

***MINUTES OF A REGULAR MEETING OF  
BIG BEAR MUNICIPAL WATER DISTRICT  
HELD ON THURSDAY, FEBRUARY 18, 2010***

**CALL TO ORDER**

President Fashempour called the Open Session to order at 1:00 PM. Those in attendance included Director Eminger, Director Suhay, Director Smith, Director Murphy, District Counsel Wayne Lemieux, General Manager Scott Heule, Lake Manager Mike Stephenson, and Board Secretary Vicki Sheppard.

**REPORTS**

Mr. Heule reported that Staff has been fighting and mostly losing the battle with the terrible cold that has been going around. He stated that the District received 76 applications for the year round position of Launch Ramp Supervisor adding that interviews for the position will take place this coming Monday. He stated that applications for the maintenance and ramp attendant positions had similar responses and Mr. Stephenson and Mr. Carroll are working their way through those applications. Mr. Heule reported that in response to conversations during the last Watershed and Lake Improvement Committee meeting, he set up a meeting with Don Evenson and Doug Headrick on March 12 to discuss lake release issues. He explained that Staff posted signs closing the boardwalk due to the height of the snow on the boardwalk treads. He added that the resulting railing was too low to provide a reasonable amount of protection for users. He reported that the signs didn't do a perfect job based on the traffic observed on the boardwalks last weekend. He explained that the signs on the western section have been removed since most of the snow has melted away and the signs remain on the eastern section until more snow melts. Mr. Heule reported that District Counsel Wayne Lemieux has been working the past several months on a possible video conferencing method that might be useful to the District. He explained that it would allow Counsel to be represented at every meeting and after the meeting today we will conduct a test of a possible approach. Lake Manager, Mike Stephenson reported on creek flows explaining that he did some math after visiting Knickerbocker and Rathbun creeks. He explained that there is not a lot of flow as yet and he believes the lake is far from overflowing. He predicts it will reach 4.5 feet from full. He reported that the cameras for the ramps will be operational by April 1<sup>st</sup>. He reported that Travis Carroll gave citations to four men for venturing onto the lake ice. He added that no one was injured but it was amazing that the ice didn't break. He added that the San Bernardino County Dive Rescue Team had water rescue training the very next day. President Fashempour asked if there is a difference in lake water evaporation when the lake is frozen. Mr. Stephenson explained that it still evaporates when it is frozen.

**APPROVAL OF CONSENT CALENDAR**

Upon a motion by Director Murphy, seconded by Director Eminger, the following consent items were unanimously approved:

- Minutes of a Regular Meeting of February 4, 2010
- Warrant List Dated February 12, 2010 for \$29,087.9
- Approval of a Resolution of the Board of Directors of Big Bear Municipal Water District supporting the nomination of Melody Henriques-McDonald to the Executive Committee of the Association of California Water Agencies Joint Powers Insurance Authority (ACWA/JPIA)

- Approval of a vote on Alternative Apportionment Formula for Special Districts for Fiscal Year 2010-11 and thereafter

### **KAYAK RENTAL BUSINESS – DISCUSSION AND POSSIBLE ACTION**

Director Eminger excused himself and left the Director's area due to a possible conflict of interest explaining that his wife works for Pleasure Point Marina.

Mr. Heule reported that after participating in the Board Workshop on this issue in October 2009, the Operations Committee met two additional times with representatives of the marinas. He added that kayak rental businesses have also been a topic at their regular committee meetings on three occasions. He explained that as a result of their deliberations and discussions the Committee is satisfied that enough information regarding the issue of vessel rental businesses has been gathered and evaluated and are confident that their interpretation of District obligations can be considered by the full Board of Directors. Mr. Heule reported that the Committee believes strongly that the District is responsible to the public and the landowners in Big Bear Valley to make the lake accessible to the public and to encourage its use by the public and they also note that it is the District's responsibility to manage recreation use of the lake. He stated that marinas help the District carry out this responsibility by providing the public with easy access to boat rentals, fuel, slip rentals, in some cases launch facilities, bait and tackle and food and snacks at their respective landing sites. He explained that marina's do not have a universal right to control all commercial activities currently occurring or ones that might occur on the Lake in the future. Mr. Heule advised that the Operations Committee believes public access and use needs to be a very high priority consideration for any decision the District makes and additionally noted that the District has consulted two attorneys to help interpret the marina contracts to be sure of the Districts obligations. He reported that both attorneys conclude that the Districts jurisdiction begins and ends at the high water line of the lake and therefore the Operations Committee finds that when commercial operations occur below the high water line the District has jurisdiction and a permit from the District or marina partnership should be required. He added that if the business operation occurs above the high water line the District has no jurisdiction. Mr. Heule explained that businesses in town renting kayaks or any other kind of vessels are not conducting commercial operations below the high water line; therefore the District has no jurisdiction over their operations. He added that non-marina businesses that rent vessels for use on the lake are prohibited from launching them or training rental customers on the water. He stated that if they want to provide that service they will need to partner with a marina or secure a permit from the District. Mr. Heule stated that if the Board determines that the interpretation and conclusions of the Operations Committee as described above are valid, the Committee will work with the General Manager to draft paperwork language to manage the process. He added that some clean-up language in District regulations might also be necessary for consideration by the Board at a later date.

