

***MINUTES OF A REGULAR MEETING OF  
BIG BEAR MUNICIPAL WATER DISTRICT  
HELD ON THURSDAY, JUNE 16, 2011***

**CALL TO ORDER**

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

**REPORTS**

General Manager, Scott Heule reported that he had brief conversations with TMDL Task Force representatives from the USFS, Mountain Resorts, Caltrans, and the engineering consultant at Brown and Caldwell recently. He explained that the named dischargers have been put on notice by the Regional Water Quality Control Board (RWQCB) that they need to "identify a specific plan and schedule that the responsible parties are committed to implement to address TMDL requirements." He added that this is in reference to taking action on the April 14, 2010 Plan and Schedule for In-Lake Nutrient Reduction. Mr. Heule commented that the USFS cannot write any checks to pay for other's work and they cannot do any work outside the forest boundary. He reported that Caltrans does not have much money to spend on the effort. He added that the ski resorts are not in a position to lead on these efforts but have contributed money annually to the efforts of the TMDL task force. He stated that the County and the City both claim an inability to physically do any work or spend any money on projects outside their jurisdictional boundaries. Mr. Heule reported that there was a meeting yesterday to discuss the RWQCB requirements. He commented that the District was not notified or invited. He mentioned that the FY 2011-12 proposed budget includes \$83,000 to use for preliminary design or planning for a nutrient reduction project in the Lake. He also commented that the District purchased the Trout Pond and that the District would likely welcome collaboration with the dischargers regarding its use and management as a sediment basin. Mr. Heule reported that John Tuttle hiked down to Station A in Bear Creek. He explained that we all had been concerned that the high runoff from the winter storms and flood control releases might damage or wash away our monitoring station. He reported that the basic structure appears to remain in place but our monitoring equipment probably resides behind Seven Oaks Dam now. He added that the weir is no longer functional because of the accumulation of rocks and boulders on the downstream side. He commented that the pond on the upstream side however is still clear. He explained that it might be possible to clear out some of the debris to return the weir to operating condition, but a new stilling well and equipment enclosure will need to be constructed. He stated that further investigation at the site is necessary to evaluate what, if any, of it can be reconstructed. He added that the Facilities Committee will be discussing this matter. Mr. Heule reported that he sent the ACOE a letter saying we want the study to be suspended. He commented that there is a work-in-kind audit going on explaining that our project manager Raina Fulton and planner Kathy Bergmann are piecing together the needed information. He added that as part of wrapping up this Draft F4 report, and allow them to spend the \$250,000 allocated to our study, we needed to approve and increase in the project budget from \$8,628,000 to \$9,127,000. He explained that means our work-in-kind obligation increases from \$4,314,000 to \$4,563,000. He reported that the

discussion with both Ms. Fulton and Ms. Bergmann, and their meetings with David Van Dorp, indicate that we will not have a problem justifying our matching obligation. He added that he needs to submit our Carp removal demonstration project and also the flow records for Rathbun Creek.

Lake Manager, Mike Stephenson reported that the lake level shows 2.5" down from full and dropping quickly adding that evaporation is starting to take over. He added that there has been no measurable precipitation lately, however some of the tributaries have started to flow again adding that he can't explain it. He reported on the latest weed treatments explaining that 147.725 acres have been completed so far adding that nearly the entire south shore has been treated. He stated that boat counts are down by about 30% explaining that revenue from boat permit sales is down about the same. He reported on a minor incident Tuesday evening when a drunken girl dived off some rocks and hit her head and was transported to Loma Linda Hospital. Director Smith asked which rocks. Mr. Stephenson explained that it was at Garstin (China) Island. He reported that staff has begun a weed census (mapping the weed areas) and then will get right back into treating the various areas. Director Fashempour commented that she has had reports of residents taking some of the Eurasian Milfoil that has washed up on Stanfield Cutoff and then planting it in their yards. She explained that they believe it makes a huge difference in helping their gardens to grow. Mr. Stephenson explained that the treated Milfoil could kill broad leaf plants and the City has a mulch program that might work better for them.

