

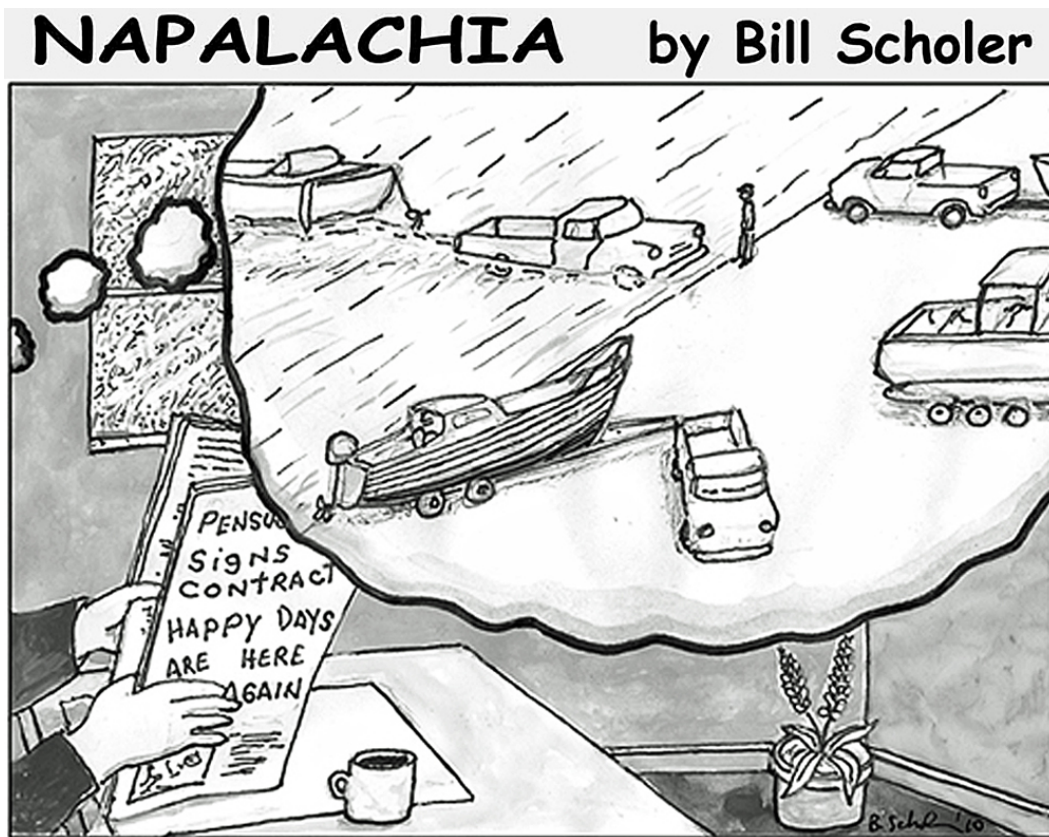
Chapter IX. The “Big Mistake”: Pensus - The Beginning Was The End!

The Short Story That Was Actually A Fantasy

(The Lake Berryessa News, April, 2010)

The Bureau of Reclamation has selected Pensus Group LLC as the best proposal for six concession areas located at Lake Berryessa. Pensus Group submitted a single offer to operate multiple locations, including the Steele Park, Spanish Flat, Lake Berryessa Marina, Rancho Monticello, Markley Cove, and Putah Creek concession areas.

Per Mike Finnegan, Reclamation Area Manager: The Pensus Group's proposal will ensure that each of the individual concession areas can be effectively developed and operated. The proposal includes new facilities and enhanced recreational opportunities at Lake Berryessa for the visiting public, which should contribute significantly to the local economy.



Pensus will also pay for its share of improvements to the water and sanitation district at Berryessa Highlands, the Napa Berryessa Resort Improvement District (NBRID). In a statement to the Lake Berryessa News last week, David Finch, president of the Pensus Group, expressed his enthusiasm for the future of Lake Berryessa. He hopes to have the contract signed with Reclamation by the end of March.

He said that Pensus, in anticipation of the completion of the contract, is moving forward with preparatory work for opening some facilities such as boat ramps, boat slips, and marina services as soon as possible. Pensus has scheduled a meeting with the California State Water Resources Control Board in anticipation of meeting the various water and sewer system requirements at the resorts.

Steele Park Resort will be an important element in the Pensus strategy incorporating upscale facilities with a restaurant, hotel, corporate meeting center, and a full-service marina. If other Pensus resort marinas are any indication, Lake Berryessa resorts will likely become exceptional destinations.

Pensus operates several first-class marinas including Pleasant Harbor Marina, which is a full-service marina, located on Lake Pleasant, 35 miles northwest of downtown Phoenix. Pensus' Roosevelt Lake Marina is situated on the largest lake in Central Arizona, consisting of 112 miles of shoreline, peaceful coves and 22,000 acres of surface water. Antelope Point Marina is a new, architecturally significant marina on the southwest shores of Lake Powell within the boundaries of the Navajo Nation and the Glen Canyon National Recreation Area.

The success of the new Lake Berryessa resorts will depend on attracting visitors from all over the Bay Area as well as on establishing partnerships with the Napa Valley resorts and wineries. Pensus said they plan to work closely with local businesses, residents, and environmental groups as they move forward. The immediate stumbling blocks to redevelopment of the resorts are the significant amount of clean-up still required as well as any potential legal actions by the previous resort owners.

This concern was confirmed recently in the Napa Register: "Rancho Monticello operator Bob White said Thursday he plans to sue the bureau for the alleged unconstitutional taking of his property. When Pensus or another new concessionaire signs on to take over the resort, White said he will also sue that company for illegal conversion of his property."

Pensus Signs Berryessa Contract – Begins Facilities Development (The Lake Berryessa News, May, 2010)

In a move long-awaited by Lake Berryessa region businesses and residents, the Bureau of Reclamation signed a contract with Pensus Lake Berryessa Properties, LLC (Pensus LBP), on April 28, 2010, for management of six concession areas at Lake Berryessa. The contract term is 30 years with a mutual option to extend the contract for an additional 10 years. Pensus, part of Arizona-based marina operator and commercial developer Pensus Group, will operate the Markley Cove, Putah Creek, Lake Berryessa Marina, Spanish Flat, Steele Park, and Rancho Monticello resorts. For the next three years, however, Markley Cove will continue to be run by its current long-term owners, John and Linda Frazier. Reclamation already has a separate contract with Forever Resorts to manage Pleasure Cove Marina.

Pete Lucero, public affairs officer for the Bureau of Reclamation, said that Reclamation expects limited boat launching, camping, and service facilities to be open this summer. Berryessa Highlands residents and Napa County officials have been concerned about whether Pensus, as operator of Steele Park Resort, will pay into an assessment to upgrade water and sewer facilities serving the Highlands. Lucero said the contract calls for Pensus to pay any required assessments to the county or the state. Lucero told the Lake Berryessa News that the signed contract and its

attachments are being transmitted to Pensus. Once Pensus has the contract in hand, Reclamation will make it available to the public.

In a prepared statement, Pensus CEO David Maule-Ffinch said, "Pensus Group would like to thank Reclamation for the effort and commitment necessary to bring this complex transaction to fruition. The signing of this contract will now allow work to start on the improvement and expansion of services at Lake Berryessa. We anticipate a very successful public-private partnership in the best interests of the visiting public."

Mr. Ffinch told the Lake Berryessa News that he was enthusiastic about the future potential of Lake Berryessa, but that, with it now being the first week of May, "we are going to have a tough challenge for 2010". A Pensus team will begin work at the lake during the week of May 3. The Pensus Lake Berryessa web site now includes the resorts slated for opening this season, projected opening dates, and proposed services for those resorts. They hope to open Putah Creek Resort by Memorial Day weekend. The Spanish Flat Resort opening is still to be determined, and the Steele Park opening is dependent on the state of the resort clean-up.

Although the actual timing is unclear because of the operational start-up complexity and the need to carefully comply with environmental laws, Ffinch said that they expect to provide tent camping and RV sites at Putah Creek and Spanish Flat this year. Possibly later in the season they may be able to provide tent camping sites and RV sites at Steele Park based on the state of the clean-up of that resort. They will be using the mobile home sites on a temporary basis to provide more attractive and spacious camping accommodations, and possibly more sites, than have been available in the past.

Pensus LBP also intends to provide "Self Launch & Retrieval and Self Park on site (subject to space availability)" at all three resorts, as well as a boat launch-and-retrieval service (you call, they launch, you play, you go, they retrieve and store) for those who don't wish to test their trailering skills. Fuel will be dispensed at Putah Creek and possibly later at Steele Park. Steele Park will also have dry storage of boats in a fenced and secured area

Due to the very limited time available, operations for the 2010 season will be minimal. There will be no water or sewer services for the RV and campsites. Until water and sewer facilities are fully developed, porta-potties or mobile trailer restroom units will be used. Likewise, food service and retail products will be sold from portable trailer units. There will be no restaurant-style food service in 2010. Pensus LBP understands that the demand for boat slips is very strong. Although they are taking reservations and expect to start signing people up very soon, they won't be able to start installing slips until later this year.

Assuming that they can get all the permitting in place, Mr. Ffinch hopes to install initial lodging units and provide better retail services next year. He urged people to go to the Pensus Lake Berryessa website to make reservations, for more detail, and for regular updates. For the thousands of folks waiting to get back out on Lake Berryessa, this is extremely encouraging news.

NAPALACHIA

by Bill Scholer



They're Off Like a Herd of Turtles! Bureaucracy at Berryessa
(The Lake Berryessa News, February, 2011)

Although the image of a turtle stampede is amusing, no one at Lake Berryessa is laughing about how long it is taking to redevelop the demolished Lake Berryessa resorts. Local businesses and property owners who have been severely hurt by the Bureau of Reclamation's destruction of five resorts had hoped that the redevelopment of those resorts would be fast-tracked by government agencies so the desperately-needed recovery could begin. Unfortunately, this does not appear to be the case.

Pensus re-opened two resorts last year (Lupin Shore and Chaparral Cove) with minimal services. So far this year the most visible sign of progress has been the removal of non-native vegetation at Chaparral Cove and Lupine Shores (the entrance driveway oleanders are gone!). Pensus has announced the re-opening of Foothill Pines (the former Spanish Flat) on Memorial Day, although there may be no boat launching until the demolished launch ramp is replaced. Apparently it is taking time to get the required permits to rebuild the launch ramp.

Each of the three Pensus resorts will have tent and RV camping with brand new concrete picnic tables and BBQ/fire rings along with improved restroom trailers. Per their web site they are also taking reservations for Surface Dry Storage at Lupin Shores and Chaparral Cove. Unlimited launch and retrieval will be included in the boat storage price and one free weekend of camping per month will be included in the RV storage price.

