 BS Biology CSU Chico
1972 MS Botany CSU Chico

1.) Sapphos Environmental – Owens Lake Dust Environmental Impact Report (EIR), wildlife-birds, 1995-1996

2.) Point Reyes Bird Observatory (PRBO) – Owens Lake Snowy Plover / shorebird surveys 2001, 2002 and 2003 field seasons.

3.) PRBO Pacific Flyway Project – Owens Lake 1989-1994

4.) USFWS Breeding Bird Surveys since 1973 - 2002

5.) National Audubon Society Christmas Bird Counts– since 1970

6.) International Shorebird Survey, Owens Lake, [Manomet Conservation Center, MA] 1999-2002

7.) U. S. Shorebird Conservation Plan – authored the Owens Lake section.

8.) Fall 2002 and spring 2003 - Sapphos Environmental and the Great Basin Unified Air Pollution Control District for bird surveys at Owens Lake for a revised Dust Mitigation EIR.

9.) 30 years teaching with Death Valley and Lone Pine Unified School Districts. Elementary grades and middle school science, retired.

10.) Spring 2003 bird surveys on the Lower Owens River for the PRBO.

11.) Spring 2005 bird surveys on the Lower Owens River for the PRBO

12.) International Shorebird Survey, Owens Lake, [Manomet Conservation Center, MA] Spring2005-Fall2005

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

September 28, 2005

FAX TRANSMITTAL

CALIFORNIA STATE LANDS COMMISSION

DIVISION OF ENVIRONMENTAL PLANNING AND MANAGEMENT

PHONE: (916) 574-1890
FAX: (916) 574-1885

FROM: Madeline Cavalieri
PHONE NUMBER: (916) 574-1956

TO: Clarence Martin, LADWP
PHONE NUMBER:
FAX NUMBER: 760-873-0266
TOTAL PAGES (INCLUDING COVER): 17 pages
MESSAGE: Comment letter for NOP for the Lower Owens River Project, SCH#: 2000011075

STATE OF CALIFORNIA ARNOLD SCHWARZENEGGER, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
Relay Service From TDD Phone **1-800-735-2929**
from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1833**
Contact FAX: **(916) 574-1835**

September 28, 2005

File Ref: SCH 2000011075

Nadell Gayou
The Resources Agency
901 P Street
Sacramento, CA 95814

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

Dear Mr. Martin:

Subject: Notice of Preparation (NOP) for the Lower Owens River Project (LORP)

This responds to your request for comments from the California State Lands Commission (CSLC) on the NOP for the preparation of a Supplemental Environmental Impact Report (EIR) for the LORP at Owens Lake. The specific location of interest for the Supplemental EIR is the Owens Lake "brine pool transition area."

As you are aware, upon admission to the Union in 1850, California acquired nearly four million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the three-mile wide band of tide and submerged land adjacent to the coast and offshore islands of the State. The CSLC holds its sovereign interest in these lands subject to the Public Trust for commerce, navigation, fisheries, open space, and preservation of natural environments, among others. The CSLC is particularly concerned with the natural resources and public recreational opportunities of lands under its jurisdiction.

The proposed project identified in the NOP includes Owens Lake, which is sovereign land of the State of California as described above. The CSLC has a legal responsibility for, and a strong interest in, protecting the ecological and Public Trust

values associated with the State's sovereign lands, including the use of these lands for habitat preservation, open space and recreation. Proposed development located within Owens Lake would be subject to the CSLC's application process and the Commission would be a Responsible Agency under the California Environmental Quality Act (CEQA).

As previously advised, the document should discuss the full range of environmental issues required under CEQA, including, but not limited to, water quality and hydrology, including runoff, sedimentation, degradation, erosion, and drainage; biology, including, native, rare, endangered, and threatened plant, animal, and aquatic species, and species of special concern; and the loss of wetland and upland habitats.

All studies which may be needed to evaluate the environmental effects of the proposed project, including biotic studies and inventories of plans, animals and aquatic resources, should be conducted as part of the preparation of the Supplemental EIR. Relevant project alternatives to reduce the significant effects to a level of insignificance or proposed mitigation measures that will be incorporated into the project should be included in the document. Maps, charts or other graphics should also be included to illustrate the location of biotic species and their habitats in the relation to the project site, and the proposals for their protection.

Additionally, enclosed are comments on the DEIR/EIS that were previously prepared by the CSLC in our letters of February 29, 2000 and January 13, 2003 each of which is incorporated herein by this reference. We also incorporate herein any additional comments that may be submitted by the Office of the Attorney General on behalf of the CSLC.

Further, on December 9, 2004, the CSLC authorized the issuance of a General Lease – Public Agency Use, Lease No. PRC 8576.9, for the installation and maintenance of a 34.5kV overhead electrical transmission facility located on sovereign land at Owens Lake and the placement of two stream gages in the Owens River Delta as components of the LORP. It is our understanding that the proposed brine pool transition area is located south and some distance from the lease premises in the Owens River Delta area. Once staff has reviewed the Supplemental EIR, the City will be advised if an application to amend the existing lease will be required for this additional component of the LORP.

We appreciate the opportunity to comment on the NOP and look forward to our review of the draft document. If you have any questions concerning the CSLC's leasing process, please contact Susan Young at (916) 574-1879. For questions concerning the proposed environmental document, please contact Judy Brown at (916) 574-1868

Sincerely,

Stephen Jenkins

Stephen Jenkins, Assistant Chief
Division of Environmental Planning and
Management

STATE OF CALIFORNIA GRAY DAVIS, Governor

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone **1-800-735-2922**
from Voice Phone **1-800-735-2929**

Contact Phone: **(916) 574-1833**
Contact FAX: **(916) 574-1925**

February 29, 2000

File Ref: SCH 2000011075

Gene L. Coufal
City of Los Angeles,
Department of Water and Power
300 Mandich Street
Los Angeles, California 93514

Dear Mr. Coufal:

Subject: Lower Owens River Plan SCH# 2000011075

This responds to your request for review and comments from the California State Lands Commission (CSLC) on the Notice of Preparation (NOP) for the Lower Owens River Plan Draft Environmental Impact Report (DEIR).