#### **APPROVAL OF CONSENT CALENDAR**

Upon a motion by Director Eminger, seconded by Director Smith, with Director Murphy abstaining from the vote, the following consent items were unanimously approved:

- Minutes of a Regular Meeting of June 2, 2011
- Minutes of a Special Meeting Workshop of June 9, 2011
- Warrant List Dated June 13, 2011 for \$84,002.28
- Approval of a Resolution of the Board of Directors of Big Bear Municipal Water District establishing employee compensation and repealing Resolution No. 2010-04
- Approval of Trout Pond clean up

#### **ADMINISTRATIVE HEARING: CRISANN CONROY APPEAL OF THE JUNE 2, 2010 BOAT DOCK LICENSE DENIAL FOR APN 0306-061-63**

Mr. Heule explained the purpose of the hearing stating that he will turn it over to District Counsel Wayne Lemieux who will provide additional background and recommend procedures to assist the Board to address the appeal. Mr. Lemieux explained that this administrative hearing will review and consider an appeal of the denial by the District of a boat dock license. He provided background on the hearing process explaining due process in which they may only consider evidence presented to them. He added that he is here today to give legal advice to the Board of Directors should questions arise on how to implement evidence, not to help them make a decision. He introduced Mr. Jeff Dains who represents Crisann Conroy and Ms. Christine Carson who represents the District. He advised that the Directors will have many documents to review and will not be in a position to make a decision today. Director Fashempour asked if they have questions after reviewing the documents, should they call Mr. Lemieux. Mr. Lemieux stated that if it is a legal question they should call him adding that most of the questions they would have after reviewing the materials would probably be surveying and easement questions and that should not be addressed to him.

Mr. Dains thanked Mr. Lemieux and the Board. President Suhay asked him to please speak into the microphone. Mr. Dains then presented information explaining that there seems to be confusion over what documents were to be presented today adding that some of those documents are therefore not here. He listed the missing documents (surveys, maps, easements, and letters) adding that he will get them together and have them all delivered the first of next week. He went over deeds and parcels explaining that he hopes to narrow down and clarify some of the issues and discrepancies including lot line adjustments and APN numbers. He discussed deeds back as far as 1909 commenting that he believes the deed language allows Ms. Conroy up to 3 boat slips. He explained that he has reviewed the District's definitions and regulations on docks and easements reporting that the District has some latitude on this subject however there is a doctrine called pre-emption explaining that the District's regulations can't conflict with California State law. He explained that "if there is a conflict then the District's opinion and regulations are pre-empted". Mr. Dains discussed the California Civil Code regarding easements and dominant tenement estates (landowner) and servient tenement estates (lake).

He added that when a property is split into 2 properties, all of the easements are transferred to the split properties and both properties have rights explaining that "the split doesn't terminate the rights of either of the properties and both properties then become dominant tenements". He stated that with the split, Ms. Conroy is entitled to 3 slips. He then discussed what "overburdening the easement" means. He explained that 3 slips for each property could potentially "burden the easement" but allowing one slip on Ms. Conroy's property would not overburden the easement. He stated that he believes he and Mr. Lemieux had nearly agreed to this but when it came down to compensation, negotiations broke down. He cited several civil codes and reported that he believes the agreement in 1909 stated that the parcel has dock rights. Mr. Dains again stated that if MWD regulations conflict, it is superseded by the State Code. He added that the property was transferred in-kind to the new tenant and no new easement was created explaining that "it is an existing easement from 1909". He added that one of the arguments is that "the new parcel is non-contiguous with the lake" adding that "that alone cannot defeat the easement rights that already exist". He reported that he personally saw a parcel for sale in Boulder Bay that was across the highway from the lake and advertised "17,000 sq feet including dock rights". He commented that District rules and regulations do not seem to show equal enforcement (they are inconsistent). He said he also noticed inconsistencies in the Shelter Landing area. He stated that this doesn't seem necessary since they have the deeds and Ms. Conroy is only asking for what she is entitled to. He stated that he knows there is some history here adding that Ms. Conroy is a single woman who is only trying to make a living. He explained that she is only asking for one boat slip and has complained "at least to him" of harassment. He asked that there be some recordable instrument of dock rights, "which you can do under state law" so this issue never comes up again. He stated that "the issue at this point is compensation" explaining that Ms. Conroy is entitled by law to compensation. He added that she has lost sales on her house due to District actions and is only asking for 1 boat slip and \$50,000 compensation in some recordable form and "then this issue will be done-with". He thanked the Board for their time. Director Eminger complimented Mr. Dains on his presentation. Director Murphy asked why Ms. Conroy did not try to get a flag-lot from the City. Mr. Dains stated that he did not know explaining that the easement has now been defined to access the lake adding that it defined the 1909 easement to the property.