Although Pensus provided a new development plan to Reclamation in November, 2010, it has yet to be approved. The new Pensus plan includes wet slips at Lupine Shores, but they are awaiting Reclamation's approval of their pricing structure to move forward with actual dock installation.

Despite justifiable frustration with the slow pace of planning and permitting, David Finch, president of the Pensus Group, has been consistently gracious in his characterization of the Bureau of Reclamation, describing them as intelligent, dedicated people who want to do the right thing for Lake Berryessa. Discussions among Reclamation, Napa County, and Pensus have been ongoing since last October. A County representative described these discussions.

“The County did help to facilitate communication between the Reclamation, Pensus, and the Central Valley Regional Water Quality Control Board (Regional Board) staff during the fall of 2010 to discuss water and sewer permitting for all 6 resorts. At that time, the Regional Board staff outlined the process for the 6 resorts; timing of applications, information that will be required, and the necessary justification. In addition, the Regional Board staff discussed with Pensus compliance with cleanup activities at some of the resorts and the CDO at NBRID. With regard to other permits – such as for gasoline service and building - County staff is working with the Reclamation to outline a process for review by various County departments but that has not yet been formalized.

At this time, County agencies are not involved because we have no authority. In the future, it is anticipated that departments such as Conservation Planning and Development (including building), Environmental Management, and Public Works will be involved. Law enforcement and first responders are very interested in further discussions with Reclamation and Pensus as resort activity increases.

The County is willing to assist with building permit reviews, inspections, and code enforcement if an agreement can be reached with Reclamation regarding these activities. Even without an agreement, the County has responsibility for the review/issuance of permits by the County’s Department of Environmental Management (e.g. restaurants, hazardous materials, camp grounds).

Although the Pensus development plans are occurring on federal land, the County anticipates that there will be increased demand for County services in these areas. The purpose of our negotiations is to insure the health and safety of County residents and visitors to the Lake, and recognize the unfunded responsibilities we incur by providing services. The status is that negotiations are continuing.”

Springtime at the Lake: Pensus in Bloom?

(The Lake Berryessa News, March, 2011)

Now that the Bureau of Reclamation has approved the new plans for the Pensus Lake Berryessa resorts, anticipation of summer fun at the lake is growing. Although 2012 will be the year for major improvements, 2011 will see many upgrades to amenities at Lupine Shores, Chaparral Cove, and Foothill Pines (Memorial Day opening) resorts. Markley Cove Resort, Pleasure Cove Marina, and all public recreation facilities are open for business as usual.



In the longer term, David Finch, President of Pensus, stated that, "Pensus plans to provide a safe, high quality and varied recreation experience to satisfy the desires of all who choose to enjoy the extraordinary beauty of Lake Berryessa" A joint Pensus - Bureau of Reclamation press release stated last month that five concession areas managed by Pensus will be open this summer. There will be a single telephone number for reservations and information.

Chaparral Cove (formerly Putah Creek) and Lupine Shores (formerly Steele Park) recreation areas are currently open for day use, boat launching, and RV and tent camping. Beginning Memorial Day weekend, Foothill Pines (formerly Spanish Flat) will be open for day use and RV and tent camping. The resorts will have new concrete picnic tables and BBQ/fire rings. Chaparral Cove, Lupine Shores, and Foothill Pines are expected to be served this summer by restroom trailers with running water (no showers) and an RV pump out service.

For this season Pensus will have a retail trailer unit at Lupine Shores and Chaparral Cove. It will sell convenience items, ice and some packaged food and beverages. Blue Oaks (formerly Berryessa Marina) and Manzanita Canyon (formerly Rancho Monticello) will be open for group camping on a reservation basis. These sites will not have the upgraded picnic tables and fire rings and will be served by porta-potties. Daily Launch Fee is \$21 which includes six people in your boat. Additional people would pay the \$3 per person Day Use Fee. Annual Launch Passes are now available for \$225 and are valid from March 1, 2011 – March 1, 2012. The pass is attached to the boat. Pass is good for entry of one watercraft trailer and up to six people. Additional people will be subject to the day use fee. The annual launch pass will be honored at all Pensus resorts.

For the 2011 season that will include Lupine Shores and Chaparral Cove. When the remaining launch ramps are built the passes will be honored at those resorts as well. Dry Boat Storage will be available at Chaparral Cove and Lupine Shores beginning in March and potentially at Manzanita Canyon beginning Memorial Day weekend. Dry Boat Storage Rate: \$4.20 per linear

foot. This includes unlimited self-launch fee. Launch and retrieval service is available for \$40 or \$20 each way. RV Storage Rates are the same as the Boat Storage Rates. One free weekend of camping per month will be included in the RV storage price. (Not applicable for holiday weekends)

The hours of operation for day use at Chaparral Cove, Foothill Pines and Lupine Shores will be 8 AM to 8 PM. RV and camper walk-ins and launchers who have not purchased the annual pass will need to check in between these hours as well. RV and campers who have made online reservations in advance will be able to access the sites at any time, as will those who purchase the annual pass. Pensus is also finalizing signage for the concession entry locations as well as investigating billboards and radio advertising and preparing brochures.

Although wet slips are now shown in the Lupine Shores plan, Pensus cannot install wet slips until the environmental process is completed. They expect to obtain price approvals for wet slips within a few months. All things going well they will start construction of slips in late 2011 for 2012 season occupancy.

Bureaucratic Wheel-Spinning: How Much Is Enough?

Although the National Environmental Protection Act (NEPA) has been raised as an issue in the Lake Berryessa redevelopment process, it is not clear why this should be an impediment since Pensus is simply replacing the old facilities with new environmentally-friendly construction. Any delay because of NEPA is even more puzzling since the demolition of the old resorts was accomplished with a minimum of environmental oversight. Reclamation used what is known as a Categorical Exclusion (CE).

Per Department of the Interior guidelines, "CE applies to actions that do not individually or cumulatively have a significant effect on the human environment. Each CE is approved by CEQ and excludes categories of Federal actions from further NEPA documentation because the action has been shown to have no significant effect on the environment. A CEC is a written checklist which is used to document whether or not a proposed action meets the criteria for being categorically excluded from further NEPA documentation. As a general rule, preparation of a CEC should be a fairly rapid process, taking, at most, a few hours or a few days and involving a little research, a few coordination telephone calls, and/or short face-to-face discussions to get information, as needed, to fill out the checklist. Some internal and external scoping of issues and documentation may also be required."

During the Task Force 7 at Lake Berryessa campaign to save the lake and in the Berryessa For All court case against Reclamation, it was argued that Reclamation had not followed NEPA in its determination to demolish all facilities at Lake Berryessa resorts. Reclamation responded that they had evaluated the situation and produced Categorical Exclusion Checklist #743. They also stated that they had reviewed the environmental impacts of demolition of each site and that environmental impacts were minimal and mitigated by using Best Management Practices. The federal judge agreed that Reclamation had done the necessary analysis to support the demolition.

Bureau of Reclamation representative, Pete Lucero stated at the time, "Reclamation has determined that the action of trailer removal at Lake Berryessa is subject to Categorical Exclusion (CEC #743) because, with very few exceptions, trailer removal involves minimal disturbance, is

designed to correct unsatisfactory environmental and safety conditions, is wholly within an existing facility, and is located on pre-disturbed land.”

A federal judge agreed stating. “The Court earlier held that NEPA does not require a site-specific analysis of removal and demolition...holding “terseness of the agency’s discussion of construction impacts” complied with NEPA so long as agency considered environmental impacts on a general level. The Court reiterates that holding and finds that the FEIS adequately discussed and considered the environmental impacts from the removal of trailers and associated infrastructure.”

It appears irrational to have done the massive demolition and destruction at Lake Berryessa under CEC #743 and then require any more stringent requirements for redevelopment. Environmental review should be minimal, especially since the Bid Prospectus and the final contract already require best management practices and an environmental management program during rebuilding. All construction permits should be fast-tracked to allow the rapid re-opening of the resorts and the economic recovery of the Lake Berryessa community.

Did You Hear the One About...

...how many bureaucrats it takes to screw in a light bulb? No, not that one – the one about how many Reclamation officials it takes to dig a one-foot diameter hole only four feet deep? Witnesses at Chaparral Cove last month say it was four – and it took six hours! The hole was for a PG&E pole. They would dig six inches down, then sift the dirt for Native American artifacts.

As silly as this may seem to some, there is often a good reason (and some legal requirements) to exercise care when excavating in areas that may potentially contain Native American cultural artifacts. But from a scientific point of view, the areas inside the resort boundaries, and even areas outside them, are not of significant cultural value. This excessive bureaucratic oversight is not justified based on previous archeological studies done above the 440 foot lake level. Any delays in redevelopment such as requiring hours to dig a hole are just nonsensical academic exercises for the Reclamation participants. Especially considering Reclamation approved the "grind it to the ground" approach originally.

When Does History Actually Become “HISTORY”?

(The Lake Berryessa News, September, 2011)

A fascinating document surfaced recently with the simple title: Investigative Report: Pensus, Inc. The 17-page report was prepared by the Office of the Inspector General, U.S. Department of the Interior, at the request of Congressman Mike Thompson and released on March 3, 2011 (although sources kept telling me that it had not yet been made public). The actual report synopsis is reproduced below.

Synopsis

Congressman Mike Thompson, 1st District of California, requested an investigation of the Bureau of Reclamation’s (USBR) concession contract award to Pensus, Inc. (Pensus) at Lake Berryessa in Napa County, CA. In his letter to the Acting Inspector General, the Congressman noted several concerns received from his constituents about the integrity of the USBR contract process. The Congressman questioned if Pensus received information that gave it a distinct advantage over other bidders and if Pensus modified its proposal after bids had been received and opened.

The complainants, John and Linda Frazier, bid on the USBR Lake Berryessa concession contracts. The Fraziers provided a document stating several concerns. We investigated only those issues not previously litigated during a 2007 U.S. Court of Federal Claims case.

We focused on whether USBR complied with the law and public policy in entering into a concession contract with Pensus, devised a false motive to re-bid the contract, or engaged in collusion with Pensus during the contract solicitation and award process. We found no evidence that USBR violated the law or public policy in regard to the contract solicitation and award to Pensus for the Lake Berryessa concession contracts.

We did find, however, that the Office of the Solicitor determined that as a result of incorporating inapplicable provisions from National Park Service statutes into its concession contract guidance manual, USBR unintentionally promised to pay the concessionaire with funds that it would not have the statutory authority to pay.

