

**Final Notes**  
**Bear River License Implementation**  
**Environmental Coordination Committee Meeting**  
**November 16, 2005**  
**Pocatello, Idaho**

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<b>Commitments Made at the November 16, 2005 Bear River ECC Meeting</b>	
Monte Garrett	<ul style="list-style-type: none"> <li>• Begin preparing RFP for thermal imaging work. Discuss with PacifiCorp contracting the addition of a nonperformance clause.</li> <li>• Speak with PacifiCorp’s external communications staff about the press release on the availability of habitat enhancement funding. Consider purchasing a paid advertisement if newspapers do not plan to run stories.</li> <li>• Check with Deb Mignogno regarding “in perpetuity” language in MOA for land trust.</li> <li>• Circulate (email) new conservation easement format to ECC members.</li> </ul>
Mark Stenberg	<ul style="list-style-type: none"> <li>• Prepare RFQ for land trusts. Attach MOA for their review and comment. Consider distributing to additional land trusts in the area. Specifically mentioned were Sagebrush Steppe, Idaho Foundation for Parks and Lands, and The Nature Conservancy.</li> <li>• Set up meeting with landowners in the Cove area regarding fencing issues (with Eve Davies). Speak with Kelly Mortensen about attending.</li> <li>• Contact John Gangemi (Oasis) about presenting results of his work in Black Canyon to the ECC.</li> </ul>
Glen Pond	<ul style="list-style-type: none"> <li>• Speak with the Soda Springs, Idaho mayor about Cove decommissioning. If appropriate, arrange for representatives from the ECC to attend a city council meeting after the first of the year to present more information about the project. Consider meeting with other city councils in the area.</li> </ul>
Dave Teuscher	<ul style="list-style-type: none"> <li>• Keep ECC informed on fish tagging for telemetry study. If there are tags left over from the current effort, consult with ECC members on what to do with remaining tags.</li> </ul>
Claudia Conder	<ul style="list-style-type: none"> <li>• Check with Idaho Division of Water Resources on the application to put the Cove water right into the state water bank. The ECC would like to know whether the application can be protested. Update the ECC at the January meeting.</li> </ul>
Eve Davies	<ul style="list-style-type: none"> <li>• Make contact with landowners on Williams Creek regarding agreement not to divert water. Report to the ECC at the January meeting.</li> <li>• Forward edits to the October funding proposal meeting notes to Miriam.</li> <li>• Work with funding proposal subcommittee to develop monitoring forms for ECC-funded projects (January meeting).</li> <li>• Meet with landowners in Cove area regarding fencing issues (see above).</li> </ul>
Connely Baldwin	<ul style="list-style-type: none"> <li>• If changes to the Ops and Compliance Plan regarding use of reservoir deadband rather than gages to show compliance are approved by FERC, work with Lynn Van Every to ensure that he is comfortable with this change. Consider Van Every’s suggestion to footnote data on the website when gages show noncompliance.</li> </ul>

<b>Commitments Made at the November 16, 2005 Bear River ECC Meeting</b>	
Warren Colyer	<ul style="list-style-type: none"> <li>Consider putting fish passage structure work out for bid. Discuss further with Davies.</li> </ul>
Jim Capurso	<ul style="list-style-type: none"> <li>Complete list of items to be considered for projects proposed for funding by the funding proposal subcommittee. Present for discussion at the next subcommittee meeting</li> </ul>

### **ECC Members Present**

Monte Garrett, PacifiCorp  
 Mark Stenberg, PacifiCorp  
 Marv Hoyt, Greater Yellowstone Coalition  
 Warren Colyer, Trout Unlimited  
 Lynn Van Every, Idaho Department of Environmental Quality  
 Hunter Osborne, Shoshone-Bannock Tribes  
 Jim Capurso, U. S. Forest Service  
 Pat Koelsch, Bureau of Land Management  
 Jim Mende, Idaho Department of Fish and Game

### **Others Present**

Eve Davies, PacifiCorp  
 Claudia Conder, PacifiCorp  
 Kelly Mortensen, U.S. Department of Agriculture  
 Steve Smith, Idaho Soil Conservation Commission  
 Steve Anderson, Idaho Department of Fish and Game  
 Claire Bosen, Twin Lakes Canal Company  
 Glen Pond, PacifiCorp  
 Greg Mladenka, Idaho Department of Environmental Quality  
 Dave Teuscher, Idaho Department of Fish and Game

### **Participating By Telephone**

Mary Lucachick, Idaho Department of Parks and Recreation  
 Connely Baldwin, PacifiCorp (1 p.m.)

