

the RAINSHADOW

OWENS VALLEY COMMITTEE • WE WATCH THE WATER

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The Rainshadow is the newsletter of the Owens Valley Committee. OVC is a 501(c)(3) non-profit citizen's action group dedicated to the protection, restoration, and sustainable management of water and land resources affecting the Owens Valley.

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President's message

The Owens Valley Committee (OVC) had a promising start to 2006. We were invited to participate in a workshop on Owens Valley water issues held by the new Board of Commissioners of the Los Angeles Department of Water and Power (LADWP). I reviewed the history of the litigation between LADWP and the OVC, among others, and informed the Commissioners about the deadlines they face associated with the Lower Owens River Project (LORP). I also had a private audience with Mary Nichols, the Chair of the Board, who has a reputation as an environmental advocate. She and I daydreamed about a time when LADWP and the various interests in the Owens Valley could engage in creative rather than adversarial problem-solving.

Shortly after that, the OVC collaborated with the Inyo County Water Department to initiate an "ad hoc" process to try to find consensus regarding the use of 1600 acre-feet of water that agreements state should be used for wetland habitat. This project had stalled in competing strategies posed by three different consulting firms, and it seemed no resolution could be reached. A group including staff from Inyo County, LADWP, California Department of Fish and Game, and members of the OVC, the Sierra Club, and the ranching community have met in more than six sessions, and we have developed a conceptual plan for seven projects that would utilize this precious water.

When the OVC was invited again to address the LADWP Commissioners in Bishop in April I was able to report that we may be able to bring to decision-makers a project proposal that was truly developed collaboratively and that enjoys the support of all parties involved. Although it is too soon to celebrate, it appears there may be a change in attitude and policy at LADWP that can only benefit the Owens Valley. On-going pressure exerted by the OVC on LADWP in court has doubtlessly influenced this attitude, and we are dedicated to maintaining that pressure.

Carla Scheidlinger
President
Owens Valley Committee

Ad hoc means “hope” for Hines

The Memorandum of Understanding (MOU), to which the OVC is a party, mandates that there be a total of 1600 acre-feet of water each year left in the Owens Valley for the creation of wetlands to mitigate for springs and seeps that were lost in the wake of groundwater pumping associated with the second aqueduct.



A good water year: Bishop Creek overflow is being used to help recharge water tables in the valley this year.

Although three different consultants have presented plans for the use of this water, all the plans have violated some provision of the MOU and have left all parties with a great sense of frustration and doubt that any reasonable mitigations could be developed that would please us all.

The OVC took the unprecedented step of initiating an *ad hoc* process in an effort to get this important mitigation back on track. *Ad hoc* means that any decision the group reaches is not binding and that any participant can leave the process at any time without endangering the legal MOU process, which remains in place. Furthermore, no decision of the group can be implemented until all proper legal protocols are observed, including public input into the resulting proposal.

Inyo County Water Department, LADWP, California Department of Fish and Game, the Sierra Club, and the ranching community have joined the OVC in this *ad hoc* process. What makes the process special is that it has created an atmosphere in which we have been able to brainstorm freely. Initial contacts were stilted and hostilities were evident, but as we have moved into a third month of meetings, the process has resulted in increased trust. Very creative and practical ideas have surfaced. We now have seven projects under consideration that include one associated with Hines Spring, as well as six more that will utilize both artesian well waters and canal waters to create habitats that will substantially enhance wetland habitat in the Owens Valley for the benefit of wildlife and aquatic organisms. OVC members Carla Scheidlinger, Derrick Vocelka, and Mark Bagley feel genuinely enthusiastic about this process and believe that, time-consuming as it is, it will result in a much more environmentally valuable project than could have been obtained from the consultants alone. If a proposal before the decision makers of the *ad hoc* participants truly is universally supported, it will be a real landmark in the Owens Valley water wars. We may be replacing “see you in court” with “see you on the next field trip.”

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Yerba mansa (*Anemopsis californica*), a denizen of alkali meadows.

Wrights' historic rights wronged in Round Valley

IN THE LAST HALF OF THE 19TH CENTURY, Native Americans were being pushed from their land in Round Valley, but some of them learned they could homestead land to keep it from the avarice of newcomers.