Upon admission to the Union in 1850, California acquired nearly four million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the three-mile wide band of tide and submerged land adjacent to the coast and offshore islands of the State. The CSLC holds its sovereign interest in these lands subject to the Public Trust for commerce, navigation, fisheries, open space, and preservation of natural environments, among others.

The proposed project area includes the Owens River and Owens Lake, which are sovereign lands of the State of California as described above. The CSLC has a legal responsibility for, and a strong interest in, protecting the ecological and Public Trust values associated with the State's sovereign lands, including the use of these lands for habitat preservation, open space and recreation. Proposed development located within these waterways is subject to the CSLC's leasing process and the Commission is a Responsible Agency under the California Environmental Quality Act (CEQA).

The document should discuss the full range of environmental issues required under CEQA, including, but not limited to, water quality and hydrology, including runoff, sedimentation, degradation, erosion and drainage; biology, including native, rare,

endangered, and threatened plant, animal, and aquatic species, and species of special concern; and the loss of wetland and upland habitats.

All studies which may be needed to evaluate the environmental effects of this project, including biotic studies and inventories of plants, animals, and aquatic resources, should be conducted as part of the preparation of the Draft EIR. Relevant impact analyses should be incorporated into the document. In addition, proposed project alternatives to reduce the significant effects to a level of insignificance or proposed mitigation measures that will be incorporated into the project should be included in the document. Maps, charts, or other graphics should also be included to illustrate the location of biotic species and their habitats in relation to the project site, and the proposals for their protection.

We appreciate the opportunity to comment and look forward to our review of the draft document. If you have questions concerning the CSLC's leasing process, please contact Barbara Dugal at (916) 574-1833. For questions concerning the proposed environmental document, please contact Betty Silva at (916) 574-1872.

Sincerely,

Mary Griggs

Mary Griggs, Assistant Chief
Division of Environmental Planning
and Management

cc: Barbara Dugal
Betty Silva

STATE OF CALIFORNIA GRAY DAVIS, *Governor*

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

PAUL D. THAYER, *Executive Officer*
(916) 574-1800 FAX (916) 574-1810
California Relay Service From TDD Phone **1-800-735-2922**
from Voice Phone **1-800-735-2929**

Contact Phone: **(916) 574-1880**
Contact FAX: **(916) 574-1885**

January 13, 2003

File: Lower Owens River Project
SCH# 2000011075

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

Ms. Gail Louis
U.S. Environmental Protection Agency
75 Hawthorne Street , WTR-3
San Francisco, CA 94105

Subject: **Draft Environmental Impact Report/Statement (DEIR/S), Lower Owens River Project (LORP), November 1, 2002**

Dear Mr. Martin and Ms. Louis:

The California State Lands Commission (CSLC) staff thanks you for the opportunity to comment on the subject DEIR/S. The LORP is compensatory mitigation required for impacts to wetland and riparian habitats resulting from groundwater pumping in the Owens Valley; impacts that a 1991 Final EIR considered difficult to quantify or mitigate directly. Preparation of this DEIR/S must be founded on a "project description" that mirrors that contained in an April 1997 Memorandum of Understanding (MOU) between the Los Angeles Department of Water and Power (LADWP), County of Inyo, CSLC, and other parties. The goal of the LORP, as stated in the MOU, is "the establishment of a healthy, functioning Lower Owens River riverine-riparian ecosystem, and the establishment of healthy, functioning ecosystems in the other physical features 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." (MOU, p. 8.)

The proposed project includes the Owens River and has potential significant impacts to the Owens Lake, which are sovereign lands of the State of California.[1] The CSLC has a

[1] Upon admission to the Union in 1850, California acquired nearly four million acres of sovereign land underlying the State's navigable waterways. Such lands include, but are not limited to, the beds of more than 120 navigable rivers and sloughs, nearly 40 navigable lakes, and the three-mile-wide band of tide and submerged land adjacent to the coast and offshore islands of the State. The CSLC holds its sovereign interest in these lands subject to the Public Trust

legal responsibility for, and a strong interest in, protecting the ecological and Public Trust values associated with the State's sovereign lands, including the use of these lands for habitat preservation, open space and recreation. Proposed development located within these waterways is subject to the CSLC's leasing process, and the CSLC is a Responsible Agency under the California Environmental Quality Act (CEQA).

The CSLC staff has reviewed the subject document and believes that the project as proposed in the DEIR/S does not meet the LORP goal specified in the MOU. The project description is the foundation on which the analyses of an EIR/S should be conducted. An inaccurate project description will, by definition, result in inaccurate analyses. The project, as defined within the MOU, is not carried forward into the subject EIR/S. As such, the document's analyses, even if they were adequate, do not address the actual project. Additional key areas of concern include: (1) the failure of the DEIR/S to provide for adaptive management and effective monitoring as required by the MOU and/or the CEQA; (2) the failure of the DEIR/S properly to set forth habitat goals that are consistent with the needs of indicator species listed in the MOU; and (3) the DEIR/S's repeated conclusion that "funding limitations" prohibit the LADWP from mitigating certain significant impacts to less than significant, and may also limit the ability of the LADWP and Inyo County to conduct the monitoring associated with the LORP. Staff also recommends that the LADWP thoroughly and promptly revise the DEIR/S. The LADWP has not prepared a DEIR that meets the requirements of the CEQA. The remedies now required add further delay to the LADWP's failure to meet the MOU deadline for completion of the DEIR. The result is that ongoing environmental harm attributed to the LADWP's groundwater pumping remains unmitigated.

The comments provided here and in Attachment 1, which are not exhaustive due to the extensive shortcomings of the DEIR/S, are submitted for your consideration and response. Please call Cy Oggins at (916) 574-1884 or Barbara Dugal at (916) 574-1833, if you have any questions concerning these comments.

