



May 2, 2022

Monterey County Water Resources Agency
1441 Shilling Pl., North Building
Salinas, CA 93901

Attn: Brent Buche, General Manager

Re: Dock Renewal Licenses

NRW MAC agrees with and supports the vast majority of your Agency's dock program at Lake Nacimiento. Recreational use is protected and enhanced by having a program that assures docks are properly maintained and do not create hazards. A legally supportable fee program that properly collects revenue to maintain the dock program is also appropriate and necessary.

However, we disagree with your assertion that Ordinance 4065 grants you the authority to collect dock fees for docks that are not floating and remain below the highwater mark. Notwithstanding the language in Section 4, paragraph (a) that spells out the requirements for initial dock licenses, the language in Section 4, paragraph (b), which talks about renewal licenses, specifically allows an exemption for "a previously registered dock.... that has been left high and dry and is not refloated until after April 1". If that language is not clear enough, the following sentence states "Renewal is not required during any year in which the dock remains out of the water for the entire licensing year." There is no mention of "highwater mark" anywhere in the renewal section of the ordinance. Any reasonable reading of the above language can only be interpreted to allow the deferral of dock renewal fees if the dock is not floating for the entire licensing year.

The most logical legal basis for the language in Section 4(b) is the fact that your Agency only has an easement to flood/deposit water in the lake to the highwater mark, but no other right to the land under the water. A dock stored on dry land is not stored on Monterey's property merely by virtue of a flood easement, hence a right to impose a fee on the dry land is questionable.

In addition, Section 3 of the Ordinance reads: "It shall be unlawful for any person to construct, moor, maintain, own, operate or use any dock **on or in the waters** of Lake Nacimiento unless said dock is first licensed by the Agency in conformity with this ordinance" (emphasis added). By its own language the Ordinance limits the Agency's ability to regulate or license dock ownership, only when such dock is **on or in the water**, not sitting on dry land not owned by the Agency. Cursory reading of the remainder of the Ordinance confirms that all of the rules and regulations pertaining to construction materials and strength and type of mooring of the docks are purely related to the docks' presence in water, not on dry land.

In addition to the above, this is really an issue of fairness. People object to paying a fee for something they cannot use. Your current interpretation of the rules attempts to charge folks for a use or privilege that they can't enjoy or

exercise. If by chance a large storm occurs and floats docks that are currently sitting on dry land before the license year is up, the owners of those docks will gladly pay the Agency's fee and actually use their docks. This is specifically contemplated by Section 4(b) cited above. If your concern is insurance, then dock owners could continue to provide you with certificates of insurance without having to pay the fees for non-floating docks. This would be a reasonable requirement and not costly to the dock owner.

NRWMAC requests that you immediately change your interpretation of the rules and regulations regarding docks that are not floating, so that they do not have to be moved to above the highwater mark in order to obtain a fee exemption.

Sincerely,

A handwritten signature in blue ink that reads "Steve Blois". The signature is written in a cursive style and is enclosed in a thin blue rectangular border.

Steve Blois
NRWMAC ResOps representative

Cc: John Baillie, Chair, ResOps subcommittee
Jennifer Bodensteiner, MCWRA Dock program mgr.
Martin Koczanowicz, Aleshire & Wynder, LLP