

REPORT
OF
COMMUNITY MEDIATION SESSION

ON THE PROPOSED

CASTLE CREEK HYDRO PROJECT

(MARCH 22, 2011 AT THE ASPEN INSTITUTE)

MAY 25, 2011

May 25, 2011

OWEN OLPIN, MEDIATOR
SOUTH FISH CREEK RANCH, P.O. BOX 10
TEASDALE, UTAH 84773

CITY OF ASPEN'S PROPOSED CASTLE CREEK HYDRO PROJECT

To the Citizens of the City of Aspen and Pitkin County

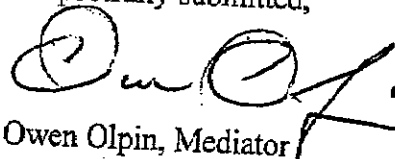
It is my privilege to present the Report of a community mediation convened to examine and develop principles and procedures to address concerns that have arisen over the City of Aspen's proposed Castle Creek Hydro Project. Those concerns have centered on potential impacts on the stream health of Castle and Maroon Creeks, the City's strong commitment to develop renewable energy in response to the imperatives of global climate change, and the appropriate intensity of environmental review and analysis to be undertaken by the Federal Energy Regulatory Commission in Project approval proceedings. The Report sets forth consensus recommendations of the mediation Participants on those important matters.

The twelve distinguished mediation Participants are identified in the attachment to the Report, as are the highly qualified Experts who made their expertise available to and deliberated with the Participants.

A Public Forum will be held on June 16, 2011, from 5:30 to 8:00 p.m. in the Paepcke Auditorium at the Aspen Institute to provide further information and afford concerned citizens the opportunity to ask questions and express views on the proposed Project and its potential impacts.

It has, indeed, been my privilege to serve as mediator and strive with the Participants and Experts as they worked diligently and probed deeply to achieve consensus in fashioning the recommendations set forth in the Report. There is also need to salute Tim McFlynn and Ruthie Brown for their tireless efforts in convening and carrying out the mediation that led to the Report.

Respectfully submitted,



Owen Olpin, Mediator

Introduction

On March 22, 2011, a small number of nonprofit and community leaders and concerned landowners met privately at the Aspen Institute with City of Aspen senior staff to address issues raised by individuals and organizations objecting to the proposed Castle Creek Hydro Project ("Project"). The all-day meeting was mediated by Mr. Owen Olpin. The participants were benefited greatly by collaboration among and contributions from the experts advising the City and the independent experts who had reviewed the Project on behalf of the Pitkin County Healthy Rivers & Streams Program. Participants, Experts and other attendees are listed on Attachment "A".

This Report has been prepared to summarize the recommended guiding Principles for City decision-making on the Project and on the path forward on two pivotal issues: streamflow protection and environmental review by the Federal Energy Regulatory Commission ("FERC").

Statement of Principles

The City of Aspen's continued leadership is imperative in its Canary Initiative programs and other projects that reduce carbon emissions, developed and approved through a community-driven and ecologically responsible public process. Decision-making on the proposed Project should be informed by science as well as by (a) the urgency and magnitude of the global climate crisis, (b) guaranteed protection of stream flows sufficient to ensure true stream health in both Castle and Maroon Creeks, and (c) legal protection of water rights held by the City of Aspen.

Healthy Streams

A precautionary and incremental approach to any and all Project operations is imperative, in order to ensure that healthy functioning stream ecosystems in both Castle and Maroon Creeks are fully protected from adverse impacts by Project operations.

The centerpiece of an operating protocol suggested by the City, well-received by the Participants, and the subject of ongoing collaborative review, analysis and refinement by both the City and the Healthy Rivers experts, is a "slow start" with small incremental increases in hydropower diversions, as warranted by rigorous ongoing monitoring and as approved in advance by the Project oversight Board of Experts. Project oversight in this suggested protocol would be vested in a three member Board of fisheries/stream health experts with one member representing Pitkin County's Healthy Rivers and

Streams, one member representing the Colorado Division of Wildlife and one member representing the City of Aspen. To insure both public participation in and the transparency of Project oversight, the Board of Experts will hold open meetings, post baseline and monitoring data on its website, and give notice of opportunities for public input to all interested parties requesting same. Some Participants suggested adding one or more citizen members to the Board of Experts.

