

MINUTES
BOATING AND WATERWAYS COMMISSION EMERGENCY MEETING
SACRAMENTO, CALIFORNIA
September 23, 2013

Pursuant to due and regular notice, the emergency meeting of the Boating and Waterways Commission was called to order by Chairman Metz on September 23, 2013, at 2:00 P.M. at the Holiday Inn hotel, 300 J Street in Sacramento, California.

Commissioners in attendance were Douglas Metz, David Lumian, David Livingston, John Bañuelos, and Virginia Madueño. Division of Boating and Waterways staff in attendance were Sylvia Hunter, Deputy Director; Joleane King, Associate Governmental Program Analyst; and Margarita Sanchez, Administrative Assistant.

PROPOSED EMERGENCY REGULATIONS QUAGGA AND ZEBRA MUSSEL INFESTATION PREVENTION FEE

Ms. Hunter introduced Tara Lynch and Penny Schulz, Legal Counsels for the Department of Parks and Recreation and Susan Ellis, Environmental Program Manager of Evasive Species and Jennifer LaBay, Senior Environmental Scientist, from the Department of Fish and Wildlife.

Ms. King gave a presentation and summary on the proposed emergency regulations. Chairman Metz asked where in the regulations is the definition for marine waters. Ms. King replied the definition was discussed and defined at the technical advisory group. She read the following: "For purposes of this section, marine water is defined as California coastal and bay waters, which includes Suisun Bay. Marine water shall not include inland waterways, rivers, lakes, reservoirs, wetlands or the Sacramento-San Joaquin Delta." Chairman Metz asked if a map or listing will be included in the regulations so boaters will know where the boundaries of marine waters are and who will enforce it. Ms. Schultz responded there will not be a map or a listing included in the regulations and she added that enforcement will be done by peace officers.

Commissioner Lumian asked what the cost will be and if youth groups will be exempted from the fee. Ms. King stated the cost was discussed in the technical advisory group and is about \$3.5 million and the youth groups will be exempted.

Commissioner Bañuelos questioned why the Department of Fish and Wildlife is not running this program since they have a great program now. Ms. Ellis replied that Fish and Wildlife is doing the outreach and education portion of this program and other departments under the umbrella of the Resources Agency are doing other portions. She added that currently they receive and estimated \$ 2 million and with 15% of the fund allocated to them, they will be able to hire one more person. Ms. Hunter added that the Division will have one analyst who will develop and administer the program and will keep the Commission informed.

Commissioner Bañuelos asked how the Division will know if this program will work, since the Water Hyacinth Program has not worked for the past 20 years. Ms. Hunter replied that the Water Hyacinth Program is a control program and the Quagga/Zebra Program will be on prevention and not control.

Chairman Metz asked about the estimated time of implementation. Ms. Hunter replied the collection will not be done until January 1 and implementation will begin the following budget year in July. She added the Commission will be kept informed.

Commissioner Livingston stated there is a lot of discussion on enforcement today, and he assured the Commission that the local law enforcement will not have any problems or issues with enforcement.

PUBLIC COMMENTS

Jon Friedman, US Army Corps of Engineers (Corps), asked that the Division consider how the regulations will affect federal vessels operating on marine waters that are responding to natural disaster in inland waters. He said the Corps will be applying for the grant money when they become available. Mr. Friedman added he was confused on the relationship between the Department of Fish and Wildlife and the Division of Boating and Waterways and asked if there will be education money for training of officers to prevent the infestation or is the money coming out of different departments for training. He said the Corps will be asked by boaters if in the next few years there will be an additional fee on the fishing license, since the mussels can be spread through fishing equipment as well as boats. He added the state needs a strong campaign on what it is doing and where it is going with the mussel program. He said he would like to make sure the money will be used on prevention and not on controlling, but noticed there was a little mixing of that language in the grant application. Mr. Friedman stated the Corps will continue the great relationship it has with the Division and thanked the Commission for the opportunity to speak.

Greg Gibeson, Recreational Boaters of California (RBOC), commented his organization has been very supported in the prevention of the mussels, but is concerned about the enforcement of boaters in the marine and inland waters, especially the boaters who recreate between the Delta and the bay. He expressed concern about the recreational boater who will be paying the new fee and already has to pay many other fees. There should be some coordination of these fees. Mr. Gibeson said there are many bay area boaters who come into inland waters to recreate and will not be able to understand what is inland and what are marine waters, so they may no longer boat in the Delta. This would cause a loss of revenue in the area. He said the regulations are too vague and will be hard to enforce and boaters will be asking how much will the fine be and why would it apply to some and not all boaters.

