

# California Native Plant Society

Bristlecone Chapter  
PO Box 364  
Bishop, CA 93515

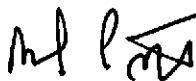
November 29, 2011

Ms Susan Joseph-Taylor  
Chief Hearing Officer  
Office of the State Engineer  
901 South Stewart St.  
Suite 2002  
Carson City, NV 89701

Dear Ms Taylor:

Enclosed please find comments on behalf of the Bristlecone Chapter of the California Native Plant Society for the Spring, Dry Lake, Cave, and Delamar Valley Water Rights Hearing. We originally submitted these comments in 2006, but they are as relevant now as they were in 2006. Also, it is worth noting that, since the comments were written, dust storms over certain wellfields now occur (see enclosed clippings). These wellfield dust problems are responses to pumping-induced decline of vegetation cover and are miles away from Owens Lake (which has its own dust problems). Thank you for considering these comments.

Sincerely,



Daniel Pritchett  
Conservation Chair  
Bristlecone Chapter, California Native Plant Society

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*Dedicated to the preservation of California native flora*

## **Introduction**

Management practices of the Los Angeles Department of Water and Power (DWP) in Owens Valley, CA have been discussed at the public hearings for the Spring Valley applications. I submit the comments below as someone who has lived in Bishop, CA since 1995 and who is well acquainted with DWP's management practices in Owens Valley<sup>1</sup>.

## **Comment 1: Enforcement**

Political leaders and agency managers who negotiate a water management agreement will inevitably be replaced by others not party to the original negotiations. Political, economic, and environmental conditions among all parties to an agreement will also change. Misunderstandings and disputes about the management agreement are, unfortunately, inevitable. **Because disagreements are inevitable, all parties must have equal access to enforcement mechanisms if a management agreement is to accomplish its goals. Because enforcement mechanisms (arbitration and litigation, for example) cost money, the agreement must provide some means to insure all parties have access to financial resources necessary for enforcement.**

This is one of the most important lessons from the Inyo-LA Long Term Water Agreement (LTWA). This agreement makes no provision for the asymmetry in the financial resources of Inyo County and Los Angeles. Compliance by DWP with the LTWA is, therefore, effectively voluntary. Case in point: after challenging DWP's annual pumping plans in 2000 and 2001 Inyo County simply gave up, even though DWP increased its annual pumping until 2005 (when sanctions from litigation initiated by the Sierra Club and Owens Valley committee forced DWP to temporarily reduce pumping). As of May, 2005 there was a backlog of 12 cases in which Inyo County Supervisors allege DWP has violated the LTWA<sup>2</sup>. To date Inyo County has failed to take enforcement action on any of them.

If Inyo County were to resume challenging DWP's excessive pumping, it is more cost effective for DWP to absorb the litigation expenses than it is to comply with the LTWA by reducing Owens Valley pumping and purchasing replacement water elsewhere. DWP freely admits that "litigation is cheaper than water" and has boasted that its legal budget alone is larger than Inyo County's entire annual budget<sup>3</sup>.

Use of this tactic of legal delay is not just an idle threat. In his decision in the Sierra Club and the Owens Valley Committee's litigation over DWP delays in mitigation projects, Inyo Superior Court Judge Lee Cooper noted DWP's strategy of legal delay in his emphatic finding for plaintiffs.<sup>4</sup> Because of Inyo's inability to enforce the LTWA, rather than accomplishing its goals of "avoiding" significant impacts while providing a "reliable" water supply to LA, the LTWA has instead become a public relations screen to justify DWP's excessive groundwater pumping. Some detailed examples to support this assertion are provided below:

### **Example 1: USGS determination of excessive pumping**

In 1998 the USGS released a long-overdue comprehensive analysis of Owens Valley groundwater management. The analysis considered different management scenarios in an attempt to determine the maximum long-term pumping consistent with LTWA environmental protection requirements. The report concluded that long-term average pumping should not exceed about 70,000 acre feet/year.<sup>5</sup>

According to DWP's 2005-2006 annual report, annual pumping has averaged about 95,000 acre feet/year since 1987.<sup>6</sup> The year 1987 is a relevant starting point for averaging because that is the end of the LTWA's "baseline" period against which changes in vegetation are to be measured. This means that since baseline vegetation conditions were mapped, DWP has exceeded the USGS estimated maximum long term average pumping by about 25,000 acre feet/year. At a valuation of \$400.00 per acre foot, the excessive pumping is worth about \$10,000,000.00 a year. DWP has never offered any evidence that the USGS modeling is incorrect.

