

OFFICE OF THE BOARD OF COUNTY COMMISSIONERS
OF BLAINE COUNTY
REGULAR MEETING OF THE JUNE 2013 SESSION

SILVER CREEK – PICABO LIVESTOCK
KILPATRICK POND STREAM ALTERATION PERMIT

Seventh Day - Afternoon

Tuesday, June 25, 2013

Pursuant to Statutory Provisions, the Board of Blaine County Commissioners (BCC) met this day at 1:30 p.m. Present were Chairman Lawrence Schoen, Vice-Chairman Angenie McCleary, Commissioner Jacob Greenberg; Blaine County Land Use Administrator Tom Bergin; Zoning Specialist Nancy Cooley; Blaine County Engineer Jeff Loomis; Silver Creek Preserve Manager Dayna Gross and Silver Creek representatives Sunny Healey and Caley Gallison; Picabo Livestock water resource engineer Chuck G. Brockway; applicant Nick Purdy; Purdy Ranch stream keeper Douglas Andres; The Nature Conservancy representatives Rydell Welch, Toni Hardesty, Clark Shafer, Caroline Clawson, Lisa Ellen, Jerry Jeffery; and B.I. Friedlander; Idaho Fish and Game Fisheries Manager Douglas Megargle; aquatic biologist Steve Fisher; Greg Loomis; GeoEngineers civil engineer Ryan Carnie; Silver Creek Outfitters Brian Richter; Trout Unlimited representatives Pete DeLuca, Richard Chorney, Thomas Tierney, Nick Cox, Ed Northen, and Carmen Northen; Idaho Division of Water Resources representative Allen Merritt; Blaine County Land, Water and Wildlife Levy Advisory Board Coordinator Clare Swanger; Sturtevant's and Sun Valley Mountain Guides owner Olin Glenne; Leroy Robinson; Peter Gray; Jim Carkonen; Paul Boucek; Renee Faltings; Justin Petty; Jess Anderton; Duane Carlson; and Recording Secretary Sunny Grant.

Chairman Schoen called the meeting to order at 1:38 p.m.

LAND USE AND BUILDING SERVICES HEARING

• **Continuation of Silver Creek's Kilpatrick Pond Stream Alteration Permits public hearing**

Picabo Livestock Co. Inc. proposes the discharge of concrete, dirt, rock, and dredged material below the ordinary high water mark of Silver Creek on the east side of the Kilpatrick Rd. Bridge to replace an irrigation diversion dam, construct a fish passage, construct a temporary coffer dam, remove excess sediment from approximately 1100 feet of channel, construct 2.8 acres of wetlands, and riprap the outlet of a temporary bypass channel.

The Nature Conservancy proposes to alter Silver Creek and adjacent wetlands by discharging dredged and fill dirt material below the ordinary high water mark of approximately 2500 linear feet of stream and 2.56 acres of wetland by narrowing the channel to reduce thermal loading, promote sediment transport of incoming materials while maintaining the existing legacy sediment on site and create wetland habitat on their property on the west side of the Kilpatrick Rd. Bridge.

The two projects are intended to work in conjunction with each other and are located within Sections 25 and 30 of Township 1 South, Range 19 and 20 East, in Blaine County, near Picabo, immediately east and west of the Kilpatrick Rd. Bridge.

Authorizations for the proposals have been issued by the US Army Corps of Engineers and the Idaho Department of Water Resources.

The two applications were noticed together. Cooley read notice.

Greenberg moved, seconded by McCleary, that joint notice for the two applications was adequate. Motion carried unanimously.

DISCLOSURES:

- Schoen was approached personally by Bob Henley expressing support for the project.
- David Glasscock requested Schoen recuse himself from the application since The Nature Conservancy holds an easement on his property. Schoen said this easement is wholly unrelated to these applications.

Applicants:

Silver Creek Watershed Manager Dayna Gross said The Nature Conservancy is based in science and focused on community conservation. TNC wants to make sure Silver Creek remains healthy and strong for future generations.

The Nature Conservancy (TNC) has wanted to clean up Silver Creek for years. Consultants and state and federal agencies have reviewed the preserve over the years and told TNC routinely that the pond needs to be addressed. This Stream Alteration Permit (SAP) has been reviewed by Trout Unlimited and Idaho Fish and Game. The Natural Resources Conservation Service (NRCS) has provided some funding for restoration and wetlands enhancement.

The Kilpatrick dam has been in place for over 100 years and needs to be replaced. Kilpatrick Pond is wide and shallow, full of sediment, and too hot for trout. Warm water goes over the dam and continues to heat up as it moves downstream. Kilpatrick Pond's ecosystem—insects, vegetation, etc.—is different from the rest of Silver Creek.

The project design will hold sediment in the pond so it doesn't flush downstream. The surface area of the pond will be reduced, which will reduce thermal impact, and enhance diversity of backwater areas. The pond will be dredged out, sediment dried out and used to create different kinds of wetlands. A bank structure will be put in place to create a more natural channel through the pond area. The upper area is left open for float tube recreational use and to be a natural sediment deposition area. There will be new

side channels and access points.

