

M. Lane #34 BOS 4/14/15

COUNTY OF EL DORADO
RIVER MANAGEMENT ADVISORY COMMITTEE (RMAC)
MINUTES

Location: Coloma-Lotus Fire Station
Date: Wednesday, March 17, 2010
Time: 7:00 p.m. – 9:00 p.m.

Members Present: Martin Harris, Landowner/Resident
Timothy Lasko, Member-At-Large
Dave Martinez, Coloma/Lotus Business Owner
Bill Dietchman, State Department of Parks & Recreation
Hilde Schweitzer, Non-Commercial Boater Representative

Members Absent: Eric Carter, Alternate, State Department of Parks & Recreation
Stephen Liles, Commercial Outfitter
Marilyn Tahl, Member-At-Large

County Staff: Noah Rucker-Triplett, Environmental Management
Greg Stanton, Environmental Management

1. Call to Order: 7:03 pm
2. Roll Call
Present: 5 – Bill Dietchman (arrived at 7:20), Martin Harris, Dave Martinez, Timothy Lasko, and Hilde Schweitzer
3. Approval of Agenda:
A motion was made by Martin Harris, seconded by Dave Martinez to approve the Agenda as submitted.

Consent:

4. Approval of Minutes:
 - a. Minutes of RMAC Meeting of February 10, 2010

A motion was made by Martin Harris, seconded by Hilde Schweitzer to approve the minutes as written.

Public Comment (Non-Agenda Items)

Melody Lane, president of COMPAS, read a statement she prepared regarding her discord with the River Management Advisory Committee. This statement was submitted for public record and is available for review as part of the official records from tonight's RMAC meeting. The committee members agreed to allow fifteen minutes at the next RMAC meeting for her to further present concerns per her request.

Bob Palacio wanted to know how much time had been used so far in the meeting by Ms. Lane's comments. Fourteen minutes was the response.

Dr. Dale Smith, a paralegal representing COMPAS, read a statement (as provided by Section 54954.3 of the Brown Act) that he prepared regarding Brown Act violations that he feels have been committed. His statement was submitted for public record to be available for review as part of the official record from tonight's RMAC meeting. Dr. Dale Smith also submitted an additional paper with Sections from the Ralph M. Brown Act, California Government Code Sections 54950 et seq. The Sections read were as follows:

- #54951 "Local Agency"

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- #54952.2 (a) "Meeting"
- #54953.3 "Right to Anonymity"
- #54954.3 "Opportunity to Address the Body"

Dr. Smith's informed the Committee that they could be subject to legal action by COMPAS.

At this point in the meeting Dave Martinez stated that he felt that the RMAC meeting should not continue until the committee was advised by legal counsel and left the meeting, 7:45 p.m.

The remaining RMAC members decided to continue with the meeting.

Discussion with possible action:

5. a) Institutional Permit (Review & Restructure)

Tim Lasko proposed the following changes to the Institutional permits in the River Management Plan for discussion/consideration.

- Definition of an Institutional Permit – make the volunteers of Institutional groups exempt from shared costs. Allow the 501 (c) (3) to elicit donations after their trips, but prohibit them from adding extra fees above shared costs, membership fees or donations requested or required prior to taking someone down the River.
- Allow each Institutional permittee to have three fundraising trips each year.
- Allow each Institutional to have salaried employees
- Advertising should be addressed for the Institutionals (currently not allowed).
- Limit the Institutional use to one pod per section per day. This would allow seven boats on Chili Bar and on the Gorge (56 total people).
- Transfer of permit – create a policy to limit the number of Institutional groups, add a stipulation that two consecutive years of non-use would equal the loss of a permit. If there was a permit wait list, those permits could be available to a different organization. This would prohibit the number of permits obtained but not being used. They should also be given the ability to declare "in-active status" for one year, with the stipulation that they are not to exceed two "in active" years in a five year period.

Section 6.2.4 Guide Requirements – Should be the same as Commercial

Section 6.2.9 County Operating Reports – Should be the same as Commercial

Fee's should be 50% of Commercial Rates and/or an exception for 18 years or under use.

Violations, Penalties and Appeals – Should be same as Commercial

Public Comment:

Paul Tebbell, Executive Director for FOR – Asked if this was being brought about by Commercial companies concerns? Paul also stated that he would like to participate/comment on the drafts.

The committee responded that this review of the Institutional permit was not brought out from concerns by Commercial Outfitters.