If anything, the USGS's 70,000 acre feet/year estimate of maximum long term average pumping is too high. This is because evapotranspiration values used in the model were subsequently found to understate actual water consumption by Owens Valley phreatophytic vegetation.<sup>7</sup> If the USGS's hydrologic modeling were re-done with more realistic estimates of evapotranspiration, the estimate of maximum long term average pumping would probably be less than 70,000 acre feet/year.

### **Example 2: Throwing out monitoring protocol and baseline data**

In 2000, Inyo County attempted for the first time to enforce the LTWA's requirement that management be conducted to avoid declines in vegetation relative to the 1984-1987 baseline data. Inyo County filed a complaint under the LTWA's dispute resolution procedure. To support its complaint Inyo introduced monitoring data showing that total vegetative cover in several parcels had been well below baseline levels for the entire period of management under the LTWA and that water tables had been correspondingly depressed. Vegetation monitoring had been conducted in accordance with the protocol specified in the technical appendix to the LTWA to allow current conditions to be compared with baseline conditions. In its complaint Inyo asked that water tables be allowed to recover to vegetation rooting zones so impacts could be avoided.

In its response to Inyo's complaint, DWP simply rejected the vegetation monitoring protocol which had (by that time) been in use for 10 years. Although DWP had agreed to the monitoring protocol in 1991 and had never previously found any fault with it, in 2001 DWP attorneys wrote:

“[In the baseline 1984-1987 inventory] Transects were located visually by choosing lines that appeared to cover the representative units of vegetation within the parcel...locations were generally toward the center of the parcel... Inyo used *random* locations for vegetation transects....*The use of these new transects in comparison with the baseline transects is like comparing apples to oranges.*”<sup>8</sup> (Italics added)

At the stroke of a pen ten years of monitoring data and comparisons to baseline conditions were dismissed as “apples to oranges.” Equally important, DWP didn’t state what an appropriate protocol for making comparisons with baseline conditions might be.

The mystery as to what DWP considered an acceptable means for making comparisons to baseline data wasn’t solved until 2005. DWP manager Brian Tillemans then stated that baseline data themselves were not suited for making statistical comparisons at all.<sup>9</sup> In other words, DWP no longer accepts the validity of its own baseline data, and therefore rejects all comparisons with baseline data regardless of what monitoring protocol is used. This renders the LTWA largely unenforceable.

**Example 3: “Avoid impacts” means “consider impacts”**

In 2001, Inyo made another attempt to enforce the LTWA’s requirement that management be conducted to avoid declines in vegetation relative to baseline. Consistent with the LTWA’s goal of “avoiding” significant impacts, Inyo asked that proposed pumping in 2001-2002 runoff year be reduced to allow water table recovery.

In this case, DWP didn’t bother making arguments about monitoring protocols – it simply re-wrote the goal of the LTWA and replaced the word “avoid” with the word “consider.” DWP wrote:

“In short, the Agreement requires the City to *consider* impacts of its groundwater pumping before implementing the annual plan, but does not authorize Inyo to restrict or limit the City’s pumping before the fact. The Agreement instead sets forth the method of determining *after the fact* whether an impact to vegetation has occurred which is measurable, significant, and attributable to groundwater pumping.”(Italics added)<sup>10</sup>

On the other hand, according to the EIR to the LTWA:

“A *primary* goal of the Agreement is to *avoid* causing significant decreases or changes in vegetation or other significant effect on the environment of Owens Valley. Therefore, mitigation is not considered a primary management tool, but rather a *secondary tool* should impacts occur that are inconsistent with the goals of the Agreement.”<sup>11</sup> (Italics added)

According to DWP attorneys, under the LTWA Inyo can only sit on its hands and wait for pumping impacts to get so bad that DWP decides it has to mitigate. The DWP lawyers who came up with this interpretation of the LTWA goal give new meaning to the phrase “power of attorney”!

**Example 4: Groundwater dependent ecosystems don’t need access to groundwater**

Although it might be concluded that DWP’s creative interpretations of the LTWA (noted in examples #2 and #3) give it sufficient legal protection to pump as much as it wishes, DWP has also initiated a campaign to re-define the ecology of the Owens Valley floor.

