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**Copies via Electronic Mail**

August 28, 2005

Pedro Pete Lucero  
Park Manager  
Lake Berryessa Field Office  
Bureau of Reclamation  
5520 Knoxville Road  
Napa, CA 94558

Re: Bureau of Reclamation (“BOR”) Letter of Notice, Pleasure Cove Resort, dated March 28, 2005 and BOR Interim Concession Contract for Pleasure Cove Marina

Dear Mr. Lucero:

This is in reference to your letter dated March 28, 2005, addressed to “Whom It May Concern” with respect to the termination of the Interim Concession Contract No. 04 LC 20 8317, dated May 20, 2004, for Pleasure Cove Resort, between BOR and Pleasure Cove Resort Asset Management Group, LLC. (In light of the several defaulted conditions, there is serious doubt whether this contract was ever consummated as a legally effective agreement.).

With respect to personal property owned by private stakeholders at Pleasure Cove Resort, your letter specifically requires the incoming concessionaire to operate the new interim concession contract as follows:

- **Trailer Sites:** Bonded long-term mobile home or trailer permittees, until November 1, 2005.
- **Private Docks:** Dock master dock owners may use their docks, until November 1, 2005.

The directive in your letter and BOR’s subsequent interim concession contract with Pleasure Cove Marina, LLC<sup>1</sup> fails to state and address the basis of BOR’s legal authority

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<sup>1</sup> BOR Interim Concession Contract for Pleasure Cove Marina with Pleasure Cove Marina, LLC (Concession Contract No. 05-LC208905). [See Section 2 , A. 1. c. (“Bonded Long-term Recreation Permittee Trailer Sites”) and d. (“Dock Master Program”); Exhibit L (“Contract Expectations”)].

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to mandate unilateral action to order the removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005. Although this and similar issues were addressed in previous communications (E-mail to Michael Finnegan, BOR Area Manager, dated May 26, 2005, and e-mail to you dated June 29, 2005), BOR as of this date has ignored and continues its failure to provide a direct response to this pertinent issue raised by private stakeholders.

Since time is now of the essence because of BOR's rapidly approaching deadline, on behalf of private stakeholders at Pleasure Cove Resort/Marina demand is hereby made to BOR as follows: **Provide a response, no later than September 5, 2005, to substantiate BOR's legal authority to mandate unilateral action to order the removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005.**

**I. BOR's Unilateral Order Violates the Existing Lake Berryessa Reservoir Area Management Plan (RAMP) Environmental Impact Statement (EIS) Issued in 1992 and Adopted by BOR's Record of Decision (ROD) in 1993**

**A. The 1992 RAMP EIS adopted in 1993 is the guiding recreation management plan at Lake Berryessa**

The Lake Berryessa RAMP EIS was developed in 1992 after the completion of comprehensive environmental procedures required by law. The certification for the RAMP EIS states: "It is a broad-based document which addresses the impacts from several land, water surface, and concession management actions the Bureau of Reclamation is considering for eventual adoption and expansion in a Reservoir Area Management Plan."<sup>2</sup> **BOR's 1992 RAMP EIS, as adopted in the 1993 ROD, is the guiding recreation management plan currently in effect at Lake Berryessa Recreation Area.**

**B. The Draft Environmental Impact Statement/Visitors Service Plan (DEIS) issued in October 2003 is inoperative and has no legal force and effect since it has not been effectively adopted as required by law**

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<sup>2</sup> Final Environmental Impact Statement for the Lake Berryessa Reservoir Area Management Plan Napa, California, Statement Number: FES 92-12, Filing Date: June 16, 1992.

