Federal Decision Makers Hear Plentiful Support for Mill Creek

Mono Lake Friends Speak Up

by Geoff McQuilkin

Mill Creek received landmark public support during the recently completed Federal Energy Regulatory Commission (FERC) comment period. Now the next move is FERC's, and a ruling is expected later this summer.

Mill Creek has long suffered from excessive diversion of its water, with over 70% of the creek's flow diverted on average. Although existing water rights justify some of these diversions, about 25% of the creek is diverted simply by historical happenstance. The primary reason for this is that water is initially diverted for hydropower use and it is difficult to get the water back into the creek after it flows through the powerhouse. The Committee believes that only water legally allowed under water rights should be diverted from the creek; the rest should flow in Mill Creek to Mono Lake.

FERC has the power to fix this long-standing problem by requiring repair of the "return ditch" as part of a new license for the hydropower plant. Such repair—which would allow the ditch to carry 40–52 cubic feet per second (cfs) of water in contrast to the current maximum of roughly 15 cfs—is part of a settlement agreed to by Southern California Edison (the power plant operator), land management agencies, the Department of Fish and Game, CalTrout, and the Mono Lake Committee.

The public voice was loud and clear in support of the settlement. Committee members and Mill Creek supporters made their voices heard!

In the end, 132 personal letters were filed with FERC in support of the settlement, including a dozen from local property owners. An online petition hosted by the Committee received over 1,000 signatures and was also submitted.

Key conservation groups with Mono Lake interests also weighed in on the issue. The Audubon Society endorsed the settlement, writing that "… restoration of Mill Creek's damaged habitat is dependent on water rights and other matters of California law. Nonetheless, FERC alone is responsible for assuring that the hydropower facility, including the return ditch, is constructed and operating in a manner which does not cause or continue these significant [ecological] impacts."

Ducks Unlimited (DU) also spoke in support of the settlement and Mill Creek restoration. DU Director of Conservation Planning and respected waterfowl expert Dr. Fritz Reid wrote that the second most important action possible to restore Mono Lake waterfowl habitat (after raising the lake) is "rewatering of Mill Creek to restore riparian wetland and hypopycnal environments" and that FERC has the opportunity "to assure that the licensed hydropower facilities neither impede the return of water to Mill Creek nor hamper the waterfowl habitat restoration that will follow."

ARYA DEGENHARDT

Mill Creek, Mono's third largest tributary.

Comments were also submitted by Mono County, which owns Mill Creek water rights. The county expressed concern that a refurbished return ditch might be too large and infringe on its water rights, although the settlement clearly states that it does not alter existing water rights. The Committee believes that water rights and water law—not ditch size—determine how Mill Creek water is allocated, and is concerned that the county may seek to ratchet down the size of the return ditch in an effort to shore up or even augment diversions under its established water rights.

Currently, the Committee and other settling parties are working on reply comments to answer questions raised by the county and a local resident in a separate lengthy document. Details will follow in the next *Newsletter*.

FERC does not have to follow a fixed timetable to issue its ruling on the settlement, but hopes are for news by late summer. If FERC adopts the settlement as submitted, refurbishment of the return ditch could be underway within two years, promising healthier, water rights-based flows for Mill Creek and the streamside forest, wildlife, and birds that depend on it.

Meanwhile, Mill Creek is receiving a much needed, though temporary, boost in flow thanks to the wet winter. Lundy Reservoir spilled over for the first time since 1998, providing the highest peak flow to the creek in almost two decades, helping to create fish habitat, disperse cottonwood seeds, and build channel structure. Let's hope the next step is the return of excessively diverted flows for Mill Creek's better health. ❖