

***MINUTES OF A REGULAR MEETING OF  
BIG BEAR MUNICIPAL WATER DISTRICT  
HELD ON THURSDAY, APRIL 1, 2010***

**CALL TO ORDER**

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

**REPORTS**

General Manager, Scott Heule reported on the Washington DC trip that he, President Fashempour, and Director Suhay made last week. He commented that Congressman Jerry Lewis explained that there was a hold on all earmarks by Republicans. He added that Senators Feinstein and Boxer might be able to sponsor. He added that the ACOE was happy to see them however they are in no position to influence the needed earmarks for funding. Mr. Heule reported on the Quagga Inspector Training that took place on Wednesday, explaining that it was attended by over sixty five participants including marina staff, two Fish & Game Wardens, one ACOE Park Ranger, and all District Staff. He stated that he has been receiving correspondence from ACWA and they are currently studying what ramifications the new health care legislation may have on our health insurance service and costs. Mr. Heule explained that there are a lot of items upstairs in storage including an electric cart. He suggested that staff should inventory the items and perhaps have a garage sale and get rid of some of the items that are no longer used. President Fashempour asked what the District would do with the money from the sale. Mr. Heule stated that we would see how much money was involved and then the Board could discuss.

Mr. Stephenson reported on his trip to Seattle to attend the Western Aquatic Plant Management Society (WAPMS) Conference. He explained that he found the conference to be very educational adding that they reported on a new herbaside treatment that is approved by the EPA and he feels it will "get the job done". Mr. Stephenson updated the Board on the office remodel stating that it is close to completion. He explained that the ramps opened today and, even with the snowy weather, they had two launches. He reported that there are lots of fish being caught explaining that trout are spawning and people are illegally catching them in the creeks with nets. He explained that Fish & Game can't help due to budget constraints so the District spent funds to make signs and post them at the entrances to the various creeks warning against illegal fishing. He added that Fish & Game however has been able to issue numerous tickets for illegal fishing.

**APPROVAL OF CONSENT CALENDAR**

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

- Minutes of a Regular Meeting of March 18, 2010
- Warrant List Dated March 26, 2010 for \$46,731.64

**CONSIDER APPROVAL OF SECOND READING BY TITLE ONLY OF ORDINANCE 43, AN ORDINANCE OF THE BOARD OF DIRECTORS OF THE BIG BEAR MUNICIPAL WATER DISTRICT ADOPTING DISTRICT OPERATIONS CODE AND REPEALING ORDINANCE NOS. 38, 40, 41, AND 42 AS IT RELATES TO COMMERCIAL ACTIVITIES ON THE LAKE**

Mr. Heule reported that as discussed at the last Board meeting, adoption of this Ordinance will incorporate the previous amendments of Ordinance 38 into a single Ordinance and will add language further defining and controlling commercial activities below the high water elevation of the Lake. He added that in some cases amendments have been made that improve clarity within the document by consolidation of repetitive language and definitions. He reported that the significant changes in the Ordinance are in Title 2, "Lake Operations" as it relates to permits and permit applications. He explained that all commercial activities occurring below the high water elevation of the lake will require licensing either as a concessionaire of a licensed marina or with a concession permit issued by the District. Mr. Heule reported that the amendment specifically requires all boats, except those operated or rented by owners of commercial marinas or their concessionaires, to have lake permits. He added that changes proposed will prohibit boat rental businesses from launching vessels or using their vessels for training/teaching purposes below the high water elevation of the lake without a concession permit from the District or being a concessionaire of a licensed marina. He reported that if the business is a concessionaire of a marina they can conduct their activities at a marina or out of the marina site only. Mr. Heule stated that changes to the ordinance also reference concession policies that have not been developed by the District. He explained that provisions in the proposed Ordinance note that no commercial lake use concession permits will be issued by the District before April 1, 2011 and this will allow the Board time to draft and adopt policies that will be consistent with District Lake Management objectives. He reported that at the March 18, 2010 Board meeting the Board unanimously approved the first reading of new Ordinance 43. Mr. Heule stated that the Commercial Marina operators object to the new language in Ordinance 43 and a letter to the District from the marinas dated March 24, 2010 states "We, as current marina licensees, respectfully request that the Municipal Water District enter into arbitration with us concerning the proposed policy of changes addressing commercial operations on Big Bear Lake as presented by the MWD at the meeting of Thursday, March 4, 2010. We would further request that any such policy changes be held in abeyance until the arbitration is completed." Mr. Heule explained that although the use of arbitration to settle marina compensation disagreements is included in the marina licenses, arbitration of disagreements in proposed government legislation is not legal. He added that an arbitrator is a substitute for a judge and an arbitrator cannot have more power than the court could have and because of the separation of powers doctrine, courts will not interfere with the legislative process. He explained that courts are limited to judging whether legislation violates state law or the Constitution adding that courts cannot order the District to adopt or not adopt legislation. He reported that legislation cannot be judged by the court until it is adopted and the same principle applies to arbitration. Mr. Heule explained that if the District denies the request, the marina operators have a couple of options. They can wait until Ordinance No. 43 is adopted and renew the request (the operators would then have to establish every possible interpretation of the Ordinance is unlawful) or they can wait until the District issues a concession agreement for use of the lake and challenge the lawfulness of the permit (the operation would have to demonstrate the specific permit is unlawful). Mr. Loren Hafen,