The Nature Conservancy and Picabo Livestock share the pond, and will share in its restoration.

Waterways engineer Chuck Brockway said Picabo Livestock is focused on the lower part of the pond. The Kilpatrick Dam is an irrigation diversion structure and is non-jurisdictional, but is not working well and should be engineered better to do its job. During construction, Silver Creek water will be bypassed through Albrethson Ditch with a coffer dam. When construction is done, Albrethson Ditch will be narrowed back to its natural state.

The new Kilpatrick Dam will be engineered to divert irrigation water, pass flood flows, pass fish, manage temperature and look nice. Underflow pipes will take cool water from the bottom of the pond; overflow will pass over check boards, and water in the middle will be managed in a way that is determined to be best for the pond. Fish passage will be through a multiple-drop cascade pool within the whole structure, and can be shut off if necessary.

PUBLIC COMMENT:

Public comment (including signatures on two petitions opposed to the project) to date appears to be about 50/50 for and against the project. Written public comments received and Silver Creek response include:

- Fast water would inhibit insect growth, increase water flows and push silt down to slower areas of the creek, where water temperature hasn't been detrimental to the trout population.

Research shows the pond is contributing to warm water downstream, which supports warm water insect and trout populations. Silver Creek is a cold water ecosystem, and The Nature Conservancy is focused on maintaining and enhancing the cold water ecosystem.

- Silver Creek is owned by the public and their interests should be upheld. There will be no provision for anglers to return to the bridge.
- Water velocity will increase by 200%.

The velocity increase mentioned is from a GeoEngineers graph that shows unusual flood conditions with the dam out. Normal velocity increases are minimal and undetectable, except in extreme flood situations which will naturally flush the stream.

- The benefit of lowered temperature is unknown.
- What is the effect of an increase in wetlands surface area and localized increase in ambient radiation?

The water won't move through the wetlands, so warmer water won't be flowing through Silver Creek.

- There is no guarantee that the fish passage will work.
- Request monitoring of turbidity and sediment transport.
- A number of locals assert that benefits of the project are at best a guess, and some say it would have a negative effect on recreation.
- Sediment testing has been done in Silver Creek, although not in Kilpatrick Pond. There are levels of heavy metals in the sediment.

Additional Blaine County Commissioners comments:

- The BCC received numerous public comments, many of which were concerned about public access. Public access to the preserve will continue, and will improve due to better egress banks. Purdy plans to slope the banks around islands and wetlands to enable better access.
- Blaine County is acting as a pass-through agency for a macroinvertebrate study conducted by the U.S.G.S. The Nature Conservancy requested the study in response to public concern about project impacts of insect populations.
- The Standards of Evaluation to determine compliance for a Stream Alteration Permit refer to permitting by state and federal agencies. Part D Section 5 Local Public Interest allows more for judgment on the effect the project would have on fish and wildlife habitat, aquatic life and recreation.

Silver Creek Preserve Manager Dayna Gross' response to negative public comments:

- Populations of insects and trout downstream have become warm-water dominant species. The Nature Conservancy science contends this is a cold water ecosystem, but the pond contributes to the warm water downstream.

Chuck Brockway comments:

- The purpose of the new dam configuration is to provide a low level of continuous sediment movement of all particle sizes and not allow them to accumulate. During the spring flush, sediment should be flushed out at a higher rate, but not as a fast-moving "slug". The creation of better defined channels will assist the spring flush.

PUBLIC COMMENT:

- Clark Shafer, who works for The Nature Conservancy, asked what the actual number of public comments was.

McCleary said she counted 72 for the project and 36 negatives.

- Pete deLuca, Trout Unlimited (TU) Boise Board member, said TU Boise supported the project. Their primary focus is the science of the ecosystem. This project will help restore a cool water

system, which is good for trout.

- Carmen Northen, said local chapters of the National Leadership Council of Trout Unlimited heavily support the project, which is good for fish habitat and wetlands, wildlife refuge and bird sanctuary.
- John Finell is a passionate Silver Creek fisherman. He is convinced the science being conducted by The Nature Conservancy proves this is a good project. His own personal experience in waders is that much of the creek is way too warm. He's seen the silt build up since the 80's and the channels are deep.
- Chad Chorney, a paid Trout Unlimited staffer, said Trout Unlimited works to preserve cold water fisheries and their habitats. National and local TU organizations have reviewed the project and support it.
- Paul Boucek said the public is unable to attend public hearings and voice opposition to the project because they work for a living. He said the original "preferred alternative" fixes a couple of very major problems, by using booms instead of a coffer dam that would dewater the whole lower part of the pond and kill everything in it. The preferred alternative dam would underflow sediment through and costs way less than this project. This project's bank treatment results in a near vertical bank, which, combined with increased velocity and a depth of 8 or 9 feet, makes it impossible to get out of the stream.

Gross said the "preferred alternative" has been modified into this project. Much of the area being restored to wetlands (or "islands") was originally wetlands. This will reduce the surface area of the water which will reduce evaporative transpiration and water temperature.

The vertical bank is on the north side and looks much like many of the banks on Silver Creek. The south side is natural gravel and will be sloped.

