

**To: River Management Advisory Committee**  
**From: Karen Mulvany**  
**Re: Public Comment for 07/25/2017 RMAC meeting, file # 17-0742**  
**Date: July 24, 2017**

The comments below were originally submitted to the Planning Commission as it heard public comment on the River Management Plan Update on June 22, 2017. Subsequently, El Dorado County rearchitected its website and all linked references to documents in the original comments were broken. The attached document provides updated document links to new county website addresses, and provides additional clarification based on Q&A from new RMAC members raised in the 7/10/2016 public meeting.

Formatted

To: Planning Commission  
Re: Item 17-0659 Planning Commission; Public Comment on River Management Plan Update  
From: Karen Mulvany  
Date: June 21, 2017

Many people do not appreciate how unique the South Fork of the American (SFA) is. It is the most popular whitewater run in California, probably the western United States. Yet unlike virtually all other popular whitewater runs, the SFA runs largely through private lands. The combination of public use and private interests, plus the commercial use of the river, sets this complex environmental, recreational, and economic ecosystem up for conflict. Yet, as I have often commented at River Management Advisory Committee (RMAC) annual meetings, the existing system works surprisingly well.

In no small part, this is due to the extraordinary talents and deep expertise of the RMAC members, who are unpaid volunteers. It is also attributable to the unique skill set of the River Manager, Noah Triplett, and the River Patrol staff who intercept hundreds of uneducated tubers, boaters, SUPs, and surfers on the river each year, preventing untold numbers of accidents. Yet it is also due to the very existence of the RMAC, notably the venue it affords to work things out. This is now under undue threat.

I am a private boater and a riverfront property owner that has been kayaking the South Fork of the American since the early 90's. Professionally, I have worked as a Wall Street analyst, consultant to public turnaround companies, and Executive VP of a public company responsible for strategic planning. These experiences inform my comments below.

1. Why do RMAC river management powers and duties exist?
  - a. The Court found in its 1995 Bernard v. El Dorado County decision that the county had erred in making river permitting a ministerial, rather than a discretionary, process.
  - b. After exhaustively reviewing 15 alternatives to satisfy the court order, the BOS determined that the RMAC alternative best fulfilled the discretionary process requirement established by the court.
  - c. See sections 1.2 – 1.4 of the standing 2001 RMP at [http://www.edcgov.us/Government/EMD/Rivers/River\\_Mgmt\\_Plan/Sec01-RMP-Final-](http://www.edcgov.us/Government/EMD/Rivers/River_Mgmt_Plan/Sec01-RMP-Final-)

[1204.aspx](#)

<https://www.edcgov.us/government/emd/rivers/river%20mgmt%20plan/documents/Sec01-RMP-Final-1204.PDF>

2. Does Parks staff have any legal standing to usurp RMAC's legal power to recommend River Management Plan updates to the Planning Commission and The Board of Supervisors?
  - a. Board Resolution 065-2002, dated March 12, 2002, vests RMAC with the power to recommend updates and amendments to the River Management Plan (RMP). See:  
<https://www.edcgov.us/BosBoardsCommissionsPdfUploads/Executed%20Resolution%20065-2002.pdf>  
<https://docs.google.com/viewer?url=https%3A%2F%2Fwww.edcgov.us%2FGovernment%2Femd%2FRivers%2Fdocuments%2FResolution%2520065-2002.pdf>
  - b. Parks included a number of earlier Board Resolutions in its submission to the Planning Commission (PC), but did not include this one. Notably, this is the only board resolution cited in the county's RMAC website at  
[http://www.edcgov.us/EMD/Rivers/River\\_Advisory\\_Committee.aspx](http://www.edcgov.us/EMD/Rivers/River_Advisory_Committee.aspx)  
[https://www.edcgov.us/Government/River/Pages/river\\_advisory\\_committee.aspx](https://www.edcgov.us/Government/River/Pages/river_advisory_committee.aspx)
  - c. Note that the 2002 BOS Resolution delivers no power to Parks or any administrative staff to overrule RMAC recommendations for the RMP, or to separately submit Parks recommended changes to the RMP for consideration by the Planning Commission.
  
3. In compliance with the RMP, RMAC has made prior attempts to submit its recommended RMP updates to the Planning Commission:
  - a. On 3/28/2013, the Planning Commission directed Parks to proceed with RMAC's submitted revision to RMP. See:  
[https://www.edcgov.us/Government/Planning/PCagendas/2013/03-28-2013\\_minutes.aspx](https://www.edcgov.us/Government/Planning/PCagendas/2013/03-28-2013_minutes.aspx)  
[https://www.edcgov.us/government/planning/pcagendas/2013/documents/03-28-2013\\_minutes.pdf](https://www.edcgov.us/government/planning/pcagendas/2013/documents/03-28-2013_minutes.pdf)
  - b. For this update, RMAC had drafted and submitted to the Planning Commission an RMP amendment focusing on institutional permitting. RMAC had held many public input meetings on this update at zero county or River Trust Fund cost, and had itself drafted the plan update, relying on committee expertise rather than consultants. The Planning Commission directed Parks to proceed with the RMAC's recommended RMP update with a CEQA initial Study and appropriate CEQA document and return to the Commission.
  - c. Parks did not proceed with the Planning Commission directive. Instead, Parks signed a \$61,000+ contract to hire a consultant to update the RMP. Parks did not issue an RFP for this contract, nor did it advise RMAC of its decision to use River Trust Funds to pay a consultant for an RMP update.
    - i. This consultant had worked on the 2001 RMP update and had ultimately run bills exceeding \$500,000. As the River Trust Fund balance was insufficient to pay

this amount, the county loaned the RTF the needed funds, and river management expenditures were curtailed for years while the debt was paid down.