Sincerely,

Dwight E. Sanders

Dwight E. Sanders, Chief
Division of Environmental Planning and Management

Attachment

cc: State Clearinghouse
Paul Thayer, Executive Officer
Jack Rump, Chief Legal Counsel
Cy Oggins
Barbara Dugal
Maurya Falkner
Jim Frey
Eric Gillies

ATTACHMENT 1, ADDITIONAL COMMENTS

Key Concerns

1) **The DEIR/S does not adequately ensure that the LORP will be adaptively managed to achieve the goal specified in the MOU, and does not ensure that an effective mitigation monitoring program will be implemented as required by the MOU and the CEQA.** Adaptive management is a critical element in the MOU. Section II.E of the MOU (p. 18) states:

> "Monitoring sites and water flow gaging stations will be identified and a program for data collection, analysis, and reporting (which will identify pathways to allow feedback to indicate where adaptive modifications to management are necessary) will be described as part of this plan. Should the reported information reveal that adaptive modifications to the LORP management are necessary to ensure the successful implementation of the project, or the attainment of the LORP goals, **such adaptive modifications will be made**" (emphasis added).

Similarly, the LORP Ecosystem Management Plan (August 2002, pp. 68, 72, & 73) states:

> "Successful adaptive management is dependent upon a monitoring program that provides a reliable measure of change in ecosystem components.... Under adaptive management, monitoring is not the last chapter of a plan; rather, monitoring and management plans are developed concurrently to form a single adaptive-management approach.... Adaptive management is the singular comprehensive approach for managing the river ecosystem in order to reach the desired goals of a healthy and functional ecosystem."

Although the DEIR/S acknowledges the importance of adaptive management and monitoring, it fails to provide for the implementation of a monitoring and adaptive management program that contains measurable performance criteria to ensure that the LORP goal will be met. An example of these deficiencies is the apparent failure of the DEIR/S to include monitoring requirements that would allow for scientific assessments of the progress of the LORP to achieve MOU goals such as: (1) the benefit to biodiversity and Threatened and Endangered Species and their habitats, (2) the continuation of sustainable uses, including recreation, grazing, agriculture, etc.; or (3) the creation of diverse natural habitats consistent with the needs of specified habitat indicator species.

Furthermore, there does not appear to be the necessary commitment by the LADWP to implement the proposed monitoring and adaptive management approach identified in the MOU, Ecosystem Management Plan, or DEIR/S. For example, the DEIR/S on page 2-4 states "**To the extent funding is available**, the County and LADWP will conduct the monitoring associated with the LORP..." (emphasis added).

2) **Funding limitations are cited throughout the DEIR/S as the primary reason why significant impacts cannot be mitigated to a level of insignificance.** The LORP is compensatory mitigation for existing significant impacts resulting from historic groundwater pumping and diversion activities, and the LADWP should ensure that the LORP is properly funded, implemented, mitigated and maintained. The claim in the DEIR/S that limited funds prevent the mitigation of significant impacts to a level of insignificance should be placed in the context of the economic benefits the LADWP receives from the water it takes from the Owens River. The DEIR/S should estimate the costs to fund implementation of each of the mitigation measures needed to meet the goal of the LORP, and should compare these costs to the historic (1970 to 1990, according to the timeframe stated on DEIR/S p. 2-1), subsequent, and continuing economic benefits of these water withdrawals.

DEIR/S Executive Summary *(Comments on the Executive Summary also apply to the related sections of the main document, which may or may not be noted below.)*

3) **Page S-1, last paragraph & Page 1-5, paragraph 3.** The DEIR/S states: "As provided in the MOU, the LORP will be adaptively managed. This means that, subject to funding limitations and consistency with the MOU...." This meaning is not consistent with the MOU, which defines Adaptive Management as "...a method for managing the [LORP] that provides for modifying project management to ensure the project's successful implementation, and/or the attainment of the project goals should ongoing data collection and analysis reveal that such modifications are necessary." (Section I.D, pp. 2-3.) This definition does not include any reference to "funding limitations" and the DEIR/S should be revised to reflect this.

4) **Page S-2, last paragraph & Page 2-33 (Section 2.4.2).** The DEIR/S states:

> "The management action for creating and enhancing habitats in the Delta is to establish baseflows to the Delta with an average annual flow of 6 to 9 cfs as specified in the MOU. ... While no minimum baseflow has been established for the Delta the daily baseflow would be the amount necessary to maintain Delta conditions and to conserve water for use in the Delta during other times of the year (within the 6-9 annual average)...."

The statement "within the 6-9 annual average" incorrectly implies that the MOU establishes a maximum baseflow. In contrast, the MOU identifies an annual average of **approximately** 6 to 9 cfs (Section II.C.2, p. 15, emphasis added) and requires that baseflows be adaptively managed to ensure successful implementation of the LORP, or the attainment of the LORP goals. Consequently, flows into the Delta of greater than 9 cfs may be required pursuant to the MOU to meet the goals of the LORP. The DESIR/S should first set forth the goals for the delta, e.g., create and maintain habitat consistent with the needs of the indicator species specified in the MOU, then determine what flows and other actions are needed to meet those goals.

5) **Page S-3, paragraph 1.** The DEIR/S states: "The facility [pump station] is designed to capture flows in the river and divert the water to the Owens Lake dust control project...." How will the water be diverted to the Owens Lake dust control project? Please discuss or add a reference to the DEIR/S section that discusses this.

6) **Page S-3, paragraph 5, last sentence.** Please add the word "areas" after the word "lease" (change to "... throughout the lease areas ...").

7) **Page S-5, bullet 2, 1st & 3rd sentences.** The first sentence would be clarified by adding the word "created" after the word "conditions" ("The temporary adverse water quality conditions created during the initial releases..."). The 3rd sentence states that the fishery is expected to recover once water quality conditions improve. Please add a range of time anticipated for the fishery to recover.

8) **Page S-5, bullet 4.** The DEIR/S states: "The rewatering of the river would create new wetted channel areas, including areas that are barren and could cause saltcedar infestation in these and other areas.... There is no feasible mitigation measure to avoid this impact in the future due to funding limitations." Please explain how the goal of the LORP can be met if deleterious species such as saltcedar are not controlled? This statement in the DEIR/S is in direct conflict with the letter and spirit of the MOU, which states that the goal of the LORP includes:

> "Establishment and maintenance of diverse riverine, riparian and wetland habitats in a healthy ecological condition...." (Section II.B.1, p. 8.)
>
> "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." (Section II.B.4, p. 9.)