Jack and Jim Wright were Paiutes who homesteaded the area now known as Wright's 40 Acres. By 1891 they had an irrigation system and were raising sheep and fruit trees. They had homesteaded a total of 80 acres; other members of the Wright clan had holdings in other parts of Round Valley.

The south 40 acres were ultimately purchased by Los Angeles, but the north 40 remains in private hands. The area is still served by a ditch from Pine Creek and smaller ditches within the neighborhood.

40 Acres is one group of water users that have pre-1914 water rights on Pine Creek. One of the other users, the Los Angeles Department of Water and Power (LADWP), built a weir on BLM land in 2001 and began to constrict the flow to 40 Acres. They did this without a BLM permit.

LADWP initially claimed that they did not need a permit, but in 2003 they applied for one to the BLM, which has not yet approved the application. In the permit application LADWP made some serious misstatements of fact: a question on the form asks if the project would result in any change to rural lifestyles or environment. Clearly the weir did, as several property owners suffered loss of vegetation and had to dig new wells. However, LADWP never asked 40 Acres residents if there were impacts.

In 2002 the nominal president of the 40 Acres Homeowners' Water Association, Thaddeus Taylor, reorganized the association. Currently, nearly 80% of the property owners are members. Since then, an association representative checks the water gate daily and raises the flow if required just as LADWP sends someone to reduce the flow.

All of the waters of the state are owned by the State of California. LADWP has not demonstrated a legal right to stand between the state and 40 Acres in controlling 40 Acres' water.

—Carla Scheidlinger

—Thaddeus Taylor

Revisiting groundwater management: Will Owens Valley get soaked?

It's 1989-1990 all over again.

The ON/OFF groundwater management protocol for the Inyo-LA Long Term Water Agreement (LTWA) was developed then, and Owens Valley is revisiting it now.

Although the protocol was developed in closed negotiations, evidence suggests that the lines of argument went something like this:

Inyo wanted to realize the LTWA's goal—environmental impact avoidance while providing a reliable water supply for LA—by managing water tables for drawdowns of “one-to-several years” followed by recovery to vegetation rooting zones. DWP refused to accept direct water table management but provided no biological basis for its refusal. Both parties made a political compromise to manage



water tables indirectly. To do so, a protocol for turning wells on/off was developed using complicated calculations and untested models based on fine-scale measurements of leaf area and soil moisture to determine if adequate water was available for vegetation at permanent monitoring sites. This became known as the ON/OFF protocol and was written into the LTWA. According to Dr. David Groeneveld (ON/OFF's creator), it was intended to result in one-to-several year drawdowns followed by recovery to rooting zones.

Fast forward to 2006. Portions of almost every wellfield have been subject to continuous drawdowns since the late 1980's. Both Inyo and DWP agree (for different reasons) that the LTWA's ON/OFF protocol is a failure. Both Inyo and DWP's consultant Montgomery Watson Harza (MWH) are working on replacements. Inyo's replacement, based on direct water table management, will be released in November 2006. DWP has made no public statement regarding its

proposed replacement but has again rejected the basic concept—direct water table management—on which Inyo's protocol will be based. Just as in 1989-1990 DWP has given no biological (or any other) reason for its rejection.

The final decision will, once again, be made by politicians. Will Inyo politicians have learned from 15 years of failed management-by-compromise that it's time to do the obvious—manage water tables directly?

Time will tell.

Meanwhile, DWP has already started a campaign to manipulate public opinion. DWP's consultant MWH carries out the campaign in the form of public presentations that claim to present “cutting edge” science regarding resource management. The presentations' underlying theme attempts to discredit the concept of “groundwater dependence” on which the LTWA is based. DWP's Gene Coufal as-

sisted the campaign last spring by asserting at a Technical Group meeting that groundwater dependence is just “a matter of opinion,” notwithstanding the facts that it is the basis for the LTWA's vegetation classification and that the phrase is used 62 times in the LTWA/EIR.

By focusing attention on “all factors which may affect vegetation,” i.e., everything but groundwater, DWP and MWH apparently hope people will be so confused they'll think groundwater dependent ecosystems don't need access to groundwater. Like camels crossing the desert, existing wellfield vegetation has a degree of “drought hardiness.” If water tables are permanently lowered, however, wellfield grasses will certainly die, just as will camels unable to reach the next oasis.