The Board of Experts by unanimous consensus would (a) approve in advance the details of the initial "slow start" of hydropower diversions and specify, as well as modify from time to time as needed, the details of a rigorous monitoring plan including the impacts to be monitored; (b) make regular and ongoing determinations regarding the Project's effects on stream health based upon data collected pursuant to the monitoring plan; and (c) impose such additional limitations upon Project operations and diversions as may be required to fully protect healthy functioning stream ecosystems. Such an operating protocol would be legally binding and enforceable as an express condition of the FERC approval, as a specific condition of land use approval within the City Ordinance approving the Castle Creek Energy Center, and as either an inclusion in the stipulated diligence decree concerning the City's water rights or a separately executed contract between the City and Pitkin County, whichever is more appropriate.

FERC Exemption or Licensing

The Participants are aware of the issues associated with the FERC exemption, permitting or licensing process. The Participants' interest is limited to ensuring that the environmental safeguards on this Project are at least as comprehensive and rigorous as the most stringent of any FERC licensing process appropriate to a Project of this size and scope.

The Participants support the City's decision to pursue a conversion of its FERC application for a small conduit exemption to a minor water power project license application (1.5 MW or less) as defined in 18 CFR 4.30 (B)(17), including the appropriate level of NEPA analysis and review (not less than an Environmental Assessment).

Next Steps

The Participants urge City collaboration with organizations like American Rivers, Healthy Rivers & Streams, and other sources of expertise and experience, to the end that an exemplary level of environmental responsibility for Castle and Maroon Creeks characterizes this Project going forward. All

Participants also support one or more open Public Meetings on the important issues raised by the Project including but not limited to environmental responsibility, renewable energy generation, climate change, fiscal responsibility, and the historic legacy of the City of Aspen. To attract broad participation, such meetings should be planned as well as attended by interested landowners and citizens, river conservation and renewable energy organizations, the City of Aspen and its Utilities and Renewable Energy Department, and the Pitkin County Healthy Rivers and Streams program.

Mediator's Comment

The Mediator has reviewed this Report and believes that it fairly and adequately summarizes the results of the March 22, 2011 session at The Aspen Institute and continued collaborative efforts through the date of this Report. The Mediator compliments all the Participants and Experts for their constructive and collaborative work together and for their civility in addressing a tough and complex problem.

Attachment "A"

Mediator

Owen Olpin, Esq.
Teasdale, UT

Participants

Steve Barwick
City Manager
Aspen, CO

Bill Budinger
The Rodel Foundations
Aspen, CO

Tom Cardamone
Executive Director
Aspen Center for Environmental Studies
Aspen, CO

Sharon Clarke
Land and Water Conservation Specialist
Roaring Fork Conservancy
Basalt, CO

Al Dietsch
Citizen
Aspen, CO

John Ely
Healthy Rivers & Streams Program
Pitkin County
Aspen, CO

Connie Harvey
Maroon Creek Landowner
Aspen Co

David Hornbacher
Director
Utilities and Renewables
Aspen, CO

John Katzenberger
Director
Aspen Center for Global Change
Basalt, CO

Nathan Ratledge
Director
Community Office for Resource Efficiency
Aspen, CO

Will Roush
Castle Creek Landowner
Aspen CO

Auden Schendler
Vice President of Sustainability
Aspen Skiing Company
Aspen, CO

Healthy Rivers & Streams Experts

Greg Espergren, PhD
Aquatic Biologist
Trout Unlimited
Eagle, CO

Kurt Johnson
Hydropower Consultant
Telluride Energy
Telluride, CO

Sarah Klahn, Esq.
Water Lawyer
White & Jankowski
Denver, CO

Lee Rozaklis, PE
Hydrology and Water Engineering
Hydrosphere/AMEC
Boulder, CO

City of Aspen Experts

Cindy Covell, Esq.
Water Lawyer
Alperstein & Covell
Denver, CO

Bill Miller, PhD
Senior Aquatic Ecologist and President
Miller Ecological Consultants
Denver, CO

Karl Kumli, Esq.
Energy, Water and Public Utilities Lawyer
Dietze & Davis, P.C.
Boulder, CO

Kerry Sundeen
Hydrologist and President
Grand River Consulting
Glenwood Springs, CO

Conveners

Ruthie Brown
Co-Convener
Aspen, CO

Tim McFlynn
Co-Convener
Aspen, CO

Rapporteur

Olivia Katz
Aspen, CO