

# Irish Beach Improvement Club

*A Not-For-Profit Community  
Service Organization*



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*Parks, Recreation & Private Gated Beach Access*

October 26, 2019

State Water Resources Control Board  
Fee, Data Management, and Statements Unit  
Division of Water Rights  
Attn: Eloise Berryman  
P.O. Box 2000  
Sacramento, CA 95812-2000

Subject: License 010564 (Application A021901) Moores Creek Tributary to Irish Gulch in Mendocino County, *Rebuttal of IBWD Amended Supplemental Objection to Change of Ownership*

Dear Ms. Berryman,

As you are already aware the Irish Beach Water Districts (District) has again objected to the transfer of the subject license to the Irish Beach Improvement Club (IBIC). The District's attorney, Matthew Emerick, transmitted an Amended Supplementary Objection to you on October 4, 2019. Most of their objection has not changed since their August 13, 2018 letter to your office and continues their claim of inferred ownership of the underlying property and appurtenances in support of the subject license. On August 22, 2018 we provided to the SWRCB a rebuttal along with supporting and background documentation.

We continue to be frustrated by the lack of progress we have had with the District regarding this dispute. We have met with them several times and attempted to come to a resolution to no avail. IBIC continues to be concerned by the inflammatory nature of the District's transmittals to the SWRCB and the potential misleading and the questionable accuracy of the statements contained there-in. IBIC believes it would be beneficial and helpful to again offer a rebuttal of their accusations.

At the risk of being repetitious of our August 13, 2018 letter to you, attached, we address 9 primary salient facts for you to consider in your evaluation of the merits of the District's objection. We have cited specific references in our discussion. To aide your review we have included a DVD with complete copies of all references.

We are transmitting this via email and US Mail. The DVD with the references is included with the copy transmitted by US Mail. If there are any questions or need for further documentation, please feel free contact me directly at (530) 592-7813 or [mldunbaugh@gmail.com](mailto:mldunbaugh@gmail.com).

Thank you

Michael Dunbaugh  
President, IBIC

cc: IBWD

Rebuttal of IBWD  
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1. The District discusses the intentions of the Developer. Contrary to the documented facts, the District's claims that it was always the intention of the Developer that the District maintain and own the facilities for the Pomo Lake Water Diversion.
  - IBIC and the District were created at essentially the same time in the late 1960s. The District was created to care for the water distribution system and IBIC was created to care for and maintain common facilities including Pomo Lake.
  - The Developer (Moore's) leased Pomo Lake and Moore's Creek properties to IBIC at its creation in 1967. The lease went through a few iterations subsequent to its creation with the last version issued in 1971(Ref. 1). The Developer was very clear regarding their intent. The lease specifically assigned care and maintenance of Pomo Lake dam and lake to IBIC in the terms and conditions page 4 paragraph 2(b). The lease also required IBIC to pay all ad valorem and property taxes page 4/5 paragraph 3(b). In 1986, at the end of the lease period, the property was deeded to IBIC. There were no encumbrances or conditions on the deed for Pomo Lake and there were no Pomo Lake easements established for the District.
  - The Developer agrees with this position that Pomo Lake was originally intended to be owned, operated and maintained by IBIC. The co-signature of Gordon Moore's for Mendocino Coast Properties (MCP) attached to IBIC's original July 2018 Change of Ownership Application to SWRCB attests to this fact (Ref. 2).
2. The District states that they have held the license for 40 years. That is misleading.
  - There is no evidence that the District ever performed or financed even routine maintenance of the works for Pomo Lake. There was no need. That responsibility was already assigned to IBIC by the property Developer, the Moore's.
  - IBIC maintenance activities included: IBIC's draining and cleaning of Pomo Lake in the 1980's, routine control and clearing of pond weed from Pomo Lake and the spillway, routine stocking of fish in the lake, hiring environmental consultants for recommendations regarding care of the lake, hiring professional civil engineers to evaluate the integrity of the dam and spillway and provide care and maintenance recommendations, and building and maintaining foot bridges and trails for public access around the lake.
  - The District has never participated nor contributed to any of the efforts to maintain Pomo Lake for its licensed purpose of recreation and fire protection since Pomo Lake's inception in the 1960s.
3. Owning and operating a water facility for purposes that are separate from and not incidental to the water distribution system is outside the scope of the powers granted to the District by the water code section 35401(Ref 3).
  - The District is empowered to provide a water distribution system as a "California State District". No where in the water code is the District empowered to provide recreational facilities as permitted and licensed by the SWRCB.
  - Originally the District was not empowered to provide fire protection services for Irish Beach (Ref 4). The District was temporarily empowered by State law in the 1970s to provide fire protection services 35412 (Ref 3). The District was no longer empowered to provide fire protection services with the annexation of Irish Beach to the Redwood Coast Fire Protection District in 2006 /7 (Ref 5).

