

Final Notes
Bear River License Implementation
Environmental Coordination Committee Meeting
October 20, 2004
Grace, Idaho

Decisions/Commitments Made at the October 20 ECC Meeting	
Monte Garrett	<ul style="list-style-type: none"> • Password protect a portion of the planned ECC website for sharing draft materials. • Present the agreement in principle on Cove Decommissioning to PacifiCorp's management for approval. • Arrange meeting in Boise to begin drafting a Settlement Agreement for Cove Decommissioning (during 1st week of Nov., if possible) with Harriet Hensley, Scott Yates, Frank Wilson and PacifiCorp attorneys. • Distribute draft agreement language for Cove Decommissioning for ECC review before next ECC mtg. Will try to distribute at least one week before the next meeting (i.e., by Nov. 10). • Draft a letter to FERC regarding recommendation on Cove Feasibility Study alternative (decommissioning). Distribute to ECC for review and provide signature sheets at the November ECC meeting. • Coordinate with EDAW to attend the November ECC meeting
Scott Yates	<ul style="list-style-type: none"> • Attend meeting in Boise on the Settlement Agreement for Cove Decommissioning, 1st week of November
All	<ul style="list-style-type: none"> • Provide comments or suggestions on the proposed ECC website to Garrett.
Jim Mende	<ul style="list-style-type: none"> • Coordinate with Harriet Hensley and the Idaho Water Resources Board on decommissioning. • Arrange for Matt Campbell to attend the November ECC meeting.
Susan Kammerdiener	<ul style="list-style-type: none"> • Incorporate comments on Black Canyon Monitoring Plan for distribution on Nov. 1 to ECC for 30-day review
Miriam Hugentobler	<ul style="list-style-type: none"> • Coordinate with Jodi Williams, Phil Rassier, and Connely Baldwin to attend the November ECC meeting, if possible. • Check with Lynn Van Every about availability of IDEQ offices for the November ECC meeting.

ECC Members Present:

Monte Garrett, PacifiCorp's Environmental Coordinator
Mary Lucachick, Idaho Department of Fish and Game
Jim Mende, Idaho Department of Fish and Game
Jim Capurso, U.S. Forest Service
Marv Hoyt, Greater Yellowstone Coalition
Deb Mignogno, U.S. Fish and Wildlife Service
Lynn Van Every, Idaho Department of Environmental Quality
Blaine Newman, Bureau of Land Management
Warren Colyer, Trout Unlimited
Hunter Osborne, Shoshone-Bannock Tribes (joined at 10 a.m.)
Charlie Vincent – American Whitewater

Others Attending

Scott Pratt, PacifiCorp
Eve Davies, PacifiCorp
Louis Berg, U.S. Forest Service
Kelly Holt – PacifiCorp
Jeff Seamons – Franklin County Fish and Game
Claudia Conder - PacifiCorp
Scott Christensen – Greater Yellowstone Coalition
Glenn Pond - PacifiCorp
Susan Kammerdiener, SWCA Environmental Consultants
Pat Koelsch, Bureau of Land Management
Scott Yates, Trout Unlimited

Attending By Phone:

Jenna Borovanski, Idaho Rivers United
Connely Baldwin (PacifiCorp)

ECC Members Not Attending

Susan Rosebrough, National Park Service

The meeting was called to order at 9 a.m. by Scott Pratt, PacifiCorp. Pratt was introduced to the group as meeting facilitator. Pratt reviewed his role as facilitator. ECC members agreed to have him serve in that capacity.

The meeting began with introduction of meeting attendees, followed by a review of the day's agenda. Notes from the September ECC meeting were approved with changes from Monte Garrett.

Update by Monte Garrett, Environmental Coordinator, PacifiCorp

Website/Flow Phone

Garrett presented a prototype of the website and proposed features to the ECC. Deb Mignogno (USFWS) asked if it were possible for the website to have an area for ECC members to pick up draft documents. Garrett will check to see if it is possible to password protect a portion of the site for draft materials. Otherwise, only finals will be on the website. Contact information for ECC members may also be added, but this has not yet been decided.

Information on flows in the Bear River will appear on the website, and Garrett showed ECC members an example of how water flow data would be presented. The website will show tables/graphs of flow in hourly average flow rates (weekly/daily, respectively) in real time. A phone number for the flow phone will be posted on the website.

Garrett encouraged ECC members to call him with comments or suggestions regarding the website as it is being finalized in the near future.

Results from Dam Leakage/Monitoring

Dam leakage measurements were taken October 1, using methods previously distributed to and approved by ECC members. Results showed 2 cfs leakage at Grace dam and 1 cfs at Oenida dam. The results will be submitted in writing (a letter) to FERC and will be incorporated into minimum flow requirements.

