



January 2020 NEWSLETTER

NRW MAC VS MONTEREY COUNTY

It has been one year since the Nacimiento Regional Water Management Advisory Committee ("NRW MAC") filed its lawsuit against the County of Monterey, and other agencies in that county, each of which has some responsibility for managing Lake Nacimiento. Or rather, mismanaging it.¹ The lawsuit alleges that the various agencies named as defendants (for the sake of brevity, all are referred to herein as "Monterey County") have, among other things, failed their obligations to operate the lake in such manner as to provide sufficient water levels for recreation. When the level becomes too low, docks and launch ramps become unusable and navigational hazards emerge from under water. This happens entirely too often in the peak summer months, causing harm, financial and otherwise, to the community of residents, businesses and lake enthusiasts who depend on the lake for its recreational use. These are NRW MAC's constituents, approximately 6500 in number, on behalf of whom the lawsuit was filed.

Since the dam was built and the lake was formed in the 1950's, there have been several interests competing with each other over how the water should be used, and to what extent. The interests have included those of farmers in the Salinas Valley, who have always gotten the lion's share of the water for irrigating their crops. Other demands on the water include the flow requirements of the Salinas River Diversion Facility (in effect, a reservoir), the mitigation of saltwater intrusion, the recharge of groundwater, and the federal environmental requirements set in place to support a fish

habitat. However, NRW MAC's 6500 constituents also have rights to the use of this water, and for over 25 years NRW MAC has fought, and continues to fight, to ensure that these rights are recognized and honored.²

In the current litigation, NRW MAC has been involved in a lengthy and continuing negotiation process with Monterey County over what the lake level should be. (To allow for settlement discussions to proceed while keeping litigation costs to a minimum, the parties agreed to stay the court action.) Although the specific details of the talks are shielded by a confidentiality agreement, in general terms they concern the level at which the lake should be maintained from April through Labor Day each year. NRW MAC asserts that the water in the lake must be maintained during these months at 750 feet above mean sea level (msl), with adjustments made for drought years. At 750 feet msl, the capacity of the lake equates to approximately 40%. At this level, launch ramps are fully usable, as are docks and other facilities, and most hazards to navigation remain submerged. The lake is safe and enjoyable.

NRW MAC has come a long way in its litigation this past year. It has made great progress towards resolving critical issues, thanks to its team of attorneys, water rights experts and negotiators. NRW MAC is confident it has a path

¹ The lawsuit can be viewed in its entirety here:
www.nrwmac.org/knowledge-base

² A NRW MAC representative attends all the Monterey County Reservoir Operations Committee meetings ("RESOPS") to ensure that its constituents' voices are heard. (NRW MAC has a seat on the RESOPS board as a result of a prior lawsuit against Monterey County.) Members of the NRW MAC Board of Directors conduct outreach meetings and have participated in media interviews in order to apprise the public of developments concerning the lake. And it has filed lawsuits and complaints with state regulatory agencies to protect the lake and its constituents.]



to success in order to make Monterey County change its lake operations procedure to support recreation and keep the lake at a mutually acceptable level. Without NRWMAC's intervention, via the current litigation. Monterey County would continue to ignore the recreational aspects of the lake. Some local realtors have opined that if Monterey County's actions aren't curtailed or changed, property values around the lake may decline as much as 25% in the next few years.

However, NRWMAC cannot stop Monterey County without major financial support to sustain its litigation. NRWMAC needs the help of landowners, businesses and other interested parties around the lake if it's going to succeed. To fund the lawsuit, NRWMAC created a GoFundMe campaign, with NRWMAC board members donating \$15K in seed money. Although the campaign has raised over \$150,000 to date, much more is needed. Unfortunately, only a small percentage of NRWMAC's constituents have supported the effort financially.

NRWMAC has asked various people why they haven't donated. One recurring answer is based on a mistaken belief that Monterey County and the agricultural interests are too powerful to fight. This is not true: NRWMAC has fought them before, and is fighting them now, and can and must prevail. Other responses demonstrate that many people are simply unaware of NRWMAC, do not know what NRWMAC does, or do not know about the GoFundMe page.

