

***MINUTES OF A SPECIAL MEETING WORKSHOP OF
BIG BEAR MUNICIPAL WATER DISTRICT
HELD ON THURSDAY, OCTOBER 15, 2009***

The Open Session workshop began at 2:00 PM. Those in attendance included President Murphy, Director Fashempour, Director Suhay, Director Smith, Director Eminger, District Counsel Wayne Lemieux, General Manager Scott Heule, and Board Secretary Vicki Sheppard.

INTRODUCTION

President Murphy made a brief introduction stating that he wished to adhere to the agenda adding that no action would be taken at this round of talks.

STAFF PRESENTATION

General Manager Scott Heule began by giving a PowerPoint presentation highlighting the District's Administrative Code and giving background information on canoe & kayak rentals outside of commercial marinas (copy attached).

PUBLIC COMMENTS

Ron Cotta, Johnny's Ski & Board, stated that he has a good off-season summer business delivering kayaks to customers. He added that he feels that restricting kayak rentals only to the marina owners would be like limiting ski rentals only to the ski area owners. He added that sporting goods businesses outside of Big Bear rent kayaks and he doesn't feel it is fair to discriminate against Big Bear businesses. He commented that Quagga mussels could come from boats rented from non-area rentals when Big Bear rentals have all been inspected. He reported that his business gives renters proper instruction on operation and safety. He explained that when a prospective customer approaches them outside of their office they direct them to their rental office adding that they are not a commercial operation on the lake but a commercial operation in the city. He stated that they only rent kayaks, but what if they wanted to rent water skis or float tubes; how could that be regulated? He added that he feels there should be plenty of room for their business as well as the marinas explaining that they do not wish to be a marina.

Steve Pontell, Pine Knot Landing, stated that his recommendation is that the District develop a clear understanding of the economy on the lake considering the viable number of marinas operating on the lake and the viable economic activity on the lake. He added that if non-commercial marinas were allowed to rent kayaks then they eventually could begin to rent boats, jet skis, etc. He stated that the District needs to explore within the context of permits.

Jory Lyle, Big Bear Paddling, stated that he is in competition with businesses like Pine Knot Marina. He explained that public demand has been created by little businesses like his that offer quality services that the marinas do not offer adding that he wouldn't have started delivering kayaks if the marinas were offering this service. He stated that he doesn't believe that some 20 year old potential litigation should stop new businesses.

Jim Dooley, North Shore Trading Company, stated that Captain John has been very supportive of his kayak instruction activities. He questioned if someone wanted private instruction, are they breaking the law by providing instruction or a tour? He added that their goal is to make Big Bear Lake a paddle friendly area and it will ultimately get business to the marinas. He explained that years ago we didn't see any paddling on the lake but now there are many paddlers. He spoke

about the Paddlefest event that takes place on the lake and he wants to make Big Bear Lake a premium paddling destination.

Jory, Big Bear Paddling, stated that he and North Shore Trading Company sell very expensive kayaks and canoes so it is to their benefit to get people interested in paddling. He stated that they lose sales to shops outside of Big Bear because those shops offer instruction and demo days and he and North Shore Trading would like to offer this service also and keep the money in Big Bear. Valley resident, Scott Hoffman, stated he grew up in Big Bear and is a paddling boater. He commented that paddling is a growing interest in Big Bear. He stated that it is an alternative to power boating and he hopes it doesn't go away. He asked how the marinas are planning to replace certified instruction.

Director Suhay asked what it takes to become a certified instructor.

Cathleen Calkins, kayak instructor, listed the hours of training she received to become a certified instructor to teach paddling and safety classes.

Alan Sharp, Big Bear Marina, stated that he understands the higher-end sales of kayaks that exist now and he doesn't want to stop this but renting and delivering kayaks is different. He advised that the marinas have costly insurance naming MWD as additionally insured.

Loren Hafen, Holloways Marina, stated that there are a lot of issues that he feels we all agree on. He stated that Holloway's does deliver lower quality kayaks however there are lots of demands from the public that they, as a marina, have responded to such as offering pontoon boats. He commented that there are lots of issues that the marinas had to address to become a marina. He stated that, in the economic theme of things, he feels there should only be a limited number of operating marinas. He added that kayaks are not a big part of his income, but it is the principal of the thing. He stated that Big Bear Lake is not a lake that a company like REI is permitted to have a rental boat on, they just haven't been caught. He explained that water skis and wake boards are not required to have permits to be on the lake, but kayaks are. He also remarked about a 1980's litigation stating that the District was ordered to set up a standing committee to address these issues, adding that he doesn't want to be forced into again.