### **ECC Members Not Present**

Deb Mignogno, U.S. Fish and Wildlife Service (proxy to Capurso)  
 Charlie Vincent, American Whitewater  
 Kevin Lewis, Idaho Rivers United  
 Susan Rosebrough, National Park Service

### **Review**

Notes from the September ECC meeting were reviewed and approved. Commitments from the September ECC meeting were reviewed and have been met.

Koelsch inquired about adding a nonperformance clause to the contract for **thermal imaging**. Garrett agreed to speak with PacifiCorp contracting about adding a nonperformance bond to the contract. Garrett will work on getting the contract ready to go out for bid in the near future.

Garrett updated the ECC on changes made to the **MOA for Land Trusts** at the October Funding Proposal Subcommittee meeting. Garrett recommended taking “in perpetuity” language out of the MOA. Hoyt disagreed, stating that that is the point of putting property in trust.

Garrett told the ECC that PacifiCorp’s external communications staff had sent the press release announcing the availability of habitat enhancement funds to 20 **media contacts**. Colyer said he had stopped by the Montpelier newspaper office and spoke with them recently. Van Every noted that he did not receive the final press release. Garrett agreed to check on distribution. Koelsch suggested taking out paid newspaper advertisements if local newspapers do not choose to run the press release. Tuescher said a newspaper is planning a story on IDFG’s telemetry work. He agreed to try to roll a story on funding opportunities into that. Garrett agreed to check with PacifiCorp’s external communication staff and if it looks like local papers aren’t going to run the press release, will consider purchasing an ad.

Garrett said FERC has published a notice regarding the license amendment for Cove Decommissioning and has asked for comments on Cove decommissioning. Garrett said he had spoken with FERC staff regarding scooping, and FERC believes this **scoping process for Cove Decommissioning** was adequate, given the noncontentious nature of the project. Garrett said it looks like the project has broad support, with the exception of one negative comment to FERC from Stan Christensen, an area resident. Garrett said Christensen had gone before the Soda Springs city council and they plan to file a letter of protest with FERC regarding the project. Garrett said he expects that decommissioning will go forward as scheduled, with work on the ground beginning in July 2006. Mende offered to go before the Soda Springs city council. Capurso said he thought it would be appropriate to go before the council and present them with more information on Cove Decommissioning. Glen Pond agreed to speak with the Soda Springs mayor and arrange a visit to the city council (i.e., get a date for the meeting, get message together, and decide who is going). Davies suggested visiting with other area city councils as well. Pond suggested that after the first of the year would be an appropriate time.

## **Updates**

### **Monitoring Work in Black Canyon - Monte Garrett, PacifiCorp**

Garrett reported that the first round of monitoring in Black Canyon was complete. Mladenka noted that there were contractual problems in the beginning, but these were worked out and the first round of monitoring was completed. Mladenka said a control reach has not been identified. He said he could perform monitoring in the control reach himself, if need be. Koelsch raised concerns about fish shocking methods used. Teuscher said he had concerns about one reach above Grace, but other than that, the electrofishing work that was completed seemed OK. He said the fisheries biologist who conducted the work felt that he had covered the holes in the reach above Grace well. Teuscher said he will know more once he sees the report. Koelsch said he is concerned that studies may proceed 3-4 years only to find the data are inadequate for the needs of the ECC.

Mladenka said he felt the company got what data they could, given the limitations of funding, etc. Teuscher said it is up to ECC members to review the report and presentation from the first year carefully and see that it is going to give the ECC what it needs.

#### **Telemetry Study – Dave Teuscher, Idaho Department of Fish and Game**

Teuscher said that tags from fish tagged in the spring expired in August and IDFG is no longer tracking those fish. He said from the data obtained so far, it appeared that tributaries were important for the fish. Teuscher said he began fall tagging in late October. Forty percent of the river has been sampled and 40 to 50 fish tagged, with a goal of 100 tagged fish. Teuscher said the Thatcher reach would be sampled tomorrow, followed by other areas not yet sampled. He said fish captured this fall were large, and in better condition than fish sampled in the spring. There have been no recaptures. Colyer asked if IDFG would sit on the tags over winter, or go back upstream and tag additional fish if they don't tag enough fish as they work downstream. Teuscher said he will keep the ECC informed if there are tags left over, and ask for comments on what should be done. Teuscher said the temperature tags have been very useful and the study is going well. He will contact Stenberg about coming along on the tagging near Thatcher.

#### **Genetics Work – Dave Teuscher**

Teuscher said the genetics work has two main focuses: rainbow trout introgression (all samples have been run) and relatedness (about half these samples have been run). Data are showing that the Bonneville cutthroat trout found in southern Utah and Bonneville cutthroat trout from the Bear River are quite different. Bonneville cutthroat trout in the Bear appear to be more closely related to Yellowstone cutthroat trout. Garrett asked when the final genetics report would be complete. Teuscher said January or February 2006. Teuscher suggested waiting for May to June 2006 for a final report, as he is still giving samples to the lab. Koelsch asked whether the extension needed to be formalized. ECC members decided that the May/June timeline suggested by Teuscher would be OK.

