



## PARADISE IRRIGATION DISTRICT

*"Paradise Irrigation District (PID) is dedicated to the business of producing and delivering a safe, dependable supply of quality water in an efficient, cost effective manner with service that meets or exceeds the expectation of our customers."*

*Please consider how this agenda item relates to our mission.*

**TO: Board of Directors**  
**FROM: Kevin Phillips, Interim District Manager**  
**DATE: May 16, 2018**  
**RE: Reconsideration of the Division of Boating and Waterways Grant Agreement C4123010 for the North Lake Boat Launching Facility Project No. 1083**  
**5/16/18 Board of Directors Regular Meeting**

The District received a \$670,000 grant for the North Lake Boat Launching Facility from the State of California Natural Resources Agency; Department of Parks and Recreation; Division of Boating and Waterways (DBW). The District executed a Grant Agreement on June 3, 2015.

At a Regular Board meeting on August 16, 2017, staff asked for authorization to send a formal request to the Division of Boating and Waterways (DBW) to relocate the grant funded site from Boat Launch No. 2 to Boat Launch Ramp No. 1, and move forward with the project as generally depicted in a planning exhibit prepared by DBW (see attachment).

The Board of Directors decided to delay moving forward because it had concerns and questions relative to many conditions in the agreement. The Board appointed an Ad Hoc Committee to review the agreement further and prepare a list concerns for District legal counsel review and comment. A list dated October 24, 2017 was prepared and sent to DBW requesting consideration and response.

The District received a DBW response on April 17, 2018 in conjunction with the California State Department of Parks and Recreation's legal division. See attachment. The Ad Hoc committee, District counsel and the Interim District Manager met on May 10, 2017 to discuss the DBW response letter. The committee does not recommend moving forward with the grant as previously recommended by staff for the following reasons:

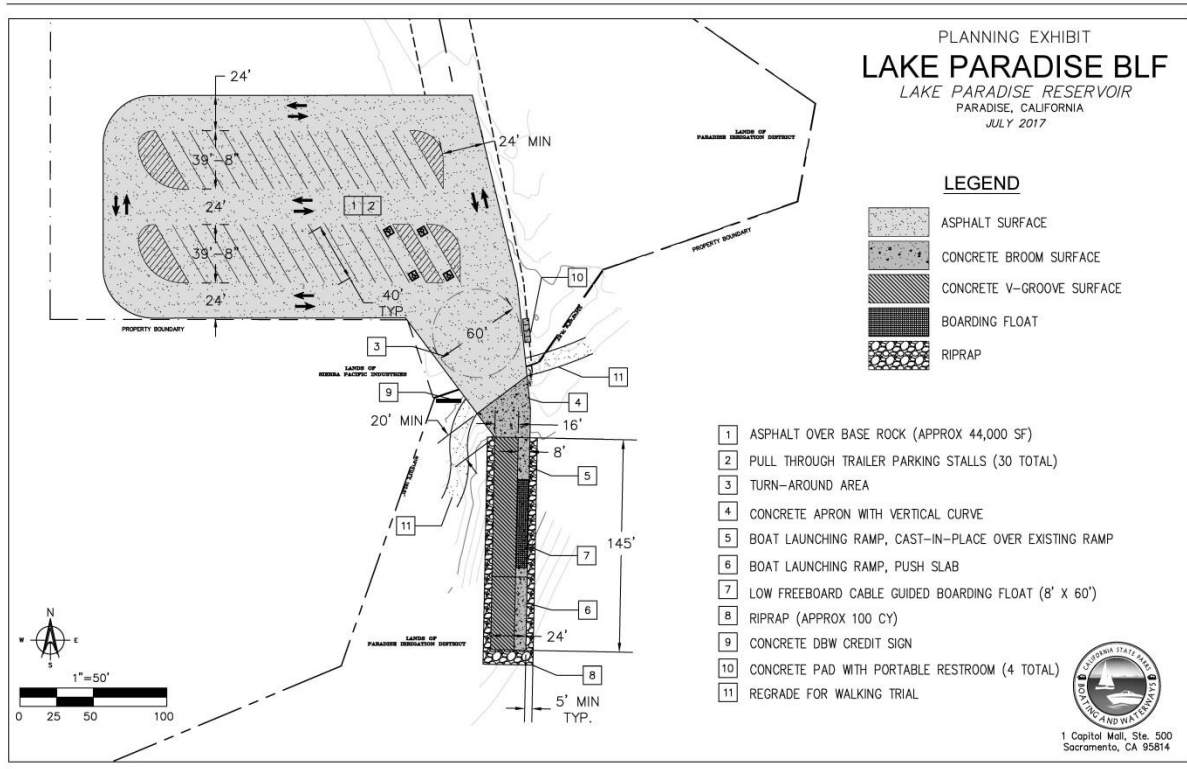
1. The 20-year term of the agreement does not allow the District to opt out once the project moves forward;
2. Once grant funds are paid, no termination is allowed unless all the funds are repaid to DBW; and
3. The facility must be operated in accordance with the agreement for the 20-year term.