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In October 2003, BOR prepared and issued the DEIS (“Environmental Impact Statement for the Future Use and Operation of Lake Berryessa Napa County, California”) in the effort to identify and assess the various management alternative for the re-development and management of visitor services (commercial and non-commercial) at Lake Berryessa. BOR is required to prepare a comprehensive Visitor Services Plan (VSP) to comply with Public Law 96-375 (pertaining to Lake Berryessa and the concession operations). BOR’s required action was primarily in response to severe criticism regarding the management of concession operations at Lake Berryessa as summarized in a comprehensive audit report issued by the Department of the Interior Office of Inspector General issued in May 2000.<sup>3</sup> The public comment period for the DEIS was extended to April 4, 2005, and BOR reports that it expects to issue its ROD for the proposed VSP sometime this fall.<sup>4</sup> **The 2003 DEIS is merely a draft document without any legal force and effect in the absence of compliance with the National Environmental Policy Act (NEPA) and related environmental laws and policies.**

**C. BOR’s unilateral order mandating the removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005, is unlawful because it violates the 1992 RAMP EIS**

BOR’s letter dated March 28, 2005, and the Interim Concession Contract for Pleasure Cove Marina are in violation of the 1992 RAMP EIS because it orders the unilateral removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005.

The 1992 RAMP EIS, adopted by the 1993 ROD, specifically provides for mitigation features which were included in the “Proposed Actions” to lessen socio-economic impacts associated with some “Concession Management Actions.” These preferred actions pertaining to long-term trailer sites include:

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<sup>3</sup> Department of the Interior Office of the Inspector General Audit Report (“Concessions Managed by the Bureau of Reclamation,” Report No. 00-I-376, May 2000. The audit report found that “BOR had not effectively managed its existing concessions operations, primarily at the Canyon Ferry Reservoir and at Lake Berryessa, because of inadequate contract provisions, mainly in the areas of contract default and operation and maintenance plans, and because it had not enforced existing contract provisions in the areas of building improvements, health and safety inspections, and prices charged the public.” (Emphasis added). (Audit Report, Executive Summary, “Results in Brief,” pgs. 1-2).

<sup>4</sup> It was reported in the August 27, 2005 issue of the San Mateo County Times that the “final decision won’t be known until late October at the earliest.”

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- “Allowing long-term sites to remain until one year after the reorganization of a resort as long as those sites in the base floodplain...are flood proofed and/or anchored. This will allow many of the long-term sites targeted for removal or relocation to remain until the year 2009.”
- “The removal of long-term sites for eventual conversion to short-term sites will generally be limited to shoreline areas selected during master planning and resort reorganizations.”
- “Long-term sites subject to removal will be able to relocate, provided space is available in approved areas.”<sup>5</sup>

**BOR’s unilateral action mandating the removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005, unlawfully contradicts the 1992 RAMP EIS and constitutes BOR’s blatant effort to prematurely enforce “contemplated” visions in the draft 2003 DEIS without adoption of the Record of Decision.**

## **II. BOR’s Unilateral Order Contemplates and Encourages Violation of Applicable Laws (Local, Regional, State and Federal)**

BOR’s Interim Concession Contract for Pleasure Cove Marina with Pleasure Cove Marina, LLC requires compliance with all “applicable laws”: “This Contract, and its administration by Reclamation, shall be in accordance with all Applicable Laws governing the area of operation. The Concessionaire shall operate and maintain its facilities and appurtenances in safe working order, and shall comply with all Applicable Laws, policies, and orders and directives of any other public authority affecting such works.”<sup>6</sup>

### **A. The execution of BOR’s unlawful order requires non-compliance with applicable laws**

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<sup>5</sup> See 1992 RAMP EIS, Executive Summary, “Soci-Economic Impacts,” “5. Mitigation for Socio-Economic Impacts, “ a., b., d, and e,” pg. xvi.