#### **Introduction - Kelly Mortensen, Idaho Department of Agriculture**

Mortensen told ECC members that he is working on getting cattle operations (i.e., corrals) off waterways. He said he has a small group of engineers who work on these projects, and he talks with people who call and say they are interested in doing this. He added that his job is mostly teaching. Koelsch asked whether the people Mortensen has met with are aware of ECC funding availability for this type of work. Mortensen said he will pass the word. He added that he would be happy to work with the ECC as a resource, to educate people about the regulations.

#### **Cove Water Rights - Claudia Conder**

Conder told ECC members that she has filed an application for putting the Cove water right into the state water bank. Conder said the person she is working with at the Idaho Division of Water Resources had reviewed the application and said it looked fine and should sail through and will preserve PacifiCorp's water right. She said the next step is to lease the water right and she will wait for Cove decommissioning to proceed. Hoyt asked whether there could be a protest to the application. Conder said she believed the application would just be noticed, with no opportunity for protest. She agreed to double

check with Bill Graham (IDWR) on this point and will present an update to the ECC at the next meeting.

### **Williams Creek Agreement not to Divert - Lynn Van Every**

Van Every said he had gone through the IDWR database and pulled up existing water rights on Williams Creek with priority dates to get an overview of how water is diverted on that stream (see Attachment 1). Van Every said the total diversion appears to be 14 cfs for irrigation rights, with an additional 0.216 cfs for domestic use. He said irrigation takes place from April to October, depending on decree. Van Every noted that this was based on information contained in the database, and that it was not ground truthed. He said the ECC project concerned the #7 water right (see Attachment 1), and there are four other diversion points between this project and the Bear River. He said the question is whether the water put back into Williams Creek would make it to the Bear River. He said he feels that some agreement not to divert would need to include the four downstream priority water users. Davies suggested talking to the landowner nearest the Bear (the junior water right) to get more background information. Stenberg asked whether this information was needed to make a decision on whether to fund the project. Van Every said that the project had already been funded. Garrett asked what the long term plan was for Williams Creek, and whether the ECC planned to work with other landowners in the area. Davies said it seemed to be an area where interest in ECC opportunities is very positive.

Stenberg said he would like to have a conversation with the ECC about these types of goals. Capurso said the ECC had been working on restoration planning, and had some goals, so the process is in place. Davies agreed to begin contacting landowners and report back at the next ECC meeting.

Capurso said he has been working on a list of things the ECC may want to consider for funding proposals. He said he believed it would also help people who are developing proposals. Capurso said he hopes to get that done before the next funding proposal subcommittee meeting.

In regard to Williams Creek, ECC members discussed the possibility of establishing an instream water right so that no one else would file on the water not being withdrawn. Bosen noted that others can file on water that is not being used. Garrett said the ECC needed to seek clarification, as groups such as Idaho Department of Fish and Game or Idaho Department of Parks and Recreation may be the only entities that could make application to the Water Board for instream water rights. Lucachick said that is no longer the case, that the Water Board can now accept applications from any group, not just state or federal organizations. Bosen said another option would be for someone downstream on the Bear to file so that the water would be guaranteed to stay in Williams Creek (i.e., it would go downstream to the Bear River user).

### **Land Trust Memorandum of Agreement – Monte Garrett**

Garrett summarized the purpose of the MOA for ECC members. He said the MOA is intended to provide freedom for the land trust to search out properties. The ECC would

provide up to \$2,000 in funding for preliminary transaction costs. Then, with the ECC's guidance and blessing, the land trust would negotiate with the landowner. If the ECC decides not to purchase, it is out only \$2,000. If the ECC decides to purchase the land, it must come to agreement with the land trust on how much funding to provide them to manage the property. At that point, a land management strategy would be developed. After purchase, the land trust would provide a clear title with a covenant that the land would be managed according to the ECC's goals. A management plan would then be developed by the land trust and approved by the ECC. If not approved by the ECC, the land must be transferred to another owner specified by the ECC.

