

## NOTES | May 4, 2011

### Mono Basin Core Working Group Meeting

Prepared by Center for Collaborative Policy

#### Key Outcomes

The Core Working Group refined the charter for its consensus-seeking activities. A discussion regarding each party's interests and visions of success for the Mono Basin was followed by a discussion on how each defines 'feasibility'. The group identified the materials and resources needed in preparation for the next meeting's examination of Lee Vining Creek and agreed on a tentative meeting schedule through December 2011.

Next Meeting: May 17, 2011, 9:30-3:30, LADWP in Bishop

#### Action Items

Action Items		
5/17/2011	Bartlett	Revise April 6-7 Meeting Summary and send to Greg Brown for posting on State Water Resources Board website
5/10/2011	Bartlett	Revise Charter and circulate with changes
5/11/2011	Schlafman	Summarize highlights of Lee Vining Creek's FERC license and send to Gina for the group to prepare for 17 May meeting
5/12/2011	Bartlett	Send packet for May 17 meeting
5/17/2011	Martin	Bring to next meeting: R2 Resource Consultants' Report on evaluation of sediment bypass operations of Lee Vining Creek
5/17/2011	Martin	LADWP presentation: overview of Lee Vining Creek operations
5/17/2011	Bartlett	Call in Mike and/or Dan for May 17 meeting
5/17/2011	Bartlett	Confirm dates for 4 October meeting with State Board and Stream Scientists
Done	Bartlett	Distribute updated calendar of 2011 meeting times
5/17/2011	Bartlett	Call Stream Scientists about Charter
Previous Meeting		
Done	Vorster	Generate initial task list for Modeling Work Group
5/1/2011	Adams & Coufal	Resolve contract issues so Stream Scientists can participate in meetings related to Synthesis Report
5/1/2011	Vorster & Reiss	Send daily data to Mike Deas for modeling
If needed	Lisa & Dave	Conduct Briefing with Supervisors Hansen and Bauer if recommended by County Counsel

#### Meeting Welcome

Gina Bartlett, Facilitator with the Center for Collaborative Policy (CCP), welcomed the group and opened the meeting with introductions. As at the previous meeting, attendees included representatives from Los Angeles Department of Water and Power (LADWP), Mono Lake Committee (MLC), Department of Fish and Game (DFG), and California Trout. New attendees were Dan Golden, Southern California Edison (SCE), and Mike Schlafmann, Inyo National Forest, in attendance to provide input on issues relevant to their respective organizations.

## Document Review

### April 6-7 Meeting Summary

The group provided feedback on the April 6-7 Meeting Summary. Gina Bartlett will incorporate the group's approved revisions and send to Greg Brown for posting on the State Water Resources Control Board (SWRCB) website. Revisions include:

- Clarify language around public access to meetings (pages 3, 4);
- Add California Trout and the Department of Fish and Game to the list of long-term stakeholders (p. 7);
- Specify the figure 0.4 in the discussion of robustness of the modeling.

All agreed that reviewing the notes again would not be necessary prior to their public release. The State Board staff will post all approved meeting summaries on its web site. Group members may post summaries and the final charter on their organizational sites as well.

### Group Charter

The group provided additional input to the Group Charter (Version 2: 4/6/2011). Gina will incorporate approved revisions and distribute to the group for further review with all revisions remaining underlined until final approval of the Charter by the group. Upon final approval, the Charter will be posted to the State Water Resources Control Board website.

Revisions to the Charter are:

- Add sentence noting "SWRCB will provide feedback in a timely manner as to not hold up the process" (as noted in the April 6-7 Meeting Summary)
- Include references to Water Right Order 98-07 in all references to Water Right Order 98-05
- Change terminology from 'Other Signatories' (p. 2) to 'Additional settlement parties to the State Board Orders'.
- Separate monitoring from LADWP facilities in the goal statement. Monitoring will occur on LADWP facilities.

The group agreed to revise the goal statement as follows (single underline reflects previous edits, and double underline reflects revisions from the May 4<sup>th</sup> meeting):

*The goal of this effort is to develop mutually agreed-upon strategies and implementation measures for operations, maintenance...*

In response to a question regarding the term ‘ad hoc’ to describe SWRCB’s involvement, the SWRCB chose this term to clarify that this group process is separate from SWRCB.