There's much more about this report to come later in this story, but it reminded me that we are in the last stages of a "historical" process that began about ten years ago. On November 7, 2000 the Bureau of Reclamation published a Notice of Intent (NOI) in the Federal Register initiating their plan to destroy a family-based recreational culture at Lake Berryessa.

OK, you got me – I exaggerate (slightly). The NOI actually stated:

"The Bureau of Reclamation is initiating a formal Visitor Services Planning effort for the Lake Berryessa Recreation Area. The purpose of the Visitor Services Plan is to determine the type and level of commercial facilities and services that are necessary and appropriate for future long term operations...The time frame for completion of this plan is 18 to 24 months...The draft EIS is expected to be completed by November 2001. The final EIS is scheduled to be released in March 2002."

The Draft EIS (DEIS) was actually released on October 31, 2003, two years late, and therein lies the beginning of the tragic tale that led to the present situation at Lake Berryessa.

In early 2001 Task Force 7 at Lake Berryessa was formed and requested that Reclamation meet with resort mobile home owners. Reclamation ungraciously agreed but made it crystal-clear that they intend that all long-term sites be removed in any new plan. But is this tragic tale (of which I can document every sad step) actually "History" yet? And would the Markley Pensus IG Investigative Report be considered part of that "History" or just a current event on the path to the glorious new Lake Berryessa envisioned by the victors in this decade-long process?

In a BBC History Magazine poll readers were asked when they thought history began – in other words, how much time has to pass before a certain event becomes history. The response that received the most votes: a second before the present. The second largest response was that events become part of history only after a decade has passed. This is a practical people-based view of history.

Academic historians define history as presenting facts without expressing any opinion or analysis of the events whereas memories are comprised of emotions that can have a great influence on the perception of an actual event. Critical historians live by the old saying of "there are two sides to every story and then there is the truth." Historians live where the truth is hidden in the 12

different stories told by the 12 different people all witnessing the same event from a different viewpoint. That's why they believe that it takes approximately fifty years before a balanced view of what actually happened and why emerges. The people involved have to die off and stop defending turf before a more objective viewpoint can develop.

I'm more interested in the narrative approach to defining history. It is organized chronologically; focused on a single coherent story; primarily descriptive but also analytical; primarily concerned with people but also the abstract circumstances in which they find themselves; and deals with the particular and specific first and the collective and statistical second. To me a big part of the fascination with any history is trying to discover what was going on inside people's heads in the past, and what it was like to live in the past.

Carol Fitzpatrick's Town of Monticello History Exhibit at the Spanish Flat Center is this type of narrative history, for example. So is "Roots of the Present: Napa Valley 1900 to 1950" by Lin Weber, available at the Napa County Library. It reads like a novel, but is an academically solid description of Napa County "History".

So how does this new Inspector General's Investigative Report fit into Lake Berryessa history? The report itself is not a thorough legal investigation as much as it is a narrative of recollections and comments of the participants in the process. The "bad guy" in all of it turns out to be a single unnamed individual attorney in the DOI's Office of the Solicitor (SOL).

The first bid process was complete. The Pleasure Cove contract had already been negotiated and signed. The Pensus contract had been negotiated and in review. The Markley Cove contract negotiations were planned but had not yet started because the expiration date of the present Markley contract was later in time than the others. Unfortunately, the Markley Cove concession owner had assumed that receiving the bid award was equivalent to a contract guarantee and made significant investments in purchasing equipment in anticipation of a new 40-year contract.

During review of Pensus' contract, SOL identified legal flaws that would supposedly put Reclamation at risk of violating the Antideficiency Act which prohibits the government from purchasing, or implying that they may purchase, assets for which funds have not yet been officially approved by Congress. Reclamation had inadvertently used a clause from a National Park Service contract template that included this type of language. Since no one could predict the financial situation at the end of a 40-year contract, nor would anyone expect Congress to actually make an appropriation in 2010 for a 2050 expenditure, the contracts would previously just state something like "depending on funds being appropriated by Congress".

Apparently this was not acceptable to the SOL. Nor was it acceptable to simply remove the offending language by "red-lining" it and getting on with business. The Attorney-Advisor said that would be unfair to the losing bidders and that the only fair alternative was to re-do the whole bid process. As a result, SOL advised USBR to rescind the June 2007 prospectus and all associated agreements on February 26, 2009, and requested that the prospectus be revised and rebid.

Aside from the shocking use of the word "fair" by the SOL to justify undoing years of effort, that "fairness" had actually not been applied during the original bid process. There were six original bidders. The owners of Rancho Monticello and four partners had applied to run five of the seven resorts under the name Lago Resorts LLC. One of the partners, California Parks Co., a company that runs the concessions at Angel Island State Park and Lake Camanche among others across California, would manage the resorts.

Lago Resorts bid to operate Rancho Monticello, Putah Creek, Berryessa Marina, Spanish Flat and Markley Cove. The plan, explained Bob White, included spending \$90 million to remodel, upgrade and build new facilities at the resorts while keeping the resorts open.

The other applicants were: Recreation Del Sol Enterprises LLC , St. Helena, CA (Peter White – a previous owner/partner at Rancho Monticello); Pensus Group LLC with experience operating marinas in Arizona but not ground-based resorts; FX10 LLC (Linda Frazier bidding on her own Resort, Markley Cove); Steele Park Resort Inc. (Sean Buckley), and Pleasure Cove Marina LLC, a subsidiary of Forever Resorts Inc, which has extensive resort management experience nationally and internationally, but only bid to operate Pleasure Cove Marina.

The fact that Forever Resorts only bid on Pleasure Cove, which had been given to them by Reclamation after it confiscated the resort from Steve Petty in 2005, was a disappointment to Reclamation. Clearly, Reclamation wanted a single company to take over the Lake Berryessa resorts - as documented in the bid prospectus. They were hopeful that Forever Resorts would be that “white knight”.

Reclamation had attempted to lay the groundwork to justify giving Forever Resorts any of the other existing resorts by stating in 2005: "Due to the approaching expiration of the other six concession contracts at Lake Berryessa it is possible that any of the other concessionaires could have their contract terminated in advance because of financial and 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 that responsibility through an amendment to this contract."

But apparently Forever Resorts' experience with the Bureau of Reclamation at Lake Berryessa did not incline them to get in any deeper financially by bidding on more resorts.

The Lago Resorts bid was outstanding. I read it. In the interest of full disclosure, I wrote the ISO 14000 Environmental Management System for Rancho Monticello which was used in the Lago Resorts bid. I also wrote the Environmental Management Plan for the Steele Park bid and participated in writing the Environmental Management Plan for the Markley Cove bid.

But a funny thing happened to the Lago bid on the way to the evaluation. It was rejected as non-responsive and tossed out. Arguably an outstanding bid backed by substantial investment resources and managed by people with decades of experience. It was never evaluated!

Per the Whites, “The bid was declared non-responsive due to one sentence that did not make the U.S. government the first lien holder on personal property loans, i.e., cars, equipment, etc. We did request consideration and revisions, but were flatly rejected. But that “first lien” clause has since been removed from all the current contracts.”

The terms of 2009 Bid Prospectus, and the fact that the Bureau of Reclamation had already forced the closure of Rancho Monticello and Spanish Flat, made it impossible for Lago Resorts to bid again. What's more puzzling about the Lago Resorts rejection is that Reclamation allowed bidders to modify (clarify) their bids per a statement in both the 2007 and 2009 bids. “An Offeror may not amend or supplement a proposal after the submission date unless requested by Reclamation to do so and unless Reclamation provides all Offerors that submit proposals a similar opportunity to amend or supplement their proposals.”

This opportunity was presented to Pensus when they apparently violated a Franchise Fee requirement in the second bid process. In the first prospectus, a bidder was allowed to bid a 0 percent franchise fee. The second prospectus clearly stated that each bid proposal must include a minimum 1 percent franchise fee. But the report implies that Pensus did not propose a franchise fee in the second bid – perhaps inadvertently – which would have made their bid “non-responsive” – the same justification that Reclamation used to deny the original Lago Resorts bid. However, in this case Pensus was allowed to modify/clarify their bid. Clarification requests regarding the 1% franchise fee were also sent to the other bidders.

So “fairness” appears to have a hazy definition in government circles. From a pragmatic point of view, there was no one left among the original bidders to whom to be “fair”. Lago had been eliminated. Steele Park and Spanish Flat had given up.

The Inspector General’s report shows that most of the local Reclamation officials did not really want to redo the bidding process. But there are pretzel-twisting rationalizations of why a winning bid award does not mean a contract. There are long sections of self-justification and hand-wringing, which makes for interesting reading, but then Reclamation did the totally unnecessary anyway - and forced a re-bid.

One interesting revelation is the mindset of Reclamation Area Manager Michael R. Finnegan. Finnegan did not participate in the June 2007 bid review or selection process. Finnegan believed that the review panel misinterpreted the evaluation criteria and selected the Fraziers as having the best proposal for the Markley Cove concession only because it misinterpreted the Record of Decision and failed to seek clarification.

Finnegan explained that the review panel had misinterpreted the “continuity of operations” provision in the Record of Decision to mean that there must be zero impact on the continuity of business operations at the Markley Cove concession during the new concession contractor’s transition phase. Finnegan emphasized that if not for the panel’s misinterpretation, Pensus would have been selected as having the best proposal for the Markley Cove concession.

A basic unanswered question which will probably remain unanswered is why - when the new prospectus was the same as the old prospectus - did Markley Cove lose the bid the second time? SOL did not investigate that nor will the primary documents probably ever be released - even under a Freedom of Information Act (FOIA) request. The Lake Berryessa Chamber of Commerce tried the FOIA process previously and was rebuffed. Not surprisingly, the federal government has an extensive list of justifications to withhold rather than release information.

In the report the SOL Attorney-Advisor said he was heavily involved in the review and approval of the second prospectus. He said the second prospectus had two significant changes from the first: it did not include the clause promising to pay the concessionaire at the expiration of the contract, thus removing the Antideficiency Act issue; and it incorporated a franchise fee, since the first prospectus did not include one. He stated that not including a franchise fee results in the Government not receiving any money for the concession, which would technically prevent it from being a concession. The second prospectus included the franchise fee with the hope that bidders would bid higher than 1 percent.

The Attorney-Advisor related that because he was not too involved in the first bidding review process and had limited involvement answering general legal questions during the second, he did not know why the Fraziers were selected as having one of the best proposals during the first process and not during the second. He explained that changes to the second prospectus as well

as modifications to the framework of the scoring system – the franchise fee was given more weight in the second process – may have contributed.