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- Since Pomo Lake is not part of the water distribution system, storage of water for fire protection in Pomo Lake can not be considered incidental to the water distribution system and is outside of the powers granted to California Water Districts.
  - The District has been informed of this limitation by LAFCO (Ref 5). The Districts Legal Council recognized this in a May 2018 draft agreement transmitted to IBIC which also considered the license surplus (Ref 6). IBIC confirmed the limitation of District powers with LAFCO (Ref 7).
  - It could be considered a misuse of public funds to spend public money on activities outside of the District's powers granted in the Water Code.
4. The District does not now or in the past own any part or appurtenance of Pomo Lake or Moores creek. The current claim of the District of inferred ownership of Pomo Lake is inconsistent with documented positions the District has taken in the past.
- In the 1990 agreement with IBIC the District recognized IBIC was the owner of Pomo Lake and the District needed to get an easement to access Pomo Lake water (Ref 8).
  - In the July 2002 Bartle Wells "Irish Beach Water District Engineer's Report for District Wide Capital improvement Assessment" Appendix A, Fixed Asset Listing" issued by the District in support of a proposition 218 tax assessment, Pomo Lake was not listed as an asset of the District (Ref 9).
  - The LAFCO Sphere of Influence (SOI) report adopted May 2, 2016 (ref) does not indicate that Moores Creek, Pomo Lake or fire protection as part of the District. Only Irish Gulch creek, the District wells and 5 water storage tanks are identified (Ref 10).
  - The District has never budgeted for or paid Pomo Lake property related taxes or maintenance costs associated with Pomo Lake and its appurtenances.
5. Under the license there has never been a need for the District to have access to Pomo Lake or an easement for such access. The District contends that to enjoy their assigned water right they had to have easements and access. They claim ownership is inferred regardless of the fact that the does not hold a deed for the property nor an easement for the works.
- At the time the permit was assigned to the District the dam had already been built and the lake filled with water. The license is very clear on this subject (Ref 11). The license states "After initial filling of the reservoir, license's right under the license extends only to water necessary to keep the storage reservoir full by replacing water beneficially use and water lost by evaporation and seepage, and to refill if emptied for necessary maintenance and repair" (completed prior to the District being assigned the license). Natural stream flow from Moores Creek provides such replenishment and requires no action from a licensee.
  - Since the District does not own the land or easements over which Moores Creeks flows they have no control over its flow.
  - It can be concluded that access and easements are not required because they are not needed by the District to perform the intent of the license.
  - It should be noted that there is no record of Pomo Lake ever being used as a source of fire protection water by the District, Cal Fire or Redwood Coast Fire Protection District.