The DBW has not dispersed any part or advanced any grant funds for the project to date.

Pursuant to the Grant Agreement Exhibit B; Article 21 – Termination, the Department of Parks and Recreation may terminate the Agreement without cause upon a thirty calendar days advance written notice by the District.

The following motion is recommended:

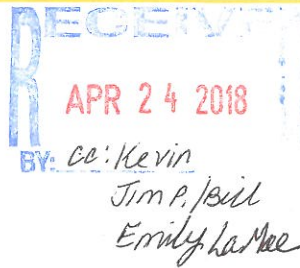
*“I move to authorize the Interim District Manager to send written notice prepared by the District’s legal counsel to the Department of Parks and Recreation; Division of Boating and Waterways that requests termination of Grant Agreement No. C41223010; Project # 1083 pursuant to Exhibit B; Article 21 – Termination.*





DEPARTMENT OF PARKS AND RECREATION  
Division of Boating and Waterways  
One Capitol Mall, Suite 500  
Sacramento, California 95814  
Telephone: (916) 327-1779 / Fax: (916) 327-1770

Lisa Ann L. Mangat, Director



APR 17 2018

Mr. Jim Passanisi  
Paradise Irrigation District  
6332 Clark Road  
Paradise, CA 95969

**Paradise Lake Boat Launching Facility, Grant No. (C4123010) #1083, Grant Agreement Questions Response**

Dear Mr. Passanisi:

The Department of Parks and Recreation, Division of Boating and Waterways (DBW) has reviewed your request dated October 24, 2017, regarding the Paradise Irrigation District's (PID) questions regarding the Grant Agreement between DBW and PID.

The following responses are provided by DBW in conjunction with the California State Department of Parks and Recreation's legal division:

**Page 1**

**Q:** General concurrence: Did PID hold the meeting and receive "general concurrence" from the public? Is that documented?

**A:** According to page 1 of the Grant Agreement, under "Grant Recitals," provision No. 5, PID is required to submit to DBW:

1. Evidence of a noticed meeting held on the proposed Project, as well as documentation of general concurrence by the attending public supporting the proposed Project.
2. Signed Concurrence of all land owners, whose land is directly affected by the proposed Project, supporting the proposed Project.

**Page 4**

**Q:** Article 3B: Does this language mean PID can opt out and/or amend the agreement during the twenty years it exists?

**A:** PID may request revisions to the Grant Agreement in writing, which will be reviewed and responded to by DBW in a timely manner. Please note, once a project is constructed, opting out of the 20-year Grant Agreement is considered a breach. As per Exhibit B, Article 9, DBW may take any action to correct the breach, including but not limited to requiring the Grantee to repay DBW all of the project's reimbursed grant funds, or repayment of the 20-year term on a prorated basis, based on the remaining length of the Grant Agreement.