The discussion was opened up to the committee members:

Hilde asked how the permits will be issued?

Noah stated that it was recommended by the Committee to limit the number of Institutionals at the current level which went to County Council. There have not been any new Institutionals groups that have applied. Tim suggested we just limit the number of pods to one on Chili Bar and one pod on Gorge instead of going to user day allocations.

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Hilde asked how many Institutionals there are now that do not have commercial permits. Noah responded that the number is 10-12.

The committee asked to have Tim's comments sent around to RMAC members, and that Noah get the new numbers for existing Institutionals to the committee. Bill suggested that the Institutionals Subcommittee formalize a draft to be discussed by RMAC as a whole at the next meeting in April.

Noah suggested that a draft be submitted to County Counsel for review before a final recommendation is made because there may be legal questions that pertain to current commercially permitted outfitters.

b) River Safety/Signage/Outreach

Noah handed out some pictures of the existing signs that are currently out there. The lifejacket sign, stating it's a County Ordinance, is at the most of the put in locations and public river access sites. The only issue is that maybe there should be a simpler sign that points out visually existing river hazards.

Public Comment:
None

Committee Member Discussion:

Hilde was surprised that so many signs were up since she has only seen one or two, but thought some more of the "Life Jacket required" signs be put up.

The issue of glass ban (at the park) and alcohol ban on the river, Martin says he sent a letter to the Sheriff Kohler.

Boating Access

State Parks access has been determined and will not change their standpoint on this. The access start dates were discussed and are in the minutes from previous RMAC meetings. Bill stated that Skunk Hollow is open during the weekdays to people (concessioners with contracts) with keys to the locks, and will be open on the weekends to the public. Starting April 1st they will be open seven days a week.

Public Comment:
None

Committee Member Comments:

c) Life Jacket Loaner Program

Noah printed up some information/articles on two programs that exist for loaner programs. The El Dorado Hills Fires Station has a funded program, where you can check them out with a driver's license and must be returned (checked back in). The other program is called "Kid's Don't Float". It consists of a large sign with jackets hanging on it which uses the honor system for borrowing and returning them.

Public Comment:
None

Committee Discussion:

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The County needs to look at the liability issue that we make sure we have a standardized jacket for both adults and children. Some commercial outfitters have stated that they have PFD's that can be donated to the programs.

e) Volunteer Safety Program – Citizen Patrol for Education

This was brought up at the November RMAC meeting to possibly start a programs to be out there educating the public on river safety issues and help to patrol the put in's and public areas.

Public Comment:
None

Committee Discussion:

Maybe there is a service organization out there that might want to do this type of program.

f) River Permit Transfers and User Day Transfers

This item was brought forward from the last RMAC meeting. Noah has presented permit transfer requests to the Planning commission but historically not to RMAC. It was asked that those requests be presented to RMAC prior to going to the Planning Commission.

Public Comment:
None

Committee Discussion:

Hilde asked if a commercial company sells a portion of their business, could they transfer some of their user days along with that portion. Noah said yes, they could request to transfer user days along with the sale of a portion the company but that the other company had to already have a permit to transfer the user days to (permit cannot be created).

Hilde stated she has an issue with this because it could essentially create user days if a commercial company sells off portions of their business in a piece meal type of way it could create a flex permit (more user days). Noah stated hopefully that would not happen because it has to go through Planning and him. The concern with the flex permits and companies that have thirty days or less should make it so they would not be allowed to have a flex permit (create one). The max on flex permits is thirty or less on usage. This is another reason they should be tracked by RMAC.

It was stated that if the committee is going to be going through the River Management Plan to change the Institutional permits maybe they should clarify that flex permits cannot be created.

g) RMAC Purview Review:

Bill asked for this topic to be added to the agenda to clarify what items RMAC should address and that all the members are clear on the purview of RMAC

If the Planning Commission wants to pass items down to RMAC for review they need to understand that RMAC is a small volunteer body and give better protocols and guidelines.