By persuading the Inyo County public (and Inyo County Supervisors) that

groundwater is only “part of the picture” DWP probably hopes to garner approval of an ON/OFF replacement that legitimizes the de facto permanent water table drawdowns already created. If, on the other hand, Inyo insists that “groundwater dependence” means what it says, permanent drawdowns won't be tolerated, pumping will have to be reduced, and a direct water table management protocol will be hard for DWP to oppose.

The wild card is the LA Board of Water and Power Commissioners. The current board was appointed by Mayor Villaraigosa, and a majority on it claim to be environmentalists wanting to reform DWP. As of this writing, however, there's little to show for all the talk except lawsuits DWP filed challenging its obligation to abate dust at Owens Lake and a glimmer of hope that DWP will finally approve a long-term lease for the Bishop airport. (Under Villaraigosa's predecessor, Mayor Hahn, DWP refused to negotiate a long term lease until Inyo agreed to increased

groundwater pumping.) The new LA Board hasn't even begun to tackle groundwater management.

Will the LA Board's widely-publicized good intentions be sufficient to overcome the entrenched DWP management culture of de-

ceit and exploitation in Owens Valley? Have Inyo Supervisors recognized their predecessors' mistake and learned that direct water table management will be the most effective way to accomplish the LTWA's goals?

Time will tell.

—Daniel Pritchett



Upper left: Pumped groundwater pours into an Owens Valley canal.

Lower right: A Pacific treefrog (Hyla regilla) amidst saltgrass (Distichlis spicata) in an alkali meadow on the valley floor.

Legal battles linger, but meetings may prime pump for change

The Owens Valley Committee and the Sierra Club have fought side by side for many years in Owens Valley water battles. Long-term OVC member and Sierra Club MOU representative Mark Bagley has been instrumental in coordinating and leading that alliance. Mark spoke with the *Rainshadow* by phone recently from San Luis Obispo, where he was being honored with a conservation award at the 20th annual Sierra Club California convention for his unflinching and hard-hitting work on Owens Valley water issues.

OVC: What were you doing when you first heard about Owens Valley? Did you have any idea then that you would someday be a long-term resident there?

MARK: I first heard about Owens Valley when I was a student at UCLA, reading geology books and hiking books about the Sierra Nevada. I was vaguely aware that the water I was drinking came from the Sierra Nevada, but I had no idea I would wind up in Owens Valley 15 years later.

OVC: Why and how did you start working on Owens Valley water problems? What grabbed you about the issue?

MARK: Before I moved to Bishop, I lived in Ridgecrest for a few years, and through the California Native Plant Society, I got to know some of the early members of the OVC: Mary DeDecker, Betty Gilchrist, Vince Yoder, and Mike and Nancy Prather. I first got involved as a member of the Bristlecone Chapter of CNPS. What grabbed me was the arrogant destruction of our environment, the injustice, and Los Angeles' lack of respect for environmental laws.

OVC: Environmental damage to the Owens Valley from Los Angeles' ground-water pumping and second-aqueduct water exports has been ongoing for more than 35 years, but the Los Angeles Department of Water and Power (LADWP) has historically been reluctant to mitigate for that damage as required by the California Environmental Quality Act. You were instrumental in the recent lawsuit against LADWP for its delays in implementing the Lower Owens River Project (LORP) as partial environmental mitigation—the case in which Judge Cooper

ordered the City to fully implement the project by July 2007 or forfeit use of the second aqueduct. What's happened most recently in the battle over LADWP's delays?

MARK: LADWP filed an appeal of the Judge's decision, mainly on the grounds that he overstepped his authority in threatening their second aqueduct. Our attorneys filed a brief in the appeal and believe that they made a very strong case.

I'll note that LADWP is solely interested in the threat to their second aqueduct. They entered into a second agreement with Inyo County that, should they win on appeal, LADWP will abide by the other deadlines and conditions Judge Cooper imposed, such as the \$5,000 a day the City pays until the LORP is implemented.



Work proceeds on the Lower Owens River Project near the aqueduct intake.

Meanwhile, LADWP is moving forward with the work to build the pumpback station and make modifications to the aqueduct intake and other infrastructure in order to get water into the river. At this time they're well ahead of schedule. If all goes well, they may even have the project fully implemented by late next winter. Amazing what a little incentive does.

OVC: Two other lawsuits against LADWP have been in progress for years as well. Can you tell us about those?