Specifically, DWP now asserts that the entire concept of groundwater-dependence (a concept first documented by a DWP engineer almost a century ago, and the basis of the entire vegetation classification for the LTWA) is simply “a matter of opinion”.<sup>12</sup>

To support this assertion DWP has engaged the services of the multi-national consulting firm, MWH Americas, Inc. (at least two contracts worth about \$27,000,000.00) to bring “cutting edge” science to Owens Valley.<sup>13</sup> MWH has obliged by asserting, among other things, that “roots will drown and plants will suffer” if water tables are recovered to historic levels! It has treated Owens Valley groundwater-dependent meadow vegetation as comparable to such hydro-ecologically unrelated communities as Sonoran and Chihuahuan desert shrublands, California chaparral, Great Basin sagebrush, and Oregon juniper woodlands.<sup>14</sup> In effect, MWH is paid millions to ignore, and persuade the public to ignore, almost a century of hydro-ecological data pertaining to Owens Valley.

### **Conclusion**

Examples #2-4 above all occurred between 2000 and early 2005, a period when the mayor of Los Angeles was hostile to the concept of environmental protection and had appointed a Board of Water and Power Commissioners who shared his view. In 2005 Los Angeles voters elected a new mayor (Antonio Villaraigosa) much more concerned about environmental protection. Mayor Villaraigosa, in turn, appointed a Board of Water and Power Commissioners which shares his view, and there is reason to hope DWP’s groundwater management will improve.

The point, however, is that Los Angeles politics control DWP’s interpretations of the LTWA and its management practices. Inyo County, though an equal partner in the LTWA, has little effective influence on management because it has limited access to enforcement mechanisms. Notwithstanding the seemingly just goals of the LTWA and the good faith of both LA and Inyo leaders during the LTWA’s negotiation, the failure of the LTWA to account for the asymmetry of Inyo’s and LA’s economic and political resources makes attainment of the management goals subject to the unpredictable course of LA politics. This has been described as “dehydration without representation.” It may also be seen as an illustration of Lord Acton’s famous observation that power tends to corrupt and absolute power corrupts absolutely.

## **Comment 2: Ethical considerations**

Former DWP general manager David Freeman succinctly captured the ethical and legal ambiguity of DWP's acquisition of land and water in Owens Valley in stating, "We stole it fair and square." Precisely. He didn't say "we stole it but we got caught and have paid our debt to society." To the contrary, Los Angeles stole it and got away with it due to the direct intervention of President Theodore Roosevelt.

President Roosevelt rationalized his support of the LA Aqueduct project on geopolitical grounds: it was in the United States' interest to develop a metropolis in southern California and this took precedence over justice for a few ranchers in the middle of nowhere. Las Vegas, on the other hand, is *already* a metropolis, so it is hard to see how Roosevelt's geopolitical rationalization would apply today.

The proposed withdrawals and interbasin transfer would reduce large areas of eastern Nevada to the status of resource colonies to support Las Vegas' desire for unconstrained population growth. The implicit equation of unconstrained Las Vegas population growth with "public interest" is an equation which demands great scrutiny.

People remember injustice, especially un-remedied injustice and even more especially injustice committed by their own government. The proposed project would be perceived by the residents of eastern Nevada as an un-remedied injustice committed by their own government and the lesson of Owens Valley suggests the injustice would not be soon forgotten.

As an Owens Valley resident, I'm accustomed to seeing our history with Los Angeles cited as a negative example. To see Las Vegas attempting to repeat what Los Angeles did, thereby using Owens Valley as a positive example, is simply appalling.

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<sup>1</sup> I have an M.A. in Ecology and Systematics from San Francisco State University. As Conservation Chair of the Bristlecone Chapter of the California Native Plant Society I have studied DWP's groundwater management with regard to the Inyo-LA Long Term Water Agreement since 1997. I have attended virtually every public meeting of the Inyo-LA Technical Group, most Owens Valley meetings of the Inyo-LA Standing Committee, and many meetings of the Inyo County Water Commission. I've read all reports submitted to the Inyo-LA Technical Group pertaining to groundwater management, DWP annual reports, "fact sheets" and reports produced by DWP consultants, and most legal documents pertaining to the two disputes initiated by Inyo County regarding DWP's excessive groundwater pumping.

<sup>2</sup> "A dozen water suits." Inyo Register, May 5, 2005.

<sup>3</sup> Former Chair of the LA Board of Water and Power Commissioners Dominic Rubalcava's boast was reported by ICWD Director Greg James at an Inyo County Water Commission meeting on October 8, 2001. DWP General Manager Gerald Gewe's statement regarding litigation and water was made at a ceremony at Owens Lake in 2002 as reported by Owens Valley Committee Outreach Director Mke Prather.

