



May 2022 NEWSLETTER

Monterey County Dock Threat

As many of you already know, Monterey County has been sending out letters that state:

“...docks out of the water and below the ‘high water mark’ (800 ft) are still subject to Dock Fees, and that by July 2022 the Agency (Monterey County) will revoke dock licenses that are not renewed. Once revoked the dock owner will need to remove the dock from the reservoir.”

NRWMAC board member Steve Blois requested clarification of the MC dock policy at the Monterey ResOps meeting in March, and again in April, as the above statement from MC does not appear in either dock ordinance 4065 or 5344. Steve also stated that while NRWMAC agrees and supports the vast majority of MC’s dock program, NRWMAC does not agree with the MC position that Ordinance 4065 grants them the authority to collect dock fees on docks that are out of the water and below the high-water mark.

In-fact, Ordinance 4065, 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 “high-water 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.

NRWMAC has officially responded to Monterey County regarding this issue, and our response is attached with this newsletter as well as being posted here:

<http://nrwmac.org/wp-content/uploads/2022/05/NRWMAC-Response-re-Dock-Fees-050422-.pdf>

Both MC Dock Ordinance 4065 and amendment 5344 can also be seen here:

http://nrwmac.org/wp-content/uploads/2022/04/MC_Dock_Ordinance_No_4065.pdf

http://nrwmac.org/wp-content/uploads/2022/04/MC_Dock_Ordinance_No_5344_amendments_to_Ord_4065.pdf

More dock information can be found at the NRWMAC Knowledge Base here, under MCWRA Dock Fees:

<http://nrwmac.org/knowledge-base/>

NRWMAC vs Monterey County

NRWMAC continues litigation against Monterey County and the agencies that mismanage Lake Nacimiento and their continued push against the recreational rights on the lake and area.

A portion of the lawsuit has been referred to the State Water board to determine if Monterey County exceeded their yearly release quota, which NRWMAC asserts based on their published releases for at least one past year. Once that portion of the lawsuit is settled, the suit returns to the San Luis Obispo Superior court for the breach of contract portion of the lawsuit.



In April NRW MAC and attorneys attended the first referral proceeding which basically outlined how the proceedings will go forward with the State Water Board, getting all parties known and the initial discussions. More hearings are set for May and June and we shall provide all information we can as it becomes known.

What You Can Do

We've reached the moment when it's vitally important for your support. We are now headed back in to court, with the next audience being in Sacramento with the State Water Board, maintaining the battle with Monterey. It's very costly to fund our hardworking legal team. Now more than ever, we need you to support NRW MAC's efforts on your behalf. We urgently need an influx of dollar donations at this time.

Generous people like you are the **ONLY** source of funding to support NRW MAC efforts to correct and hold Monterey accountable for water mismanagement at Lake Nacimiento. **We urgently need you to keep supporting our efforts at this time with your dollar donations for NRW MAC's legal expenses.**

Even if you have previously donated, we are asking for your continued help, please donate any amount that you can. Clicking a link below will take you directly to donation sites.

GoFundMe:



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

or

Private Donation:

(via PayPal)



<http://nrwmac.org/donate#Private-Donation>

If you prefer to write a check, please make it out to NRW MAC and mail to: NRW MAC, PO BOX 398, Paso Robles, CA 93447.

And, we need you to pass this newsletter along to everyone you can think of who can help us to inform anyone and everyone who is concerned about Lake Nacimiento and our legal battle to

Save the Dragon!

NRW MAC needs volunteers to help get the word out, help procure time and dollar donations, sign up to help at fundraisers and events, and help inform people at information stations.

For more information about how you can get involved, please go to:

www.nrwmac.org/get-involved

Who to Call/Contact

We need the right people to know about Monterey's mismanagement of Lake Nacimiento, and our fight to correct the problems they are causing to recreation and property rights.

We encourage you to write, call, or email your elected local, state, and federal officials as well as the local press. Tell them about what is happening to our recreational water, and how the lake quality and property rights have been affected under Monterey's mismanagement. The more people we reach out to, the better our chances of succeeding in our legal pursuits and in making the changes needed at Lake Nacimiento.

NRW MAC's "Who to Call" contact list is on our website. It has contact information for your San Luis Obispo and Monterey County supervisors, California state representatives, the California State Water Boards and more. Go to:

www.nrwmac.org/who-ya-gonna-call

Thank You for Supporting NRW MAC!



California Water Rights

Let's be clear about water rights. Water in California is protected for the use and benefit of all its citizens. ***California's waters cannot be owned by individuals, groups, businesses, or governmental agencies.*** Permits, licenses, and registrations give individuals and others the right to beneficially use reasonable amounts of water. Monterey was provided a grant in 1958, based on their application to develop a first-class recreation area at Lake Nacimiento, thereby making a long-term commitment to promote and develop recreational facilities at Lake Nacimiento.

Monterey was again licensed in 1964, with the statement of purpose: "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."

In 1996, Monterey was once again granted a permit subject to prior rights that *authorized specific purposes* for using the water for irrigation, industrial, municipal, **recreation**, and domestic use.

There are ***no percentages of water*** listed in those grant rights. There is ***no single group*** that owns the water. In fact, there are five groups with interest rights that share the water in Lake Nacimiento and **ALL FIVE** are entitled to the water!

The Recreation Component

The Monterey County Flood Control and Water Conservation District (the "District"), built Lake Nacimiento in the mid-1950s, for recreation, flood control, and water conservation. The District first had to condemn and take private properties in and around the reservoir site by eminent domain.

In part, this 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...**" Therefore, the provision of recreation at the reservoir was **key** to allowing the construction to commence. (*Boldface supplied by NRWMAC for emphasis.*)

To put it simply, Monterey claimed and based recreational support at Lake Nacimiento as an *equal right* to take land. They must continue to support recreation or they can face invalidating their right to that land.



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