

To: El Dorado County Board of Supervisors

From: River Management Advisory Committee (RMAC)

Re: River Management Plan Update

Date: August 30, 2017

Dear Members of the El Dorado County Board of Supervisors,

The members of the El Dorado County River Management Advisory Committee (RMAC) respectfully recommend that the members of the El Dorado County Board of Supervisors give strong support for the RMAC Proposal that is defined in this letter. We believe that doing so will continue to meet the objectives and goals of the Board of Supervisor's Resolution No. 065-2002. We believe that not doing so would be to the detriment of the best management of the South Fork of the American River; increase annual costs to the operations of the river management program; result in potential negative impacts to the business sector of the Coloma–Lotus Valley region as well as opening up the County of El Dorado to unnecessary expensive litigation and/or costly environmental review.

We sincerely urge you to take the time and consideration to fully review this proposal. We look forward to continuing to work with the Board of Supervisors, the Planning Commission and County Staff to address and work toward solutions to the various problems and concerns that challenge the South Fork of the American River and its adjacent lands.

History

In 1999, after having spent two years considering 15 alternative approaches to managing the South Fork of the American River (SFA), the El Dorado County Board of Supervisors (BOS) directed staff to prepare an EIR that considered only one River Management Plan (RMP) alternative, the RMAC Alternative¹. This

¹ P. 1-3, Section I Introduction, 2001 River Management Plan: "On March 30, 1999, the Board directed again that a Revised Draft EIR be prepared, that considers the River Management Advisory Committee Alternative (RMAC Alternative), without modification, as the proposed project. (The RMAC is an advisory body that provides review and comment on river management activities to the El Dorado County Planning Commission. The RMAC holds regular public meetings that provide a forum for the discussion of river use issues, ideas, and conflicts.) The Board also directed that a multi-factor carrying capacity approach be developed as a project alternative or as mitigation for impacts associated with projected growth in river use."

RMP update implemented a discretionary process for managing river permits, a change that was required after the County was sued and lost the 1995 Carlson v. El Dorado County case, and based this process on the RMAC. The county's standing river management EIR, and the River Management Plan associated with it, are thus based upon the existence of the RMAC, and its oversight of the RMP and its implementation.

In early 2013, after hosting multiple public input meetings and doing multiple draft revisions, the RMAC completed an RMP update and issued it to the Planning Commission for consideration, in accordance with Section 7.2.1 of the standing 2001 RMP. In accordance with adaptive management planning principles in use for BLM river management plans² and State Parks (and also recommended by staff's consultant), the RMAC's RMP update focused largely on an update to institutional permits issued to not-for-profit entities (NFP's). Through this planning process wherein RMAC had many public meetings with representatives of the institutional groups, NFP's, permitted outfitters, and the general public, the resultant RMAC RMP update addressed this difficult issue that the county had been struggling with for many years. RMAC's recommendation was one that reached a consensus with the various parties, would likely be economical to the county, and would likely meet environmental standards. And it should also be noted that this RMP update had been drafted by RMAC volunteers at no cost to the county.

After reviewing the RMAC RMP update, the Planning Commission directed county staff to proceed with RMAC's recommended update with a CEQA initial Study and appropriate CEQA document and return these to the Commission³.

² See p. 18, Plan Amendments of BLM's July 2004 South Fork American River Management Plan. Note also that the BLM held a total of 48 meetings between 2000 and 2003 to gather public input in a community-based collaborative process.

³ Per Section 7.2.1 of the 2001 RMP: Planning Commission Consideration of RMAC Recommendations: The County Planning Commission will conduct a public session for consideration of any RMAC recommendations to modify the existing RMP. After the receipt of public comments and deliberation, the Planning Commission will reject or tentatively accept the RMAC recommendation. If the RMAC recommendation is accepted, a CEQA Initial Study will be conducted to identify and report the potential environmental impacts of the proposed program modification. The results of this analysis will be reported to the County Planning Commission in a public session. The Planning Commission will consider the results of the CEQA analysis and accept or reject the RMAC recommendation to modify the RMP.

However, county staff did not comply with the Planning Commission's directive, but instead hired a consultant, Environmental Stewardship Planning (or ESP, now acquired by Dudek), to attempt a broad rewrite of the RMP.