District Counsel, Wayne Lemieux, stated that he wasn't going to argue the law but there have been many changes to the Brown Act stating that there can't be any standing committees that meet in private.

Steve Pontell remarked that what is legal and what is not legal is an open question. He stated that activities on the lake should be limited to marinas. He explained that concessions such as fishing guide services have to be affiliated with a marina.

President Murphy stated that he has read all of the marina contracts advising that the District has certain obligations on the lake but that doesn't limit outside businesses from selling fishing licenses for example. He explained that the contracts are vague on some subjects.

Steve Pontell stated that if someone has commercial activities on the lake the District has the responsibility to stop this. He added that marinas have a perpetual right to commercial activities on the lake.

Ron Cotta stated that he is not a commercial marina on the lake but he is a commercial operator on the boulevard. He stated that it would be an easy thing to add MWD as an additional insured to his insurance. He stated that they sell high-end kayaks also commenting that it would be a very small portion of the marina's business. He also commented on an article in the Grizzly stating that an MWD Director likened the situation to the ski resorts versus private equipment rentals 50 years ago.

Loren Hafen stated that comparing the situation with the marinas to ski rentals and ski resorts is not the same thing. He explained that marinas have a contract that gives them exclusive rights

and ski areas did not have a specific contract with the Forest Service granting them the exclusive right to rent skis.

Jory, Big Bear Paddling, commented that he could add the District to his insurance today. He stated that if he contacted a marina to be a concessionaire they would be controlling his business, not MWD. He stated that he would like a non-motorized commercial permit with MWD.

Director Eminger commented that the District is looking for middle ground asking what if the non-marina businesses had an agreement with a marina to launch from the marina.

John Saunders, Captain Johns Fawn Harbor, stated that when he had his tour boat he was told he would have to go through a marina for his business adding that now the District is considering changing everything. He stated that it isn't that he doesn't want anybody to compete with him but he feels it should be fair and they should have to do everything the same way he did. He explained that commercial marinas are site specific meaning that people can't rent from anywhere but a commercial marina. He explained that the Discovery Center rented from him and then left him and started to rent from non marinas and he lost money. He stated that any concession has to operate through a commercial marina and always has had to.

Roy Brownie, Pleasure Point Marina, complimented the Directors on how hard they work adding that competition is what it's all about, but stating we do have to look at what is fair. He commented that we all have to follow the same set of rules with licenses, permits, insurance, parking restrictions, and inspections. He added that marinas pay for exclusive rights and it has a value and when these other businesses come in, it reduces the value of their marina permit. He explained that he doesn't want to have to hire an attorney. He stated that they have concessions that work out of their marina like a fishing guide service and a wake board concession and that is the only way it is fair.

Jory stated that if paddlers are restricted to a marina it limits the areas they can go and some of the marinas are unsafe areas to paddle around.

District Counsel, Wayne Lemieux, stated that the overview of commercial permits shows that no one in this room has a permit that regulates kayak rentals outside of the marinas.

Loren Hafen stated that is not accurate and he will bring that legal information for District Counsel's review.

Mr. Lemieux stated that the District can regulate kayaks if they wish.

Steve Pontell asked if the District can allow commercial businesses to rent kayaks.

Mr. Lemieux stated that the law doesn't compel the District to regulate kayaks.

Larry Cooke, Big Bear Dock Systems, stated that he thinks MWD would be remiss not to get another legal opinion.

Marco Guzman, Big Bear Discovery Center, stated that the Forest Service Discovery Center conducts many education and safety activities, clean-ups of Big Bear Lake, adding that we all need to consider how we will care for the lake and the people that use it. He stated that is the most important thing.

Roy Brownie stated that everyone needs to cooperate.

Steve Pontell agreed stating that everyone should be allowed to access the lake.

President Murphy moved on to lakefront lodging dock and boat rentals

No lodge owners were represented and no comments were made.

Loren Hafen stated that the adherence to the commercial marina permit law applies to lodging, dock, and boat rentals at lodging facilities. He explained that they have to go through commercial marinas to allow activities on the lake adding that commercial activities through lodges is in violation of commercial marina permits.

Alan Sharp asked for clarification of time shares concerning tenant versus owner rental rights. He asked for a definition of a tenant as far as it involves a time share.

President Murphy stated that timeshares can rent to other people. He commented that Lagonita is a time share and they also rent to others.