Christine Carson, representing the District, stated that denial of the dock license was proper. She stated that she objects to several attorney letters that were based on hearsay and not facts. She added that if Mr. Dains is going to submit additional materials, then she would like to also

submit additional facts. She explained that she objects to some of the letters/materials Mr. Dains presented that were not authenticated or stamped by a recorder, a surveyor, or an assessor. She explained that she made copies of all her exhibits for the Board if they want to view them. She discussed the definition of easements. She explained that Ms. Conroy "severed her parcel from the lake" and the damages she is claiming are not valid. She discussed the value of the property at the time the parcel was severed explaining that the value at that time is different than the fair market value at the purchase time. She stated that Ms. Conroy knew she would not have lake front property rights if she split her property. She explained physical taking versus regulatory taking of land. She explained that the standard for regulatory taking is different from physically taking the person claiming regulatory taking they have to show the lost full use of the land and you have to look at the entire bundle (land and easement). She reported that the fact that Ms. Conroy can't sell her property for what she wants is not a taking of her property and is not viable. She cited several similar cases where a claimant did not recover damages. She stated that Ms. Conroy is asking for the right to add a dock and therefore is expanding the scope of the easement. She reported that the other properties being cited as examples are not similarly exhibited explaining that a highway was built after the easement of 1909. She reported that the 1909 easement doesn't say anyone can build a dock. She stated that the District has the right by Resolution to control safety on the Lake and control the placement of any dock. Mr. Lemieux interrupted stating that the attorneys need to return to facts and not just present legal arguments. He explained that the Directors need to consider facts. Ms. Carson discussed the 1927 Fisher deed stating that Fisher didn't have the right to convey what he did not own explaining that Fisher was granted the right to passage and he subdivided lots but he had no right to convey (to give away) a right-of-way and did not have boating rights. She explained that the Fisher deeds had a right-of-way to lay a water pipe but not the right to convey a right-of-way. Ms. Carson reported that when Ms. Conroy severed her own parcel she caused this current problem and the new lakefront owner has the right to a slip, not Ms. Conroy. She stated that Ms. Conroy should have known the rules when she sub-divided but when she asked for a dock the District denied her a dock license. Director Murphy commented that he remembered that her deed or easement talked about lake use but not dock use. Ms. Carson replied that since the District had language in 1981 about dock use and she bought the property in 2000 and split it in 2005 that is the reason to deny her dock rights and also negates her claim that it is unconstitutional. President Suhay asked if the District would have the right to compensation if this case goes to appeal and the District wins. Mr. Lemieux stated that "it only goes one way".

Mr. Dains explained that there is nothing in their claim that states that the Board does not have the right to control and police safety on the lake and maintain control of the placement and construction of docks, but for purposes here it is not relevant. He discussed and objected to many of the cases cited by Ms. Carson. He stated that they are mainly objecting to the District not allowing Ms. Conroy to "use the lake". Ms. Carson stated that the District has not terminated Ms. Conroy's right to use the lake, just her dock rights.

Director Murphy asked if the new lakefront homeowner might object if Ms. Conroy places a dock in his front yard (could be a blight on his property). Ms. Carson stated that the lakefront homeowner might object along with the fact that it is against District regulations. Mr. Dains stated that Ms. Conroy and the new owner might have an understanding regarding this.

## RECESS

President Suhay called a short recess at 2:35 PM



## **RECONVENE TO OPEN SESSION**

The meeting reconvened at 2:40 PM

### **CONSIDER APPROVAL OF A RESOLUTION OF THE BOARD OF DIRECTORS OF BIG BEAR MUNICIPAL WATER DISTRICT TRANSFERRING FUNDS UNAPPROPRIATED AS OF JUNE 30, 2011 TO THE DISTRICT'S CONTINGENCY RESERVE ACCOUNT, AFFIRMING INVESTMENT POLICY, APPROVING THE DISTRICT'S BUDGET AND ESTABLISHING THE APPROPRIATIONS LIMIT FOR THE FISCAL YEAR COMMENCING JULY 1, 2011**

