

# Mill Creek Settlement Discussions:

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## *Many Sitting at the Table*

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by Lisa Cutting

**R**eflecting on the past is appropriate given this is the 25th anniversary of the Mono Lake Committee. Looking back, there's no doubt there have been many successes along the way. In fact, it's the successes that constantly validate the Committee's role and purpose here in the Mono Basin and motivate us in our current work. But challenges still remain. And rewatering Mill Creek is one of those challenges.

For almost three years now, nine different parties have been meeting regularly, motivated by the hope of one day bridging differences to resolve water allocation issues in the north part of the Mono Basin. Participants include Southern California Edison, Bureau of Land Management, United States Forest Service (USFS), Mono County, People for Mono Basin Preservation, American Rivers/Caltrout, California Department of Fish and Game, and the Mono Lake Committee. More often than not, each party has brought along a host of participants to the meetings including decision-makers, legal council, and technical scientific experts. And while the process has been long and arduous, most parties agree that progress is being made—albeit, slowly.

At stake are many different interests and proposed uses for limited water including restoring Mill Creek, generating hydropower, irrigating meadows, grazing, fish-rearing, and maintaining water in Wilson Creek. At first glance, the assumption might be that these goals are mutually exclusive and therefore a solution is impossible. But the Committee believes that it is possible for the parties to work together and ultimately arrive at a solution that meets most of each party's needs. The Committee's 25 years of experience in negotiating cooperative solutions has been helping guide us through this process.

### **Current status**

The Federal Energy Regulatory Commission's (FERC) requisite 50-year review of Southern California Edison's Lundy power plant license began nearly two decades ago. A FERC decision was released in April 2000 (see Winter 2000 *Newsletter*) that pleased no one. The Committee's primary concern and motivation for joining the appeal process was FERC's failure to address the issue of the Mill Creek return ditch—the mechanism for returning Mill Creek water to Mill Creek after its passage through the power plant. Other parties in addition to the Mono Lake Committee—the USFS, California Trout, and American Rivers—appealed the decision because of FERC's failure to uphold the USFS 4(e) conditions (a federal rule that empowers the USFS to determine instream flows for streams they manage). This prompted the water rights holders and the parties involved with the FERC rehearing—and other interested parties—to get together and try to work things out rather than accept (or not accept) a future mandated FERC decision that would presumably still not please any party. For the Committee, the key question throughout the process has been how to balance competing water uses while returning Mill Creek to health after decades of damage caused by neglect and improper water management.

### **Why a Settlement Negotiation Process?**

Most resource managers, public officials, and organizations would agree: solutions reached through a collaborative process are generally long-lasting fixes to what were once viewed as insurmountable challenges. Just by virtue of being at the table, parties signal to one another that even though they still have their principles and guiding philosophies, they are willing to listen to

opposing perspectives and develop creative solutions that may in fact represent a win-win outcome.

In theory, the process is quite simple. The various parties share their principles, goals, and priorities with the group. Technical information is collected and shared. Questions are clarified and common ground begins to emerge. Little by little movement toward “middle ground” begins to occur. The end result is a settlement agreement in which interests are more fairly served within the context of the negotiated settlement.

FERC actually encourages settlement negotiations and settlement agreements. FERC seeks to “strengthen inter-agency coordination on hydropower licenses to shorten processing timelines,” to “encourage applicants to address stakeholder concerns before the licensing/certification process,” and to “utilize collaboration with affected parties to the greatest extent possible.” (from Strategic Plan 2001–2005, FERC, September 25, 2001, Market Objectives, Revision B)

FERC can rest assured that if an agreement arises out of this type of process all the parties are on board with its content. This means less work on FERC's part and more often than not a solution that satisfies more of the stakeholder's interests. It also means no surprises—as the parties are submitting the agreement to FERC not the other way around—and the assumption that the license is agreeable to all.

### **History of Mill Creek**

Mill Creek is the third largest tributary stream in the Mono Basin behind Rush and Lee Vining creeks. Although the Los Angeles Department of Water and Power (DWP) originally planned to divert Mill Creek water the plan proved to be cost prohibitive and never materialized.