Mr. Heule stated that Lagonita advertises rentals of boats but it is only to their tenants. He stated that there are two different types of renters in a time share; week-end and nightly rentals. He explained that if a condo/town home has boats they are owned by the time share owners.

Loren Hafen stated that time shares, in most cities, are defined as commercial operation and have to pay TOT (transient occupancy tax).

Steve Pontell stated that it is very important for the District to determine the economic position of Big Bear Lake if the District is going to stop its protective stance of marinas.

Director Suhay thanked everyone for coming to the workshop.

Director Eminger stated that the District has always had a good relationship with the marinas.

Director Smith stated that it seems to be coming down to a legal dispute and the marina permits are very vague and non-specific. The District's rights and responsibilities are not as clear as the marinas think. They are very un-clear.

President Murphy thanked everyone for coming commenting that he thinks the workshop was very fruitful and a second one may be scheduled.

ADJOURNMENT

There being no further business, the workshop was adjourned at 3:33 P.M.



Vicki Sheppard
Secretary to the Board
Big Bear Municipal Water District

(SEAL)



Workshop

October 15, 2009

BIG BEAR MUNICIPAL WATER DISTRICT

During the Board's August 20 meeting a business item regarding an amendment to Ordinance 38 as it pertains to permits for non-profit organizations generated a significant amount of public comment. While the Board approved the first reading of the proposed amendment the Board decided to postpone the second reading until additional information is gathered and the commercial marina owners have a chance to address this and related issues in front of the Board. During the discussion it became apparent that in addition to the proposed amendment at least two other significant issues concerned those in the audience. One was rental of kayaks and canoes by local businesses unaffiliated with a licensed commercial marina. The second issue was lakeside lodging businesses possibly using their docks and boats on the lake for commercial purposes. At the Board meeting on September 3rd staff made a presentation identifying for the Board some of the non-marina businesses that are renting kayaks and describing their collaboration with local lodging businesses. Additionally Staff presented a preliminary list of organizations and individuals that should be invited to a future workshop to discuss these issues. After the Board decided on a date for the workshop Board President Murphy appointed Director Smith, representing the Administrative Committee, and himself, representing the Operations Committee, to an ad-hoc committee to further study the issues from the Districts' perspective and develop an organized approach to receive public input. The ad-hoc committee developed the agenda for today's workshop and anticipates that further public deliberations and public input will be necessary before the Board will be ready to render any decision or set any policy. Also, the committee felt that the two topics on the agenda today require a broader spectrum of public input than the proposed amendment to Ordinance 38 as it relates to non-profits. Therefore, the Ordinance amendment will be publically and more directly discussed with the commercial marina owners at a later date. Announcements regarding the workshop today were mailed on September 9th to commercial marina owners, kayak rental businesses, the chamber of commerce, resort association, City of Big Bear Lake and local media. Additionally, individuals and businesses or agencies that typically receive the Board's agenda were also emailed the workshop notice.

Administrative Code

- ♦ CHAPTER 1. GENERAL PROVISIONS
 - ♦ Section 1.102 Mission and Goals
 - ♦ The mission of the District is to stabilize the level of Big Bear Lake for recreation and wildlife.

Although the District does a variety of things the mission is clear. According to the District's Administrative Code, "The mission of the District is to stabilize the level of Big Bear Lake for recreation and wildlife."

Lake Stabilization

- ◆ In-Lieu water contract, San Bernardino Valley Municipal Water District
- ◆ \$1.28 million paid in FY 2009-10
- ◆ 2004 drawdown with in-lieu = -17 feet
- ◆ 2004 drawdown without in-lieu = -30 feet

- An important breakthrough on the lake stabilization portion of the Districts' Mission came in 1996 when an agreement was signed with San Bernardino Valley Municipal Water District to supply water to Bear Valley Mutual Water Company in-lieu of releasing water from the lake. Payment for this water is based on the assessed value of the properties within the Districts' boundaries.
- For Fiscal Year 2009-2010 the in-lieu payment is \$1.28 million. The benefit to the valley and everyone recreating on Big Bear Lake of this agreement can be illustrated with this simple comparison.
- At the height of the most recent drought in 2004 the measured lake level was 17 feet below the top of the dam.
- However, if the in-lieu agreement had not been in place the lake level would have been down 30 feet. Fulfilling the Lake Stabilization portion of the District's mission statement consumes roughly 25% of the Districts' annual budget.