9) **Page S-5, bullets 5-6.** Bullet 5 states: "The amount of water flowing from the Delta Habitat Area to the brine pool transition will be less than existing flows...." Bullet 6 states: "This reduction [in the amount of water released to the Delta from that released over the past 15 years] could possibly reduce the extent of existing aquatic and wetland habitats (including the brine pool transition)...." This significant impact contradicts the MOU's goal to maintain and, in some instances, create habitat consistent with the needs of the indicator species. Table S-1 (p. S-11) states that no feasible mitigation is available due to an existing court injunction that prohibits water inputs to the brine pool that may affect trona-mining operations on the lakebed. The DEIR/S should identify and assess potential project alternatives that meet the dual goals of enhancing/creating habitat consistent with the needs of the indicator species and diverting water from mining operations.

10) **Page S-7, Table S-2.** Please explain the statement that "a higher baseflow of 9 cfs is not feasible unless the MOU goals are not being met." Why isn't it feasible (see comments for Page S-2, last paragraph)? Does the statement that the 50 cfs alternative is feasible and no institutional or technical obstacles exist contradict the

argument that mitigation is infeasible due to a court injunction? Moreover, as noted above, the DEIR/S does not properly set forth the MOU goals or a monitoring program that can determine whether they are satisfactorily met. Please clarify.

11) **Page S-9, Section 7 (Comparison of Impacts Between a 150 cfs and 50 cfs Pump Station).** Please list and compare the energy requirements and air pollution emissions associated with the operation of each station. Can the smaller pump station be operated without construction of power poles (a potential significant adverse impact to raptors and aesthetics) and/or by using alternative power sources? In light of the numerous delays that have occurred since the LORP was required to be implemented, the CSLC staff does not concur with the argument in paragraph 5 that 50 cfs stand-alone station is not feasible because design drawings will take up to six months to complete (resulting in a delay in project implementation). The staff strongly recommends that the LADWP start and complete the design drawings prior to certification of this document so that this option may be considered feasible. (See also related comments for Page 2-40.)

12) **Page S-16, Table S-1 (Mitigation Measure P-1).** Three years may be an insufficient time to control colonization of non-native aggressive or noxious weeds resulting from construction of the pump station. Weed control should be an integral part of, and occur throughout, the proposed restoration monitoring and maintenance program, and the program should be concluded only upon achieving the success criteria approved by the California Department of Fish and Game (CDFG) and other Responsible Agencies.

13) **Page S-25, Table S-1 (Description of Impact by Issue Area, Rangelands).** Table S-1 discusses the possibility that cattle drift onto BLM lands may occur, but no mention is made of cattle drift onto State-owned lands within the Delta. Table S-1 should also identify State lands, and proposed mitigation measure LM-1 should include development of lease-specific measures in consultation with the CSLC.

DEIR/S Sections 1-18

14) **Page 1-5, paragraph 5.** The DEIR/S states: "Although the MOU specifies that a Habitat Conservation Plan (HCP) will be prepared as one part of the LORP Plan, LADWP has concluded, after conferring with MOU parties, to delay initiating the development of an HCP..." Please include in the DEIR/S a proposed timetable, prepared in consultation with the MOU parties, for completion of the HCP.

15) **Page 1-6, paragraph 1.** The DEIR/S states that the proposed LORP does not include any specific actions to manage recreation (other than the current land management practices by LADWP); however, the LORP will provide new recreational opportunities over time. If recreation is not managed, how will the LADWP ensure that the LORP goal to provide for the continuation of sustainable uses including recreation (see MOU, p. 8) is met? How will the LADWP ensure that existing and new recreational uses are "sustainable" and will not cause

environmental degradation (see definition of sustainable uses in MOU, p. 5)? How will achievement of these goals be monitored?

16) **Page 1-6, Section 1.3.1 (CEQA Lead Agency and Responsible Agencies).** The CSLC also has discretionary actions to take, since development located on CSLC lands is subject to the CSLC's leasing process. Please include the CSLC in the list of Responsible Agencies under the CEQA.

17) **Page 1-11, Table 1-1.** The CSLC has a discretionary action to take on elements of the project as proposed. For example, a lease will need to be issued for portions of the overhead power line and for the stream gages proposed at the lower east and west branch.

18) **Pages 2-2 to 2-3.** As stated in other sections of these comments, the CSLC staff does not agree with the conclusion stated in the DEIR/S that the project description incorporates the adaptive management concept and provides the specificity required for environmental analysis of impacts and subsequent project approval and implementation. In particular, staff believes that the proposed adaptive management and monitoring program cannot effectively monitor the progress of the project as proposed to achieve the goal stated in the MOU.

19) **Page 2-4, paragraph 3.** The DEIR/S states that "To the extent that funding is available, the County and LADWP will conduct the monitoring associated with the LORP...." The LADWP and/or Inyo County should ensure that the necessary funds are set aside to conduct effective monitoring associated with the LORP. See the related comment below.

20) **Page 2-5, paragraph 3 and Page 2-6, Table 2-1 & paragraph 2.** The DEIR/S states that installation of the 50 cfs pump station would cost approximately $3 million to $3.3 million less than would installation of a 150 cfs station. Page 2-6, paragraph 2 states that the costs of monitoring are approximately $2.6 million. Please clarify how the DEIR/S can emphasize limited funds in certain instances, but not, in this instance, support installation of a 50 cfs pump station and the placement of the approximately $3-3.3 million saved into a fund for monitoring and mitigation.

21) **Page 2-6, Table 2-1.** This table outlines the costs of the two pump station options, but does not include the differences, if any, of the maintenance costs associated with the two options. Please add this information to the DEIR/S.

22) **Page 2-23, Section 2.3.5.3 (Seasonal Habitat Flows).** Paragraph 3 of this section states that "No flows above the 40 cfs baseflow will be released...in years when the runoff is predicted to be 50 percent or less of the average (normal) runoff." The MOU states on p. 12 that "In years when runoff is forecasted to be less than average, the habitat flows will be reduced from 200 cfs to as low as 40 cfs in **general proportion** to the forecasted runoff in the watershed" (emphasis added). The "no flows above the 40 cfs baseflow" limit in the DEIR/S appears to contradict

does not provide information regarding the size of the berm, what the berm will be constructed of, etc. Please provide these details.