Mr. Heule reported that at the June 2<sup>nd</sup> Board meeting a discussion was held to obtain comments regarding the upcoming fiscal year budget. He explained that no changes were suggested at that time. He explained that the appropriations limit has been calculated and posted in accordance with required procedures and once approval is given, the budget will be forwarded to the County of San Bernardino for filing. Mr. Heule reported that since that meeting, two changes have been recommended. He reported that on page 4 of the Draft Budget, General Fund Revenue, under Operating, Dock License Fees, the Projected Revenue is changing from \$90,000 \$97,000. He added that on page 13, Lake Improvement Fund, Herbicide Projected, is changing from \$140,000 to \$240,000. He commented on page 5, Administration, Services and Supplies, LAFCO Fee, stating that it might come in lower than projected explaining that he has no estimate at this time on how much of a reduction that might be. He reported that the Budget & Finance Committee recommends approval of the budget with the two changes noted.

Director Murphy moved approval of a Resolution of the Board of Directors transferring funds unappropriated as of June 30, 2011 to the District's Contingency Reserve Account, affirming Investment Policy, approving the District's Budget with the two changes noted, and establishing the appropriations limit for the Fiscal Year commencing July 1, 2011. Director Smith seconded the motion and it was unanimously approved.

### **CONSIDER APPROVAL OF EXPENDING \$100,000 ADDITIONAL FOR THE PURCHASE OF HERBICIDE FOR MILFOIL TREATMENT**

Mr. Heule reported that after performing our initial Milfoil inspections, it is apparent that last year's treatments were ineffective and the Milfoil beds have doubled in size. He explained that the beds have grown outward toward deeper water as well as crept towards the shoreline. He added that the plant density is about the same at first glance but it is early in the season and hard to tell, however the entire bottom turned up full rake tosses. He commented that the surveys were conducted by navigating to the beds that were mapped last year and throwing a rake and counting the stems and then moving outward to find the outside of the weed bed. He explained that we continue this until the rake is clean or only desirable species are present on the rake and then we add this data to last year's map and show the growth of the weed bed from year to year. Mr. Heule reported that this method shows us our success or lack of success as compared to last season. He explained that the results of our surveys show that we have lost some serious ground and need to react quickly to regain our edge on Milfoil control adding that "the hurdles are obvious". He mentioned that the lake has filled up by about 5 feet and the plant beds have doubled in size. He reported that water clarity is great. He explained that these things are all part of the equation that makes this an exceptionally difficult season to combat Milfoil. Mr. Heule stated that the District diverted \$140k to the invasive species fund and we have about \$80k of dock weed fee fund. He added that the first load of herbicide was \$138k for 36k lbs of Renovate

OTF explaining that at the high rate of application we have treated 72.5 acres and used 28160 lbs of herbicide. He reported that the calculation is \$1,328 an acre and estimating 300 acres of Milfoil for the season it would take about \$400k and with the \$240k we have to spend this year we are about \$160k short. He reported however that Lake Manager Mike Stephenson has negotiated a 40% discount on the herbicide purchased this season to compensate for the problems we had last year. He explained that the 40% discount is only for the amount of Max G we used last year and this discount equates to about \$60k. He commented that the invasive species fund is about \$100k short if we elect to treat the entire lake for Milfoil. Mr. Heule explained that one thing that reduced the amount of funds needed is that we are a part of a new herbicide trial reporting that this herbicide Clipper has been used on Milfoil in other states with great success adding that the two proposed sites for the Clipper trials are east of Eagle and Grout Bay and both sites are approximately 40 acre. Mr. Stephenson reported that the Renovate treatments have been effective so far. He explained that they have treated almost all of south shore and have all of north shore left to treat. He explained that with this new dollar amount, they will be able to treat the entire lake. He reported on the experimental Clipper program explaining that it has had very good reviews but if, for some reason, it doesn't work they have a back-up treatment plan. Director Murphy asked when they planned to treat Grout Bay. Mr. Stephenson reported that they prefer to see if the Clipper works in Grout Bay, but if there is a problem with that treatment, they will probably treat it later next week with Renovate. Director Murphy asked how long until that treatment should show results. Mr. Stephenson reported that the Clipper treatment should show results in 3 days and if they do it themselves with Renovate, it should show results within 3 weeks. He reported that he will notify Director Murphy when Grout Bay will be treated.

Director Smith moved approval of expending \$100,000 additional for the purchase of herbicide for Milfoil treatment. Director Eminger seconded the motion and it was unanimously approved.