Garrett noted that he sent the MOA out to ECC members by email for review on November 7. He asked whether there were any further comments on the MOA, especially whether the MOA should state that "interest in land" should be "in perpetuity," or some other specified time period. Colyer said while he can't envision spending money on short term projects, he would like to have the flexibility to approve shorter term projects should they arise. Hoyt said he believed that the purpose of a land trust is to manage land in perpetuity, otherwise, why use a land trust? He noted that the cost for conservation easements is often similar to the cost of purchasing land, so why not specify in perpetuity? Stenberg said shorter term agreements, like managing property for wildlife for 20 years, may be a habitat enhancement project rather than a conservation easement. Hoyt said he's not sure whether land trusts can accept agreements that are not in perpetuity. He thinks it may be a legal requirement, and believes it should be. Stenberg said the ECC should define "conservation easement," and added that there may be a legal answer to that question. Garrett said his thinking was simply to maintain flexibility. He said he knows that there are shorter term conservation easements, as PacifiCorp has used them in the past. Garrett said the MOA would be between PacifiCorp and the land trust. Colyer said he believes that considering projects in perpetuity only reduces flexibility, as then the land and water acquisition funding could not be used for short term projects. He noted that restoration funding tends to go quickly, and projects in this category have been turned away. He said he would like to have the flexibility to use land and water acquisition funding for shorter term projects. Garrett suggested using a term other than "conservation easement" when considering shorter term projects (i.e., refer to the project as some other kind of easement). He said this is a question for the ECC, as the ECC will approve all agreements. Garrett noted that the ECC has the option of not approving any projects that are not in perpetuity, but the flexibility to approve them if desired. He asked for ECC members' thoughts on this and called for a preliminary vote on the issue.

**Question:** Should land trusts only bring the ECC projects that are designated as "in perpetuity," or should project duration be left for the ECC to manage?

Hoyt - In perpetuity. He questioned whether land trusts can accept projects that are not in perpetuity and asked whether the ECC should even be discussing this option.

Colyer – Flexibility. He said he would favor leaving duration out of MOA and let the ECC manage this.

Van Every – In perpetuity. He said he believes that shorter term projects are enhancement projects, not conservation easements.

Osborne – In perpetuity.

Teuscher – Flexibility. He said he believes the ECC should maintain options.

Capurso – Maintain flexibility in managing the land trust. He said he currently sees no reason to do anything besides projects that are in perpetuity, but noted that short term opportunities worthy of consideration may arise over the course of the next 30 years.

Koelsch - Flexibility, as long as the ECC has veto power.

Garrett – Flexibility. He said he will contact Mignogno by phone to check on the land trust, as the MOA needs to be completed soon as is it necessary for a pending land purchase.

### **Changes to Operations and Compliance Plan – by phone with Connely Baldwin**

Baldwin discussed changes to the Operation and Compliance Plan that will be filed with FERC. He said there will be a change in language regarding how to show compliance with minimum flows. This change is in regard to the threshold of when the gauge will be used to show compliance with minimum flows versus when reservoir deadband will be used. That is, when flows reach 200 cfs at Soda or 300 cfs at Oneida, PacifiCorp will use reservoir deadband to show compliance.

Baldwin said at Grace, any buildup of algae or ice affects the gauge, and best accuracy is +/- 5 percent. He said it would be better to calibrate the gate for reservoir levels. He noted that PacifiCorp would still provide information from the gauge, but the deadband method would be more accurate to prove compliance. It would also reduce fluctuation, etc. Van Every asked whether the data on website are from the gauge. Baldwin said yes, and that these data will still be available, but would not be used to prove compliance. Van Every asked if the Operations and Compliance Plan would be modified. Baldwin said yes, that would be the first step. Van Every noted that for the past year, gauge data showed that minimum flows were exceeded pretty much all year long. Baldwin said yes, that was done to ensure that minimum flows were met despite problems with the gauge.

Garrett said he wanted to be sure ECC members know that if this change is approved by the FERC, the gauges may show that PacifiCorp is out of compliance when that is not in fact the case. Garrett said PacifiCorp will work with Van Every to be sure Idaho Department of Environmental Quality is comfortable with the calibration of the gate, etc. if this change is approved. Van Every said in regard to gauges, USGS only maintains 10 percent accuracy, so he can live with 5 percent error (i.e., why change?). Baldwin said the change is being proposed so that operators don't have to "chase changes." Baldwin asked whether the real time flow measurements on the website were to show compliance with minimum flows or provide information to whitewater boaters. Van Every said he

thought the measurements were used for both purposes. Van Every suggested footnoting the data on the website when flow goes beyond minimum so that people know why. The call with Baldwin ended.

The regular ECC meeting adjourned and was followed by a Funding Proposal Subcommittee meeting.

### **Agenda Items for the ECC Meeting**

#### **January 18, 2006, Pocatello, Idaho (a.m.)**

- Presentation from Oasis. Stenberg will contact John Gangemi
- Thermal imaging work.

#### **Items for Proposal Funding Subcommittee Meeting (p.m.)**

- Review new proposals.
- RFQs to land trust.
- Cottonwood Creek RFQ.
- Draft monitoring forms for funded projects



Attachment 1  
Williams Creek water rights/diversions points