Cove Decommissioning

Pratt reviewed the results of the October 13 conference call between ECC members and Garrett, which was scheduled for ECC members to present an offer for Cove Decommissioning for Garrett to submit to PacifiCorp. The ECC's offer was 10 cfs in flows/cost share (i.e., a reduction in the minimum flow requirement at Grace).

Garrett said he has since reviewed the ECC's conference call proposal with PacifiCorp, and the offer was not favorably received. Garrett presented another counter offer.

Garrett suggested that the ECC and PacifiCorp agree to continue the 80 cfs minimum flows through the completion of decommissioning. Once decommissioning was complete, and cost was known, flows could be based on the true cost of decommissioning, with a cap at 20 cfs. Therefore, ECC funding through flows would be based on true cost, with 20 cfs cap.

Jim Capurso (U.S. Forest Service) expressed concern about the ecological impacts of increasing the flow of the Bear River to perhaps as high as 900 cfs in the reach below Grace Tailrace in the summer as a result of the proposed Cove Dam removal. It was estimated that the historic pre-hydro project summer flow in this reach was more like 10-30 cfs. More flow is not always better. He suggested this would be something the ECC would have to consider and perhaps deal with as we go further down the decommissioning road. Mignogno asked what we know about the ecological effects since

80 cfs minimum flow has been in place. Eve Davies (PacifiCorp) said there are height changes primarily, as well as velocity changes. Garrett said he can't see that amount of flow washing out habitat; in fact, there should be benefits to aquatic resources.

Garrett said the new offer represents a compromise from PacifiCorp's point of view. The company would just as soon operate the project for only 10 cfs, he said. There is also the risk that 20 cfs may not cover the entire cost of decommissioning, as PacifiCorp expects overruns to be more likely than underruns.

Mignogno brought up the possibility of Corps of Engineers (COE) cost sharing. There is a possibility of getting funding from COE that cost shares 80/20 for aquatic habitat improvements (PL 206).

Marv Hoyt (Greater Yellowstone Coalition) said cost sharing with outside agencies is not really the issue. He said the ECC needs to base its decision on what is known now. He said he was skeptical that a federal agency would be able to provide funding for the project at this time.

Scott Yates (Trout Unlimited) said both Mignogno and Hoyt are correct, 206 is not funded at the level it is authorized for. Yates said it would be difficult to craft a deal based on cost share and we need to approach this based on what we are certain of. PacifiCorp has presented a valid offer.

Hoyt said the ECC should look at every option for cost share, but base the decommissioning decision on what's on the table now.

Options were diagrammed on the whiteboard:

Flow (80 cfs for 2-5 years) – capped at 20 cfs and delayed settlement on flow amount – based on actual cost. Then the minimum flow in the Grace bypass would be reduced by 20 cfs.

Charlie Vincent (American Whitewater) asked for time to clarify a comment he made during the October 13 on conference call, saying he had been approached by other ECC members in the interim for clarification. Vincent said he did not mean negotiations between the ECC and PacifiCorp were in bad faith. Vincent said he sees a disconnect between process we were following on Cove and these negotiations. He said it seemed the ECC wanted PacifiCorp to provide confidential information and was going more toward traditional negotiations. He said the ECC seemed to have an advantage.

Lynn Van Every (Idaho Department of Environmental Quality) said he appreciated Vincent's comments. Van Every said the caucus had based its decision on benefits to aquatic resources, but Vincent had not been directly involved. Van Every said he could see the issue from both sides.

Yates said the process has been more like a negotiation, adding that the ECC doesn't have the data needed to proceed otherwise.

Garrett said he has discussed decommissioning with FERC staff, and PacifiCorp may not need to reopen its license for decommissioning. Rather, PacifiCorp may amend the current license. If the license is amended, there will still be an opportunity for public comment, but to a lesser degree than a relicensing process.

Mignogno asked about the level of NEPA analysis that may be necessary, an environmental assessment vs. an environmental impact statement. Garrett said it could be an EA, or perhaps no NEPA analysis would be necessary. The issue has not been discussed adequately with FERC at this point.

Capurso asked whether there would be ECC involvement in selecting a contractor for decommissioning. Garrett said PacifiCorp would select contractors to minimize the decommissioning costs. Hoyt said he doesn't really want to be involved in finding a contractor to rip out a dam. Garrett said PacifiCorp obviously can't act on this until FERC makes their decision on whether decommissioning is in the public interest (issues an amended license) and there will be time for ECC involvement in the process.

A caucus was convened for agencies to consider PacifiCorp's counter offer.