MARK: In the Sierra Club's Lower Owens River Project Environmental Impact Report lawsuit, LADWP chose to settle before we had hearings. The settlement called for LADWP to complete a Supplemental Environmental Impact Report. The report should address potential LORP

impacts to the transition to brine pool area, which is below the Owens River Delta on Owens Lake bed. LADWP's proposed plan would reduce water going to the area, but the original impact report didn't adequately analyze the effects of that reduction. The final report just came out a couple of days ago (early June), and we'll be taking a close look at it.

The other lawsuit—brought by OVC and the Sierra Club—contends that the ecosystem management plan for the Lower Owens River Project does not meet the standards required by the 1997 Memorandum of Understanding (MOU). It was on hold until last month, when OVC's and Sierra Club's attorneys filed the first papers on discovery in the case. That case will heat up this year, and we'll call on volunteers for help soon.

OVC: Recently you and others sought new solutions in Owens Valley's relationship with LADWP by attending informal meetings about some of the other required mitigation projects (see "*Ad hoc* means 'hope' for Hines," p. 2). How are those meetings progressing?

MARK: The consultant for the Memorandum of Understanding produced a final report in late May on Hines Spring and additional mitigation projects. Not many MOU parties were happy with it. Judge Cooper has said we can put that report aside for now, as the MOU parties as well as ranchers throughout the valley have been in informal discussions for the past few months, trying to reach a settlement on what projects should be implemented. This has been called the *ad hoc* process, and it's slowly moving forward. We've now decided on a phased approach that would, in the first phase, implement projects that would use about 1200 acre feet of water per year out of the 1600 acre feet per year commitment.

The staffs of LADWP and Inyo County will be developing conceptual plans during the next month for the six projects we've agreed on. There are still some significant outstanding issues, including the role of the MOU consultants, the level of monitoring and adaptive management, and the use of the other 400 acre feet of water during the first phase. I'm hopeful that we'll work these issues out. This will be a process that will require participation from all the MOU parties for quite a few more years.

Blackrock proposal: Good news or bad?

In the May 13-14 issue of the Inyo Register, an Owens Valley newspaper, it was reported that the California Department of Fish and Game (DFG) plans to spend 1.4 million dollars in improvements to the Blackrock fish hatchery facility during the next five years. In so doing, DFG will increase production from the current 158,000 pounds/year to 180,000 pounds/year. On the surface, this sounds like good news for the valley. After all, fishermen spend large amounts of money in Inyo County.

The bad news is that pumping for the Blackrock facility already violates the Inyo-Los Angeles Long Term Water Agreement because it is destroying what was formerly the finest meadow in Los Angeles Department of Water and Power (LADWP) wellfields. This is occurring because the pumping is treated as "mitigation" under the Long Term Water Agreement, so the pumps never go off. It is mitigation because LADWP dried up Blackrock Spring, which used to provide about 8000 af/yr of water to the facility (and the adjacent LA Aqueduct). The problem is that DWP pumps more than 12,000 acre feet of water to mitigate the loss of the 8000 af/yr flow from the spring. This excessive pumping creates permanent drawdowns under a large area to the south and west, with resultant meadow destruction.

Until now, DFG might be considered a pawn in LADWP's groundwater manipulation. After all, DFG can't be blamed if LADWP uses its mitigation obligation to pump more water down the Aqueduct than would otherwise be allowed. If, however, DFG has 1.4 million dollars at its disposal and fails to invest in increasing the efficiency of the hatchery's water use (thereby allowing a reduction in groundwater pumping for "mitigation") it will, rather than playing a passive role in hatchery groundwater pumping, take a place with LADWP as one of the forces of destruction in Owens Valley.

—Daniel Pritchett

Ripples: News in brief from the Owens Valley

Water and Power visit valley

In an effort to repair battered relations between Los Angeles and Mono and Inyo Counties, three members of the Los Angeles Board of Water and Power Commissioners travelled north this spring to meet residents. In a series of meetings distributed across three days, Commissioners David Nahai, Mary Nichols, and Nick Patsouras listened to local concerns about excessive groundwater pumping, dry lake dust control, land management, a long-delayed airport lease for Bishop, and impeded water rights in 40 Acres, among other issues.

Commenting on participants' frequent use of the word "historic" to describe the Board's visit, Commissioner Pasaouras said, "To me, historic is to get our act together, you and us."