**Page 5**

**Q:** Article 4C: If the state runs out of money PID is left to pay all costs or settle for a "reduced scope of work".

**A:** This is correct.

Also, (1), if there has been no construction before grantee is notified that the State has insufficient funds, then grantee shall repay all drawn grant funds within 90 days of the end of the fiscal year in which the funds are denied.

Or, (4), if there has been some construction before grantee is notified that the State has insufficient funds, then the grantee and DBW may agree that the expenditure of funds for the partial construction constitutes construction completion.

Please note, this condition typically applies to future funding allocations. Once a grant is awarded, funding is safeguarded for the term of the grant agreement.

**Page 7**

**Q:** Article 6B 6. PID has no intention of providing shoreline facilities to remove waste from vessels holding tanks; these types of vessels will not be allowed on the lake.

**A:** DBW understands larger vessels with holding tanks will not be allowed on Paradise Lake, therefore PID is not required to construct shoreline facilities. This must be formally requested in writing by PID, and a written response will be sent by DBW.

**Page 9**

**Q:** Project completions dates, etc., need to be amended throughout the agreement.

**A:** This is correct: PID is required by DBW to provide updated project schedules as the project progresses. PID can also request an extension to the Grant Performance Period. This must be formally requested in writing by PID, and a written response will be sent by DBW.

**Page 10**

**Q:** Article 8C: Amend consistent with PID policy prohibiting 4 stroke gasoline engines specified in the Paradise Lake brochure. Also, presently the lake is closed every Wednesday.

**A:** PID must pass a local Ordinance in compliance with HN §660 if it wants to exclude 4-stroke gasoline engines, otherwise it is a violation of the Grant Agreement, and a violation of HN 660. Please provide a copy of the District's ordinance prohibiting gasoline engines. DBW has approved the grant to move forward in light of the Wednesday maintenance and Kids Fishing Derby closures

**Q:** Can this fee be used to pay PID employee salaries?

**A:** The fees collected at BLFs may be used for maintenance and repairs to the facility. Employees can be compensated only for the time spent on BLF maintenance and repair duties. Any compensation of employees for maintenance and repairs using BLF fees must be closely documented by the grantee (by number of hours expended and hourly wage of employee), and subject to audit by DBW.

#### **Page 11**

**Q:** Article 8I: Seems onerous; each time we have a concession for a special event we need to get written Department approval.

**A:** This is correct: Article 8, Item I refers to a "concessionaire" hired for the operations and maintenance of the facility. Also, as per below, DBW requires grantees to request in writing any proposed uses of the facility which are not for launching recreational craft. Please note, as per Exhibit B, Article 8, Part B: "The project and all other improvements constructed or placed in the Project Area shall be operated solely as a recreational small craft boat launching facility. Other uses of the facility such as for craft fairs, festival, sno-parks, special events, storage, transient parking, camping, etc., are not allowed without prior written permission of the Department."

#### **Page 12**

**Q:** Article 9A: PID responsible for all costs to correct any breach

**A:** This is correct.

**Q:** If the breach is not corrected PID repays the grant within 180 days

**A:** This is correct.

**Q:** 9C: PID restricts gasoline vehicles, can charge up to \$15 and closes the lake every Wednesday. Do these policies constitute a breach?

**A:** The fee of \$15 would constitute a breach. As per Exhibit B, Article 8, Item D, "The Grantee shall not charge any fee or combination of fees totaling more than \$13.00." Grantees may adjust this fee only after obtaining written permission from DBW. Also, as stated above, PID must pass a local Ordinance in compliance with HN §660 if it wants to exclude 4-stroke gasoline engines, otherwise it is a violation of the Grant Agreement, and a violation of HN 660. Please provide a copy of the District's ordinance prohibiting gasoline engines. DBW has approved the grant to move forward in light of the Wednesday maintenance and Kids Fishing Derby closures



**Page 14**

**Q:** Article 11: Is Department approval required in perpetuity or only for the 20 year term of the agreement?

**A:** As per the Grant Agreement's cover page, "Grant Agreement Performance Period is from effective date and continues 20 years from the date of Acceptance of Project."