Recreation District Rules/Regulations

- ◆ **Examples**
 - Lake permits and dock fees – help fund recreation expenses
 - Maximum boat length – public safety
 - Dock performance specifications – public safety
 - Dock placement – reduce clutter, maintain dock privileges, navigation, public safety
 - Boating law enforcement – public safety
 - Special event permits – public safety, liability protection

There are an untold number of activities and responsibilities that fall under the Recreation portion of the District Mission Statement. In addition to licensing marina businesses on the lake, policies, regulations and rules are administered by the District that help generate revenue and provide a safe and enjoyable place for lake recreation to occur. From lake permits on boats to private and commercial dock licensing, to boating law enforcement and permitting special events on the lake, recreation management is probably one of the most complex responsibilities the District has. In managing recreation on the lake the District must consider the authorities and jurisdiction of other local, state and federal agencies. Although the District boundary encompasses the entire Big Bear Valley from ridgeline to ridgeline, the Districts' lake recreation jurisdiction is considerably smaller.

MWD Jurisdictional Area

- ◆ District owned real property
- ◆ Water surface of the lake
- ◆ Land area below elevation 6743.25 feet

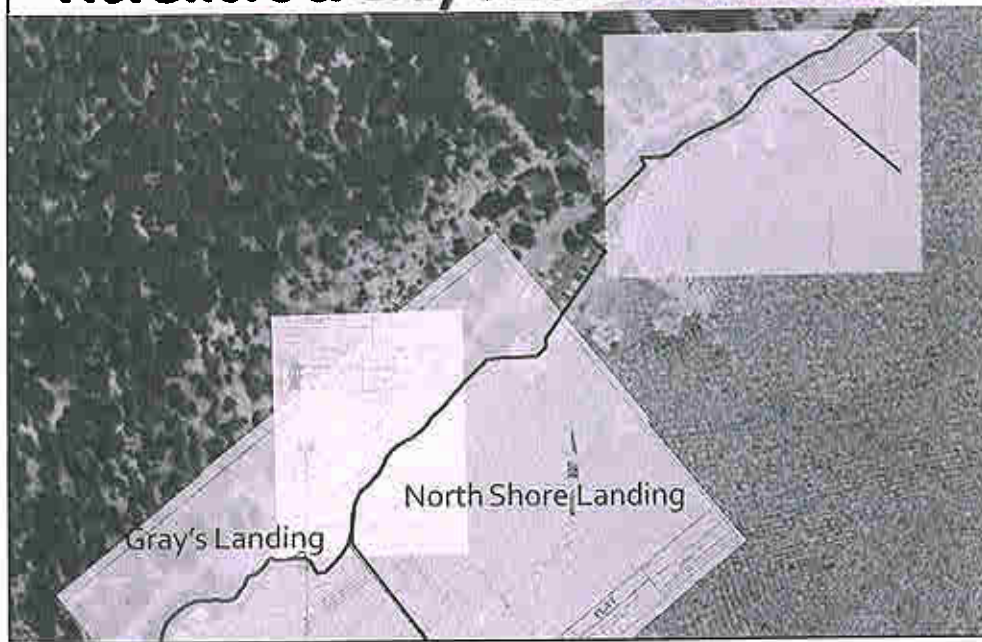
- With some certain exceptions, the District obviously has jurisdiction over District owned property. These properties include the Duane Boyer West Launch Ramp, Carol Morrison East Launch Ramp and the District offices and land area of Big Bear Marina.
- The District also has jurisdiction over the water surface of Big Bear Lake,
- and the land area below elevation 6743.25 feet. Within this jurisdictional area the District has certain specific contractual obligations.

MWD Obligations to Marinas (by contract/judgment)

- ♦ Perpetual use of landing site for commercial marina subject to terms of permit
- ♦ No more than 17 commercial marina permits
- ♦ Low water landing site
- ♦ Not unreasonably withhold consent to assignment
- ♦ Protect marina zones of influence from other commercial marinas
 - ♦ Examples: Dana Point and North Shore
- ♦ Marina Task Force meetings