Even though Mill Creek was not

exported to Los Angeles, it has been diverted for over 100 years for other uses. Its water has been used to irrigate north Mono Basin pastures and to generate hydroelectric power in Southern California Edison's Lundy power plant. And now with the acquisition of Conway Ranch (and associated water rights), Mono County has added fish rearing to the mix of uses. These diversions coupled with ditch systems in disrepair have prevented Mill Creek from receiving much needed water. Creekside forests, fish, and wildlife have suffered as a result. Still, given enough water, Mill's bottomlands offer huge potential for habitat restoration.

**Why is the Mono Lake Committee Involved?**

The Mono Lake Committee advocates restoration of natural habitats and ecological processes in the Mono Basin. Restoration is continuing today on Rush, Lee Vining, Parker, and Walker creeks thanks to the 1994 State Water Board decision and the subsequent work of DWP and others.

For Mill Creek, a stream that has been mostly dewatered due to hydropower diversions and irrigation, restoration means first and foremost restoring flows to the stream either through releases from Lundy dam or by returning water through the Mill Creek return ditch. Rewatering Mill Creek would achieve a multi-channeled wooded wetland bottomland, self-sustaining fishery, and a year-round fresh-water condition at the mouth of Mill Creek that would provide important waterfowl habitat. As cottonwood-willow riparian habitats continue to decline throughout North America, especially in the arid west, restoring and protecting this habitat in the Mono Basin has become even more important.

**The Committee's Guiding Principles**

First and foremost, the Mono Lake Committee is dedicated to protecting and restoring Mill Creek by seeking cooperative solutions that protect critical habitats while recognizing other real

water needs. What we have learned from our involvement with DWP and the State Water Board is definitely being put to the test here again in the basin.

The Committee's goal is to rewater Mill Creek's natural stream course sufficient to achieve a multi-channeled bottomland and year-round freshwater conditions in Mill Creek's delta at the lakeshore. Restoring Mill Creek's natural hydrology would result in:

- Re-establishment of wooded wetlands in the bottomlands;
- Groundwater recharge throughout Mill Creek's bottomland and delta;
- A productive fishery the full length of Mill Creek;
- A freshwater environment in both of Mill Creek's delta trenches, or "rias," as well as freshwater skim off the mouth of the creek, particularly important in winter months for migrating waterfowl.

The Mono Lake Committee is firmly committed to this negotiated settlement process. Obviously for a settlement to be reached, all parties must "give to get" in order to meet in the middle. Recognizing other party's values and goals helps prioritize decisions. The Committee believes the following to be important components of any outcome:

- Increasing efficiencies in water transport systems will create "new

water" which means that each party will have to "give up" less to reach middle ground.

- Implementing a watershed management plan that identifies clear goals and objectives for water use and incorporates an adaptive management strategy to ensure that beneficial use of the water is maximized.
- Ensuring that equity exists—both within the settlement negotiation process and the allocation of water between Wilson and Mill.

**In Conclusion**

Water is a scarce commodity in arid Great Basin landscapes like the Mono Basin. Even though every party at the table has a proposal for Mill Creek water, the Committee firmly believes there is a solution out there that will satisfy many of the competing interests. From our past experiences, the Committee has learned that as long as there is a good faith willingness from all parties to solve the problem then collaboration, creativity, and compromise can go a long way in narrowing differences and ultimately producing an agreement that everyone can live with. ❖

**Draft EIR Delayed from Caltrans  
Comment Needed in August**

Caltrans continues to refine the Draft EIR on the Mono Lake Widening Project. Once complete, the draft will be submitted to the Federal Highways Administration for approval prior to public review. Caltrans officials now estimate that the draft will be released to the public in August.

Caltrans is planning road widening along 2.9 miles of Highway 395 along the west shoreline of Mono Lake. For more details on this project see the Fall

2000 and Winter/Spring 2002 Newsletters.

Your comment on the adequacy of the EIR in defining significant impacts resulting from the Mono Lake Widening Project will be needed once the draft is released to the public. For more information on the Mono Lake Widening Project, or if you would like to be added to our email alert list, call Craig Roecker (*craig@monolake.org*) at (760) 647-6595.