Response from ECC

With Jim Mende (Idaho Fish and Game) serving as spokesperson, the ECC unanimously agreed to PacifiCorp's counter offer, but there were concerns that need to be settled.

Vincent said there was concern among ECC members about baseline data. If minimum flow was reduced by 20 cfs at the time that decommissioning was complete, and baseline data was collected at 80 cfs, subsequent data collected as part of the Black Canyon monitoring studies would be based on an incorrect baseline (80 cfs). Vincent said flows should probably go to 60 cfs now for purposes of collection of baseline data.

In addition, Hoyt asked whether the ECC (PacifiCorp) would have to go to FERC for flow reductions twice or more (original minimum flow => new minimum flow with leakage => new minimum flow after decommissioning). Baseline cfs could range from 60-70-80, etc. and could confound the interpretation of monitoring data in future years. Vincent said it's in all our best interests to keep it simple.

Davies questioned whether a range of minimum flows could be approved.

Pat Koelsch said if it's worth X amount of money for PacifiCorp to lower the flows now compared to later, then PacifiCorp would be making money up to the point of decommissioning. PacifiCorp should be willing to compensate for the fact that the new minimum flow would be provided prior to Cove actually coming out.

Mignogno asked what would happen to the money if flows were reduced now and decommissioning did not go through. Garrett indicated that, if FERC did not approve the decommissioning, then license compliance would continue to be based on the original settlement agreement and license conditions.

~Caucus~

Garret explained that, with the measured leakage from Grace dam, minimum flow requirement at Grace is now 82 cfs (80 plus 2 cfs leakage). He suggested that, instead of making multiple adjustments in flows, PacifiCorp would cap the minimum flow reduction at 17 cfs now, rather than 20 with leakage following decommissioning (65 cfs now rather than 62 cfs later)

The proposal was accepted by the ECC with brief discussion.

Mignogno asked for clarity that if the ECC gives up 17 cfs and decommissioning does not go, how will the ECC be compensated? Garrett noted that if decommissioning is denied, the ECC would also have the wrong baseline flows for the Black Canyon monitoring. He added that if decommissioning did not go through, PacifiCorp could reimburse the ECC for lost flows that occurred during the interim.

Yates said that possibility could be used as a tool to push for agreement on 17 cfs. However, he noted, the risk with FERC denying decommissioning is small.

Yates said, in terms of the cap in PacifiCorp offer, the ECC would want to have the offer include that any cost share raised would return to the ECC for use as mitigation.

Mignogno raised concerns about contingency fees, paying salaries, etc., that are included in the decommissioning alternative in the Cove Feasibility Study. Koelsch said all the ECC really needs to worry about is the cap. Garrett said PacifiCorp did have concerns about overruns.

Garrett said he had been given a lot of latitude to make the deal, but he still has to get approval of PacifiCorp management. He will present the agreement to them to get official approval. This will happen before the next ECC meeting, he said.

It was agreed to draw up a settlement agreement on decommissioning. The agreement will reduce 82 cfs minimum flow requirement to 65 cfs, and PacifiCorp would bear the costs of decommissioning the Cove development. Draft language for a settlement agreement for decommissioning will be drafted with attorneys of the parties.. Then ECC members can take the draft agreement back and review it with their constituencies. This will begin the process of license amendment as required by the FERC. Mignogno said the more specific agreement we have the better.

Garrett said he wanted to make it clear that the cost of decommissioning is based on what is presented in the Cove Feasibility Study. This provides certainty for the ECC as well as

PacifiCorp. Decommissioning terms will be consistent with what is presented in that study.

Mende asked about precluding future hydro development in the area. Yates said minimum flow would trump hydro development.

Mignogno emphasized that acceptance of the agreement was unanimous.

Kelly Holt asked for discretion on the decision from ECC members, as Cove decommissioning could affect PacifiCorp jobs.

Yates noted that there is a larger issue: How will the ECC work with the media? Yates said internally, PacifiCorp should handle the announcement. He emphasized that decommissioning is not a story to talk with anyone about until the agreement is finalized.

~Break for Lunch~

Mende asked for further discussion on impacts decommissioning may have on the local community (i.e., loss of property tax to the county). Glenn Pond (PacifiCorp) said he did not have figures, in regard to taxes, but it may be a substantial amount.

Yates said he would like the original attorneys who worked on the Settlement Agreement. (i.e., Harriet Hensley, etc) to work on the settlement agreement for Cove decommissioning.