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6. The District claims that the Moores were required to turn over the water license to Pomo Lake as a condition of development.
  - The Developer, Moores, was required to turn over the water distribution system when it established the District. That was done with the turnover of the Irish Gulch water permit and all the associated properties and easements for the water distribution system.
  - It was never intended that Pomo Lake be part of the water system. Pomo Lake and the permit/license is not for domestic or irrigation water and has never been connected to the water system. That is illustrated by the fact that: 1) there were no Pomo Lake District easements established and 2) IBIC was tasked to care for and maintain Pomo Lake, not the District. The grantor, Moores, agrees with this assessment and co-signed the license transfer request (Ref 2).
  - All water storage for the water distribution system was contained in tanks provided for that function (Ref 10). There has never been a need for Pomo Lake water storage as part of the water distribution system.
7. The District claims that IBIC does not represent the community.
  - IBIC's Bylaws clearly state and have historically that all property owners within the District are eligible to become IBIC members (Ref 12 - current Bylaws).
  - Some members of the community have elected to not be members of IBIC. That is their choice.
  - IBIC benefits and represents all interests within its scope of responsibilities whether or not those interests elect to participate. (This is analogous to someone not registering to vote, they still are represented by those who are elected regardless if they choose to participate in the election).
  - Currently there are 200+ IBIC Members representing 216 Irish Beach properties and 138 unsold empty properties still held by the developer and their family members. This totals 354 or approximately 77% of properties in the District are held by IBIC members.
8. The District's claim that IBIC, being a private corporation, can not provide a public service is inconsistent with IBIC's Articles of Incorporation and its IRS Not-for-profit corporation designation.
  - In accordance with IBIC's Articles of Incorporation (Ref 13) IBIC's purpose is to "initiate, sponsor, promote and carry out plans policies and activities which tend to further the prosperity and development of the Irish Beach section of the Mendocino Coast".
  - The IRS has designated IBIC as a 501c4 not for profit corporation formed under the IRS tax code because of our Articles of Incorporation and the fact that IBIC maintains a public facility (Pomo Lake and the surrounding parks).
  - Pomo Lake, the trails, flora and fauna, and the picnic grounds are unfenced and open to the entire community of Irish Beach, residents and guests alike.
  - IBIC holds an annual picnic in Pomo Lake park for all residents of Irish Beach.
  - All property owners and residents of the Irish Beach District, benefit from the efforts of IBIC to maintain Pomo Lake and the surrounding parks and trails. That is the mission and purpose of IBIC, that has been recognized by the IRS with its granting of a not for profit corporation status.

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9. Any claim of the District that IBIC ownership of the Pomo Lake Water Diversion License 10564 and Pomo Lake works would remove Pomo Lake and Moores Creek as future water sources is inconsistent with the facts.
- The District was clearly informed in 1987 by the SWRCB that it could not use the Pomo Lake recreation / fire protection water license (a non consumptive license) to draw water from Pomo Lake for use in the water distribution system. The District needed to obtain a new permit for that purpose (Ref 14).
  - In 1990 the District entered into an agreement with IBIC for IBIC to provide easements to Pomo Lake and Moores Creek waters should the need arise for a new water source for the water distribution system (Ref 8).
  - The District was granted a new permit, 20443 (Ref 15) in 1990 to extract water from Pomo Lake for the water system. The District never implemented the permit and the SWRCB revoked it in 2006 (Ref 16).
  - The District's claim regarding water needs is not supported by its own actions, the LAFCO SOI and the fact that the SWRCB has revoked the Pomo Lake permit (20443) and other water permits (Mallo Pass) that went many years without development. The District has not demonstrated it needed the water.
  - The water code empowers the District to take land by eminent domain to facilitate its need to provide domestic and irrigation water.

References:

- Ref 1 - Lease of Real Property and Recreational Easements - 15 April 1971  
Ref 2 - Signed Change of Ownership Application  
Ref 3 - Water Code, Div 13, Part 5 Article 1  
Ref 4 - Negative Fire Protection Ltr Mendocino Co 16 Mar 1977  
Ref 5 - LAFCO Hearing 2006 Oct to reorganize with RCFPD  
Ref 6 - Draft Pomo Lake Agreement  
Ref 7 - 10/19/18 LAFCO Response Clarification of Water District Powers  
Ref 8 - IBIC Agreement 13 Jan 1990  
Ref 9 - Bartle Wells Prop 218 Assessment Report  
Ref 10 - Irish-Beach-WD-SOI-Update-Adoped-5-2-16-w-Resolution  
Ref 11 - SWB License 10564  
Ref 13 - IBIC Articles of Incorporation  
Ref 14 - Prelim Letter re applic 29189 16 Nov 1987  
Ref 15 - IBWD Permit 20443 Granted 15 May 1990  
Ref 16 - Permit 20443 revoked April 2006 SWRCB