

FERC issues ruling on Mill Creek hydropower project

Key issues sidestepped, but settlement agreement advances

by Geoffrey McQuilkin

Mill Creek, Mono Lake's third largest tributary, once supported a rich fishery and amazingly productive streamside forests and wetlands, including rare bottomland wildlife habitats that have been virtually eliminated elsewhere in the Great Basin. For over a century, most of Mill Creek's water has been diverted for local uses, leaving little if any in the stream. A recent ruling by the Federal Energy Regulatory Commission (FERC) brings ecological restoration of the creek one step closer.

Long time Mono Lake Committee members know that the Committee has been working for more than a decade to restore Mill Creek by assuring that it receives adequate flows of water. In most years, nearly all of the streamflow at the Lundy Dam is diverted to a hydropower plant, and from there little returns to the creek. The Committee has long argued that the power plant "return ditch," which has a very low capacity, impedes

the return of water to the creek, and that, as a result, nearby water rights holders are receiving much more than their legal allotment. The solution: fix the return ditch between the power plant and Mill Creek so it can deliver the water the creek needs—and is entitled to.



The Mill Creek return ditch.

The Committee has tackled this issue by participating in the federal relicensing of the hydropower plant, a process which began, remarkably, back in 1981. Other FERC process participants include Southern California Edison (the hydropower plant owner), the Department of Fish & Game, the US Forest Service, the Bureau of Land Management, CalTrout, and American Rivers. Additional interested parties have also weighed in, such as Mono County, which holds

water rights for use on nearby Conway Ranch.

To make a long story short, after a substantial amount of controversy, FERC asked all stakeholders to get together

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Committee Annex and Field Station mortgage—PAID!

We're celebrating here in the office and hope you will do so at home! Thanks to a fantastic outpouring of member support, we exceeded our goal and raised over \$100,000 to pay off the mortgage on the Committee's Annex property in Lee Vining. We mailed off the final payment in January!

There's only one thing to say: *Thank you Mono Lake Committee members!*

Mono Lake supporters responded enthusiastically to the opportunity to retire the debt on the property, saving thousands of dollars in annual interest payments and laying the groundwork for the continued success of all the Committee's programs that use the property. The next time you're in Lee Vining, stop by and we'll point you toward the Annex so you can see it yourself!

The Committee purchased the Annex property back in 2003. We jumped at the opportunity to acquire the former King's Inn—two small houses, five cabins, and six motel rooms—close to our headquarters and right next door to the house David and Sally Gaines built when they first arrived in town to fight for Mono Lake's protection. The Annex provides workspace and housing that allow the Committee to successfully run our protection, restoration, and education programs, and has given us room to create the Mono Basin Field Station, which supports scientific research in the Mono Basin.

We can't say it too many times: *Thank you Mono Lake Committee members for making this happen!*

Twenty years later

A Gaines family update

by Sally Gaines

January 11, 1988 was the day my husband, David Gaines, was killed in an auto accident on Highway 395, leaving me a widow with two young children, ages two-and-a-half and five. He also left a big hole in the Mono Lake Committee since he was the main founder and spokesperson.

Adjustments were made by all and life went on.

The kids and I stayed in Lee Vining until the bigger middle school of Mammoth Lakes lured us there. In 1998, I married a wonderful man, Rick Kattelman, hydrologist and photographer, who shares many of my outdoor hobbies.

The kids turned out fine (in spite of being teenagers for a while): Vireo, now age 25, will graduate from Northern Arizona University in May with a degree in Environmental Studies, while Sage, age 22 ½, works part-time and studies cinematography at Santa Barbara City College.

Obviously, as you can tell from the newsletters, the Committee has had one success after another in saving, restoring, and protecting our favorite lake due to the incredible teamwork of scientists, legislators, lawyers, general public, members, and

exceptional (though underpaid) staff.

I remain on the Board of Directors, keep an eye on business at the Lee Vining headquarters, write the chatty notes to Guardians of the Lake who donate monthly, and get trotted out for various events, ceremonies, and field trips.

Dave would be proud of the efforts and accomplishments of loyal members and very competent staff over the past twenty years.

Long Live Mono Lake. ❖

Sally Gaines is a co-founder of the Mono Lake Committee and the current Board Chair.



David, Vireo, Sage, and Sally Gaines in 1987.



Rick Kattelman, Vireo, Sally, and Sage Gaines, 2007.

PHOTOS COURTESY OF SALLY GAINES

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and come up with a plan and, ultimately, the parties did: a settlement agreement was filed with FERC in early 2005. It set out a negotiated plan in which the hydropower plant would continue to operate with full flows and the return ditch would be upgraded to carry 40 cubic feet per second or more of water, thus allowing it to deliver adequate flows to Mill Creek.

Early indications were that FERC would accept the plan without major modifications. However, when the final ruling came out in late 2007, something else had happened. FERC adopted some, but hardly all, of the settlement provisions. However—and this is the key point—FERC did not reject any of the settlement provisions either. Rather, it noted that elements of the settlement, including the improvements to the return ditch, lay outside its authority. “The allocation of flows to satisfy water rights,” wrote FERC, “is not a valid basis for the exercise of our regulatory authority.”

On the face of it, this would seem a major setback—but it isn't. The settlement agreement is a negotiated compromise

designed to settle many issues, and breaking it apart would reopen numerous controversies, to the detriment of all the parties involved. For this reason, the settlement includes requirements that the signatories will implement all the provisions of the settlement, including any that FERC declares to be outside its scope of authority. The return ditch improvements fall into this latter category.

Committee staff have met with the settlement parties and progress is being made toward implementation of the return ditch improvements as outlined in the settlement agreement. Southern California Edison has reaffirmed its commitment to the agreement and more news is expected by summer on how construction will proceed.

With FERC's ruling the long and winding path to Mill Creek's restoration has taken another turn, but the end goal—restoring the creek's bottomland forest and wetlands, renewing its fishery, and bringing back a healthy delta for waterfowl—remains within reach. ❖