None of the principals in the report were willing to comment publicly to the Lake Berryessa News since apparently some discussions are ongoing. It appears that much pain and suffering have been caused by a government agency out of touch with its impacts on the lives of real people and local communities. The report is another example of something that just didn't have to happen this way. It's past history with overtones of current events. What will "future history" bring?

A Berryessa Midsummer Night's Dream (With Apologies to William Shakespeare)

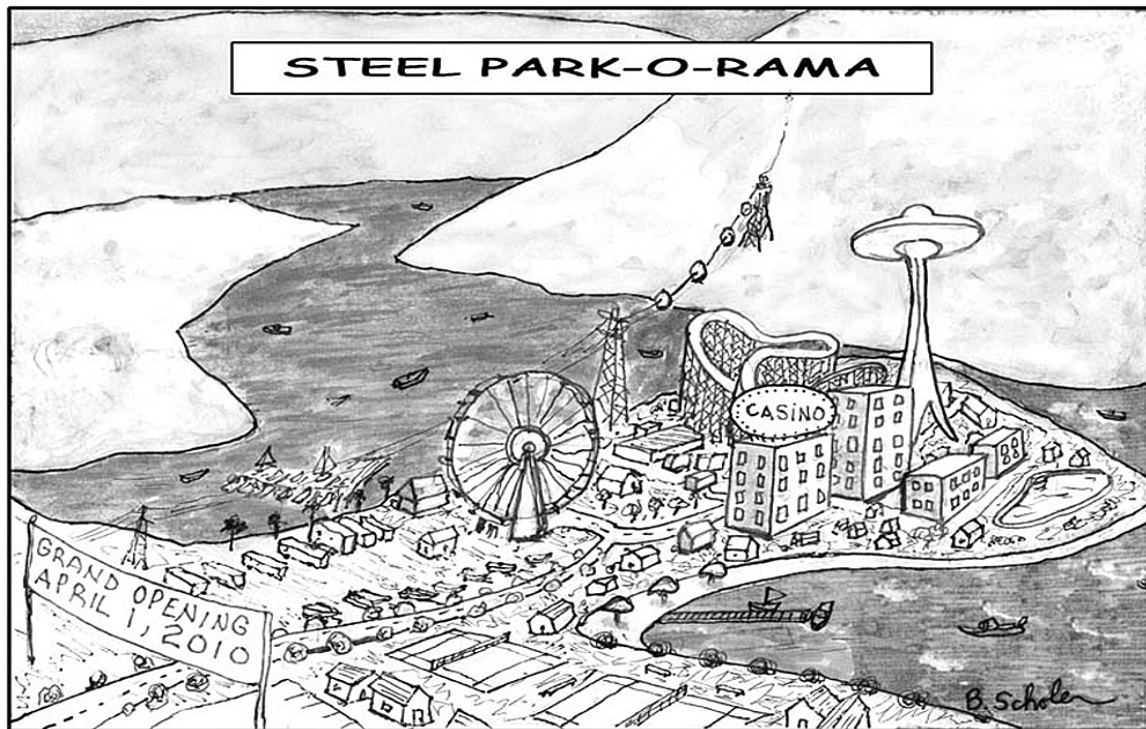
(The Lake Berryessa News, August, 2011)

I had a memory the other day of tubing and jet skiing on Lake Berryessa with friends and family. For a break we'd drift in to the Big Island Lagoon at 5 mph to float quietly with the other folks on patio boats, houseboats, or even some in kayaks. It was a quiet, safe place to float or even to put your deck chair on a sand bar and kick back in six inches of water while kids splashed around you. Later it was time for prime rib or pizza at the Steele Park Boathouse Restaurant savoring one of the most beautiful views on the lake.

But then I had a nightmare that a Dark Force swept down on Lake Berryessa and destroyed our homes and resorts, tearing up launch ramps, demolishing restaurants, eliminating access to the lake for years – even denying entry to the Big Island Lagoon to everyone except some phantom kayakers who never showed up.

NAPALACHIA

By Bill Scholer



But then, this being mid-summer, I had a comforting Midsummer Night's Dream. I saw myself sitting at a beautiful floating marina restaurant and bar, sipping a margarita, with my trusty low-emissions, quiet, environmentally-friendly jet ski at my side. Happy families were once again drifting slowly into the Big Island Lagoon for a rest stop. New resorts were providing launching and pleasant new facilities to visitors from all over the Bay Area. Just before I woke up I was once again looking out at that fantastic Steele Park view, but now it was from a brand new restaurant at Lupine Shores.

A Shakespearean tragedy is defined as a dramatic work in which the main character is brought to ruin or suffers extreme sorrow, often involving a heroic struggle, especially as a consequence of an admirable but flawed character or inability to cope with unfavorable circumstances.

This describes a decade of struggle between the Bureau of Reclamation on one side and previous resort owners in cooperation with Task Force 7 at Lake Berryessa, mobile home owners, local businesses and residents on the other. Reclamation won that struggle and the tragic results were obvious.

A Shakespearean comedy is defined as a dramatic work that is light and often humorous or satirical in tone with a happy or cheerful ending in which the central motif is the triumph over adverse circumstances, resulting in a successful conclusion.

This hopefully describes the present process of rebuilding Lake Berryessa to a superior state of recreational elegance by the Pensus Group. But that won't happen without strong management and the support of all parties involved. Unfortunately, there will always be some obstacles to overcome, even in a comedy with a happy ending.

David Ffinch, president of the Pensus Group, graciously agreed to answer some questions for the Lake Berryessa News regarding the present status of his company's progress at Lake Berryessa. "It's like planning, designing, and building a small town stretched over miles of shoreline. There's not much to see in the beginning, but once we push the button, progress will be rapid.

The public appears to be generally pleased with the level and quality of temporary services in 2011. As for 2012, any improvements will require approval from the various jurisdictions meaning planning, water quality, environmental, etc. We are working on infrastructure design and design of various vertical improvements. Our hope is that we can make some fairly definite statements in the last quarter of 2011 as to the scope of 2012 installations."

"Pensus has received very few complaints about reservations. We fielded more than 2,000 calls in the two weeks before the July 4th weekend and were completely booked by June 28th. Many people refused to book and pay in advance and were warned that they were unlikely to get a site without doing so. These same people became annoyed when we could not accommodate them during the last few days. Reclamation received 15 to 20 calls, by their account, from individuals complaining about lack of response. This is a very small percentage (less than 1%) and we are reasonably satisfied by this performance.

By August 1 a new website reservations system will be operational. Our software specialists have been training the on-site staff and will be available for support. With this system up and running we will hopefully do a better job and there will be less frustration."

Another important issue for visitors is security. "We have a 'zero tolerance' policy regarding any individual who is overly disruptive, aggressive, abusive, threatening or violent. Such individuals, when identified, will be escorted from the premises and refused access to the Concessions in the future. We will, under no circumstances, risk personal injury to our clientele, employees or police authorities by allowing clearly violent and aggressive individuals repeated access.

Pensus has received very few complaints regarding noise or disturbance at the Concessions. We did have one very aggressive and abusive individual, over the July 4th weekend. Only two calls were made by Pensus to the Sheriff requesting support. Pensus works closely with the Napa County Sheriffs and is most appreciative of their support, which has been exemplary. John Robertson, Undersheriff, and I have communicated personally and we will stay in close contact.

As I understand it on-land incidents have been minimal in comparison to the past and we will work to keep it that way and improve further.”

Mr. Ffinch’s comments were supported by the low number of Sheriffs calls over the July 4th weekend. According to a member of the Pope Valley Volunteer Fire Department, which takes care of most of the west side of the lake (along with the Cal-Fire units from Spanish Flat), this was the first time in memory that they didn’t have a single call during the weekend of the 4th. “It was wonderful to spend the weekend with my family.”

Although the National Environmental Protection Act (NEPA) has been raised as an issue in the Lake Berryessa redevelopment process, it is not clear why this should be an impediment since Pensus is simply replacing the old facilities with new environmentally-friendly construction. Any delay because of NEPA is even more puzzling since the demolition of the old resorts was accomplished with a minimum of environmental oversight.

The Bureau of Reclamation used what is known as a Categorical Exclusion (CE) and stated publicly that they had evaluated the situation and produced Categorical Exclusion Checklist #743. They also stated that they had reviewed the environmental impacts of demolition of each site and that environmental impacts were minimal and mitigated by using Best Management Practices.

NEPA itself states that the EA is a concise document, it should not contain long descriptions or detailed data which the agency may have gathered. Rather, it should contain a brief discussion of the need for the proposal, alternatives to the proposal, the environmental impacts of the proposed action and alternatives, and a list of agencies and persons consulted. Agencies should make the Finding of No Significant Impact (FONSI) and EA available for 30 days of public comment before taking action.

Unfortunately, the slow progress in this area is frustrating to many of the people involved, especially local business and residents, much less Pensus itself. The formal response from Reclamation to a question from the Lake Berryessa News does nothing to allay those concerns. This process should be fast-tracked by everyone involved, not allowed to linger into the spring of 2012. It is not an academic bureaucratic exercise – it affects real people.

Bureau of Reclamation response: “Pensus is in the process of formulating the Draft Environmental Assessment for development of recreation facilities and services within its six concession areas around Lake Berryessa as required by the National Environmental Policy Act, or NEPA. NEPA is a federal law that requires that potential impacts from federal actions and actions on federal land be examined prior to the initiation of that action. This environmental assessment for the planned development at Lake Berryessa is considered “programmatic” because it will focus on the impacts of the overall development plan proposed by Pensus. Reclamation expects the Draft Environmental Assessment to be completed fall/winter 2011, at which point the public will be invited to submit comments. These comments are an important part of the NEPA process, and will be considered in the Final Environmental Assessment. Reclamation anticipates that the Environmental Assessment will be finalized in spring 2012.”

The other major stumbling block for Pensus at Lupine Shores is the NBRID process. Mr. Ffinch was emphatic in his response to this issue that Pensus fully supports becoming part of the Berryessa Highlands water and sewer system whether run as it has been, a Resort Improvement District, or as an independent Community Services District. One wrinkle in this approach was pointed out by a County legal representative. Apparently according to law, a Resort Improvement District would provide both water and sewer services. However, if the NBRID became a

Community Services District, Pensus would be required to hook up to sewer services, but would not be required to hook up to water service from the District. Mr. Ffinch made it clear that Pensus was committed to join the proposed CSD for both water and sewer service.

“Pensus has committed to Napa County that it will hook up to NBRID and to participate proportionately in any costs subject to a maximum cost limitation of \$4M and timing. We are working closely with and support the Berryessa Highlands residents. There is nothing that Pensus can do at this point except wait for NBRID / Napa County to provide the Regional Water Authority with the assurances they have demanded from NBRID that will allow removal of the moratorium against Lupine Shores connecting to NBRID.”