LA wavers on lake commitment

In December 2005, Great Basin Air Pollution Control Officer Ted Schade announced that Los Angeles would have to complete approximately 9 square miles more work on the Owens Lake bed to meet federal air pollution control standards.

Although Los Angeles previously agreed to do what was necessary to control toxic dust from the lake bed—the single largest point source of particulate matter pollution in the United States—the City appealed Schade's ruling with the California Air Resources Board (CARB) and threatened lawsuits this spring. Noting that residents have been suffering from dry lake dust storms for 80 years,

Schade asked the Los Angeles Board of Water and Power Commissioners in Bishop this April to just finish the project. "How much longer do you want them to wait?" he asked.

EPA proposes looking away

The comment deadline for the U.S. Environmental Protection Agency's proposed National Ambient Air Quality Standards revision closed with a bang and a whimper this April. Ignoring recommendations of its scientific advisory committee, the Agency proposed to abandon particulate matter monitoring in rural areas such as the Owens Valley. Although "rural" dust frequently contains toxic chemicals—such as arsenic and cadmium found in dust storms from the Owens Lake—EPA Administrator Stephen L. Johnson posited that proposed changes such as ignoring rural particulate matter pollution would "continue to improve air quality and public health."

Not so, replied several western state air pollution control agencies, including those of California, Arizona, Oregon, Washington, New Mexico, and Nevada. Pointing out that rural wind-blown dust contains toxic chemicals, causes health problems and "premature death," impairs visibility, and carries disease, the states asked the EPA to look again. "Everyone deserves to breathe clean air, regardless of where they live," wrote Mary Uhl, chief of the Air Quality Bureau of New Mexico.

—Ceal Klingler

VOLUNTEER CLASSIFIEDS

WANTED: Publicity coordinator. The OVC will be sponsoring two more public events in 2006 (September and November). Volunteer would coordinate publicity for radio, newspapers, and local TV for one or both of these events. We will supply contact information and text if necessary. Call Carla at 937-4050 to volunteer.

WANTED: Volunteers who are comfortable with scientific language to read and comment on Environmental Impact Reports and other technical documents. Important policy changes can be confusingly couched in peripatetic paragraphs. Help catch catastrophes. Call Ceal at 760-872-3196 to volunteer.

WANTED: Meeting observers. The OVC's interests are taken up at many Inyo County meetings, including Inyo County Board of Supervisors, Water Commission, and Inyo-Los Angeles Technical Group meetings. We

need volunteers to attend such meetings and to be willing to speak about our concerns when appropriate. Call Carla at 937-4050 to volunteer and be briefed.

WANTED: sporadic reporters for OVC newsletter and/or web site to write about water related issues, events, or meetings, subject to volunteer's interests and schedule. Writing experience, a background in science, or a sense of humor helps; accuracy a must. Call Ceal at 760-872-3196 to volunteer.

SEEKING OBSESSIVE-COMPULSIVE but flexible editor to take helm of *The Rainshadow*, OVC's biannual newsletter. Twice-yearly publication requires general layout and plan for contents of each issue; small-scale recruitment of OVC members to write articles and submit photographs; editorial work and some writing; and ability to delegate. Please call Ceal at 760-872-3196.

OVC is a non-profit citizen action group dedicated to the protection, restoration, and sustainable management of water and land resources affecting the Owens Valley. The Committee oversees compliance with the implementation of appropriate water management policy, educates the public, encourages participation in local government, and advocates an inclusive and open decision-making process. We watch the water.

YES, I would love to join the Owens Valley Committee and help protect, restore, and sustainably manage water and land resources in the Owens Valley. I would like to:

• **DONATE (Please make your tax-deductible donation payable to the Owens Valley Committee)**

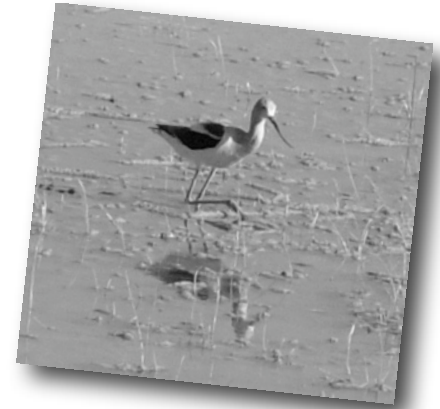
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• **VOLUNTEER**

Skills and/or interests: _____

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