The group confirmed that it will package its final agreements in the Agreements Document. The group may need to revisit agreements over time as other issues are discussed. The Agreements Document will evolve throughout the process and reflect the latest thinking on agreements. Any changes in Agreements will be noted in the Agreements Document and in the current Meeting Summary; prior Meeting Summaries will not be updated to incorporate changes that occurred after the meeting’s occurrence. Gina suggested adding the evolving Agreements Document as an addendum to each Meeting Summary. Gina will reflect this understanding in the Charter sections about Process and Participation Agreements and Decision-making Guidelines,

### **Next Steps**

Gina will request that the Stream Scientists review its role in the charter. California Trout has additional input to the Charter which it will share with the group directly in advance of the May 17<sup>th</sup> meeting. Other groups are encouraged to share additional input as well. Gina encouraged each group to have legal counsel review the Agreements Document periodically.

## **Interest Statements and Shared Goals & Success**

### **What would constitute success in this process? What are your organizational goals?**

For the Mono Lake Committee, success encompassed three aspects: (1) resolving differences to the greatest extent possible to deliver the prescribed flow recommendations by the Stream Scientists; (2) developing a new restoration order that combines the existing orders with the new language from this group to have one comprehensive order that guides the group in the future; and (3) creating a document that supports the new order and that clearly and simply outlines operations, maintenance, and monitoring to support the new order and infrastructure. This supporting document would include the long-term monitoring plan agreed-upon by the Core Working Group. LADWP responded that success would be to develop or arrive at a scientifically-based, feasible stream flow system. As LADWP has questions about the science behind the Stream Scientists’ recommendations in the Synthesis Report, reexamining some of the proposed flows and understanding the criteria underlying the recommendations will be important. This will allow LADWP to determine what it can reliably and feasibly deliver in the streams. LADWP is concerned that the stream flow recommendations in the Synthesis Report were based on a pristine condition that does not account for existing SCE or LADWP activities.

Lisa clarified that the Mono Lake Committee’s starting point is to implement the flow recommendations rather than reassess their validity.

In acknowledgment of the common goal to agree on a scientifically-based system, Gina clarified that the Core Working Group would decide on any additional scientific analyses to be conducted as well as identify the entities most appropriate to conduct the agreed-upon scope of work. While the group acknowledged that the dynamic nature of natural processes may present challenges to implementation of the recommendations, the parties seem to agree to proceed with a scientifically-based stream flow system and address specifics on a case-by-case basis.

**Southern California Edison** defined success for the Core Working Group to understand (1) SCE's capacities and limitations, specifically regarding how much water it can provide to LADWP; and (2) SCE's need to comply with existing licenses. Due to considerations of public safety as well as State of California requirements that mandate that a certain percent of SCE's portfolio be comprised of renewables, SCE noted that it approaches water from a very different perspective than the Core Working Group. SCE expressed concern about the feasibility of implementing the recommendations from the Synthesis Report, citing factors beyond SCE's control (i.e. water flow or snowpack at a given time of year) that would make it impossible for the company to supply the flow requirements. Dan noted that to come up with a scenario wherein SCE could supply the water and generate the necessary power, there would need to be a scientific justification based on historical records.

Gene added that LADWP is dependent on SCE for water flow and cannot meet the existing Synthesis Report requirements without it. Dan noted that both entities have worked together to meet each other's needs and that SCE changed its operating criteria this year to provide LADWP with the maximum amount of water possible. Collaboration between SCE and LADWP has existed since 2004 with intensified efforts in the past two years.

**California Trout** concurred with others' vision of success and emphasized the need for the Core Working Group to better understand and address SCE concerns throughout the process to improve understanding of the practicalities involved in moving forward. Mark agreed on the need to base flows on science and stated that it would be important to implement an Adaptive Management approach to the recommendations although he is not sure if that is viable at the State Board level.

**Department of Fish and Game** defined success as achieving the intent(s) of the Synthesis Report while working with all parties to maximize opportunities and minimize liability for all interests, including economic. Fish & Game would also like operation rules which tend to protect the level of Grant Lake where possible. Grant is important as a fishery in its own right, and influences water released to Rush Creek. Currently, Grant Lake is the first to be drawn down and the last to be refilled. Success would include identifying operational protocols which do not default solely to drawing down the lake when water is in short supply. Steve also noted that 'simplification of the rulebook' would benefit current participants as well as their successors. He reminded the group that the intention of the process is to follow the Water Board orders and legal guidance from the court. It will be important to give great weight to the Synthesis Report recommendations yet do so in a manner that is not dogmatic.