Noah provided an overview of the Powers and Duties of RMAC as outlined in Resolution 065-2002:

- Provide a forum for the discussion of River use issues, ideas or conflicts among persons or groups with an interest in the South Fork of the American River

- The committee can make recommendations to the Planning Commission or the BOS on matters relating to white water recreation and campground development along the river.
- RMAC shall be an advisory committee to the Board of Supervisors on the following matters:
 - Administration of the River Management Plan and Plan Update by the County
 - Implementation of the Plan Update
 - Amendments to the Plan Update
 - Regulations to private or commercial activities along the South Fork of the American river
 - The use of river trust funds
 - Other matters referred by the BOS
 - Nothing in this resolution shall requires that comments or recommendation from RMAC to be a prerequisite for a decision by the BOS on any matter
 - RMAC shall be an advisory to the Planning Commission for the following issues:
 - Amendments to the river management plan or update
 - River use permits
 - Special use permits for campgrounds, river access and similar recreation activities adjacent to the American river
 - All discretionary applications within one quarter mile of the center of the south fork of American river between chili reservoir and Folsom reservoir
 - Nothing in this resolution shall require recommendations or comments from RMAC be a requirement or prerequisite for the Planning Commission on any matter.

Public Comments:

Melody Lane asked for a copy of the resolution (which was provided) and stated that the Taxpayer Association would be interested in this information.

Committee Discussion:

The committee asked that this be available so that when something comes up we can verify that the issue falls under the purview of the committee.

h) SRT Training Permit Requirements:

Noah stated that Tim asked about this. The discussion came up again regarding that the in-house SRT training not be allowed, that everyone should go out and be certified by a swift water rescue certification program for at least one guide on the trip. SRT is a requirement of the commercial and institutional permits. Tim stated that he saw that there are some companies that are planning an in-house SRT for their guides this year, and he wants to know why this allowed.

Noah stated that the river management plan did not allow in-house SRT programs but that this was changed in 2002. The RMP states that the trip leader must provide a copy their American White Water Swift Water Rescue certification; though the American White Water association doesn't certify or train in SRT, and the trip leader requirement was changed to say at least one guide per trip have the certification. The changing of the requirement is under review at this time by the County and RMAC's recommendations are being taken into account.

Public Comment:

None

Committee Discussion:

It was asked of Bill to provide what the State Park's requirements for SRT programs. Noah stated that he is following what Risk Management told him that in-house SRT programs are allowable and SRT certifications are not required. Due to the fact that there was not an industry standard available ten years ago. There may be more of an industry standard now.

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Tim stated that RMAC should get a response from County Counsel on the SRT programs and whether they can be in-house and how often they certification is needed. Tim volunteered to meet with County Counsel on this subject.

Greg Stanton, Deputy Director with Environmental Management gave guidelines to the committee on what would be need to be put together before going to County Counsel since County Counsel is very busy. Mr. Stanton stated he was there to provide support to the Committee and the program.

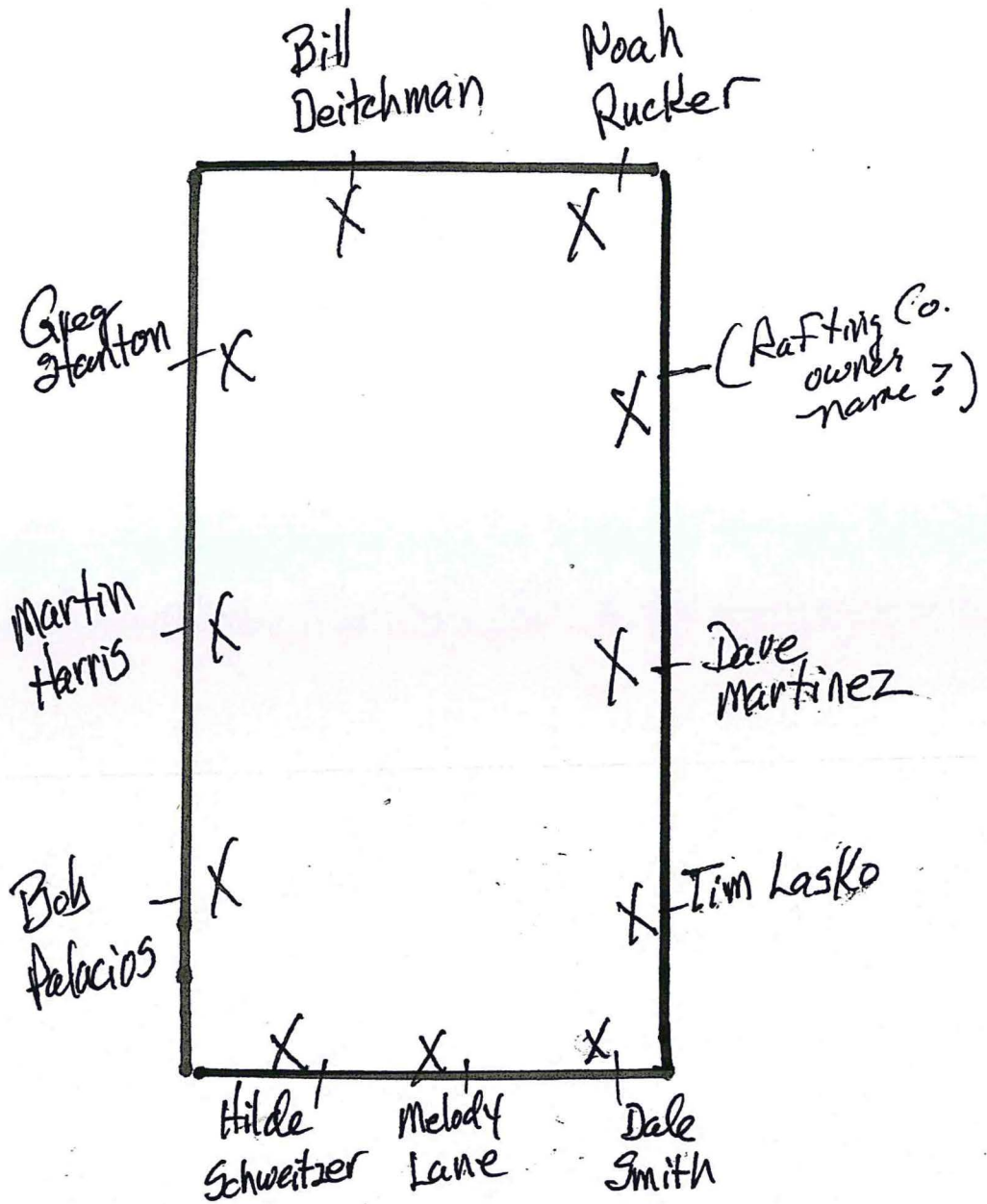
6. Committee Member Comments:

7. Next Scheduled Meeting: April 14, 2010 at the Lotus Fire Station

8. Adjournment: 9:10 p.m.

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RMAC Meeting



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Mon: Democrat 5/17/10

River committee tutored on Brown Act

By Chris Daley

Democrat staff writer

Members of El Dorado County's River Management Advisory Committee got an important civics lesson Thursday night.

"All you ever needed to know about the Brown Act but didn't know you needed to know it," could have been the title of County Counsel Mike Ciccozzi's informal seminar to four committee members and a half-dozen others in the audience.

The Brown Act's primary function is to "prevent government agencies from holding secret meetings without the input of the public," Ciccozzi paraphrased.

It's the Brown Act that establishes the requirement that governmental entities post agendas in advance of their public meetings "and the public has the absolute

right to come and comment on any item on that agenda," he emphasized.

Ciccozzi also assured the members that the Brown Act authorizes the "legislative body," for example the River Management Advisory Committee or any other similar commission, to set the processes for its meetings. That includes time limits on persons wishing to speak to an agenda item. He said the state attorney general has opined that five minutes is a reasonable time limit for an individual to speak before a commission, but that the board itself can shorten or lengthen that time as needed. He added that the courts "give great deference to the attorney general's interpretation."

"But the public has no right to be overly repetitive or to be disruptive ... or to

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use excessive profanity" or language meant to incite people, Ciccozzi continued. Freedom of speech, guaranteed by the First Amendment to the U.S. Constitution, is not without some limitations, he said, using the example of yelling "fire" in a crowded theater.

Recording of public meetings, audio or video, is fine, if it's not disruptive, he said. With regard to the keeping of meeting minutes, Ciccozzi said the Brown Act gives little direction.

"The minutes don't have to be a verbatim recitation of the meeting, but they have to reflect the general substance of what occurred in the meeting. Who has the right to approve minutes? The legisla-

tive body, but you can't abuse that privilege," he explained. "They're your minutes, so long as they accurately reflect the substance of the meeting."

Ciccozzi further pointed out that "your committee has the right to set the agenda and you do not need to hear the arguments from the public wanting something on the agenda. It might sound a little harsh, but that's the law."

And he re-emphasized that the purpose of the Brown Act is "to ensure that the people's business is done in an open environment — controlled but open. And the public must have the basic rules of decorum. They can't say to you, 'You're a criminal or a fraud or a cheat.' The public can't do that."