In regard to the decommissioning process – Yates said he would like to schedule a group meeting in Boise with the original attorneys, as this would likely result in better buy-in. Garrett said between now and the next meeting, he will arrange a meeting among PacifiCorp and the attorneys of the parties, including Harriet Hensley, Scott Yates, Frank Wilson and PacifiCorp's attorneys. He will distribute a draft resulting from that meeting for ECC review before next ECC meeting (i.e., by Nov. 10). The agreement will be called the Settlement Agreement for Cove Decommissioning.

Garret said he will draft a letter to FERC to recommend the decommissioning alternative of the Cove Feasibility Study, as promised in the September 1 filing. Garrett will distribute a draft of the letter to ECC members and will provide signature sheets at the next ECC meeting. He noted that this response to FERC on a recommendation is due at the end of November.

Jim Mende will coordinate with Harriet Hensley and the Idaho Water Resources Board on decommissioning.

Garrett suggested using the American Fork decommissioning agreement as a template. Yates said the ECC should craft the agreement rather than leaving it up to FERC.

Vincent asked whether the ECC would have problems because of lack of public involvement. Yates suggested putting public involvement on the agenda for the next meeting. Pond asked for time for PacifiCorp to take care of it from a political angle.

Davies noted that decommissioning is going to be a public process when it goes to FERC, and that FERC may identify other stakeholders.

Black Canyon Field Methods Trip – Lynn Van Every

The Black Canyon Monitoring Plan subcommittee and other interested ECC members had participated in a field trip in Black Canyon October 18 and 19 to discuss field methods that will be used in monitoring studies. Van Every said it was good to sit on the river and talk about what will be a tricky job. Van Every said the group firmed up methods for bugs, diatoms and algae. Everyone came away with a pretty good understanding of the logistics of sampling, he said, noting that this will be a 5 to 6 year project.

Comments on the Black Canyon Monitoring Plan – Susan Kammerdiener

Susan Kammerdiener (SWCA Environmental Consultants) was present to receive comments on the Black Canyon Monitoring Plan. Between now and November 1, Kammerdiener will incorporate comments from the ECC and distribute the BCMP for 30-day external review. Comments from internal & external review will be incorporated following December 1. The BCMP will then be filed with FERC by December 22..

The ECC then went through the BCMP paragraph by paragraph. Kammerdiener noted the comments and will make the changes requested.

There was discussion on whether to use rainbows as surrogates for Bonneville cutthroat trout (BCMP Paragraph 4). Vincent said the possibility of rainbow trout triggering changes in whitewater flows would be contrary to Settlement Agreement.

Koelsch said if whitewater flows make Black Canyon uninhabitable by rainbow trout, he guarantees they will make it uninhabitable to Bonneville cutthroat trout.

Vincent said American Whitewater would not want to put their interest on the line over some stupid hatchery fish, referring to the fact that hatchery fish could not be expected to behave the same way a wild native fish would.

Hunter Osborne suggested using wild rainbow trout as surrogates.

Capurso proposed the following compromise language: “Rainbow trout will be used as a monitoring surrogate for native cutthroat trout until cutthroat trout recolonize the monitoring reaches.”

Bonneville Cutthroat Trout Studies

Garrett asked whether the ECC would like Matt Campbell (geneticist) to come to the next ECC meeting to discuss the deliverable that would result from the genetics study, funded by the ECC. The ECC agreed that would be beneficial. Jim Mende will coordinate with Campbell.

Shoreline Buffers

Davies introduced Claudia Conder, PacifiCorp, who will be working on landowner issues for the Bear River License Implementation.

Davies discussed the fencing component of shoreline buffers. She said there is money for fencing in this year's budget (through March 31). Davies said a fair amount of survey has been done recently to update company boundaries. A map with adjusted boundaries was presented to the ECC. Davies said fencing would be adjusted according to survey results. Garrett noted that Davies is preparing a site-specific plan for each of the parcels, which PacifiCorp will eventually do for all of their land. He also noted that EDAW will be doing a Land Management Plan for PacifiCorp land. This Plan provides background and reference that will be used to prepare site-specific plans.

November Meeting

The November ECC meeting was scheduled for November 17-18 in Pocatello, possibly at the Department of Environmental Quality offices, with the following agenda items:

- Review of Cove Settlement Agreement Draft (4 hours) (Wednesday)
- Guest Speaker on Genetics Study – Matt Campbell (JM will contact) (1½ hours)
- Funding Criteria (1/2 hour)
- Rassier/Williams/Connely Baldwin – Water Rights (Miriam contact) (2 hours) (Q&A to sort out what we can and cannot do).
- Review of various plans with EDAW (Land Management, Recreation, Traffic Safety) (3 hours) (Wednesday)
- Fish Salvage (1/2 hour)

Meeting adjourned at 4:45 p.m.