The **U.S. Forest Service** would like to see results that are adaptive and flexible given the dynamic nature of natural systems. USFS is interested in taking an approach that views the ecosystem as a whole, as it works on forest restoration above as well as below riparian areas in the area. Mike asked the group to look at the recommendations from the Synthesis Report and consider the opportunities that could meet these objectives, regardless of whether these opportunities are within the Report's limitations and boundaries. He encouraged the group to consider science as a tool to inform, rather than dictate, decision-making and policies.

## **Interests**

Gina asked each member to identify their interests as related to the Mono Basin. For all stakeholders, a solution that offers **ease of implementation and predictability** was a priority; this was referred to as 'the cookbook'. **Efficiency in decision-making** was another interest, specifically the development of a

strong framework for an ongoing relationship to facilitate this. **Reaching agreement through consensus** around the scientific approach to the problem as well as in an amicable manner that creates a stable, long-term, mutually-supported solution is another goal. **Establishing a long-term relationship** based on transparency is also critical.

Another interest shared by multiple stakeholders was **ecosystem health and restoration**. Improving water delivery will **increase reliability of water** for export as well as for restoration. Restoring damaged systems and natural processes will ensure the best recovery possible. Maintaining the health of the overall ecosystem in a dynamic setting that recognizes and accommodates change is a goal. Others shared this interest in **flexibility** hoping for a solution that is not bound by rigid predictions of natural processes. Several participants wondered whether flexibility and ‘having a cookbook’ were compatible.

Several participants noted **the importance of recognizing the past** (in particular the historic and legal context, including legal and institutional obligations for a non-native trout) **while looking towards the future**. LADWP activities are driven by the company’s mission ‘to provide our customers with reliable, high-quality and competitively-priced water services in a safe and publicly and environmentally responsible manner’. Identifying a solution that is reliable and safe for the water system as well as for the watershed is necessary.

The challenge before the group is to honor all interests and craft solutions to meet the goals and objectives of each.

## Defining Feasibility

After much discussion, the group agreed that the California Environmental Quality Act or CEQA<sup>1</sup> definition in Public Resources Code 20151.1 could provide a useful guiding framework or roadmap to distinguish between capability (‘can it be done?’) and suitability (‘should it be done, and if so, under what conditions?’). The group agreed to look to the CEQA definition as a non-binding guiding principle for the present, retaining the option to refine or modify their own definition at a later stage of the process, as desired. This approach alleviated concerns with the limitations and liabilities of using the CEQA definition as a quantitative, legally-binding tool. The group discussed ‘feasibility’ and ‘reasonableness’ as mentioned in the Public Resources Code and D1631, p. 208.<sup>2</sup> D1631 utilized feasibility as a measure for restoration rather than a focused attempt to define feasibility.

The group recognized that ‘feasibility is in the eye of the beholder’ and that defining it can be difficult due to the subjectivity involved. Considerations that impact perceptions of feasibility can include economic, social, and environmental effects as well as related time considerations (i.e. even if a project is feasible, can it be completed within an acceptable time period?). The group recognized that tradeoffs are part of the process and that keeping the definition of feasibility open could avoid impractical solutions (i.e. a solution that is socially and environmentally feasible – but that would double the cost of water). The group agreed in the utility of having a methodical way to define and address feasibility.

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<sup>1</sup> CEQA defines ‘feasibility’ as “capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors”.

<sup>2</sup> “(4) The SWRCB will review the final proposed restoration plans based primarily on the following factors: (a) Adequacy of the measures proposed to achieve restoration of the fisheries, streams, stream channels, waterfowl habitat and other public trust resources; (b) Technical and financial feasibility; and (c) Reasonableness.”

The Forest Service follows a process that distinguishes questions of **capability** (i.e. does the technology exist, is the water available to pursue this option?) from the less easily-defined issues of **suitability** (i.e. is this the right place for this to occur? what are the social tradeoffs, breakpoint in rates, etc.) and addresses them separately. The Forest Service has found this process helpful in keeping dialogue moving until the two components can be brought together for discussion (typically once the suitability questions have been agreed upon). The group agreed that consideration of physical feasibility was a useful starting point; as needed, a subgroup could be tasked with conducting additional research into specific feasibility questions to provide input to the group later.