28) **Page 2-39, paragraph 4 (Pipeline).** The DEIR/S states: "A 400-foot long, 48-inch diameter pipeline will extend from the pump station to the existing 60-inch diameter dust control project pipeline as shown on Figure 2-7." Does the existing pipeline depicted in Figure 2-7 continue east and terminate? The entire existing pipeline should be depicted.

29) **Page 2-40 *et seq.* (New Power Line).** This section does not identify specific power requirements for a 50 cfs pump station. This is required to determine which project alternative (50 cfs or 150 cfs) is the Environmentally Preferred Project pursuant to the CEQA. The DEIR/S also states that a new seven-mile long single conductor power line will be constructed between LADWP's Cottonwood Power Plant west of Owens Lake to a tie-in point on an existing line; however, the document does not appear to describe the proposed line or to include mitigation measures to address potential impacts to raptors, snowy plovers, and other shorebirds. Please provide this information. The power line should include deterrents to minimize raptor deaths resulting from flying into the line, as well as anti-predator perches to minimize predation on snowy plovers and other shorebirds nesting at Owens Lake. Since a portion of the proposed power line will occur on lands under the jurisdiction of the CSLC, the LADWP will need to submit an application to the CSLC.

30) **Page 2-41, paragraph 6.** The DEIR/S states that "The pump station will recover river flows in excess of the flows to the Delta...flows above the amount needed by the dust control project will be diverted to the Aqueduct. No valve will be installed to direct the flows – they will follow a pressure gradient, first to the lake, then to the Aqueduct..." If the excess flows will go to the lake first and then to the Aqueduct, how will the excess flows from the dust control project be diverted to the Aqueduct?

31) **Page 2-65, Protect Continued Recreational Access to the River.** The DEIR/S states: "fences across the river will be designed to avoid interference with boats or other watercraft when feasible". The Owens River is subject to a public navigational easement. This easement provides that members of the public have the right to navigate and exercise the incidences of navigation in a lawful manner on State waters that are capable of being physically navigated by oar or motor-propelled small craft. Such uses may include, but not be limited to, boating, rafting, sailing, rowing, fishing, fowling, bathing, skiing, and other water-related recreational public uses. Therefore, fences should not be placed across the River.

32) **Page 2-69, paragraph 4.** The figure referred to should be 2-23, not 2-22.

33) **Page 2-70, paragraph 2.** This section of the DEIR/S discusses future management of the Delta Lease. The document states changes in fencing and the addition of new watering sites will result in better livestock distribution and forage use.

the general proportionality requirement of the MOU, despite the statement in the last sentence of paragraph 3 that seasonal habitat flows will be established in accordance with the provisions of the MOU. Moreover, the amount and duration of the seasonal flows (together with the base flows and land management) must be calculated to meet the goals of the project, including the delta habitat goals. The DEIR/S does not explain how the proposed flow regime will meet these goals, particularly in light of the proposed *reduction* in base flows to the delta and the proposed 150 cfs pump station, which would capture most (or all) of the seasonal habitat flows. Nor is there a proper explanation of why flows will not be augmented by downstream spillgates or how this squares with the MOU and the goals for the lower reaches of the river and the delta. Please explain.

23) **Page 2-30, Section 2.4, Delta Habitat Area Including Pump Station.** The DEIR/S states: "The Delta contains two major channels (see Figure 2-5)." Figure 2-5 depicts the Owens River Delta Habitat Area and the location for two proposed stream gages to be located at the end of the Lower West Branch and the Lower East Brach. These lands are under the jurisdiction of the CSLC, and the LADWP must submit an application to the CSLC for all gages or other structures in the CSLC's jurisdiction. Please contact Barbara Dugal for specific requirements.

24) **Page 2-31, paragraph 2.** The DEIR/S states:

> "Most of the Delta Habitat Area occurs on State-owned lands, managed by the State Lands Commission (Figure 2-6). These lands are grazed by a single private party, which is in the process of acquiring approvals to continue grazing operations on State property..."

This statement is incorrect. The CSLC previously advised the private party that until the DEIR/S was prepared and adopted, the CSLC would not consider leasing State-owned lands in the Delta, and that the CSLC staff would consider the private party to be in trespass.

25) **Pages 2-34 to 2-35.** The copy of the DEIR/S mailed to the CSLC does not include these pages (the flip side to page 2-33 is 2.36).

26) **Pages 2-35 & 6-19.** Twenty (20) percent or greater reduction of habitat suitability measured at 15-year interval following baseflow releases to the Delta is too long before considering adjusting the releases. The interval should be revised to ensure that significant amounts of habitat are not lost. A 20 percent or more reduction of habitat may potentially occur in considerably less time than a 15-year time interval. Moreover, if the delta habitat goals are impeded for a known cause that can be remedied, there is no need to wait until year 15. Adaptive management is more timely and flexible than that.

27) **Page 2-39, paragraph 2.** The DEIR/S states that a sheet pile cut-off wall with a minor berm will be constructed to elevation 3,590.5 feet. However, the document

However, the new watering sites are not identified. Please add details on these new watering sites (location, size, etc.) to the DEIR/S.

34) **Table 2-21, 2-23, 2-25, and Page 9-4 to 9-5.** The EIR/S identifies several rare plant populations within the LORP and the adaptive management plan provides monitoring triggers to better protect these species; however, there are no baseline survey data, e.g., existing population size, extent, trend, etc., and specific monitoring parameters to determine if the project measures are beneficial to these rare plant populations.

35) **Page 4-41, last paragraph, Section 4.6.3, Mitigation Measures.** The DEIR/S states: "If water quality remains degraded during the baseflows or seasonal habitat flows....and conditions for fish remain degraded, LADWP shall **consider** releasing higher quality water..." Since this is mitigation for impacts, the mitigation measure should state that the LADWP **shall** release higher quality water from spillgates.