Holloways Marina, stated he is disappointed by denial of arbitration. Director Eminger abstained due to a possible conflict of interest explaining that his wife works for Pleasure Point Marina.

Director Murphy moved approval of second reading by title only of Ordinance 43 adopting District Operations Code and repealing Ordinance Nos 38, 40, 41, and 42 as it relates to commercial activities on the lake and denial of the marina arbitration request.

Director Smith seconded the motion and it was unanimously approved.

## **PUBLIC FORUM**

Mr. Loren Hafen congratulated the District on the aggressive and successful Quagga Mussel program and stated he is available to help and wants to spread the word. Mr. Stephenson stated that he appreciates Mr. Hafen's active participation commenting that whenever people get on board it is very helpful to the program. He stated that he does have big concerns about Lake Silverwood and is very disappointed with their lack of cooperation with the Quagga problem. Director Murphy asked if Lake Silverwood was still clear of Quagga mussels. Mr. Stephenson said they had a false positive but he does think they are still clear. He thanked Mr. Hafen for promoting the word at fishing shows and everywhere else that he can. Director Smith commented that the District doesn't accept other lakes Quagga free bands. Mr. Stephenson stated that the District doesn't recognize them because we don't know their Quagga program. Mr. Hafen commented that we have kept it out of Big Bear Lake and will continue to do so. Mr. Hafen commented on the arbitration decision explaining that the marinas are trying to get the opinion of judges to see what might happen if it goes to court. He added that Mr. Heule has been very cooperative in getting him the information he has requested. Mr. Hafen added that there is a "fish issue" explaining that trout are spawning in the creeks and his wife has been very active chasing people off who are fishing illegally. He asked if the spawning trout get stuck up the creeks will they be able to get back into the lake. Mr. Stephenson advised that the District will help rescue them.

## **ANNOUNCEMENTS**

Mr. Heule announced that yesterday he had a photographer come in and take individual and group photos of all staff. He added that he showed photos of the Directors to the new staff so they could recognize the Board members. President Fashempour stated that some of the new staff greeted her by name. Director Murphy commented on the new *Mountain Waters Dispatch* stating that it came out very nice. Director Smith stated that he loved the "sock monkey" photo in the *Dispatch*. Director Smith reported on the Quagga training yesterday thanking the marinas for their active participation. He added that the State of Michigan feels that it is everyone's concern, not just boat owners, and is trying to add a fee to fishing licenses to fight invasive species.

## **ADJOURNMENT TO CLOSED SESSION**

The meeting was adjourned to Closed Session at 1:44 P.M. to:  
Conference with Legal Counsel  
Potential Litigation - 1 case

## **RECONVENE TO OPEN SESSION**

The meeting was reconvened to Open Session at 1:56 P.M.  
No reportable action.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 1:57 P.M.

**NEXT MEETING**

Open Session at 1:00 P.M.  
Thursday, April 15, 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)