<sup>4</sup> Judge Cooper's decision is available at <http://www.ovcweb.org/docs/June24Decision.pdf>. His reference to DWP's practice of legal delay is on page 5. It is noteworthy that Inyo County chose not to join with

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plaintiffs in this suit even though it clearly advanced Inyo's interests. A finer example of Inyo's fear of challenging DWP could hardly be imagined.

<sup>5</sup> Danskin, W. 1998. Evaluation of the hydrologic system and selected water-management alternatives in the Owens Valley, California. 1998 US Geological Survey Water-Supply Paper 2370-H. pg. 137.  
<http://ca.water.usgs.gov/archive/reports/wsp2370/>

<sup>6</sup> City of Los Angeles Department of Water and Power. 2006 Annual Owens Valley Report, May 2006, Fig 11, pg. 3-3.

<sup>7</sup> Steinwand, A. 2000. The effects of K<sub>c</sub> and Green Book models for vegetation water requirements on permanent monitoring site On/Off Status. Inyo County Water Department. unpublished report. April 24, 2000.

<sup>8</sup> City of Los Angeles Department of Water and Power. 2001 Response to notice of dispute. July 2, 2001. pg. 12.

<sup>9</sup> Klusmire, J. 2005. Water-watchers have a go at own public meeting. Inyo Register. July 16 & 17, 2005. Remarks by Brian Tillemans regarding baseline data are quoted near the end of the article.

<sup>10</sup> City of Los Angeles Department of Water and Power. 2001b. Reply to Inyo County Water Department Comments Dated May 18, 2001 and Transmittal Letter Dated May 2, 2001. Document submitted to Inyo County Water Department. June 1, 2001.

<sup>11</sup> City of Los Angeles Department of Water and Power and Inyo County. 1991. Response to comments on September 1990 Draft Environmental Impact Report. Volume I. Water from the second Los Angeles Aqueduct, 1970 to 1990; 1990 onward, pursuant to a long term groundwater management plan. SCH#89080705. September 1990. Pg . 2-65  
Digital copies of this document available from the Inyo County Water Department.

<sup>12</sup> Comments by DWP Aqueduct Group Business Manager Gene Coufal at the Inyo-LA Technical Group meeting June 2005.

<sup>13</sup> Agreement No. 47025 between the Los Angeles Department of Water and Power and Montgomery Watson Harza, Inc. April 17, 2001.  
Amendment No. 1 to Agreement No l. 47026 with MWH Americas, Inc., formerly known as Montgomery Watson Americas, Inc.

<sup>14</sup> "roots will drown..." from MWH Fact Sheet #2.  
Comparisons with upland ecosystems from MWH White Papers 1-3:  
MWH, Inc. 2005a. Monitoring Vegetation change in the Owens Valley. unpublished report and brochure.  
<http://www.ladwp.com/ladwp/cms/ladwp007004.jsp>  
MWH, Inc. 2005b. Effect of depth to water on vegetation change in the Owens Valley. unpublished report and brochure. <http://www.ladwp.com/ladwp/cms/ladwp007004.jsp>  
MWH, Inc. 2005c . Ecological succession and its role in vegetation change. unpublished report and brochure.

any injuries. Bunn cited state identifying it as a hazard for the safety of the community.

# DUST

Continued from front page  
age to its right front quarter-  
panel and the squad car  
received moderate damage to  
its left side, but both drivers  
were unscathed.

Approximately one minute  
later, the CHP officer once  
again attempted to back his  
squad car up to warn motor-  
ists of the collision when  
Jeffrey Lancaster, 31, of  
Phoenix, Ariz., rear-ended the  
squad car in a 2000 F350  
pulling a travel trailer.

This time, according to  
Cleland, the officer did see  
the vehicle coming and was  
able to brace for impact.

Cleland said the truck sus-  
tained moderate front-end  
damage, while the squad car  
sustained major rear-end dam-  
age.

Again, neither driver was  
injured.

Caltrans and the CHP  
closed U.S. 395 from Big  
Pine to Independence for a  
short time at 1:36 p.m., then  
began escorting motorists  
through the dust storm near  
Blackrock.

The blowing dust was so  
bad, Cleland said, motorists  
could only see 25-50 feet  
ahead of them.

Cleland said there was an  
additional collision involving  
a 2001 Toyota, however  
details on that crash were not  
available.

A day earlier, officers had  
to close U.S. 395 near Tom's  
Place when a 2001 freight

truck traveling south on U.S.  
395 near Lower Rock Creek  
Road overturned.