36) **Page 6-3, paragraph 1, Section 6.1.2, Uses of the Delta.** The DEIR/S states: "Most of the Delta Habitat Area occurs on State-owned lands, managed by the State Lands Commission...The total area of LADWP land in the Delta Habitat Area is 420 acres..." As outlined in the MOU, the goal of the LORP for the Delta Habitat Area is to enhance and maintain approximately 325 acres of existing habitat consisting of riparian areas and ponds suitable for shorebirds, waterfowl and other animals and to establish and maintain new habitat consisting of riparian areas and ponds suitable for shorebirds, waterfowl and other animals within the Delta Habitat Area. Therefore, since the LADWP's property in the Delta Habitat Area is not fenced and cattle trespass onto State land and the LADWP's acreage is small compared to State land in the Delta Habitat Area, the LADWP should consider eliminating grazing on the 420 acres in the Delta Habitat Area.

37) **Page 6-47, Potential Impacts to Brine Pool (Both Options).** As has been acknowledged in the DEIR/S (Page 6-47), existing mining operations are located on the lakebed and can be affected by water levels in the brine pool. Such mining operations, located on State-owned lands, are currently under lease from the CSLC. The DEIR/S states that LORP will not affect existing mining operations. In this regard, the proposed LORP cannot conflict and/or impact those operations and/or the CSLC's Lessee. The LORP will require coordination with the CSLC and the State's Lessee to preclude negative impacts to a significant mineral resource. Please add this information to the DEIR/S.

38) **Page 9-2, Section 9.1.2 (re. potential impacts associated with grazing).** An additional feasible "Best Management Practice" to address potential impacts of grazing on water quality is the participation by grazing lessees in the Statewide Rangeland Water Quality Management Program. This project educates rangeland owners, ranch operators and other interested persons about protecting rangeland water quality through improved grazing practices.

39) **Page 9-8, Section 9.3.2 (State Lands Commission Lands in the Delta).** The DEIR/S states that the impact of cattle drift onto public lands would be similar to that described for BLM lands and the same mitigation measure would apply. Therefore, please revise proposed Mitigation Measure No. LM-1 by adding the underlined text as follows:

"The grazing management plan for individual leases shall be modified to incorporate herd and grazing practices.... These lease-specific measures shall be developed in consultation with BLM and CSLC and shall include...."

40) **Page 10-5, first full paragraph, & Page 10-7, last paragraph.** Please refer to the CSLC's staff's comments above regarding the DEIR/S's emphasis on funding limitations. The LADWP should be required to set aside the necessary funds to implement programs to control saltcedar and other deleterious species that interfere with the goals of the LORP.

41) **Page 11-7, Reduction in Existing Flows to the Delta (Class I Impact).** The DEIR/S states: "releases to the Delta under the LORP would be about 35 percent less than under current release regimes unrelated to the LORP..." As stated in the MOU, the goal is to establish and maintain existing habitat and new habitat. Based on the alternatives presented, at this time, the CSLC supports the Alternative: 50 cfs Pump Station with Higher Baseflows and Modified Seasonal Habitat Flows. However, again, to comply with the MOU and the CEQA, the only proper alternative is one designed to meet the goals set forth in the MOU, e.g., the habitat consistent with the needs of the indicator species. The goals have not changed, and will not change. The City is obligated to meet these goals regardless of the physical features of the project that it selects. It must begin by setting forth the goals clearly, designing and analyzing a project to meet those goals, and including provisions for monitoring and adaptive management that ensure that the goals are met over time. (See key comments, above.)

42) **Page 12-2, Environmental Impacts of the LORP.** The DEIR/S lists potentially significant impacts associated with the proposed LORP and identifies the impacts as Class I Impacts (Significant and Unmitigable). However, Paragraph 5 states that..."the amount of water flowing from the Delta Habitat Area to the brine pool transition will at certain times of the year be less than existing flows...will result in a decrease in shorebird habitat in the brine pool transition area. As outlined in Paragraph 22 above, the LADWP could avoid this significant impact by implementing the 50 cfs Pump Station Alternative or taking other action. Moreover, in light of the fact that shorebirds are an indicator species for the delta, please explain how this complies with the goals of the MOU.

43) **Page 12-4, paragraph 12.** Please add the following to Paragraph No. 12: New land management on LADWP leases could cause cattle draft on BLM and State Land Commission lands.

Appendices

44) The MOU (April 1997) and the Lower Owens River Project Ecosystem Management Plan (August 2002) should be incorporated as Appendices of the DEIR/S.

(760) 872-1168
FAX: (760) 873-5695

EMAIL: mail@inyowater.org
WEB: www.inyowater.org

163 May Street
Bishop, CA 93514

COUNTY OF INYO
WATER DEPARTMENT

October 6, 2005

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

Subject: Comments on Notice of Preparation of a Draft Supplemental Environmental Impact Report on the Lower Owens River Project in Compliance with Title 14, (CEQA Guidelines) Sections 15082(a), 15103, and 15375 of the California Code of Regulations

Dear Mr. Martin:

On behalf of the County of Inyo, the Inyo County Water Department offers the following comments concerning the Notice of Preparation of a Draft Supplemental Environmental Impact Report on the Lower Owens River Project in Compliance with Title 14, (CEQA Guidelines) Sections 15082(a), 15103, and 15375 of the California Code of Regulations ("NOP").

Role of the County of Inyo

Section 1.3.1 of the Final EIR on the LORP acknowledges that the County is a CEQA Responsible Agency on the LORP because of its independent responsibility to fund a portion of project implementation (up to $3.75 million) and for funding one half of, and jointly managing, most post-implementation project activities. Given these obligations, the County will consider certification of the Supplemental EIR in its capacity as a CEQA Responsible Agency.

Location of Evaluation of Impacts

The NOP references a Stipulated Judgment in Inyo County Superior Court Case Number S1CVPT04-37217. Section 1 of the judgment entered in that case requires "*LADWP to prepare a focused environmental analysis that addressed the impacts of the LORP to the 'brine pool transition area,' as described in Paragraph 1(b) above and shown on Exhibit A, consistent with CEQA.*" Although the NOP does not reference Paragraph 1(b) or the map attached as Exhibit A to the judgment, the focus of the Supplemental EIR should be on impacts to the area described in Paragraph 1(b) of the Stipulation and shown on Exhibit A.