- It should be noted that consulting fees for the prior 2001 RMP update exceeded \$500,000, creating a River Trust Fund (RTF) debt that took many years to pay down, and additional consulting fees could not reasonably be expected to be paid down by the RTF without raising outfitter fees.
- It should also be noted that the new (2014) RMP update consulting contract for \$61,000 signed by staff was not disclosed to the RMAC, nor that the consultant hired by staff was being paid with River Trust Funds.
- And finally, it should be noted that staff's Annual River Reports for many years showed that funds flowing into the RTF, largely from outfitter fees, were being spent in their entirety on an annual basis, and consequently the recommended RTF balance of one year's worth of annual expenses, roughly \$175,000 - \$200,000, would be imperiled by any additional expenses.

ESP met with various county staff, and privately interviewed RMAC members, promising confidentiality for all input. Approximately 1 1/2 years after the contract was signed on 7/21/2014, ESP publicly disclosed recommendations in February 2016, having never held a community meeting to collect public input for inclusion in the consultant's recommendation. At the first public meeting held afterward in Coloma, more than 70 people attended, and delivered near unanimous public rejection of the proposed elimination of the RMAC.

Staff's proposal to eliminate the RMAC, or more recently, to allow the RMAC to stand but eliminate its powers and duties, will abolish the RMAC's mandated role in monitoring river management and the management of the River Trust Fund. Staff also proposes to eliminate many monitoring and reporting requirements embedded in the current RMP. The RMAC believes each of these two actions would as a consequence require a new EIR at considerable expense.

Furthermore, the RMP rewrite process proposed by staff has not been completed, meaning that staff's proposed RMP will require more RMP update expenditures. For example, staff proposes to repeal the "institutional" permits issued to several not-for-profit organizations (NFPs)⁴, restricting institutional

⁴ Current 2001 RMP definition of institutional permit holders:

"6.1.2 An Institutional Group is defined as a non-commercial group participating in a river trip operated as a program of a non-profit organization that meets IRS tax-exempt

permits to educational institutions only⁵. While staff has separately recommended that the County issue unused commercial permits to other NFPs, there is no such provision in staff's currently proposed RMP. As several institutional organizations have expressed their concerns in public meetings over the loss of their permits and have received no assurances from staff that they will qualify as private users, this remains an outstanding issue with potentially explosive consequences for the County.

The RMAC instead proposes that the County support a **low cost, low risk, revenue growth approach**:

1. Above all, adopt a **fiscally conservative approach** to RMP updates. The River Trust Fund is already overstretched and the county cannot afford another expensive top-to-bottom EIR, more consulting fees, or the fallout from massive RMP changes that could easily be challenged.
 - a. The RMAC, drawing upon its own resources and community volunteers, has the expertise to draft plan updates. Much of the new content in staff's proposed RMP update was contributed by the RMAC. For example, the complex language in the new subcontracting provision in section 6.2.1.7 was entirely drafted by RMAC members⁶.

requirements, or a non-commercial group participating in a river trip through an accredited academic program as part of the educational curriculum of a school, college, or university. An Institutional Group must also meet the following criteria:

- 6.1.2.1 Fees or charges are collected only to recover the actual costs of the trip.
- 6.1.2.2 All expenses are shared equally by all group members.
- 6.1.2.3 No member of the group obtains financial gain, including salaries, or otherwise benefits by increased assets.
- 6.1.2.4 No paid employees such as guides, lead guides and drivers are compensated by salary, wages, or equipment, with the exception that educational leaders for accredited educational programs may be paid or compensated.

⁵ New institutional definition in staff's 2017 RMP:

"6.1.4 Institutional Group: 6.1.4.1 A non-commercial group participating in a river trip through an accredited academic program as part of the educational curriculum of a school, college, or university. Fees or charges may only be collected to cover the actual costs of the trip."

⁶ 6.2.1.3.7 It shall be permissible for an outfitter to subcontract with a second outfitter, if all of the following criteria are met:

- 6.2.1.3.7.1 The second outfitter uses their own equipment, properly marked with the second outfitter's name;
- 6.2.1.3.7.2 The raft is guided by the second outfitter's employee;
- 6.2.1.3.7.3 The raft is covered by the second outfitter's insurance;
- 6.2.1.3.7.4 The second outfitter is responsible for all fees;