County Supervisor Ron Briggs attended the meeting Thursday. Much of the American River addressed in the River Management Plan falls within his District 4. In a phone conversation Friday, Briggs explained that over the past several months he has conducted a project to get a better understanding of the multiplicity of county committees, commissions and advisory boards. He said there is little standardization among them, and starting with the RMAC meeting, "I wanted to do this educational program, so I asked Mike Ciccozzi to come tonight. We're going to go to the Commission on Aging and several others in the future."

He praised the volunteers

who serve on public commissions and referred to a question raised by RMAC members regarding individual liability for actions taken by the committee. He repeated the thrust of what Ciccozzi had told them the night before. In its simplest form, an individual is usually not liable for actions of a committee as long as the action was done properly and in carrying out the duties of the specific commission. Part of his "educational program" is to help ensure that the public, acting in its role as "extensions of the county government, don't use their title for inappropriate purposes."

Violations of the Brown Act may take a civil or criminal form, Ciccozzi explained, not-

ing that in civil cases the legislative body, but rarely the individual member, may be found liable. Attorney fees can go either way, he said. If the legislative body loses, it usually is responsible for the attorney fees. If the suit is adjudged to be without merit, the entity bringing the suit would typically be liable for the fees.

"The criminal arena for violation of the Brown Act has a pretty high standard," he elaborated. "It would have to be an action taken with the intent to deprive the public of its rights to participate. We're usually dealing with civil remedies. The county's general practice is, if you're acting within your duties, the county usually will defend

you. That you're a volunteer that aspect doesn't matter.

Coloma area resident Melody Lane asked Ciccozzi who would defend a former chairman of the committee Martin Harris, who had written a letter to the editor in the Mountain Democrat that was sarcastic and pointedly critical of Lane. She described his conduct as "disgraceful."

"I haven't read Martin Harris' letter," Ciccozzi answered.

Lane then asked for a comment regarding a request she had made to the county under the Public Records Act, and again Ciccozzi responded: "I'm not trying to be rude ... But we need to

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focused within the agenda item, that is, the Brown Act discussion."

He returned to an issue that had arisen earlier in the meeting about how a committee should treat a member of the public who goes off-topic or becomes disruptive as determined by committee members.

"The worst thing you can do is to engage and try to out-shout or out-insult each other," Ciccozzi advised.

Under such a scenario, the chairperson has the authority to end a meeting and continue the agenda items to a later time. He said the committee also can tell the person he or she is off the topic and to either get back on topic or leave the meeting. If that is not successful, Ciccozzi recommended that law enforcement be called to have the individual escorted from the meeting.

"Having them removed is a drastic step — I hope we never get there," he said.

Briggs effectively capped that portion of the meeting telling the committee "the county might assist in getting a restraining order," should

such a situation arise.

He also praised the volunteer committee members: "I want to thank you for what you do — and for all the crap you can eat for free. You do a good job ... The people's business has to be conducted and able to be done."

Briggs offered his support and the resources of the county to help in their work.

Moments later, Lane challenged Briggs saying, "I would like an explanation of your appointment of me (to this committee) and rescission — two times. You didn't give me the support you're offering this group."

Briggs did not respond.

She then read several paragraphs from section 54954.3 of the Brown Act aloud.

She called specific attention to paragraphs regarding how an agenda item must be worded and noted another that discusses the public's right to raise an issue for discussion that is not on the agenda.

Part C of the section concludes: "Members of the public have broad constitutional rights to comment on any subject relating to the business of

the governmental body. Body may not prohibit member of the public from criticism of policies, procedures, programs, services, acts or omission."

Committee member Hilde Schweitzer followed the reading with some frustration toward Lane.

"At the last meeting you were given 15 minutes, and you wasted it without giving us any specifics (of what you want us to do). You just passed out papers."

Ciccozzi intervened.

"We can't all talk at once. Your board is obligated to listen but not to go back and forth."

Briggs later reiterated Ciccozzi's point when he advised committee Chairman Bill Dietchman: "It's the chair's duty to conduct the meeting. You're not compelled to act on something that's been handed to you. Don't forget you're volunteers doing good here. And it's the chair's duty to move the meeting forward."

A few minutes later after other business had concluded, he returned to the same theme

telling the committee, "You have your discussion, then you open it to public comment. It's not banter back and forth — you hear the question and then thank the person for their input."

Briggs explained the issue

of his appointment during the Friday phone call. He said he had appointed Lane to the committee but had not initially realized that the vacant position was to be held by someone from the professional boating community. He

rescinded the appointment because it was determined that Lane did not represent that category of stakeholder on the river.

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