That is why this update is coming to you. The reality is that the lawsuit has been filed on your behalf, as well as on behalf of your friends and neighbors. NRWMAC has a strong position and can resolve this lawsuit against Monterey County in your favor, but it needs your support to keep up the fight. Without help, NRWMAC's

constituents may lose their representation. Property owners and lake enthusiasts could be left to fend for themselves against Monterey County, which will almost certainly continue to use the water in Lake Nacimiento as it sees fit.

Please donate today, using the GoFundMe link below, or if you prefer you can privately donate using the nrwmac.org link, or mail a check to NRWMAC at PO Box 398, Paso Robles, CA 93447.

GoFundMe:

www.gofundme.com/lake-nacimiento-save-the-dragon

Private donations:

www.nrwmac.org/save-the-dragon/donate-today

Dams and Tunnel Status

Monterey County has not only mismanaged lake levels to the detriment of recreation, it has also neglected routine and emergency dam maintenance at both Nacimiento and San Antonio lakes, due, at least in part, to a lack of funding. The list of deferred maintenance projects includes valve replacement, road repair, spillway drain repair, and more. Several months ago, the California Department of Water Resources, Division of Safety of Dams (DSOD) conducted an engineering audit on both dams and identified critical deficiencies, that if not repaired, could restrict storage capacity or completely shut down operations at either or both dams. Although neither dam is currently restricted, the spillways at both dams are subject to failure due to deterioration and blocked drains. The dam at Lake San Antonio requires additional emergency repairs. An engineering cost analysis is being prepared that will likely exceed Monterey County's previous estimates of \$200 million.



Monterey County will present stakeholder workshops in the future to explore ideas on how to pay for the repairs, as it does not have anywhere near the funds available to conduct them. The county is examining the possibility of obtaining federal and state grants, as well as increasing property tax assessments. San Luis Obispo County receives water from Lake Nacimiento, and it is unknown at this time how, or if, that county would be impacted. Monterey County cannot increase San Luis Obispo County property taxes without approval of the later county's Board of Supervisors - an unlikely prospect. The DSOD has given Monterey County up to five years to complete the required work based on repair criticality.

These critical repair requirements, coupled with a severe lack of funding, have combined to cast doubt on a timely completion of the Interlake Tunnel Project, if it's completed at all. The construction of the tunnel cannot proceed until the DSOD signs off on the required repairs. Monterey County has been working on tunnel modeling for over four years and has yet to complete a valid model that will accurately determine water storage savings and tunnel operations. The county is still pursuing the project, but it appears it will be years before a final decision can be made and funding is in place. Furthermore, there are numerous other hurdles in the way including, but not limited to: permitting requirements from 17 federal and state agencies, a full environmental impact report with public comment, and a lengthy eminent domain court proceeding involving affected properties in San Luis Obispo County. Current funding estimates for the tunnel are as high as \$140 million, which will undoubtedly increase, and require an additional property tax burden on Salinas Valley farmers who are already facing increased taxes to pay for the dam repairs. Finally, Monterey County has

failed, and continues to fail, to address different tunnel configurations and elevations in addition to what it originally presented to begin the modeling. Given all the above, NRW MAC does not support the Interlake Tunnel Project as it currently is presented. NRW MAC will continue to monitor the situation and keep its constituents informed of any new developments.

Let's be very clear about the water...

In California, water is protected for the use and benefit of all Californians. California's waters cannot be owned by individuals, groups, businesses, or governmental agencies. And permits, licenses, and registrations give individuals and others the right to beneficially use reasonable amounts of water.

Monterey County was provided a grant in 1958 on their application of developing a first class recreation area at Lake Nacimiento, making a long term promise to promote and develop recreational facilities at Lake Nacimiento.