Baseline Information

The NOP states that the Supplemental EIR "*will include detailed description of the existing biologic resources and hydrologic conditions (at the time of the publication of the NOP for the Supplemental EIR), detailed description of the change in hydrologic and habitat conditions expected under LORP, and analysis of potential impacts on wildlife, particularly birds.*" In order to adequately describe the impacts of the LORP on the brine pool transition area, the Supplemental EIR should contain sufficient baseline data on wildlife, particularly birds, gathered over an appropriate period of time. Such baseline information is necessary to enable the Supplemental EIR to fully assess and describe the impacts on wildlife, if any, caused by the seasonal reductions in water supply to the brine pool transition area that will result from the LORP.

Postponement of the Operation of the LORP Pump Station

The NOP states that the Stipulated Judgment described above requires LADWP to "*postpone the operation of the pump station pending consideration and certification of the focused environmental analysis.*" It should be noted that the Stipulated Judgment does not require LADWP to postpone operation of the pump station. The relevant portion of the Stipulated Judgment, Section 4, enjoins LADWP "*from operation of the portion of the LORP that could affect the brine pool transition area...pending the consideration and certification of the focused environmental analysis, consistent with the requirements of CEQA.*"

Conclusion

Thank you for the opportunity to comment on the NOP. The contact person for the County is the Water Department Director, who can be reached at the address and telephone number above.

Very truly yours,

Phil Mc Dowell
Interim Director, Water Department

California Regional Water Quality Control Board
Lahontan Region

Alan C. Lloyd, Ph.D.
Agency Secretary

2501 Lake Tahoe Boulevard, South Lake Tahoe, California 96150
(530) 542-5400 • Fax (530) 544-2271
http://www.waterboards.ca.gov/lahontan

Arnold Schwarzenegger
Governor

November 1, 2005

Clarence Martin
City of Los Angeles Department of Water and Power (LADWP)
300 Mandich Street
Bishop, CA 93514

COMMENTS ON THE NOTICE OF PREPARATION FOR SUPPLEMENTAL DRAFT ENVIRONMENTAL IMPACT REPORT ON THE LOWER OWENS RIVER BRINE POOL TRANSITION AREA, INYO COUNTY

The staff of the California Regional Water Quality Control Board, Lahontan Region (Regional Board) has received the Notice of Preparation (NOP) for the Draft Supplemental Environmental Impact Report (EIR) on the Lower Owens River Project (LORP). The Supplemental EIR must address the impacts of the LORP to the brine pool transition area between Owens Lake and the Delta Habitat Area. Thank you for the opportunity to provide comments on the scope of the environmental document.

Project Description

The LORP was identified in a 1991 EIR as mitigation for impacts related to groundwater pumping by Los Angeles Department of Water and Power (LADWP) from 1970 to 1990. The LORP is a large-scale habitat restoration project with four primary components: (1) releasing water to the Lower Owens River to enhance fisheries and riparian habitats along 62 miles of the River; (2) providing water to the Delta Habitat Area to maintain and enhance 325 acres of existing wetland and aquatic habitats; (3) enhancing a 1,500-acre off-river area, the Blackrock Waterfowl Habitat Area, with seasonal flooding and land management activities to benefit wetland and waterfowl; and (4) maintaining several off-river lakes and ponds near the Blackrock Waterfowl Habitat Area.

The Final EIR for the LORP, dated June 23, 2004, did not include impacts to the southern-most portion of the Delta Habitat Area known as the brine pool transition area. This area is located between the vegetated wetlands of the Delta Habitat Area and the Owens Lake brine pool to the southwest. A lawsuit filed by the Sierra Club resulted in a Court-ordered judgment requiring LADWP to prepare and circulate a focused environmental analysis that addresses the impacts of the LORP to the brine pool transition area. The purpose of the Supplemental EIR will be to evaluate potential impacts on this brine pool transition area from the LORP by describing in detail the existing biological resources and hydrologic conditions and the changes in hydrologic and habitat conditions expected under the LORP.

Water Quality Protection Standards

The Regional Board is a responsible agency pursuant to the California Environmental Quality Act (CEQA) for this proposed NOP and Supplemental EIR. The Water Quality Control Plan for the Lahontan Region (Basin Plan) lists water quality objectives and beneficial uses, including

wildlife habitat, for the Lower Owens River and other related waters within the project area. Other beneficial uses for the Owens Lake and minor surface waters and wetlands in the area are: Groundwater Recharge; Freshwater Replenishment; Water Contact Recreation; Non-contact Water Recreation; Commercial and Sportfishing; Warm Freshwater Habitat; Cold Freshwater Habitat; Inland Saline Water Habitat; Rare, Threatened, or Endangered Species; Spawning, Reproduction, and Development; Water Quality Enhancement; and Flood Peak Attenuation/Flood Water Storage. Water quality objectives include the Nondegradation Objective as well as both narrative and numeric water quality objectives listed in Chapter 3 of the *Water Quality Control Plan for the Lahontan Region* (Basin Plan), including Nondegradation of Aquatic Communities and Populations.

General Comments

The Supplemental EIR should include a description of these objectives and beneficial uses. Both surface and ground water resources must be considered. Where significant or potentially significant effects are identified, feasible mitigation measures must be evaluated, together with appropriate monitoring for proposed mitigations. The water quality control standards applicable to this NOP for the Owens Hydrologic Unit (HU) are contained in the Basin Plan, (website address http://www.waterboards.ca.gov/lahontan/BasinPlan/Index.htm).

The plans and policies in Section 4.9 of the Basin Plan should be reviewed and addressed in the Supplemental EIR, particularly the subsections pertaining to Water Quality/Quantity Issues, Wetlands Protection and Management, Floodplain and Riparian Area Protection, Sensitive Species and Biological Communities, and Watershed Restoration. In regard to species and biological communities affected, the Supplemental EIR should address the potential effects on recently discovered microorganisms surviving in salt pans that use arsenic as a source of energy (see, for example, http://www.isslr.org/news/newsone.asp?qnewsid=268, copy enclosed).