Director Suhay moved approval of a recommendation that the Operations Committee and the General Manager work to draft language reflecting that the District's jurisdiction begins and ends at the high water line of the lake and therefore finds that when commercial operations occur below the high water line the District has jurisdiction and a permit from the District or marina partnership should be required. If the business operation occurs above the high water line the District has no jurisdiction. Director Smith seconded the motion.

President Fashempour opened the meeting for public discussion:

Ron Cotta, Johnny's Ski & Board House, stated that they rent and deliver kayaks to customers. He stated that the customers launch the kayaks themselves. He stated that sometimes they deliver to the customer's personal dock and asked if the dock is considered below the high water line. Director Suhay stated the dock is below the high water line. Mr. Cotta stated they will stop delivering to the docks.

Roy Brownie, Pleasure Point Marina, stated that he has some questions regarding the wording "commercial activity" and how it impacts the marinas. Director Suhay stated that commercial activity and commercial marina activity are not the same. District Counsel, Wayne Lemieux, stated that today is only a recommendation that as long as the activity is above the high water line that it is not a commercial operation on the lake. He made a comparison that if someone sells a hot dog above the high water line and then that person goes out on the lake with that hot dog, it is not a commercial activity on the lake and not within District jurisdiction.

Loren Hafen, Holloways Marina, North Shore Marina, Big Bear Shores, stated that he agrees with almost everything Mr. Heule said but when it gets down to what happens on the lake, he doesn't agree that some of these businesses are not conducting commercial activity on the lake commenting that hot dogs don't need boat permits. He added that if the District had allowed non-marina businesses to do business like this in the past he would not have spent money building the marinas and paying the District marina fees. Mr. Lemieux went over the definition of "private vessel" versus "for hire" vessel. He stated that the permitting powers for a private vessel are different from marina permits. Director Suhay thanked Mr. Hafen and commented that he had spent a great deal of time with the Operations Committee going over this recommendation.

Larry Cooke, Big Bear Lake resident, stated that he wants to look at where the liability would fall if someone injures themselves in one of these non-marina rental boats stating that liability will fall back on the District. Director Suhay stated that one of the things that might change is the wording on the permits. Mr. Lemieux stated that liability for the District is not great in regards to non-marina vessel rentals.

Roy Brownie stated that he wants to get together with the non-marina rental businesses and work with them so he doesn't have to pay for attorney's fees for litigation.

Ron Cotta stated that they have good liability insurance and would name the District as additionally insured if requested.

Director Suhay asked if Jory Lyle, Big Bear Paddling, was going to be returning to the Valley and operating this coming season. Mr. Cotta stated that he believes he will.

Director Murphy stated that he believes that if someone can rent a boat from a business down the hill that it is unfair to our local businesses to not allow them to do business.

Director Smith stated that he agrees with Mr. Brownie commenting that if a kayak rental business would link up with a marina it would be nice however the District can't mandate that they do so. He added that the District has tried to be fair.

President Fashempour stated that the motion had been moved and seconded and she called for a vote. With Director Eminger abstaining, the motion was unanimously approved.

Director Eminger rejoined the regular meeting.

#### **CONSIDER APPROVAL OF A PROPOSAL FROM TRANSTECH MAPCO FOR BIG BEAR MARINA CONTAMINATION REMEDIATION DESIGN**

Mr. Heule reported that in response to his request, Transtech-MAPCO submitted a scope of work and cost proposal to prepare engineering plans, specifications and construction documents for the ground water remediation trench at Big Bear Marina. He stated that their work is needed in order

to get the project approved by the Regional Water Quality Control Board and constructed this coming spring. He explained that the proposed estimated cost for the work is \$6,050 adding that the District would receive reimbursement from the State Leaking Underground Storage Tank Fund. He stated that the Committee is recommending that the work be authorized.