At an April meeting a plan was developed to potentially remove the State’s Cease and Desist Order (CDO) against the NBRID by showing that effluent volumes, which everyone knows is primarily impacted during winter by rainwater intrusion in old Berryessa Highlands sewer pipes, would be below the 50,000 gallon limit if the pipes were repaired. This would allow the CDO to be lifted and also allow a longer-time frame to make the major upgrades to the main sewer treatment plant.

The April meeting group identified several milestones and a funding mechanism. The Consulting Engineers would monitor the system through the remaining wet weather in 2011. Camera and video analysis would determine infiltration water origin and provide the results by summer. The CDO process requires a November 2011 report to the state. During summer of 2011, the identified areas of serious infiltration would be repaired. During the winter of 2012 the Consulting Engineer monitors and reports effluent flow volume which is hopefully less than the 50,000 gallon limit. Unfortunately, it appears that this plan has not been completed as of July 2011. Whether it is a lack of money or technical issues is not clear. The Lake Berryessa News is awaiting a response from the County.

On a lighter note: Although Pensus published a brochure and funded electronic billboards around the Bay Area, they had not installed entrance signs at their resorts until recently. The original signs were spray painted on plywood sheets. The latest signs are small and can’t be read from passing vehicles. It didn’t do much for their professional reputation among locals as well as visitors.

The Lake Berryessa News Facebook page chimed in with photos and a bit of satire: “Five weeks after Pensus said they’d have signs up within two weeks, a new sign finally appeared at Lupine Shores next to their old spray-painted plywood sign. It seems they’ve transitioned from their old sign company, Ghettowerks, to Tiny Town Signs, Inc. From sublime humor to breathtaking silliness. Hopefully real signs will be installed soon.” David Ffinch took the hit with reasonably good grace, acknowledging some internal problems but stating, “We finally have the permanent signs in hand as of Monday last. They will be installed within the next two weeks.”

Everything can’t work perfectly, but we are all hoping for a happy (speedy) ending to this Lake Berryessa Midsummer Night’s Dream.

[Applehood and Mother Pie! What’s Right, What’s Wrong, Why](#)

(The Lake Berryessa News, April, 2012)

In a letter of opposition to the creation of the unnecessary Berryessa Snow Mountain National Conservation Area I used the term “applehood and mother pie” statement. We are all used to

hearing “motherhood and apple pie statements” which tend to be “feel good” platitudes about a worthy concept with which few people would disagree.

But I’ve noticed that many of these statements are being slickly twisted by wordmeisters to convey something they were never meant to mean. Words can be strung together like beads on a necklace to achieve a desired affect. Sometimes comments almost seem to make sense until you scratch through that mother pie crust and find out for yourself what they really say.

Examples of this are common in politics (right and left) and from the more radical exclusionist groups. If you hit all the right hot button words, even without any specified plans or supporting analysis, people are happy to do what you want and stop thinking for themselves (thinking is hard, I know). In dealing with the Bureau of Reclamation for fifteen years I’ve gotten used to the frustration of hearing “applehood and mother pie” statements from them rather than facts and evidence. The present sad state of affairs at Lake Berryessa, unfortunately, shows how effective they were at deploying those tactics – and still are.

Local residents, businesses, and Lake Berryessa recreationists are extremely disappointed in both the Bureau of Reclamation and Pensus for the lack of progress in redeveloping the resorts. Right now Summer 2012 appears to be a repeat of Summer 2011 with minimal facilities available at the Pensus Berryessa Shores Resorts. The major responsibility for this lack of progress must be attributed to the Bureau of Reclamation. After they got what they wanted through their disastrous Visitor Services Planning process – a single company to run most of the Lake Berryessa resorts – they seem to be doing everything in their power to slow the process down and drive Pensus out. Is it simply their passive aggressive response to some Pensus plans they no longer agree with after having approved them – slow them down to make them change? Anyone who has had to deal with Reclamation knows they are neither a recreation nor customer-service oriented organization.

But Pensus bears its share of responsibility for the lack of progress. They seem to have seriously underestimated the complexity of translating their paper plans into on-the-ground results. It appeared that their company policy was to go it alone despite the offers of advice and assistance from local people with years of operational experience at the lake. Their liaison and information-sharing with local residents was minimal – sometimes because they were in negotiations with Reclamation. Pensus always publicly stated that they wanted to be a partner with Reclamation and establish a good working relationship. But although they’ve lost a lot of local support, they can at least be assured that almost everyone wants them to succeed.

Which is why the actions of the Bureau of Reclamation and of our local politicians still seem suspect to many. Despite a letter from the Lake Berryessa Chamber of Commerce and one from the Lake Berryessa News requesting that Congressman Thompson take some action to encourage the Bureau of Reclamation to expedite their decision-making process to help Pensus make progress, Reclamation instead wrote a letter of non-compliance on February 27 to Pensus further slowing things down! Pensus responded with a longer letter describing their solutions to Reclamation’s perceived problems. When will this Reclamation Hall of Mirrors fiasco end?

The Lake Berryessa News obtained a recent letter from the Pensus attorneys to the Bureau of Reclamation dated April 27 which included a previous letter on April 6 laying out some of the ongoing issues and requesting action. The letter is included below and makes for very interesting reading. You be the judge. Unfortunately, it seems that there’s no one in charge at Reclamation. With the recent resignation of the Park Manager and two other key managers all decisions are being bumped up the chain of command – but still no one seems to know what to do.

The appearance of the orange fencing and danger signs is a case in point. The Bureau of Reclamation cordoned off large areas of Lupine Shores and Chaparral Cove with orange fencing and danger signs. The fences are far from the shoreline and eliminate dozens of previously approved campsites. Apparently a drunk-as-the-proverbial-skunk crazy woman had slid down an embankment at Chaparral Cove and injured herself.

Per Reclamation: "Until Pensus develops a plan for more permanent barriers, we are obligated to provide a temporary safety barrier. We have determined that it is more cost effective to barricade off the general area temporarily than to do specific site analysis and design barrier protection at each site. Pensus is developing plans for more site-specific protection, and Reclamation's fencing will be removed when this is in place."

"Cost-effective" meant "cost-free" to Reclamation (except for the cost of fencing and signs - many signs). Reclamation made Pensus design the barriers and do a GPS site analysis along the actual edge of the shoreline. Pensus wants its campsites back. No response yet from Reclamation to the Pensus application because, apparently, no one there knows what is required and is afraid to make a decision. "Applehood and Mother Pie" - tonight's WØRD!

Pensus Tries A Little Bit Harder, But Gets No Respect

April 27, 2012

To: Michael Finnegan, Area Manager, Bureau of Reclamation

Subject: Request for Authorization of Marina Construction at Chaparral Cove, Lupine Shores and Mahogany Bay Concession Areas. Lake Berryessa, Solano Project, California

Dear Mr. Finnegan:

This is in response to a letter to Lake Berryessa Properties, LLC (Pensus) from Peggi S. Brooks, Chief, Recreation Resources Division, dated April 23, 2012 in which she points out certain perceived deficiencies in the Project Statements for marina improvements at Chaparral Cove, Lupine Shores and Mahogany Bay, which were filed with the U.S. Bureau of Reclamation (USBR) on April 3, 2012. In her letter, Ms. Brooks asserts, among other things, that:

1. Pensus must coordinate with and obtain the approval of the USBR prior to submitting an application for a Section 404 Permit to the U.S. Army Corps of Engineers (USACE);
2. The submitted Project Statements do not describe the full panoply of facilities associated with marinas at Chaparral Cove, Lupine Shores and Mahogany Bay, and the drawings and site plans for the marinas are "conceptual in nature," and not sufficiently detailed;
3. The drawings included with the Section 404 Permit include extended no-wake zones outside of Concession boundaries, which have not been approved by Reclamation; and
4. Compliance with the National Environmental Improvement Act (NEPA) requires that Pensus submit detailed site specific project descriptions supported by corresponding site plans and drawings, in light of the fact that Pensus's draft Environmental Assessment (EA) (submitted March 29, 2012) is still under review.

Pensus appreciates your feedback on these matters, as well as your acknowledgement that the installation of wet slips is a top priory for Pensus in 2012. On this latter point, we could not agree

more fervently. In order to move forward as expeditiously as possible, Pensus will provide USBR with revised Project Statements containing the information requested, including specific marina engineering and schematic designs, as well as revised site plans and drawings.

As a point of clarification, however, it is incorrect to assert that Concession Contract Number 10-LC-20-0184 requires Section 404 permits to be "coordinated, reviewed and approved" by USBR prior to submission to USACE. In fact, section 3(D)(5) of the Concession Contract contains no such requirement; it specifically provides that "[t]he Concession Contractor shall... provide to the Contracting Officer any written materials prepared or received by the Concession Contractor in advance of or subsequent to any such communications" with other regulatory agencies.

With regard to no-wake zones, Pensus has requested the establishment of no wake zones by USBR (most recently in an April 6, 2012 letter to you) and has prepared an Environmental Assessment (EA) (submitted on March 29, 2012) to support these requests. To date, however, USBR has taken no action to address these proposals. It seems odd that despite the fact that Pensus has petitioned USBR on several occasions to make a determination on the appropriate boundaries of the no wake-zones, it has yet to receive any answer. As you know, this determination is vital to the safety and design layout of the marinas and is therefore necessary to be able to provide USBR with the type and kind of more exact design specifications USBR requests. We believe that the Area Manager is an "authorized official" under the 43 CFR § 423.60, and has authority to designate no wake zones at Lake Berryessa. Therefore, we request that your office expeditiously respond to Pensus's requested designation of no wake-zones concerning its concession sites and proposed marina operations. For your convenience, we are attaching a copy of my April 6, 2012 letter to USBR. To date, only the question of toilet design raised in that letter has been addressed by USBR.

43 CFR § 423.60 provides that an authorized official may "[e]stablish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours: public use limits: and other conditions, restrictions, allowances, or prohibitions on particular uses or

activities where that action is found to be necessary for:

- 1) The protection of public health and safety;
- 2) The protection and preservation of cultural and natural resources;
- 3) The protection of environmental and scenic values, scientific research, the security of Reclamation facilities, the avoidance of conflict among visitor use activities; or
- 4) other reasons in the public interest.