- ii. The stated goal cited in multiple recent Annual River Reports was to maintain River Trust Fund balances at its year end level of approximately \$200,000 (about one year's worth of river program expenditures), while continuing to spend substantially all of the outfitter fee contributions to fund standing river programs. The financial commentary in the Annual Reports made it clear that there were no extra funds in the River Trust Fund to cover consulting fees.
  - iii. Because the RMAC did not know that consulting expenses would be charged against the River Trust Fund, it did not know that standing river management programs would be jeopardized by the Parks decision to hire this consultant.
  - d. At multiple levels, these Parks actions conflict with the BOS Resolution cited in 2a.
4. The Parks RMP Update process has been deeply flawed, and strikingly out of compliance with normal processes employed in county plan updates:
- a. The Parks consultant stated publicly that he had collected input privately from multiple sources for the RMP Update, but he declined to name his sources and stated that he had promised each contributor that the input would remain confidential
    - i. He privately solicited input from paid county staff, promising confidentiality.
  - b. He privately solicited input from RMAC members one at a time, violating the serial meeting prohibition of the Brown Act.
  - c. At no time prior to publishing his RMP Update recommendations did the consultant solicit public input on the RMP.
    - i. At the first public input meetings after the consultant update was published, both held on June 3, 2015, dozens of people attended and spoke, uniformly objecting to the consultant's proposed elimination of the RMAC.
  - d. The Parks recommendations to eliminate RMAC are based upon the consultant's assertion that conflicts among the parties represented by RMAC committee members have disappeared. There is ample evidence that the opposite is true.
    - i. While asserting that there are no more conflicts, the consultant in his plan update nonetheless identified a failure to address the new conflicts posed by increasing new river users, namely inner tubers.
    - ii. RMAC meeting audio recordings clearly illustrate that conflicts continue to exist, but that the ability to exchange information and discuss possible solutions face to face in the RMAC meetings works as a conflict resolution venue.
  - e. The RMP recommendations publicly submitted by the consultant did not include a financial analysis, which was part of his contracted Statement of Work with Parks.
    - i. After many months of stymied requests from RMAC, Parks staff ultimately conceded that the consultant had completed a financial analysis, but it had

been withheld from the RMAC and the public. It has never been publicly disclosed.

- ii. RMAC attempted to obtain a River Trust Fund budget from Parks in order to ascertain the financial status of the fund, to which program expenses are not charged in real time but reconciled once a year at fiscal year end. Parks presented RMAC with financials that failed to include all of the consulting fees, which Parks was unable to explain, as was ultimately discovered and documented during the RMAC meeting on 4/11/2016.
5. On February 23, 2016, the consultant made a presentation on the RMP Update to the Board of Supervisors. The BOS meeting audio, which can be heard at [http://eldorado.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=761,item\\_16\\_0032](http://eldorado.granicus.com/MediaPlayer.php?view_id=2&clip_id=761,item_16_0032), [http://eldorado.granicus.com/MediaPlayer.php?view\\_id=2&clip\\_id=761&meta\\_id=370292](http://eldorado.granicus.com/MediaPlayer.php?view_id=2&clip_id=761&meta_id=370292), is worthy of note for the Planning Commission for the following reasons:
- a. Supervisors Veerkamp, Novasel and Frentzen explicitly expressed their preference for retaining local control of South Fork American (SFA) River management, versus transferring control to State or Federal entities.
  - b. In response to questioning, the consultant stated that there had been no effort to tap other funding sources such as SMUD special revenue fund or grants to address the funding shortfall at the River Management Trust. Four supervisors (Veerkamp, Novasel, Frentzen, Mikulako) encouraged staff to explore other revenue opportunities, including tapping SMUD funds or TOT fees. Supervisor Mikulako expressed surprise that RMP elements had been unaddressed due to RMT underfunding while the SMUD special revenue fund had not been tapped. There were several acknowledgements of the SFA's economic importance to the county, and its international stature. One supervisor (Novasel) volunteered her belief the river was being well managed.
  - c. To the extent that the central issue in the RMP update may actually be about funding, the BOS did identify opportunities to address funding gaps.
6. In the fall of 2016, RMAC held a series of public meeting during which the committee reviewed the consultant's RMP revisions in real time, discussed changes, accepted public comment, and finalized its proposed changes to the RMP and delivered those to staff.
- a. This was an inclusive and public plan update process.
  - b. Parks staff elected not to attend these meetings.
7. In Conclusion:
- a. No other county in California has a South Fork of the American River. It is the most popular whitewater destination in California, if not the Western United States. Unlike every other park resource that EDC Parks manages as an expense center, the river is a significant contributor to the county economy. It requires a combination of commercial, whitewater recreational, business, real estate, environmental and community expertise to appropriately manage this complex yet uniquely valuable resource.

- b. The county has been sued twice over river management. Since the RMAC was formed, the county has not been sued. This is not evidence that conflicts have disappeared, but it is evidence that RMAC has worked.
8. Recommendations:
- a. I respectfully request that the Planning Commission focus exclusively on the RMAC revisions to the RMP, per the BOS Resolution #065-2002.
    - i. While clearly there are and will be additional issues that are deserving of attention in the RMP, RMAC can address these in future focused, sequential updates as it attempted to do with its institutional permit update.
  - b. Please recommend to the BOS that it restore the location of the RMAC meetings to the Lotus Coloma Valley, per the Brown Act (section 54954(b) of the CA Government Code). It was not appropriate for Parks to move the meeting away from RMAC's area of jurisdiction, over the objections of each RMAC member and the public. The RMAC cannot appropriately fulfil its mandate in a remote meeting location. RMAC meetings historically took place in the Lotus Fire Station, but could take place in the Henningsen Lotus Park Pavilion where the Parks Department held its HLP Plan Update public meetings.