Director Murphy asked how long it would be until the District was reimbursed. Mr. Heule stated that it would probably be months.

Director Smith asked if this work would settle the issue. Mr. Heule explained that it probably would not. He explained that the soil is not conducive or favorable to the usual means of decontamination.

President Fashempour asked when the last soil sample was taken. Mr. Heule stated that it is sampled twice a year.

Director Murphy moved approval of a proposal from Transtech Mapco for Big Bear Marina Contamination Remediation design for a cost not to exceed \$6,050. Director Suhay seconded the motion and it was unanimously approved.

#### **TMDL AQUATIC PLANT MANAGEMENT PLAN APPROVE CONCEPTUAL COST AND RESPONSIBILITY SHARING PLAN**

Mr. Heule reported that one of the outstanding documents required by the TMDL is an aquatic plant management plan. He explained that Erika Saad (former Project Coordinator) prepared one version as part of the Proposition 13 Grant a few years ago. He stated that it included management schemes for both Eurasian Water Milfoil as well as Tamarisk and Tim Moore has edited the earlier version for use in the TMDL efforts. Mr. Heule reported that the plan describes three types of aquatic weed monitoring and how the monitoring work and invasive weed control will get accomplished. He explained that the plan describes an annual reconnaissance survey specific to planning for herbicide treatment applications and two other surveys are described that would be completed every three years and in much greater detail than the reconnaissance work. Mr. Heule summarized the Schedule of Deliverables table identifying the District as the responsible party only for performing the reconnaissance effort and annual weed treatments. He explained that the TMDL Dischargers would be responsible for funding and managing the triennial surveys with the District providing on the water logistical support and office space and computer equipment for the consultant to use to download data and processing prior to his submittal to the Task Force. He added that this approach keeps the District involved in anything happening on the water but obligates the TMDL Dischargers to fund their share of the monitoring and reporting portion. He explained that the annual ongoing costs for the reconnaissance survey would be approximately \$3,500. He stated that the Watershed/Lake Improvement Committee recommends that the Board approve the cost and responsibility sharing concept described in the rough draft of the plan and wait until the document has been finalized to formally approve the plan. Director Suhay asked if the Comprehensive Aquatic Vegetation Survey shown on page 39 is a stand-alone study. Mr. Heule stated that it is a stand-alone study. Director Smith asked Mr. Stephenson if hypothetically this year's storms allow for water release, would we release stagnant water from the bottom of the lake benefitting water quality. Mr. Stephenson stated that we would.

Director Eminger moved approval of the TMDL Aquatic Management Plan Conceptual Cost and Responsibility Sharing Plan. Director Smith seconded the motion and it was unanimously approved.

### **PUBLIC FORUM**

Mr. Jim Gonzales, Big Bear Lake resident and applicant for the open seat on the Bear Valley Community Healthcare District's board, stated that he has been visiting various Big Bear Valley Board of Director's meetings. He complimented our Board stating that he is very impressed with the Board's conduct.

Director Eminger stated that our Board represents the entire Big Bear Valley. Mr. Gonzales stated that the Healthcare District does also.

### **ANNOUNCEMENTS**

Mr. Heule stated that any Directors interested in attending the upcoming ACWA Conference would need to let us know as soon as possible so reservations could be made.

### **DIRECTOR COMMENTS**

Director Eminger commented that he heard El Nino would be extending into the month of May and if that happens he believes we will be releasing water.

### **ADJOURNMENT TO CLOSED SESSION**

The meeting was adjourned to Closed Session at 2:02 P.M to:

Conference with Legal Counsel

Potential litigation: Conroy v. BBMWD

### **RECONVENE TO OPEN SESSION**

The meeting was reconvened to Open Session at 2:17 P.M.

No reportable action.

### **ADJOURNMENT**

There being no further business, the meeting was adjourned at 2:18 P.M.

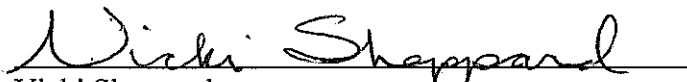
### **NEXT MEETING**

Open Session at 1:00 P.M.

Thursday, March 4, 2010

Big Bear Municipal Water District

40524 Lakeview Drive, Big Bear Lake, CA



Vicki Sheppard

Secretary to the Board

Big Bear Municipal Water District

(SEAL)