**Page 15**

**Q:** Article 13: Every road sign needs Department approval.

**A:** This refers only to directional signage leading boaters to the BLF. Signage would be reviewed during the engineering plan reviews.

**Q:** Article 14: What does this language mean?

**A:** This means is that if there is a breach by grantee of any provision of the Grant Agreement – meaning that the grantee fails to comply with a provision of the Grant Agreement (a breach), then if DBW fails to take legal action against the Grantee for that particular breach, such inaction by DBW does not constitute a waiver of DBW's legal ability to take legal action against the grantee for any future breach by grantee of the same provision or any other provision of the Grant Agreement.

**Page 16**

**Q:** Article 20: PID liable for all; holds Department harmless and defends and indemnifies.

**A:** This is correct.

**Page 17**

**Q:** Article 21: add language allowing PID to terminate early

**A:** DBW BLF grants require a 20-year agreement period beginning from the date of the Acceptance of the Project. Once the grant funds are paid, no termination is allowed by grantee unless they refund the grant money to DBW.

**Department of Parks & Recreation, Division of Boating & Waterways Maintenance Guidelines**

**Page 2**

**Q:** Long term goals: What does "meet current and long range needs of the community and of boaters in the region" mean? Does set aside revenues mean a separate account?

**A:** Long term goals refers to future public boating needs and usage. The facility must be maintained and operated for the length of the agreement to provide boater access.

Setting aside revenues: This means that PID must make sure that they have enough revenues, either from the BLF fees or from their own sources, sufficient to maintain the BLF infrastructure for the 20-year grant period. PID is required to follow their own fiscal procedures to ensure the facility is properly maintained throughout the term of the Grant. A separate account is unnecessary unless it seeks an exemption to the \$13.00 maximum usage fee. In which case separate accounts would be helpful for its justification.

**Page 3**

**Q:** Do we have power here? Do we have staff? Does language regarding boating knowledge conflict with present job description or contractual language with IBEW? Available every day? The lake is closed on Wednesdays.

**A:** PID must decide if they have the resources to appropriately develop, maintain and operate this BLF. Please also refer to previous answers regarding PID's weekly Wednesday closures as a breach of the Grant Agreement, and a violation of HN 660.

**Page 4**

**Q:** Do we have emergency contacts in place? Do we have a customer complaint procedure? What kind of security? What are "levels similar to other boat launch facilities in the region"?

**A:** PID must research what other regional BLF facilities provide as far as security, emergency contacts, etc., and must document that it is providing similar security, emergency contacts, etc. This is a liability issue.

**Exhibit C**

**Q:** Page 3: grant related activities completed by PID by June 2016 (Amend date)

**A:** Grant Agreements are amended on a yearly basis. Amended dates are noted on revised Grant Agreement cover pages.

**Q:** Page 5: Completion by March 2017 (Amend date)

**A:** Grant Agreements are amended on a yearly basis. Amended dates are noted on revised Grant Agreement cover pages.

**Q:** Page 6: Current charge could be \$15 depending on boat occupancy; June 2016 completion date needs to be amended.

**A:** As per Exhibit B, Article 8, Item D, "The Grantee shall not charge any fee or combination of fees totaling more than \$13.00." Grantees may adjust this fee only after obtaining written permission from DBW, after consultation with its Boating Commission.



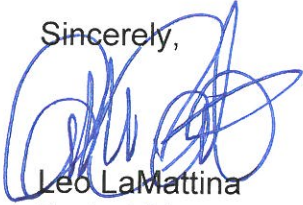
**Exhibit "D"**

**Q:** 2. No amendment or variation shall be valid unless in writing signed by both parties; no *oral understanding* not incorporated in agreement is binding

**A:** The General Terms and Conditions cannot be changed. These are State Contracting requirements.

DBW appreciates your investment in improving California's boating access. If you have any questions, please contact me at (916)327-1817 or by email at [leo.lamattina@parks.ca.gov](mailto:leo.lamattina@parks.ca.gov).

Sincerely,



Leo LaMattina  
Project Manager