Finally, with regard to NEPA compliance as addressed in Ms. Brooks' letter, USBR has in its possession a comprehensive Draft EA that fully assesses the environmental consequences of Pensus' s planned marina improvements. Timely approval of this document (as described in USBR's NEPA Handbook) is both prudent and necessary not only for the marina Project Statements, but for further development of the Lake Berryessa concession areas. Pensus thus requests that USBR initiate public comments on the Draft EA as soon as next week and make every reasonable and prudent effort to adopt the Draft EA as quickly as possible. The public is clamoring for action and USBR and Pensus should respond affirmatively. Of course, as Ms. Brooks letter points out, USBR demands approval before Pensus may proceed with concession improvements. Clearly, however, sometimes the USBR demands approval of Pensus actions

beyond the requirements of the Concession Contract. Going forward, we should work together to reduce the backlog in decisions and analyses to serve the public.

Fulfilling the promise of recreational services at Lake Berryessa is in our mutual best interests. It is our hope that USBR will start to act on the many pending matters already before it in order to turn our shared vision of Lake Berryessa into a reality. If you have any questions, please contact me directly.

Sincerely, Steven Richardson, Counsel to Pensus Lake Berryessa Properties, LLC

April 6, 2012

Mr. Michael R. Finnegan, Area Manager, U.S. Bureau of Reclamation
In Re: U.S. Bureau of Reclamation Contract No. 10-LC-20-0184

Dear Mr. Finnegan:

On March 29, 2012, Pensus Lake Berryessa Properties LLC (Pensus) provided a final response to the U.S. Bureau of Reclamation's (USBR) February 27, 2012 letter entitled "Notification of Noncompliance with Concession Contract Number I 0-LC-20-0184, Lake Berryessa, Solano Project, California and Opportunity to Cure" (Noncompliance Letter). The response cured or provided pathways to cure all alleged deficiencies in the Concession Contract's administration. Assuming that USBR agrees that those issues are resolved or on a pathway to full resolution, Pensus respectfully asks Reclamation to address specific open issues to continue moving the project forward prior to resuming any direct talks on global Concession Contract matters. To that end, this letter seeks additional specific details on USBR's expectations for decision-making on critical path matters that must be completed to fully implement the Pensus CFIP and IMP schedules for 2012, 2013 and beyond.

As next steps Pensus's March 29 letter outlined six specific discussion topics for USBR's consideration and action: (1) No Wake Zones; (2) Willi's Ski School; (3) houseboat allocations; (4) the results of Pensus' initial marketing of marina services; (5) unisex toilets and showers; and (6) the change of circumstances at the Manzanita Canyon concession area. Specifically, Pensus asks for USBR's commitment to mapping out the steps and decisions required to obtain timely approval on these and all other issues pending before it, so that we may mutually set and keep a schedule consistent with the goals of the Concession Contract. An illustration of these issues is provided below.

1. No Wake Zones

California law requires that a 200-foot "no wake" zone be established around boat docks, launch ramps, and other facilities that hold boats or provide passenger transport to boats. Additionally, boats operated by machinery are required to maintain speeds of less than 5 miles per hour in this zone to assure no wake effect. As part of its CFIP submission, Pensus provided USBR with drawings depicting proposed no wake zones to support marina operations at Mahogany Ray, Lupine Shores and Chaparral Cove, which comply with, and in some cases exceed, state law requirements. The mitigating impacts of these no wake zones on potential shoreline erosion and visitor safety were discussed in the Pensus Draft Environmental Assessment provided to USBR on March 29, 2012. It is essential that the areas depicted be established as no wake zones to protect against damage to the marina structures and watercraft occupants and to assure proper protection against personal injury. These no wake zones are also consistent with the direction

provided in the 2006 Record of Decision for the Visitor Services Plan: Future Recreation Use and Operations of Lake Berryessa (VSP ROD).

USBR has authority to approve these proposed no wake zones. In an effort to move forward, please provide Pensus with information concerning how it may obtain final approval of these no wake zones, as well as any timelines involved.

2. Willi's Ski School

Waterskiing historically has been a popular recreational pursuit on Lake Berryessa. USBR agreed that waterskiing should continue in its comprehensive recreation plans for Lake Berryessa. In fact, Alternative B, the Preferred Alternative recommended by USBR in the 2005 Final Environmental Impact Statement for the Visitor Services Plan/Future Recreation Use and Operations of Lake Berryessa (VSP EIS), acknowledged water skiing as an appropriate use of the lake's water resources. The VSP ROD adopted this alternative with minor modifications irrelevant to waterskiing. In light of the VSP EIS and VSP ROD's recommendations and authorizations, Pensus seeks the opportunity to develop the Willi Ellemeier Championship Water Ski Training Facilities (Willi's Ski School) at the Foothill Pines concession area. Development of the ski school is a unique opportunity for Pensus and USBR. As you know, Willi Ellermeier is a world-famous ski instructor and has been providing services at Lake Berryessa for over 30 years.

The March 29 response highlighted specific examples of inefficiencies in Reclamation's administration of the Concession Contract, including a 6 month delay for Pensus to obtain USBR permission to move a single utility pole six feet.

The Pensus GANT Chart provided as Attachment B to the March 29 response provided for a list of necessary development activities to occur in April and May 2012 to permit the ski school to become operational during the 2012 summer season. These activities include submission to USBR for a ski school as an approved service, USBR approval of service and USBR rate approval, Pensus submission of design criteria to USBR, USBR approval of design and installation, Pensus installation of training facilities improvements, and commencement of ski school operations. As evidenced by this list, Pensus and USBR must adopt a coordinated plan and approach for timely decisions to make this recreational opportunity a reality.

To develop the ski school, Pensus seeks specific guidance and timely action from USBR. First, Pensus seeks clarification on whether USBR will require the ski school proposal to be reduced to a Project Statement. Second, because the Concession Contract does not provide for sub-concessions for the provision of visitor services, Pensus needs to work with USBR to add Willi as an employee. Third, Pensus seeks clarification on whether USBR will require Pensus to file an employment agreement that requires USBR's approval, and whether this proposal may be contained in a Project Statement. With these questions answered in a timely manner, the project can move forward without delay. Pensus is confident that working with USBR, this important visitor service can be implemented in a timely fashion.

3. House Boat Allocations

House boating is an important recreational resource at Lake Berryessa. In February 2011, USBR completed a comprehensive Houseboat Capacity Analysis for Lake Berryessa, which concluded that Lake Berryessa has an overnight mooring capacity of 175 houseboats. Pensus is required to provide houseboat rentals at its six concession sites as part of the Concession Contract, and is authorized to provide up to 70 houseboats. In the CFIP, Pensus proposed to provide houseboat rentals as follows: Ten (10) at Lupine Shores, ten (10) at Chaparral Cove, and fifteen (15) at Mahogany Bay.

To date, USBR has not authorized Pensus to issue permits for the use of houseboats on Lake Berryessa. Pensus and USBR must adopt a coordinated plan and approach for timely decisions to make this recreational opportunity a reality. At your earliest convenience, please inform Pensus of the timing and the steps required for Pensus to obtain authorization from USBR to issue a reasonable number of houseboats permits.

4. Marketing of Marina Services

Pensus began its initial marketing of marina services on March 21, 2012. Community responses to the marketing plans have been positive and enthusiastic. Given the importance of recreation to the local economy, neighboring residents and visitors are excited by the plans proposed by Pensus. To date Pensus has received over 40 signed contracts for wet slips. The preparation of the area for construction of wet slips which has an existing concrete slab and asphalt surfacing, and assembly of equipment for construction is underway at Lupine Shores and construction of slips should start on or about April 21, 2012. Project statements with detailed plans and specifications for the marinas were sent by FedEx for delivery to your offices on Thursday, April 5, 2012. Pensus anticipates receiving approval for installation of marina slips from the U.S. Army Corps of Engineers by April 30, 2012 and would like to make installations immediately thereafter assuming that approval has also been received from USBR. Going forward, Pensus and USBR must adopt a coordinated plan and approach for timely decisions to make this recreational opportunity a reality.

As such, it is important that USBR and Pensus are on the same page concerning the full breadth of marina services that Pensus intends to provide under the Concession Contract. The Concession Contract codifies the proposals set forth in Pensus Group's initial Proposal to Operate: Water based Recreation Support and Associated Hospitality Services and Facilities within the Concession Areas at Lake Berryessa (Proposal). The Proposal outlined quite extensively marina services Pensus planned to offer. Specifically, in addition to physical facilities, Pensus proposed a village concept at the marinas with restaurants, convenience and gift stores, clothing boutiques, fuel docks and tour boat docks. The revised concept plans that were adopted by USBR in February 2011 now show the restaurant, convenience store and gift stores and clothing boutiques located on land with the exception of Mahogany Bay. From one or more of the marina complexes. Pensus will provide boat and watercraft rental operations ranging from water skis to 75-foot long houseboats, along with fuel docks.

Pensus will also provide a tour/shuttle boat service between resort areas. In addition, Pensus proposed a Marinas Concierge Services Department to provide a full range of services including launch and retrieval, boat mechanical, structural and aesthetic repair and maintenance, washes, details, galley stocking of requested food items, stocking of other necessary items, fueling, effluent tank pump out, piloting and 24 hours emergency response (accidents, breakdowns, fuel deficiency, inability to drive one's craft due to inebriation or other mishap) or any other reasonable need that is necessary to enhance the public's enjoyment of the lake and their chosen recreational activity. Assuming that USBR agrees with this scope of service, Pensus wants to develop an agreement on what USBR wants to review and approve, the form that Pensus submissions should take, and the expectations for timely approvals.

The Development Plan in the Concession Contract as well as the Operating Plan, Exhibit G, provide for the types of services outlined above. While USBR retains authority to approve specific services and rates charged to provide them to the public, it is unclear how much detail USBR seeks to review and the appropriate form of submission by Pensus to USBR for timely action. For example, Pensus has reached an agreement in principle with Marty Rodden (currently at Markley

Cove) to serve as its boat rental manager at all concession sites where boat rental may be provided. Initially boat rental will be operated from Lupine Shores only but other locations may be added depending upon market demand. This type of service lies at the heart of a successful marina and will be an important step in assuring the public a level of continuity of service that will bring credit to both USBR and Pensus. That said, how much of that relationship does USBR want to review and approve? Marty will clearly be a Pensus employee, so will it suffice to submit the details of Marty's operations and services for approval or does USBR expect to see and approve greater details of that service? These details are important to resolve at the outset, because Pensus must obtain USBR's approval for all advertisements and public information created for the concession facilities and Pensus wants to continue its marketing campaign in synch with USBR.

5. Unisex Toilets and Showers

On January 25, 2012, Pensus provided USBR with designs for a unisex shower and toilet unit for Lake Berryessa to be installed at all concession sites where RV and Tent Camping is operated. The unisex facilities were proposed because of their environmentally smaller footprint and Pensus's experience with the use of shower and toilet facilities at marina locations. USBR indicated some reluctance or dissatisfaction with the design, but has provided no formal feedback and no suggested alternatives. Pensus is preparing, and will submit within 7 days, new concept design drawings that have been revised and notated to address the concerns of Reclamation informally provided by Peggi Brooks on March 15, 2012.

