

# A Road of Opposition

*Caltrans Heading in the Wrong Direction on the Mono Lake Highway Project*

*by Jen Nissenbaum*

The Mono Lake Committee continues to look for solutions despite disappointing news from Caltrans regarding the Mono Lake Shoulder Widening Project (Project). By denying the Committee's request for a new environmental document and limiting the amount of information available for additional public review, Caltrans is pushing the Committee closer to litigation.

The proposed Project is located within the Mono Basin National Forest Scenic Area, and would widen and straighten 3.1 miles of Highway 395 along the west shore of Mono Lake.

While the Committee has worked with Caltrans for over three years to develop a project that minimizes environmental impacts along the scenic highway corridor, both build alternatives proposed in the Draft Environmental Impact Report (DEIR) will result in significant impacts to wetland and riparian areas, water quality, wildlife habitat, and visual quality. Based on the Mono Lake Committee's extensive analysis of the DEIR, the Committee concluded that Caltrans must redraft and recirculate a new environmental document in order to adequately study the Project (see Winter 2004 *Newsletter*). Recently, Caltrans denied the Committee's call for a new DEIR and the Final EIR is expected to be released in August.

Early on in the process, Caltrans made a commitment to hold a public hearing with the Mono County Local Transportation Commission (LTC) and to reconvene the Project Development Team (PDT)—the group of agency representatives that has been meeting regularly on this Project (see Spring 2004 *Newsletter*). To be effective, these commitments must be upheld after Caltrans releases its responses to public comments and indicates the final Project decision; however, Caltrans recently stated this information will not be

available by June—when the PDT meeting and public hearing are tentatively scheduled.

The Committee is urging Caltrans to change its course and commit to making the necessary changes for the project to move forward, otherwise, legal action will be necessary to protect Mono Lake. According to Section 15112 of the California Environmental Quality Act (CEQA), the Committee has 30 days after the release of the Final EIR to challenge the Project's final decision in court. The Mono Lake Committee will continue to work with Caltrans towards developing a balanced project; however, time is running out. The Committee is prepared to litigate if the Final EIR is released without substantial modification from the DEIR.

## **Caltrans Denies Committee's Call for a New Environmental Document**

The Mono Lake Committee submitted a detailed and comprehensive 64-page analysis of the DEIR prior to the close of the public comment period. The Committee's comments identified major inadequacies with the draft environmental document and supporting studies. For example, the DEIR ignored federal parkland protection regulations, failed to identify a perennial stream running through the project area, and failed to address the threat of fill-slope erosion to water quality in Mono Lake. The DEIR contained many other deficiencies, and as a result, the Committee called on Caltrans to redraft the environmental document, which, according to CEQA guidelines is required when a DEIR is fundamentally flawed.

Caltrans recently confirmed that the Final EIR is scheduled to be released in August and that no new environmental studies are planned. The Committee is not only disappointed that Caltrans is not redrafting the DEIR, but also

surprised that new studies are not mandatory based on the detailed comments Caltrans received. Over 1,300 letters were sent to Caltrans from Mono Lake supporters prior to the close of the public comment period. In addition, public agencies—including the US Forest Service, California Department of Fish and Game, California Department of Parks and Recreation, and Lahontan Regional Water Quality Control Board—all submitted letters to Caltrans identifying major deficiencies in the DEIR.

## **Caltrans Limits Information Available for Public Review**

Caltrans made a commitment to hold a joint public hearing with the LTC—the governing body for highway projects in Mono County—almost two years ago. In light of the concerns being raised at that time by public agencies and the Committee, the LTC requested the joint public hearing in order to stay closely involved in the Project's progress. Recently, Caltrans denied the LTC's request for a public hearing, and instead plans to hold a public meeting. At that meeting, Caltrans will listen to public comments, but will be under no obligation to record or respond to the comments made.

In addition, Caltrans has drastically reduced the amount of information that will be on hand at the LTC meeting. Caltrans will not have their responses to public comments available for the LTC commissioners to review. Furthermore, Caltrans will not indicate to the LTC or the public their determination for the Project's final outcome at the public meeting.