Jack Michael, President, Recreational Boaters of California, said the definition of marine waters in the regulations is an important one and he gave an example by saying that his boat will not be required to pay the new fee, but his dingy will be. Many boaters may not venture out into the Delta because they will need the required sticker or be fined. Mr. Michael said there is

confusion about Suisun Bay as to where it begins and where it ends and confusion on who will pay the fee and who will not. He said these issues have been raised before and have not been or should be fully clarified in the regulations. For example, he said, if a marina is located in the east side of the Antioch bridge which is not in marine waters and therefore requires a sticker, but the other side of the bridge which is in marine waters does not require a sticker, how do you know if that boat goes to the other side of the bridge or not. Chairman Metz asked if some type of map clarifying water areas at time of registration would help boaters. Mr. Michael responded it would be helpful, but it may not be able to address the problems of where boaters will be using their boats. Boaters may feel constrained and isolated on boating in the Delta. Commissioner Bañuelos agreed with Mr. Michael's comments.

Teresa Crimmens, Tahoe Resource Conservation District, commented on and supports the grant program. She said the Conservation District works on prevention and control of water invasive species in the Tahoe and Truckee region. Ms. Crimmens said this program will benefit to offset the need for boaters fees at individual water bodies. She asked to support the consideration of the benefits for regional prevention in the grant award factors as they are listed. Many of the program elements themselves from education to actual inspection logistic are most effectively and efficiently carried out at the regional scale.

Chairman Metz asked staff what other states have similar fees. Ms. King responded she does not have a list of the dozen or so other states with similar programs. Ms. Ellis said in the west there is Oregon, Idaho, Utah, Washington and Colorado who have boater fees but not grants programs. There are other states that have been establishing these types of fees since 2008. Chairman Metz said he will find the report that he has which shows other states with similar programs and will send it to the Division so that it could be included in the record. Chairman Metz asked if there were any public comments on the regulations. Ms. King responded the Division received five or six comments which were similar to the issues raised today.

Commissioner Madueño asked what is the difference between the \$8 and \$16 fee and if there will be money for training of law enforcement. Ms. King responded the difference is due to the DMV registering a boat on a two-year basis, so if a boat is registered in between the two years, then they pay \$8, all others will pay \$16. Commissioner Livingston stated there will not be any problems or issues with enforcement. He said it will be an ancillary enforcement duty for any marine officer and they will be receiving an updated training bulletin on the new legislation. Commissioner Madueño expressed concerns that this regulation will be a deterrent and discourage bay area boaters from boating in the Delta.

Chairman Metz asked staff if it is possible to have a workshop to discuss the concerns voiced by the public. Ms. Hunter responded that today's comments will be taken under advisement and said there will be a second opportunity for comments when the regulations become final. The Division can then work in more details on the regulations. Ms. Hunter said she would take into consideration on having a workshop in the near future. Ms. Schulz informed the Commission that with emergency regulations, the public may submit comments directly to Office of Administrative Law (OAL) for five calendar days after OAL has posted the notice of the pending emergency action on the OAL website. She indicated an emergency regulation usually becomes effective when filed with the Secretary of State and remains in effect for 180 days at which time

a regular regulation can be filed during this time frame. Ms. Schulz stated once a regular regulation is published in the California Regulatory Notice Register and on the agency's website then the agency has one year to complete the rulemaking and submit the rulemaking file to OAL. She added there is a minimum of 45 days to comment in writing on the proposed regulations.

Chairman Metz advised that the Commission have one or more workshops to address issues raised by RBOC and others in today's meeting and that the first workshop should be during the 180 days of the comment period. Commissioner Madueño stated that she would like to hear more about the concerns boaters have on the regulations in a workshop setting.

Commissioner Livingston stated many of the objections and concerns voiced at today's meeting were raised during the legislative process and for better or worse they were considered or rejected, so he was not sure how far the Commission can go as it develops the enforcement regulations, but the legislative process itself has been concluded.

Chairman Metz said in the federal government the agencies have great latitude in interpreting the provisions of the statutes. Counsel and staff should look into this as it relates to California's regulations.

ADJOURN

Chairman Metz adjourned the meeting at 3:20 P.M.

Original signed by:

Sylvia Ortega Hunter, Secretary