GeoEngineers consultant Ryan Carnie said water surface elevation during irrigation season was designed for six feet.

- Jim Carkonen said access is the most critical aspect that needs to be addressed. Water flow and anglers are going to be eroding the bank and people are going to be stuck below the bridge. He added that the project proposes constructing islands totaling over five acres to replace an iconic pond fishery.

Local aquatic biologist Steve Fisher said access is across private property and is always going to be a concern. Silver Creek is a spring creek and there is no mean high water mark.

- Brian Richter makes his living off Silver Creek and supports the project. Having a conservation group working with a rancher is landmark, and will hopefully happen more often. The pond is a reservoir, and there's no law that says Picabo Livestock has to provide access. The project will remove 100+ years of silt to improve private property, all of Silver Creek downstream and the Little Wood River as well.
- Ed Northen is a guide for Silver Creek Outfitters and president of Hemingway Chapter Trout Unlimited. The science behind this project supports it. Northen said the "pro" numbers for the project should include members of the local and statewide chapters of Trout Unlimited. He agreed that this partnership between a private landowner and a public entity should be fully supported.

Additional comments and answers to questions:

- The project will be very well monitored during construction by Blaine County, IDWR, DEQ, etc. The contractor will have to follow best practices for erosion, constant turbidity monitoring, etc.
- Nick Purdy said the dam can't be replaced and the silt can't be removed without dewatering the pond or dredging. The pond has been dewatered in the past, one-half at a time, with no negative consequences. The area that many fishermen use for access is where TNC has volunteered to dredge. The project starts farther down. The area that isn't dredged will be the same as it is now. Purdy said he intends to continue to allow access.
- Chuck Brockway said dewatering is the best way to work in the pond to the engineering design. Normal summer flows in Silver Creek will be almost the same. Brockway reiterated that spring flushing flows are designed to increase in velocity to flush sediments downstream at a reasonable rate instead of as a slug. The project is designed to decrease thermal loading, and will be extensively monitored after the project.
- Fisher said The Nature Conservancy is willing to meet with anyone who wants to discuss the project. The proposed project offers three important remedies: removal of silt, thermal loading, and excavating the channel down to gravel, which will improve trout habitat and increase recreational potential.
- Fisher added that silt in the upper pond was decreasing, largely as a result of upper watershed management.
- Fisher said proposed Condition 4 is very important as written. The contractor being considered for the project is extremely experienced and needs the latitude to make quick decisions to fix situations as they occur during construction.

Greenberg thanked the public for their concerns and questions, which helped educate him on the issues. He visited with The Nature Conservancy, Picabo Livestock Company, and canoed the site to help him make a decision. His main concern is public access.

McCleary said this application received more public comments than usual, and she tallied them to really understand the application. She supported the project, based on Stream Alteration Permit standards and conditions, including the IDWR conditions. She asked that the County receive copies of state and federal agency monitoring documents.

Schoen said this area in Blaine County provides some of the finest fishing in North America. The two public hearings have been very well attended by the public, users and scientists, and extensively covered by the media. Schoen believes the two applications meet the stream alteration permit standards of Blaine County, which is necessary to approve permits.

The BCC has carefully considered public comments and concerns. Each component of the project is critical. The project design in both upper and lower reaches meets the intended purpose and need. The stream has deteriorated, and the changes are meant to fix the deleterious impacts relatively quickly. The project will result in a healthier stream and provide diverse habitats with sediments in certain areas that will result in better fishing. The BCC discussed conditions of approval. The BCC didn't feel the need for monitoring bank structures for the purpose of public access. It is private property and the property owners have always maintained public access.

McCleary moved, second by Greenberg, to approve the Stream Alteration Permit to replace an irrigation diversion dam, construct a fish passage, construct a temporary coffer dam, remove excess sediment from approximately 1100 feet of channel, construct 2.8 acres of wetlands, and riprap the outlet of a temporary bypass channel on Silver Creek's Kilpatrick Pond, immediately east of the Kilpatrick Road Bridge. This approval is subject to the conditions as decided at today's public hearing and is based on the fact the BCC finds the project is in compliance with the Steam Alteration Permit Application Standards of Evaluation as set forth in Blaine County Code, Zoning Regulations, Ch.17, §9-17-9D. Motion passed unanimously.

McCleary moved, second by Greenberg, to approve the Stream Alteration Permit for The Nature Conservancy to modify the channel, develop a channel bank that contains legacy sediment, alter the existing open water area, create new wetlands and implement the approved revegetation plan on Silver Creek's Kilpatrick Pond, immediately west of the Kilpatrick Road Bridge. This approval is subject to the conditions as decided at today's public hearing and is based on the fact the Board finds the project is in compliance with the Steam Alteration Permit application Standards of Evaluation as set forth in Blaine County Code, Zoning Regulations, Ch.17, §9-17-9D. Motion carried unanimously.

ADJOURN

At the hour of 3:30 p.m., the BCC finding no more business before them adjourned.

Attest: _____ Approved _____
JoLynn Drage Lawrence Schoen
County Clerk Chairman