2. The RMAC believes that the **adaptive management process**, recommended by ESP (now Dudek) and also employed in the river management plans of BLM⁷ and State Parks, is both most appropriate and most fiscally prudent. The adaptive management process provides for changing a standing plan when and where change is needed. **The RMAC believes that RMP updates that would require a new EIR are best avoided if possible**, due to the environmental sensitivities of the river and the likelihood of challenges.
 - a. The RMAC institutional permit update, which received preliminary Planning Commission approval on 3/28/2013, should move forward, in compliance with county ordinance, regulations, and the Board of Supervisor's standing Resolution 065-2002. This update is highly unlikely to require a new EIR because existing monitoring and mitigation provisions would demand a reduction in commercial outfitter launches should any exceedances in total river traffic occur.
 - i. RMAC recommends against any RMP changes that would effectively eliminate access to low cost river recreation for existing institutional users, among them inner city youth and people suffering from life-threatening health conditions, as is currently proposed in staff's RMP update.
 - b. Additional updates to the RMP have been proposed that the RMAC believes have merit, including some that the RMAC has drafted itself. The RMAC recommends that the County return to a community-based collaborative process for RMP updates, and to the standard as prescribed in law, regulation and Board Resolution 065-2002 whereby it is the RMAC, not staff, that recommends RMP updates to the Planning Commission and Board of Supervisors.
 - i. Additionally, the RMAC believes that as an advisory committee whose agendas are posted at least 72 hours in advance, section 54954 (b) of the Brown Act requires that its meeting be held within its area of jurisdiction, which is within ¼ mile of the center of the South Fork of the American

6.2.1.3.7.5 The customer signs a liability release with the second outfitter.

⁷ See p. 18, Plan Amendments of BLM's July 2004 South Fork American River Management Plan. Note also the the BLM held a total of 48 meetings between 2000 and 2003 to gather public input in a community-based collaborative process.

River⁸. The RMAC requests that the BOS direct staff to return its meetings to the Lotus Coloma valley, where most of the most heavily impacted residents, businesses and river users live and congregate. The RMAC believes it is imperative that RMP update meetings be held within its area of jurisdiction.

3. The RMAC believes that if county staff gains complete control over updates to the River Management Plan and RMP implementation, staff is likely to increase outfitter fees without proper analysis and public input resulting in unknown impacts on this sector of our economy. Should it be determined that additional revenues need to be generated after proper analysis and public review, RMAC proposes to revise the RMP to **pursue other sources of revenue for the River Trust Fund** that are not currently allowed in the existing RMP or proposed in the staff plan:
 - a. It is worthy of note that in the BOS 02/23/2016 meeting, after receiving a presentation from the ESP consultant on its recommendations, four supervisors advocated for exploring and identifying new revenue sources for the River Trust Fund, including tapping SMUD or TOT funds.
 - b. In addition, the RMAC recommends that the RMP be updated to allow the River Trust Fund to add funds from independent revenue sources such as grants, donations, and other fees.
 - i. In particular, the RMAC recommends that the RMP be updated to enable the RMAC to annually identify capital expenditure projects pertinent to recreational river use on the South Fork American, and with Planning Commission and BOS approval, to pursue fundraising efforts for such projects. Such projects could include a whitewater park, recommended three years ago by the economic consultant in the 2014 Henningsen Lotus Park Plan as the only Parks

⁸ 54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings.

Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction...

project likely to meaningfully contribute to the County's economic growth⁹.

In conclusion, the RMAC believes that the South Fork of the American River is viewed by many citizens not only as a County recreational resource, but a state and national resource. Its extraordinary popularity with visitation of about 100,000 river users per year drives a meaningful sector of the County's economy, including outfitters, campgrounds, B&Bs, wineries, restaurants and other service oriented businesses. At the same time, this river is environmentally sensitive. Its management is more complex and demanding than other Park resources, unquestionably. This is why the RMAC was constructed of representatives spanning multiple user types, land owners, business owners and impacted parties, and why its powers and duties remain relevant and necessary today. The foresight of the Board of Supervisors of El Dorado County in establishing the River Management Advisory Committee in its Resolution No. 065-2002, has proven, over the test of time, to be a very wise decision. We, the committee members of the RMAC, strongly recommend and hope that the current Board of Supervisors will continue to support and recognize the value of this advisory committee.

We thank you for your time and consideration,

The RMAC Committee Members

⁹ See Economic Assessment, p. HLP-35 of June 2014 Henningsen Lotus Park Plan at <https://www.edcgov.us/government/parks/masterplan/documents/HLP%20Concept%20Plan%20Final%202014%2006%2030.pdf>:

"Specifically, as a whitewater recreation venue, HLP can dramatically contribute to the community visitor industry and provide wider economic impacts to area businesses who serve this outdoor recreation market. We anticipate that a purpose-designed and built in-stream whitewater venue will have a significant impact on the local community both in terms of direct visitor expenditures but also for community image, branding and marketing, local recreation amenities, business reinvestment, and for re-positioning Coloma-Lotus as a premier whitewater destination. However, these benefits must be carefully weighed against the costs to the local community such as competition for access to HLP and the river, increased traffic, and environmental impacts."