<sup>6</sup> Interim Concession Contract for Pleasure Cove Marina [Concession Contract No. 05-LC208905, Section C. (“Legal, Regulatory, and Policy Compliance”), pg. 14. “Applicable Laws – The laws of Congress governing the area of operation, including, but not limited to, the rules, regulations, requirements, and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, but not limited to Federal, State, and local laws, rules, regulations, codes, requirements, and policies governing nondiscrimination, protection of the environment, protection of public health and safety, zoning laws and ordinances, securities and exchange laws, and tax laws.” (“Definitions,” pg. 3).

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The long-term permittees at Pleasure Cove Resort/Marina complied with applicable law, including required local permits and state licenses, etc., before taking the necessary steps to build and/or locate mobile homes and dock facilities on sites at Lake Berryessa. The applicability of local Napa County building and planning laws, including the requirement for appropriate permits and compliance with health and safety codes, is not contested by BOR.<sup>7</sup> BOR's mandated removal order totally ignores the need for timely compliance with applicable law in order to facilitate the mass removal or demolition, and the disconnection of utilities, including sewer hookups, for over seventy to eighty mobile homes and dock facilities in a sensitive environmental watershed area at Lake Berryessa.

Aside from the issue involving potential consequences relating to the untimely removal of personal property owned by private stakeholders, BOR should focus its attention on immediate ongoing health and safety code violations involving Pleasure Cove Marina, LLC, the new concessionaire at Pleasure Cove Marina. There are verified reports of code violations involving sewage disposal issues and non-compliance with fuel line safety requirements in addition to other pertinent health and safety violations. BOR may want to review the findings prepared by Kleinfelder, Inc. for the Department of the Interior, issued on December 19, 2002, for the concession operations at Lake Berryessa, including Pleasure Cove.<sup>8</sup>

**B. The bidding procedures leading to the award of the interim concession contract to Pleasure Cove Marina, LLC (Forever Resorts, Inc.) raises legitimate questions about BOR's conduct in the award process**

According to a letter issued by Terry Sparkman, General Manager, dated July 20, 2005, Pleasure Cove Marina, LLC is owned by Forever Resorts, with headquarter offices located in Scottsdale, Arizona, and is solely owned by Rex Maughan.<sup>9</sup> Forever Resorts advertises itself as experts in the recreation service industry with extensive ownership and management experience in the operation of facilities on public lands, including six locations in California with emphasis on houseboat rental operations. (See [www.foreverresorts.com](http://www.foreverresorts.com) )

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<sup>7</sup> Pedro Pete Lucero, Park Manager, Lake Berryessa Recreation Area, recently notified a long-term permittee at Pleasure Cove Resort/Marina of a Napa County health and safety code violation and banned the use of the mobile home until required corrections were made in compliance with legal requirements.

<sup>8</sup> "Environmental Compliance and Facility Condition Assessment Report, Seven Concession Areas Lake Berryessa, California," Kleinfelder, dated December 19, 2002, pgs. 82 – 89.

<sup>9</sup> According to records filed with the California Secretary of State, Pleasure Cove Marina, LLC (#200514110055) filed its limited liability company papers with the state on April 29, 2005, listing its address as 7501 E. McCormick Pkwy #100LL, Scottsdale, AZ 85258.

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It is interesting to note that BOR's terminated interim contract with Pleasure Cove Resort Asset Management Group, LLC, dated May 20, 2004, included only two authorized optional services: 1. "Restaurant Operation," and 2. "Overnight Lodging."

BOR's draft interim concession contract, dated March 28, 2005, added two additional authorized optional services: 1. "Houseboat Rental Operation," and 2. "Other Camping Opportunities."

BOR's amended draft interim concession contract, dated May 2, 2005, expanded the term "Houseboat Rental Operation" to "Watercraft Rental Operation." (Including "houseboats rentals," "pleasure boats," and "personal water craft"). The amendment included the right to add marina slip rentals to a maximum of 400 marina rental slips for various sized vessels under 40 feet in length (increasing four-fold the amount of marina slip rentals in the DEIS). The new interim concession contract includes the right to submit requests for allocation of commercial houseboat permits (75 available lake-wide) and private houseboats (75 available lake-wide).