Specific Comments

1) Comments and Responses in the DEIR and FEIR related to the Brine Pool Transition Area

a) Impacts from Reduced Flow into and out of the Delta Habitat Area

The Draft EIR indicated that the "amount of water flowing from the Delta Habitat Area to the brine pool transition area will be less than existing flows, and as such will result in a decrease in shorebird habitat in the brine pool transition area." In the Final EIR, it was estimated that 35% less water will pass to the Delta Habitat Area than the current or recent annual average flow rate of about 11 cubic feet per second (cfs), which will likely cause a decrease in shorebird habitat in the brine pool transition area. This is contrary to policies of the Regional Board to maintain existing beneficial uses of state waters, including habitat for terrestrial and aquatic life forms. Effects of reduced water flow on beneficial uses include reduced habitat (area), impaired habitat (value) and reduced freshwater inputs that may increase salt concentration. The Supplemental EIR must fully address any potentially significant adverse effects on beneficial uses and propose mitigation to reduce the impacts to insignificant levels. One feasible means to prevent adverse effects may be to maintain present conditions and water flows to the brine pool transition area.

b) Previous Regional Board Comments Requesting that Impacts be Addressed

In the Regional Board's comments on the Draft EIR, dated November 1, 2002, we had requested that the impacts to the brine pool and the transition area be addressed in the Final EIR. The following is an excerpt from our January 14, 2003 letter:

> "Section 6.5 POTENTIAL IMPACTS TO BRINE POOL
> ...The proposed water management plan with a 150 cfs pump station (Option 1) of the LORP will result in a smaller consistent outflow of about 0.5 cfs from the Delta to the brine pool. The proposed water management is likely to decrease the extent of freshwater flooding on the brine pool in winter months (relative to existing conditions) and to increase the extent of freshwater flooding in summer months.
>
> Under Option 2 with a 50 cfs pump station there would be a potential reduction of 2,000 acre-feet of water passing through the Delta to the brine pool with an average annual flow of 7.1 cfs in the future. This option would result in a reduction of the surface area of the brine pool over a long period of time. This impact may be offset in part, or wholly, by ground water infiltration due to re-watering of the river under the LORP plus the water applied to Owens Lake associated with the dust control project. The final EIR should include a more specific discussion related to the potential impacts and mitigation of any adverse impacts of both Option 1 and Option 2 upon the brine pool and its associated wetland/freshwater interface areas."

LADWP's response to these comments follows:

> "Based on available information, impacts to the Delta Habitat Area including the brine pool transition area have been predicted to the extent known and are described in revised Section 6.3. Regarding impacts to the brine pool transition area, please see response to comment 26-5 and revised Section 6.3.5. Impacts on the mining operation located adjacent to the brine pool are discussed in Section 6.4."

Section 6.3.5 of the Final EIR states, in part, the following:

> "...mapping from aerial photographs indicates that the areal extent of this intermittently flooded playa in the brine pool transition area is approximately 58 acres, or approximately 2 percent of the total Delta Habitat Area. ... since baseflow to the Delta Habitat Area will be managed to minimize outflow, the project is likely to decrease the volume of water reaching the brine pool transition area and, consequently, reduce the extent of sheet flow in the intermittently flooded playa habitat area during the months of October to April relative to existing conditions [which is the time of year this area serves as habitat for waterfowl, wading birds, and shorebirds]. ...The area of the Delta brine pool transition area that would be affected by the project is small relative to the amount of similar habitat that is currently available in close proximity, i.e., the shallow flooding areas of the Owens Lake Dust Mitigation Program. ... Within the context of existing conditions in the Delta and the overall increase of shallow flooded playa habitat types created under LORP, the potential reduction in this type of habitat within the Delta brine pool transition area is considered less than significant. ..."

With regard to the size of the impact area, 58 acres is not an insignificant or irrelevant area. The size of the area is very relevant if one of the stated goals of the project is to maintain existing habitat. Again, the Supplemental EIR should fully address potential adverse impacts to the brine pool transition area to the extent feasible and propose mitigation for those impacts. The mitigation currently under way for the Owens Lake Dust Control, which was intended to mitigate other impacts, should not be included as mitigation for impacts to the brine pool transition area.

In Section 6.3.2.3 (Ecological Effects of Reduced Flows to the Delta), the Final EIR discusses the impacts of reduced flows to the Delta Habitat Area and concludes that "Under the proposed monitoring adaptive management program, LADWP shall make adjustments to the amount and timing of the baseflows and pulse flows up to an average

annual flow of 9 cfs [instead of 7.1 cfs] to reduce any possible adverse effects on the extent and condition of existing aquatic and wetland habitats in the Delta Habitat Area."

In response to above, Section 6.3.6 (Impact Summary) of the Final EIR concludes:

"LADWP does not concur with the view point [as presented in 6.3.2 (Impact Assessment No. 2 prepared by URS)] that reduction in the outflow from the Delta would adversely affect habitat (except in the brine pool transition area as described in Section 6.3.5)."

Although admitting affects on habitat in the brine pool transition area, LADWP dismisses the assessment presented in Section 6.3.2.3. We disagree with LADWP's dismissal of this assessment, which was not adequately explained.

With regard to the response that "releasing flows in excess of 9 cfs annual average to increase flows to the brine pool transition area is infeasible due to the September 2000 injunction" (Response 26-5), an amendment or other alternatives regarding the Court injunction should be explored as an option.

2) Adaptive Management Plan

In addition, an Adaptive Management Plan, which may include surface and groundwater monitoring, should be developed for the brine pool transition area and be included in the Supplemental EIR. Monitoring the salinity and alkalinity in the surface water and groundwater in the brine pool transition area should be incorporated into this plan to ensure that salinity or other effects do not adversely affect water quality or beneficial uses in fresh or brackish waters.

In summary, the Supplemental EIR must address all beneficial uses and objectives pertaining to this area and ensure that all impacts are mitigated, monitored and adaptively managed to ensure successful mitigation.

Please contact Tobi Tyler at (530) 542-5435 or by email at ttyler@waterboards.ca.gov if you have any questions regarding this matter. You may also contact me at (530) 542-5430.

Alan Miller, PE
Chief, North Basin Regulatory Unit

Enclosure: Mercury News article, 6/29/2005

cc: Environmental Protection Agency, San Francisco
U.S. Fish and Wildlife Service, Ventura
California Department of Fish and Game, Bishop
State Clearinghouse, Office of Planning and Research, Sacramento
Inyo County Water Department, Bishop

TT/dtT:/Cmnts LORP NOP for suppl EIR.doc
[Pending/ Inyo County /LORP