According to the CHP, the  
driver, Ronald Curtis, 49, of  
Provo, Utah, apparently made  
an unsafe turning maneuver.

The CHP said Curtis was  
traveling at about 60 miles per  
hour as he entered a left curve  
just south of Rock Creek  
Road. "Mr. Curtis made a  
sudden and unsafe turning  
movement, which caused the  
load on the trailer to shift to  
the right," a press release  
from the CHP states. "The  
weight shift, combined with  
the turning movement, caused  
the tractor trailer to roll over  
onto its right side, and spill

the cargo of ABS pipes onto  
and off the roadway."

The tractor trailer contin-  
ued to travel on its right side  
for a few hundred feet, as it  
rotated in a clockwise direc-  
tion, coming to rest blocking  
all four lanes of traffic on U.S.  
395.

"The CHP, Caltrans, Long  
Valley Fire Department and  
Miller's Towing were able to  
clear the roadway and restore  
the flow of traffic in a very  
short time," the press release  
states.

Curtis suffered a small lac-  
eration to his head and was  
treated at the scene by the  
Long Valley Fire Department  
before being released.

It appears Quinn was  
attempting to slow down  
as he entered a heavy dust  
storm with low visibility  
on U.S. 395 just south of  
Blackrock Springs Road.  
As Quinn slowed, he was  
rear-ended by California  
City resident Terry Lowell,  
46, driving a 2009 Ford  
Ranger.

The force of the rear-  
end collision propelled  
Quinn's vehicle approxi-  
mately 300 feet into a con-  
crete guard.

Quinn suffered a head  
injury and Lowell suffered  
a broken ankle as a result  
of the collisions.

Cleland said Lowell's  
Ranger sustained major  
front-end damage and  
Quinn's Dodge Ram sus-  
tained moderate front and  
rear-end damage.

A CHP officer who  
responded to the collision  
had parked his squad car  
on the right shoulder and  
decided to move the vehi-  
cle farther south in order to  
give other motorists more  
advanced notice they were  
approaching a collision  
scene.

Before the officer could  
close his driver-side door,  
Anthony Olson, driving a  
2011 Suzuki SUV, collided  
with the officer's vehicle,  
side-swiping it at about 35  
mph.

Cleland said the Suzuki  
sustained moderate dam-  
age.  
See DUST, page 3

NOVEMBER 22, 2011

# Dust storm, crashes close U.S. 395

## Injuries minor to moderate; damage to vehicles extensive

By Mike Gervais  
Register Staff

High winds and blow-  
ing dust are responsible for  
three different collisions  
on U.S. 395 Friday that  
prompted the closure of  
the highway for a short  
time.

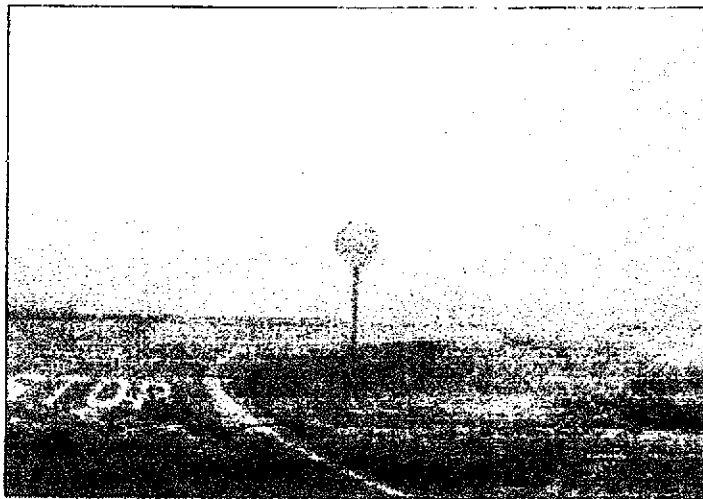
According to California  
Highway Patrol Public  
Information Officer Dennis  
Cleland, high winds blew  
a dust storm over U.S. 395  
between Independence and  
Big Pine, creating unsafe  
driving conditions that led  
to the collisions.

The first collision  
occurred at about 1:30  
p.m. when Michael Quinn,  
68, was traveling north-  
bound in a 1999 Dodge  
Ram.

INYO  
REGISTER

NOV 22, 2011





For several hours on Wednesday evening, U.S. 395 was closed to both north- and south-bound traffic due to low visibility caused by blowing sand and dirt. Photo by Ken Koerner

1040 REGISTER

FEB. 16, 2008

SAME LOCATION AS

DUST STORM NOV 22, 2011