Project Development Team (PDT) members will also have limited updated information available for Project review at the upcoming PDT meeting. With over two years of experience working with Caltrans to create a balanced

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# Courtroom Victory for Mono Lake

## *Mono Lake Protection Remains Strong*

*By Jen Nissenbaum*

**A** recent court case confirms that anyone who wants to undertake a commercial enterprise within the Mono Lake Tufa State Reserve must obtain a permit from the State.

A boat tour operator, Tom Crowe of Mono Lake Charters, had been cited by the State Reserve for operating commercially on Mono Lake without a permit. With a no contest plea, Mr. Crowe abandoned the effort to argue that the California Department of Parks and Recreation does not have permitting authority at Mono Lake.

In a series of legal briefs regarding the citation, the defense questioned State Parks' authority at the Reserve. The case came to an abrupt ending when the defense notified the courtroom that the defendant had already signed the 2004 State Reserve permit and was interested in negotiating a settlement.

While this case has been resolved, it may be a prelude of things to come. Mono Lake is beginning to face recreational use pressures that are already common throughout California.

### ***Mono Lake Charters' Boat Tour Permit is Signed***

Despite years of discussions and several months of negotiations, the owner of Mono Lake Charters refused to sign the 2003 permit offered by the State and was eventually cited for operating in the Reserve without a permit. The defendant filed a Motion to Dismiss—essentially arguing that the State does not have permitting authority on the waters of Mono Lake. Reasons presented by the defense were numerous, among them the claim that the waters of Mono Lake are not under the jurisdiction of the Mono Lake Tufa State Reserve.

After three days in court in 2004, the defense presented new information—the defendant had already sent the 2004 State Reserve permit with the associated permit fees to the Department of Recreation and was interested in negotiating a settlement. In the end, the boat tour operator abandoned his

claim that State Parks does not have permitting authority over the waters of Mono Lake by pleading “no contest” to both citations and by paying a token fine. In addition, he made a good faith statement to the court that he would follow the guidelines and regulations within the permit.

In May, the State Reserve completed Mono Lake Charters' permit application enabling the boat tour operator to legally operate during the summer 2004 season. As many Mono Lake supporters have pointed out, the interpretive motorized boat tours offered by Mono Lake Charters can be a valuable addition to the existing ways to experience and learn about Mono Lake.

The Mono Lake Committee is pleased that Mono Lake Charters is now in compliance with State Reserve regulations, as it is these rules that help maintain the appropriate balance between commercial recreational use and the protection of the Mono Lake's natural resources. Buffer zones around stream deltas, no-tour zones on the east side of Mono Lake, and low-pollution engine specifications (for the motorized boat tour operator), are examples of provisions included within the State permit to minimize impacts to natural resources.

While this recent recreational problem has been resolved, it is just one example of the types of issues Mono Lake is certain to face more of in the future. With over 250,000 annual visitors and rapidly increasing interest in recreational use of Mono Lake, planning for and implementing sound recreation policies is essential for maintaining the health of the lake and surrounding ecosystems. The Mono Lake Committee will continue to apply the principles it developed regarding boating (see Spring 2003 *Newsletter*), and will no doubt need to develop additional principles for other recreational uses—in order to ensure that the lake continues to receive the protection it deserves. ❖

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project, members of the PDT are the most qualified in helping Caltrans determine the final outcome for the Project. PDT members will have essentially no new information available to assist in making recommendations to Caltrans since the DEIR was released eight months ago.

### ***What options remain?***

In this critical time before the release of the Final EIR, the Committee continues to look for creative ways to modify the Project—to minimize environmental impacts within the unique and sensitive west shore habitat. In the meantime, the Committee is paying close attention to CEQA guidelines.

CEQA establishes a 30-day statute of limitations to challenge an agency's final decision through the courts. Assuming that the Final EIR is essentially the same as the draft, the Committee will need to act within 30-days of the release of the Final EIR. Co-Executive Director Geoff McQuilkin explained this at a recent PDT meeting stating, “The Committee is fully prepared to go to court on behalf of its 15,000 members to assure that Mono Lake and the Scenic Area receive the protection they more than deserve.” ❖

*Jen Nissenbaum is the Committee's Eastern Sierra Policy Coordinator. She is settling in to her new home in Mono City!*