Monterey County was again licensed in August of 1964 with a statement of purpose of "Recreational use at Lake Nacimiento Reservoir within San Luis Obispo County and irrigation, domestic, municipal, industrial and recreational uses within an area of Monterey County".

And again in 1996 Monterey County applied for and was granted Permit # 21089, subject to prior rights that authorized purposes for using the water for irrigation, industrial, municipal, recreation and domestic use.

There is no "Percentage of" listed in those rights. There is no "group" that owns the water... all five interests share the water interest, and all five interests are entitled to it.



The Recreation Component...

The Monterey County Flood Control and Water Conservation District (“District”), the predecessor to MCWRA, built Nacimiento Reservoir in the mid-1950’s for recreation, flood control and water conservation. In order to begin construction, the District first had to condemn and take private properties in and around the reservoir site by eminent domain. (The District had eminent domain powers under the Monterey County Flood Control and Water Conservation District Act (“Act”). At that time, SLO County Supervisors approved the eminent domain by Monterey County because they were paying to have the dam built on SLO County property.

In relevant part, the Act gave the District the power to condemn “lands deemed by the supervisors of the district to be **necessary or convenient for the installation, construction, use and maintenance of recreational areas or facilities including picnic grounds, play grounds, camp grounds, home sites, boats and fishing, bathing or other facilities for use by the public...**”(Emphasis supplied.) Thus, the provision of recreation at the reservoir was key to allowing the construction to commence.

These proceedings provide the basis for the ‘Recreational Portion’ of Lake Nacimiento and the removal or diminishing of this component invalidates Monterey’s Eminent Domain claims and provides a strong case for overturning the Eminent Domain proceedings.

Simply put, Monterey County claimed and based recreational support at the lake as an equal right to take land, and they must continue to support recreation or they can be faced with invalidating their right to that land.

Help NRW MAC Save The Dragon

“Save The Dragon” is not simply a turn of phrase; it’s a fervent plea for help. Lake Nacimiento is not going to save itself from Monterey County’s mismanagement. Without a court’s intervention, Monterey County is not going to realize the error of its profligate ways and turn off the drain spigot all by itself.

NRW MAC’s lawsuit against Monterey County Water Resources is the start of the correction of this dire situation that has gone on too long, and will force Monterey County to adopt a recreation plan that will protect all aspects of recreation in the future for the rights of lake owners and recreational users. However, this litigation will require funding support from all lake property owners and enthusiasts to make this happen.

NRW MAC’s GoFundMe legal campaign, and other events, with your contributions, has raised over \$150,000 and we are grateful to all of those who have contributed.

Being the primary source of funding for these legal efforts, your donations, now more than ever, will make a difference.

Please share, forward and circulate this newsletter with your friends, family and anyone you know that uses or cares about the lake, wildlife, and future of the lake!

We need to inform people of this fight, and let everyone know why their funding support is so critically important right now, and to please donate today.

If you value your recreation, water quality, way of life and property values, please donate today – even if you have previously donated.



If you prefer you can privately donate using the nrwmac.org link below, or mail a check to NRWMAC at P.O. Box 398, Paso Robles, CA 93447.

For more information, updates and donations please go to our website, www.NRWMAC.org or directly to the GoFundMe location here:

www.gofundme.com/lake-nacimiento-save-the-dragon

The Latest NRWMAC Apparel ...

The latest styles and colors are showing at NRWMAC. We have beanies back in stock by popular demand! And the new Grey and Teal colors are a HUGE hit! Ladies shirts in Teal, Sweat shirts (“hoodies”), Tanks and t-shirts in gray!

And the new two color hats Khaki / Green and Blue / White !

Thank you for your support

We wish to thank everyone that supports NRWMAC, and as everyone continues to come up with more ways to help, we need everyone to get involved.

NRWMAC needs volunteers to help with getting the word out, donations, sign-ups, handouts, information booths, fund raisers, t-shirt sales, and help at functions and events.

You can help the effort by donating time, dollars, purchasing merchandise or signing up for events here: www.nrwmac.org/get-involved