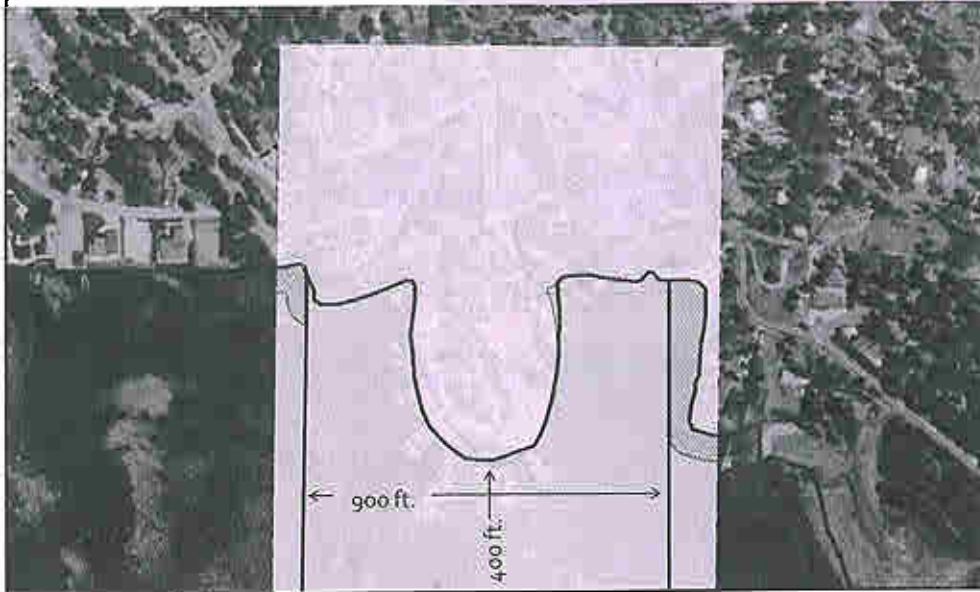
- As successor in interest to agreements made by Bear Valley Mutual Water Company, the District is bound by commercial boat landing permits dating from the 1950's to the early to mid 1970's. Sometimes called commercial marina permits, they are perpetual in nature and provide the holder the right and privilege to operate a marina business subject to the terms of the permit.
- Although the District can issue other permits and agreements no more than 17 commercial marina permits can be active at any time.
- The District is obligated to provide for and allow commercial marinas to use lake bottom for parking, temporary utilities and conducting business during low lake level conditions.
- Although the marina permits cannot be assigned, transferred or sublicensed without the consent of the District, the District cannot unreasonably withhold that consent.
- The District cannot permit commercial marinas from encroaching into the zones of influence of other commercial marinas. Of the 12 active permits, 5 have legally defined zones of influence including, for example, Dana Point or Captain Johns Fawn Harbor and North Shore Landing.
- As a result of litigation in years past the District is obligated by Court judgment to regularly conduct meetings with the marina owners to try to resolve conflicts. Marina Task Force meetings are held twice annually, once in the spring and once in the fall.

No. Shore & Gray's Zone of Influence



Zones of influence for North Shore Landing and adjacent Gray's Landing illustrate the protections provided by contract that prohibit one commercial marina from encroaching into another marina's zone of influence.

Dana Point/Captain Johns Fawn Harbor



The zone of influence for Dana Point Marina or Captain Johns Fawn Harbor extends from the high water line 400 feet south into the lake as measured from the point, and 900 feet west to east.

Boat Restrictions Lakefront Lodging (Res. No. 2009-02)

- ♦ Hotel, motel and bed and breakfast
 - ♦ No. of boats owned and moored by the lodging facility shall be limited to three and shall be for the exclusive use of the resident owner or manager
 - ♦ They shall not be available for rental or use by tenants or the general public
 - ♦ Any dock slips not occupied by the facility's boats shall be only for the mooring of boats owned by registered tenants during their stay at the facility
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- Concerns continue to arise regarding docks and boat use at lakefront lodging establishments. The District has adopted regulations that limit the number and nature of boat docks at hotel, motel and bed and breakfast businesses on the lake. For these lodgings only the resident managers' boat can occupy a dock slip on a long term seasonal basis.
 - Boats moored in slips are prohibited from being used as rentals for lodge guests or others.
 - Slips not occupied by the resident managers boats can only be used intermittently by guests of the facility. They cannot be rented.

Boat Restrictions Lakefront Lodging (Res. No. 2009-02)

- ♦ Timeshares, Townhomes and Condos.
 - The use of any boats owned individually or cooperatively by the owners of the units in the facility shall be for the use of the registered tenants only
 - Rental of boats is prohibited
 - Any dock slips not occupied by the facility's private boats shall be only for the mooring of boats owned by registered tenants during their stay at the facility

- For timeshares, townhomes and condominiums on the lake, rules regarding facility boats and docks are somewhat different. The rules were established to recognize the shared ownership of boats in slips at the lakeside lodging business. Where boats are owned individually or cooperatively by the owners of the units in the facility they can only be used by the registered tenants.
- Rental of the cooperatively owned boats is prohibited, and
- Any dock slips not occupied by the facility's private boats can only be used for the temporary mooring of boats owned by registered tenants during their stay at the facility.