6. Manzanita Canyon Concession Area

As Reclamation is aware, a February 12, 2012 decision by the U.S. Court of Appeals for the Federal Circuit, *Laguna Hermosa Corp. v. U.S.*, clarified Pensus' and Reclamation's rights to use existing facilities at the Manzanita Canyon concession area. The court affirmed an earlier finding that the past operator of Manzanita Canyon abandoned improvements made under their lapsed contract, and is not entitled to compensation from USBR or Pensus. The CFIP submitted by Pensus on February 10, 2011 stated that all materials left at the Manzanita Canyon concession area would be removed by Pensus. However, the Laguna Hermosa decision changes earlier assumptions that all facilities had to be removed from the area before development.

Pensus's current plans for Manzanita Canyon, as set forth in the Draft 2013 IMP submitted as Attachment B to the March 29 response, waits until 2014 to construct improvements at Manzanita Canyon, limiting use of the area to primitive camping in 2012 and 2013. The result of this decision is that either USBR or Pensus can use the remaining facilities without payment to the former operator, and that facilities could be used on an interim basis to promote greater use of the concession area at an earlier date.

In light of the decision, Pensus seeks guidance from USBR on how to move forward with developing a new plan for Manzanita Canyon that incorporates existing facilities. With cooperation from USBR, there is real opportunity for Pensus to offer added services at Manzanita Canyon at an earlier date. The items discussed above are just a sample of the outstanding issues facing Pensus and USBR.

Catch-22: The Bureaucratic Double Bind Theory in Practice

(The Lake Berryessa News, May, 2012)

The series of actual emails below is emblematic of the dysfunctional approach the Bureau of Reclamation is taking to any actions proposed for the redevelopment of Lake Berryessa. The

resorts have existed for more than 50 years. No items of cultural or historical importance have ever been discovered within the resorts or at Oak Shores or other Bureau-maintained facilities.

Reclamation demolished more than 1,000 mobile homes and resorts facilities, and is still digging and scraping away at the remaining residue, without any substantive environmental or historical studies to support their actions. They simply filled out a short form called CEC 743, which was approved on October 11, 2007 concluding:

“Reclamation has determined that the proposed action is appropriate for Categorical Exclusion under the National Environmental Policy Act 011969 (42 United States Code [U.S.C.) 4321, et seq.) based on the following information: The removal of all existing trailers and associated appurtenances within existing and developed sites at Lake Berryessa resorts involves only minor construction activities on previously disturbed land and there will be no impacts to waters of the United States. Further, Reclamation has reviewed the proposed action and determined that there is no effect to Federally-listed species or critical habitat.”

A consultation with the State Historic Preservation Office has concluded that there are no affects to cultural resources under Section 106 of the National Historic Preservation Act.”

Now Reclamation wants detailed studies for any action taken by Pensus, even digging a hole for a power pole, moving fence posts originally hammered in by Reclamation to eliminate dozens of campsites from use, and just about anything else. They even deny approval of the same type of Categorical Exclusion they used themselves to undertake massive demolition and ground disturbance over hundreds of acres of shoreline.

No wonder the project manager below may want to call himself Captain Yossarian when dealing with the Bureau of Reclamation. For those of you who remember the book and movie, Catch-22, we truly find ourselves in a “Catch-22” situation at Lake Berryessa! One bureaucratic justification for Catch-22 actions from the book is:

“Catch-22 states that agents enforcing Catch-22 need not prove that Catch-22 actually contains whatever provision the accused violator is accused of violating.”

This directive seems to perfectly encapsulate the local Reclamation approach and conduct. The project referred to in the email chain is the simple digging of a couple of trenches. Read it to believe it.

From: Reclamation, May 25, 2012: Thank you for your email. Your revised project statements of May 18, 2012 have been received at both Lake Berryessa and CCAO offices (May 23rd, 2012). As of today they have been routed for review of administrative sufficiency, followed by technical and environmental review. I have requested a time estimate for completion by the review team and should be able to provide a response to your question by COB Weds. May 30th (considering staff availability due to the Holiday weekend).

From: Reclamation, May 29, 2012: I spoke with staff today as they work through their review of the revised project statements for your project. It appears there are still some questions regarding some details of the proposed project. My engineer will have his comments prepared by Thursday mid-morning. I propose a brief meeting to discuss the questions, followed by your providing a

written response on the comment form we provided or other form best suited. Once all comments have been addressed, the NEPA evaluation will continue to the stage of cultural review by the Mid-Pacific Region and then State Historical Preservation Officer (SHPO). I am told we should expect a timeframe of 90 days or less for cultural review and concurrence by SHPO.

From Applicant's Project Manager, May 29, 2012: Thanks for the update. When we last spoke, when the subject of NEPA / SHPO came up, I pointed out that all of the testing would effectively be performed in areas previously disturbed during the preceding 50 years of use under the former concession contracts. I thought that our discussion at that time had reached at least a tentative consensus on the in situ conditions.

Our application includes a request that the USBR issue a Categorical Exclusion for this work, similar to numerous instances of minor work operations categorized previously by your office. I respectfully request that the nature of the work to be undertaken as well as the fact that the area has already be thoroughly disturbed be considered before launching into another lengthy period of review.

From Reclamation, May 30, 2012: I know that you and others at your company have stated that you believe the previous disturbance in the concession areas warrants relief from further review of cultural resources. I am not able to concur with this, nor have I in the past, because it is a matter of Federal and State law, and it is not my role to determine how the laws are to be implemented by Reclamation.

My role is to obtain complete project descriptions for concession development activities and pass them to the appropriate staff in Reclamation for compliance with NEPA/NHPA. Staff specialists review the project description and other documentation, determine what level of NEPA and NHPA analysis is required and initiate that process. If significant ground disturbance will occur from the project then it will normally require review by SHPO. The review time required by SHPO is not within Reclamation's control. Understanding this planning process and the timeframes required is key to successful project management, which is why we have provided you with flowcharts and NEPA process information.

I understand your wish to expedite this project and will do everything I can to assist in getting it approved. Having a completed cultural survey as you initially set out to do would have significantly streamlined this and other projects. In the absence of that survey, each project will have to be individually evaluated for NEPA/NHPA compliance.

From Applicant's Project Manager, May 30, 2012: I still have no official word on the status of the Project Statements themselves, but given the tone of this communication I am not expecting anything less than another re-write. At this rate, even with a perfect Project Statement, we will be denied permission to undertake even the most basic of testing for another three – four months. If this is the best that can be done for something this simple, I can only guess how difficult a real building project will be to obtain approval.

Aka: Capt. Yossarian

Seasons, Cycles, and Radical Change: Chaos Theory - Berryessa Style

(The Lake Berryessa News, June, 2012)

Summer is here again. With the change of seasons it's time to unwrap the boat and refill the pool. Seems like I just winterized the boat and drained the pool yesterday - but it was a whole Winter ago, a whole cord of wood ago - the annual cycle of country living. After six years of looking at the same walls and floor, I've started ripping out the rug and repainting my living room to add more color. Radical change for me, but it was time. How can anyone go six years without radically changing something?

Positive change may also be coming to the Berryessa Highlands now that the Napa Berryessa Resort Improvement District (NBRID) is moving forward with the required upgrades to its water and sewer system. This change comes with a relatively high cost to NBRID ratepayers in the form of a bond issue. Residents are now in the process of voting for the proposal. Some are very frustrated and upset with the cost, but after many years of trying, and apparently getting it right this time, there is really not much choice for the future but to vote yes.

Other change has come very slowly this season/cycle at the lake. Much of this is due to the bureaucratic constipation of the Bureau of Reclamation. It is difficult to be even moderately objective when discussing a bureaucracy that has consciously done so much damage to the Lake Berryessa community.

The biggest mistake Reclamation made was to choose Pensus. They really had only two motivations in the Visitor Services Plan. One was to get rid of all the mobile homes. The other was to remove all the previous concessioners and get one company to run the lake. If they had chosen the Lago Group's bid (the Whites and Spanish Flat owners) probably none of this would have happened. But they disqualified the White's bid on a technicality and didn't even review it. They refused to let the White's revise that one item to meet the bid requirement.

The biggest mistake Pensus made was to play hardball about the value of the existing facilities. They convinced Reclamation to declare that all the facilities had no value and must be removed - even though Reclamation's own appraisers put the value of all the facilities at the resorts at about \$12M. No one, including the judge in one legal case, thought that any new company would do that.

Pensus could have had working resorts for pennies on the dollar. But they believed it was better to start from scratch with new facilities in a 40-year contract than pay for old facilities that would have to be replaced anyway within a short time. Maybe a reasonable business decision, but a terrible strategic one, in my opinion. And very bad for our community. It's probably immaterial if the concessioner is Pensus or if the Lago Group had won. The situation would likely be the same now with any concessioner trying to work with the Bureau of Reclamation.

Unfortunately, Reclamation seems to be continually trying to re-write itself as a satirical sketch on Saturday Night Live, the Daily Show, or Colbert Report. Whether it's simply a slavish dedication to policy over people, an homage to Catch-22, a psychological attachment to the Double Bind Theory of Government, it's difficult for most people to understand their true motivation. Crying "incompetence" seems too simple a reason for this chaos. If Reclamation disagrees with some of the Pensus plans, (they do have more real experience with the lake than does Pensus) why didn't they just say so?

Why approve the original Pensus plans and then, a year later, approve radically different Pensus plans? Many people familiar with the lake do not agree with several elements of the Pensus plans either. But why these delaying tactics? A growing number of folks believe it's a continuation of Reclamation's original plan to simply shut down the lake to return it to its "natural state". According to a meeting participant, prior to her recent unlamented resignation as Park Manager, Lynn Pilgrim-Little said something to the effect, "Well, it's taken us five years but we almost have the lake back to its natural state."

Tell that to the people of the Town of Monticello. Only the removal of Monticello Dam and the restoration of the Berryessa Valley would bring this area back to its "natural state". Even if we give the Bureau of Reclamation the benefit of the doubt, and that they are trying their best, they have once again thrown the lake into severe chaos with their attempt to terminate their contract with Pensus. Add to that the tragic death of David Ffinch, Pensus president, on June 2, and we have chaos compounded!

I had a reasonable working relationship with David Ffinch and believe he was an honorable man with his own vision for Lake Berryessa. In the end, although he always refused to publicly criticize Reclamation, he became convinced (as most of the Lake Berryessa community already was) that Reclamation was acting in bad faith.