Many solutions may be capable but ultimately deemed unsuitable by the group; the group may also find numerous ways to achieve the same goal. The group will try to minimize areas where it is unable to reach consensus and, in such instances, present these to the State Board along with agreement on the considerations of disagreement. The State Board will then be left to make a decision on any outstanding points of contention.

The group will develop feasibility criteria as well as define capability and suitability when it addresses specific topics. The facilitator noted that criteria would be easier to define related to each specific topic, rather than attempt to generate criteria in the abstract. Over time, common criteria will likely emerge.

## **Preparation for May 17<sup>th</sup> Discussion of Lee Vining Creek**

The group identified the materials and resources needed in preparation for next meeting's examination of Lee Vining Creek.

### **Priority Review**

- Synthesis Report and LADWP Feasibility Report
- Summary of the FERC license for Lee Vining Creek to provide an understanding of current constraints

### **Other Background**

- Fish habitat assessment and in-stream flow study
- R2 Study on the evaluation of sediment bypass operations of Lee Vining Creek

Mike agreed to provide the group with the FERC license, along with a summary of its highlights by May 11. Dave agreed to bring the R2 report to the May 17<sup>th</sup> meeting, for use as a reference. Gina requested that everyone include their name and the date on any document sent out.

LADWP will provide a presentation overview of the Lee Vining Creek facility at the May 17<sup>th</sup> meeting. Dave will take the lead on preparing this presentation. In addition to providing an overview of the current management scenario and any planned infrastructure upgrades, the presentation will include information on (1) proposed strategies to follow the new diversion table; (2) side channel openings on Lee Vining Creek; (3) monitoring; and (4) creek maximization, e.g. licensing issues and coordination with SCE. Gina agreed to invite Mike (USFS) and/or Dan (SCE) to this meeting to provide input.

Given the linkages between creeks (i.e. impacts to Rush Creek from changes to Lee Vining Creek), detailed discussion of some of these issues – in particular (2) and (3) – may be deferred to a later meeting. In general, while the group will aim to deal with issues on a case-by-case basis, linkages should be considered as well.

## **2011 Calendar and Work Plan**

The group agreed on a tentative schedule of meetings through December 2011. Meetings will alternate between Mammoth Lakes and Bishop, with two potential meetings in Sacramento in July and October. Meeting time will vary according to location. Unless otherwise noted, meetings held in Mammoth Lakes will be from 8:30-2:30, and Bishop will be from 9:30-3:30. Sacramento meetings will be planned in accordance with SWRCB schedules, with the objective of holding a briefing with SWRCB representatives to provide an update on progress and solicit feedback on the group's process.

Gina will coordinate with the SWRCB and the SWRCB Stream Scientists regarding meeting dates and aim to finalize all 2011 meeting dates at the May 17<sup>th</sup> meeting. Core Working Group members unable to attend a meeting should contact Gina.

Gina explained that the goal is to at least hold an initial discussion on all key issues by the end of 2011. As the process evolves, specific agenda items will be refined and re-ordered as necessary. In addition to the proposed work plan, work groups will conduct ongoing work to provide input to the process; one example is a modeling work group conducting side studies in preparation for a broader Core Working Group discussion.

## **Core Working Group Participation**

As noted in the Charter, the Core Working Group has agreed to allow certain stakeholders outside of the Core Working Group to attend and provide input at meetings that address issues relevant to their organizations. As Southern California Edison operations impact water availability, and as a number of LADWP's Mono Basin operations take place on U.S. Forest Service land, both of these entities participated in this meeting. The Core Working Group agreed that discussion was enhanced by participation of these two entities and agreed to continue to involve each in future meetings as relevant. Both entities expressed interest in continuing to participate in the process in this capacity. Dan will reserve the dates but only attend by request. He requested that the group keep him informed of progress and send him in advance any requests for information to allow sufficient time for his water staff to provide input. Mike Schlafmann from the Forest Service will participate on a regular basis.

## **Attendance**

Gene Coufal, Los Angeles Department of Water and Power (LADWP)

Lisa Cutting, Mono Lake Committee (MLC)

Mark Drew, California Trout

Dan Golden, Southern California Edison

Ali Karimi, LADWP

Dave Martin, LADWP

Geoff McQuilkin, MLC

Bruk Moges, LADWP

Steve Parmenter, Dept. of Fish and Game  
Paul Pau, LADWP  
Mike Schlafmann, Inyo National Forest

Facilitator Gina Bartlett, Center for Collaborative Policy (CCP)  
Note-taker Hannah Murray, CCP