In another interesting modification, BOR omitted the reference in the previous May 20, 2004 defaulted interim concession contract for the termination of private long-term trailer uses on November 1, 2005, **unless otherwise required by the Record of Decision (ROD)**. Both BOR's draft interim concession contracts (March 28, 2005, and May 2, 2005) and the final interim concession contract for Pleasure Cove Marina **omits the reference to "unless otherwise required by the Record of Decision (ROD)."** Was this a mere clerical error or did BOR intentionally omit this critical contract language?

In addition to the favorable interim concession contract services noted above, which is tailor-made for a pre-selected bidder such as Forever Resort with its houseboat rental background and experience, BOR deleted the reference to the ROD requirement for the termination of long-term permittees on November 1, 2005. Moreover, BOR expanded the scope of services and operating plan in the new interim concession contract to include a "favored nation" or "grandfather" provision, i.e., the potential to expand concessions lake-wide without the need to comply with government bidding law and process:

"Due to the approaching expiration of the other six concession contracts at Lake Berryessa it is possible that nay of the other concessionaires could have their contract terminated in advance because of financial or performance problems. In the event this occurs and Reclamation determines it necessary to establish an interim concessionaire, in a similar manner as this contract, the Pleasure Cove concessionaire could be assigned

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that responsibility through an amendment to this contract. This opportunity is being outlined in advance to provide operating efficiency and a relatively quick transition if such an incident(s) occur. Such an assignment would be pending the satisfactory performance by the concessionaire at Pleasure Cove and the mutual agreement by both parties to take on the additional responsibilities.”<sup>10</sup>

### **III. Conclusion**

Please provide BOR’s response, as soon as possible, to substantiate its legal authority to mandate unilateral action to order the removal of personal property owned by private stakeholders at Pleasure Cove Resort/Marina by November 1, 2005.

There are many serious ethical concerns regarding BOR’s conduct, perceived or otherwise, in the handling of the unfortunate situation concerning the concession operation at Pleasure Cove Resort/Marina. Was it a mere coincidence or sheer chance that BOR totally and completely modified the new interim concession contract to significantly increase authorized commercial houseboat and watercraft services, marina slip rentals (four times increase over the amount outlined in the DEIS, and even added the “favored nation” or “grandfather” provision to ensure that the new concessionaire can take over resort operations at other defaulted concession operations at Lake Berryessa Recreation Area? What happened to the requirement for the ROD as a condition for the termination of the long-term permittees’ personal property rights?

The verdict is: The winner: Forever Resorts, Inc. DBA Pleasure Cove Marina, LLC; The loser: the tax paying public; and The conspirator: BOR (Big government at its very worst).

We are looking forward to your courtesy in providing a prompt response to the issues raised in this letter **on or before September 5, 2005**. Thank you. Best regards.

Very truly yours,

/s/

FRANK A. IWAMA

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<sup>10</sup> BOR’s Interim Concession Contract for Pleasure Cove Marina with Pleasure Cove Marina, LLP (Concession Contract No. 05-LC208905), Section B. (“ Scope of Services and Operating Plan”), pg. 14.

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Cc: Oscar Braun, Executive Director  
Half Moon Bay Coastside Foundation  
Henry "Hank" Howard  
Michael Finnegan, Area Manager, BOR  
John Keys, Commissioner, BOR  
Rex Maughan, President & CEO  
Forever Resorts, Inc.  
Terry Sides, Director of Administration  
Forever Resorts, Inc.  
Terry Sparkman, General Manager  
Pleasure Cove Marina, LLC  
Hon. Gale Norton, Secretary  
U.S. Department of the Interior  
Hon. Richard Pombo, Member of Congress  
Chair, House Resources Committee  
Hon. Michael "Skip" Thompson, Member of Congress  
Hon. Diane Dillon, Chair  
Napa County Board of Supervisors