#### **CONSIDER REVIEW SCHEDULE OF CALTRANS HIGHWAY BRIDGE DEMOLITION PLAN DSOD APPLICATION**

Mr. Heule reported that based on direction from the Facilities Committee (Directors Smith & Fashempour) and consensus of the Board of Directors, Staff has advised Caltrans that the final old highway bridge demolition plan would be reviewed by the District engineer and then forwarded to DSOD for approval when a seepage remediation grouting plan was also received by the District. He explained that DSOD has said that once they have an application, fees, CEQA documentation, and engineer stamped plans for the bridge demolition the quickest they can approve the submitted plans would be 10 days. He added that all necessary submittals except the grouting plan required by the District were delivered to the District on Thursday June 9, 2011. He stated that in the transmittal letter accompanying the bridge demolition plans Caltrans said "BBMWD is reminded of the 10 day review time by the DSOD, and any additional cost from the contractor associated with exceeding the review time will be sent to the BBMWD in accordance with 8-1.09, Right of Way Delay of the Standard Specifications." He explained that in a follow-up telephone conversation with the letter signatory, Scott Gueltzow, he reminded Mr. Gueltzow that the conditions for District submittal of the bridge demolition plans have been clearly spelled out to Caltrans in several communications over the past several months. He also reminded him that Caltrans has had a year and one half to develop a grouting plan. Mr. Gueltzow said that the plan was just signed but Caltrans was waiting to secure a contractor and cost estimate to include in the application. Mr. Heule advised that he needed to get the plan to the District before the

bridge demolition plan would be forwarded for review by DSOD, or alternatively the Board would need to authorize him to submit the demolition plan without receipt of the grouting plan. Mr. Heule explained that late Monday afternoon the grouting plan was received from Caltrans and has been forwarded to DSOD adding that this is now an information only item and no action is required.

**CONSIDER AUTHORIZING COUNSEL TO BEGIN DRAFTING PAPERWORK TO FILE EMINENT DOMAIN ACTION PAPERWORK AGAINST THE CITY OF BIG BEAR LAKE, DEPARTMENT OF WATER & POWER**

Mr. Heule reported that in order to move the acquisition of the DWP process forward the Board has taken several actions including securing the services of bond counsel and a financial advisor. He added that DWP staff has been asked to compile inventories of their facilities, equipment, infrastructure and preliminary title report for real property and easements. He reported that Mr. Lemieux met with DWP earlier today. He explained that the mechanism that will be used to actually complete the acquisition will be an eminent domain action against the City of Big Bear Lake, Department of Water and Power. He commented that District Counsel is ready to begin working on that effort and recommends that formal action be taken to direct him to begin preparing paperwork for this effort. President Suhay stated that he was under the impression that this would not cost the District money. Mr. Lemieux commented that there are some costs involved but he needs approval to even begin the process explaining that this is more appropriate to be discussed in closed session.

Director Fashempour moved approval authorizing Counsel to begin drafting paperwork to file Eminent Domain Action paperwork against the City of Big Bear Lake, Department of Water & Power. Director Eminger seconded the motion and it was unanimously approved.

**PUBLIC FORUM**

No comments were made

**ANNOUNCEMENTS**

Mr. Heule announced that he will be making a presentation to the Sierra Club this evening explaining that the topics will include historic lake levels, the in-lieu agreement, fish releases, Milfoil treatment, and briefly the DWP acquisition.

**DIRECTOR COMMENTS**

Director Murphy commented that it is nice to be back from vacation. Director Fashempour added that it is nice to have Director Murphy back.

**ADJOURNMENT TO CLOSED SESSION**

The meeting was adjourned to Closed Session at 2:58 P.M to:  
Conference with Legal Counsel

Potential Litigation – BBMWD vs. City of Big Bear Lake

**RECONVENE TO OPEN SESSION**

The meeting was reconvened to Open Session at 3:36 P.M.  
No reportable action.

**ADJOURNMENT**

There being no further business, the meeting was adjourned at 3:37 P.M.

**NEXT MEETING**

Open Session at 1:00 P.M.  
Thursday, July 7, 2011  
Big Bear Municipal Water District  
40524 Lakeview Drive, Big Bear Lake, CA



Vicki Sheppard  
Secretary to the Board  
Big Bear Municipal Water District

(SEAL)