



Legislation Details (With Board Report)

File #: WRAPA 24-008 **Name:** Brow Appeal/P&A May

Type: WRA P&A Item **Status:** Agenda Ready

File created: 4/26/2024 **In control:** Water Resources Agency Personnel and Administration Committee

On agenda: 5/3/2024 **Final action:**

Title: Support recommending that the Board of Directors of the Monterey County Water Resources Agency hold an appeal hearing to consider:

- a. Denying an appeal filed by Paul Brow challenging the Monterey County Water Resources Agency’s decision to revoke dock license #26433 due to deterioration, damage, and inadequate maintenance which renders the dock a hazard and in violation of Ordinance 4065;
- b. Authorizing the General Manager to revoke dock license #26433; and
- c. Authorizing the General Manager to proceed immediately with summary abatement which may include destruction of the dock if not retrieved by the owner from floating on the surface of the Reservoir or if left aground within the highwater mark of the Reservoir.

Sponsors:

Indexes:

Code sections:

Attachments: 1. Board Report, 2. Attachment 1 - Ordinance No. 4065 (2000), 3. Attachment 2 - Brow Revocation Letter, 4. Attachment 3 - Brow Appeal letter received 3.1.24, 5. Attachment 4 - Docks and boatslips standards, 6. Attachment 5 - Photos of Brow Boat Dock, 7. Brow Boat Dock Revocation Board Presentation PPT

Date	Ver.	Action By	Action	Result
5/3/2024	1	Water Resources Agency Personnel and Administration Committee		

Support recommending that the Board of Directors of the Monterey County Water Resources Agency hold an appeal hearing to consider:

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- b. Authorizing the General Manager to revoke dock license #26433; and
- c. Authorizing the General Manager to proceed immediately with summary abatement which may include destruction of the dock if not retrieved by the owner from floating on the surface of the Reservoir or if left aground within the highwater mark of the Reservoir.

RECOMMENDATION:

It is recommended that the Personnel and Administration Committee support recommending that the Board of Directors of the Monterey County Water Resources Agency adopt a resolution:

- a. Denying an appeal filed by Paul Brow challenging the Monterey County Water Resources Agency’s decision to revoke dock license #26433 due to deterioration, damage, and inadequate maintenance which renders the dock a hazard and in violation of Ordinance 4065;
- b. Authorizing the General Manager to revoke dock license #26433; and
- c. Authorizing the General Manager to proceed immediately with summary abatement which may include destruction of the dock if not retrieved from floating on the surface of the Reservoir or if left aground within the highwater mark of the Reservoir.

The Board hearing on the appeal is de novo. A draft resolution with findings supporting this recommendation is attached for consideration.

SUMMARY/DISCUSSION:

On February 9th, 2024, Boat Dock #26433, owned by Paul Brow, was located on Nacimiento Reservoir (Reservoir) by Monterey County Water Resources Agency (MCWRA) inspector staff with both floatation and structural failures. The finding was that the deterioration, damage, and inadequate maintenance of the boat dock renders it a hazard. According to Ordinance 4065 (Attachment 1) Section 15: Nuisance Docks, docks that are not properly maintained in accordance with the ordinance are subject to summary abatement.

On February 9th, 2024, Mr. Brow was advised to retrieve and remove the dock from the reservoir while performing repairs. He was asked to identify the planned retrieval date to avoid receiving a notice of abatement. The owner replied and stated there were weather constraints that limited the ability to access the boat dock to conduct repairs or remove the dock. Mr. Brow claimed to have the boat dock floatation repaired by the end of March of 2024. Agency staff responded to this statement, alerting Mr. Brow that the dock was not being properly maintained and was in violation of the ordinance, and because reservoir safety is a top concern, the license was set to be revoked and the dock subject to summary abatement.

On February 21st, 2024, the dock owner was sent a Revocation Notice (Attachment 2) via Certified USPS mail, highlighting the violation of Ordinance 4056, and the consequence of license revocation. The revocation notice outlines the steps the dock owner can take to appeal the revocation. If a licensee, should fail to comply with the standards and requirements of the boat dock ordinance, the property owner shall assume full responsibility for all fees owed to the Agency, including any and all disposal fees and removal expenses as appropriate. A licensee cannot get a revoked dock license reinstated or restored by the MCWRA. Licensees can seek to avoid revocation by appealing their case to the General Manager via written letter. A licensee does this by requesting an Administrative Hearing. That request must be made within 10 days of the date of receiving the revocation letter.

On February 28th, 2024, the USPS Certified mail signed returned receipt for revocation was accepted by the MCWRA staff.

On March 1st, 2024, Paul Brow submitted an Appeal (Attachment 3), with a check for \$25.00. Agency staff contacted the owner stating the amount due for the standard appeal fee is \$150.00. After no response, the check was mailed back to the owner, as it was only a partial payment of the standard fee.

Paul Brow was given instructions from staff as to how to properly submit an appeal. The dock owner was also given further detail as to why this dock is out of compliance. Mr. Brow was made aware that the floatation on his dock, consisting of plastic barrels and miscellaneous plastic floats is non-compliant, and the dock's overall aging construction poses an issue. Mr. Brow was given staff recommendation regarding the replacement of the current dock with one that is constructed of proper materials and floatation, designed for high exposure to moisture. Examples of this are given, thoroughly demonstrating what is designed in accordance with compliance standards. Agency staff also provided him with a document listing acceptable standards for boat docks and slips (Attachment 4).

On April 15th, 2024, a check from Paul Brow was received by Agency staff in the amount of \$150.00, initiating the appeal process.

The existing dock has non-compliant flotation with improper floats, and is constructed of deteriorating wood,

which has weakened the structural integrity of the damaged dock. It is unstable and could collapse making it potentially dangerous to the life, health, and safety of the reservoir and its users. Use of the entire structure should be discontinued. The dock operator is aware the dock is at the end of its useful life expectancy, as wood docks are expected to last approximately 5 to 15 years before nails, bolts, and screws are worn, and materials become partially decayed. It is currently in a state of deterioration due to inadequate construction and maintenance. The owner is unable to load it off the reservoir and the Agency's ordinance guidelines are unmet, making it unusable and in an unsafe condition.

Revocation of the license and summary abatement of the boat dock would eliminate risk to both reservoir resources and reservoir users. All boat dock operators are subject to Ordinance 4065. The Agency is actively enforcing compliance with Ordinance 4065, and no exceptions are made when unusable and unsafe are found. The Agency's staff recommendation is that the dock license be revoked, the owner pays all penalty fees owed to the Agency, and that the boat dock be removed from the reservoir. Once this action is performed, Mr. Brow can apply to operate a dock in substantial compliance with ordinance standards by applying for an initial dock license for a new dock, which is subject to the approval of the General Manager.

OTHER AGENCY INVOLVEMENT:

County Council's Office

FINANCING:

Summary abatement of non-compliant boat docks comes at the expense of the property owner, as is outlined in Ordinance 4056 Section 16, which states that if a licensee fails to comply with standards and requirements set forth in the ordinance, the property owner assumes full responsibility for all fees owed to the Agency, including any and all disposal fees and removal fees as appropriate.

Prepared by: Mallory Roberts, Hydrologist (831) 755-4766

Attachments:

1. Ordinance No. 4065
2. Brow Revocation Letter
3. Brow Appeal Letter
4. Docks and Boat Slip Standards
5. Photos of Brow Boat Dock
6. Brow Boat Dock Revocation Board Presentation