In one of his final statements Ffinch said, "The stated reasons for termination are either unsubstantiated or blatantly false. For reasons unknown to Pensus, Reclamation has made it almost impossible to make any progress over the last two years which has resulted in substantial financial losses. Be assured that we do not intend to acquiesce and we will continue to move forward."

Chaos is defined as complete disorder and confusion, behavior so unpredictable as to appear random. Chaos Theory is a scientific theory describing erratic behavior in certain nonlinear dynamical systems.

How Can a Real Business Cope with... bad faith: n. intentional dishonest act by not fulfilling legal or contractual obligations, misleading another, entering into an agreement without the intention or means to fulfill it, or violating basic standards of honesty in dealing with others.

Floundering About at Lake Berryessa (Not a fishing story.)

(The Lake Berryessa News, November, 2012)

Definition: "flounder about"

1. To make clumsy attempts to move or regain one's balance.
2. To move or act clumsily and in confusion.

Every now and then the perfect real-life example of an odd word or phrase pops up. In this case it's the ongoing actions of the Bureau of Reclamation at Lake Berryessa. During the last few months, after years of inept management of the Lake Berryessa resort redevelopment process, Reclamation attempted to shift responsibility for the chaos to Pensus. But the facts, both the public record and confidential documents, do not support their contention.

The Lake Berryessa News has regularly documented Reclamation's inexplicable, bordering on the bizarre, requirements placed on Pensus as they tried to restore the resorts to operation. Although Pensus may have been unrealistic in their redevelopment schedule and some of their actual plans, no reasonable person expected the Reclamation to act as they did. Their incompetent management finally even prodded Congressman Mike Thompson to request their removal as the Lake Berryessa managing agency to be replaced by the Bureau of Land Management.

Rather than act to help expedite the re-opening of the resorts, as desperately needed by the local business, residential, and recreational communities, Reclamation seemed to do everything they could to impede progress. Then they issued a "Notification of Noncompliance with Concession Contract" and rejected the Pensus response to correct the supposed non-compliances. Reclamation quickly followed with an unexpected Notice of Proposed Termination of Contract. This all happened in a timeframe that implied that Reclamation had been planning these moves all along.

Now after months of legal tussles and a failed mediation process, all still remains unclear. The main perpetrator of the chaos, Area Manager Mike Finnegan, has retired. Coincidentally, within two weeks of his rather conciliatory presentation to the Lake Berryessa local community on October 25, Don Glaser has been replaced as Regional Director of Reclamation's Mid-Pacific Region without issuing his final decision regarding the Pensus contract termination. His staff (basically retiring Mike Finnegan) recommended termination. Glaser will move to Denver where he will "work on several high priority projects for Bureau of Reclamation Commissioner Michael L. Connor". David Murillo has been named Mid-Pacific Regional Director in Sacramento replacing Glaser.

Despite Glaser's assurance to the public at the October 25th community meeting that his decision regarding the Pensus contract would be forthcoming within a week (by October 31), that decision has not yet been announced. His office claimed there might have been a misunderstanding and that the decision will not be announced until the end of November. Reclamation also confirmed that, as of November 8, Pensus has not yet been informed of any decision regarding its contract.

Can any public agency exemplify "flounder about" any better? In an almost satirical take on biology versus bureaucracy, the life cycle of a flounder may have met its human equivalent. "In its life cycle, an adult flounder has two eyes situated on one side of its head, while at hatching one eye is located on each side of its brain. One eye migrates to the other side of the body as a process of metamorphosis as it grows from larval to juvenile stage. As an adult, a flounder changes its habits and camouflages itself by lying on the bottom of the ocean floor as protection against predators."

Predator or Prey? Pensus Responds

The Lake Berryessa News spoke with a Pensus representative regarding the present Pensus position. Because of confidentiality requirements no details of ongoing negotiations could be disclosed. Pensus intends to continue its efforts to remain at Lake Berryessa and stands behind its October 15 public statement which is reprinted here. Pensus believes it has the legal high ground and pointed out that even if the Reclamation decision is to terminate the contract, there is a formal appeal process which could be followed by further legal options.

"Dear Berryessa Stake Holders,

Pensus was unable to reach settlement of its dispute with the U.S. Bureau of Reclamation through an Alternative Dispute Resolution process. However, no final decision has yet been made by Reclamation with respect to Pensus's contract. In the interim, the contract remains in force and Pensus will continue to offer visitor services at Lake Berryessa. Although Pensus unfortunately could not reach an agreement with the Area Manager and his team, Pensus is committed to working with Reclamation's Regional Office in Sacramento and the agency's Headquarters in Washington, DC to reach a mutually-acceptable resolution to this dispute.

Pensus continues to firmly believe that termination of its contract is in no one's interest - not Pensus', not Reclamation's, and certainly not the public's. Pensus continues to firmly believe that Pensus, Reclamation, and the public share a common interest in the development and operation of robust public recreational opportunities at Lake Berryessa.

Recognizing that there remain matters to be resolved by the parties, Pensus has made a new offer directly to the Regional Director to perform the full scope of development of the six sites provided for under its contract. Pensus believes that termination is a disproportionate response to the events of the last few years, is not legally sound, and would needlessly delay the provision of recreation services at Lake Berryessa.

Pensus looks forward to the opportunity for a cooperative and constructive dialogue with Reclamation, and ultimately to continuing to serve the public at Lake Berryessa well into the future. Unfortunately while Pensus strives to reach an agreement with Reclamation to continue to provide visitor services at Lake Berryessa our development efforts will remain on hold. Primitive tent camping, RV and launching will continue at Lupine Shores and Chaparral Cove.

Sincerely, The Persistent Pensus Team"

The Devil is in the Details: Flounder-Style

Devilish Detail #1 – Markley Cove Resort

Pensus, per their contract, is scheduled to take over Markley Cove Resort on May 27, 2013. Although Reclamation (Finnegan) has pressured Pensus several times to allow a contract extension for the present Markley concessioner, Pensus has adamantly and publicly refused to agree.

Pensus has stated that the private houseboats at Markley are an important part of their financial strategy, and they had hoped to complete new docks at Lupine Shores to allow the houseboats to be temporarily berthed there while they renovated the renamed Mahogany Bay.

Reclamation's proposed contract termination has caused serious uncertainty among the Markley houseboat owners, although they had previously been assured full support by Pensus. It's not clear who is playing legal hardball with the biggest bat, but Pensus still intends to take over Markley Cove on May 27, 2013.

SECTION 1 - TERM OF INTERIM CONCESSION CONTRACT (Markley Cove Resort)

A. TERM OF INTERIM CONCESSION CONTRACT: This Interim Concession Contract No. 09LC200026, herein and hereafter referred to as the "Interim Concession Contract" shall be effective on May 27, 2009, and shall be for the term ending May 26, 2011, with two one-year options, unless otherwise provided under B. herein. Each one-year option must be mutually agreed to by the Concession Contractor and Reclamation. This is an Interim Concession Contract permitted to provide continuation of identified public facilities and services following the completion of the previous concession contract.

E. CONTRACT EXTENSION: The term of this Interim Concession Contract may not be extended beyond that stated in Section I .A.

Devilish Detail #2 – Steele Park (Lupine Shores) Launch Ramp and Roads

A postcard appeared in Berryessa Highlands mailboxes last week stating that Reclamation is considering removal of the roads and launch ramp at Steele Park (Lupine Shores). The postcard had no sender identification, but the Lake Berryessa Chamber of Commerce confirmed they had not sent it. The concern, and a real one, is that public access at Lupine Shores might be eliminated for a long period of time if this happens. And if the Pensus contract were to be terminated, this would add another complication to the process.

The note requested that residents and supporters call and write to Don Glaser of Reclamation to protest this possible action. The possibility of Reclamation demolishing the roads and launch ramp stems from a contract signed almost three years ago.

On February 5, 2010, Sean Buckley, owner of Steele Park Resort, and Michael Finnegan, Area Manager for Reclamation, signed a contract (Agreement Regarding Clean Up And Removal Of Facilities At Steele Park Resort) to allow Reclamation (and any new concessioner) to use the Steele Park launch ramp and roads for a period of only three years. In exchange, Reclamation agreed to pay for the remaining facilities demolition and clean-up of the resort. The concessioner had already demolished many of the facilities at his own cost. Most of the mobile home owners, such as I, had paid \$3,500 to have a contractor demolish our property.

As the opening lines in the song Time Warp from the Rocky Horror Picture Show predict: "It's astounding, time is fleeting, madness takes its toll." Here we are, a progress-free, madness-packed three years later when this particular toll comes due on February 5, 2013. Closure or demolition would have a serious effect on the local Berryessa Highlands community, which depends on Steele Park for lake access.

Floundering Forward – Conclusions?

None – just a series of unknowns. Step one is for the Bureau of Reclamation to finally make a reasonable, rational decision or two. What's your prediction?

Deciphering Berryessa's Ancient Rock Sculpture at Steele Park

(The Lake Berryessa News, December, 2012)

Prior to the 2008 demolition of Steele Park Resort, some budding artist created a patriotically-colorful rock sculpture on the shore of a cove at the resort. Although no one quite knew what the vivid letters meant, the sight was enjoyed by many as they spent their last summer at the lake before taking on the melancholy task of demolishing their mobile homes and leaving with only their memories.

One day a Bureau of Reclamation representative apparently took umbrage at the letters and threw all the rocks into the water. But then they magically reappeared on the shore the next day - perhaps rejected by the underwater elves.

Apparently sensing (they were actually confronted by concerned residents) that it was not environmentally-sound to randomly toss newly-painted rocks into the water, Reclamation sent a couple of workers with wheelbarrows to remove them instead. After manhandling two heavy loads of the vibrant blue R up the soft-silted hill, they gave up and returned on the Reclamation barge to eradicate the rest of the sculpture. The multi-hued rockpile was last seen sailing across Lake Berryessa to some unknown burial ground.



The Steele Park sculpture derives from a long line of historic military acronyms listed below. These descriptions are reproduced from publicly available information on the internet.

SNAFU, which stands for the sarcastic expression “situation normal - all f****d up”, is a well-known example of military acronym slang. It means that the situation is bad, but that this is a normal state of affairs. The acronym is believed to have originated in the United States Marine Corps during World War II.

SUSFU, “situation unchanged - still f****d up”, is closely related to SNAFU.

SNAFU and SUSFU were first recorded in American Notes and Queries in their September 1941 issue.

TARFU, “totally and royally fouled (sp) up” or “things are really f****d up”, was also used during World War II.

BOHICA, “bend over, here it comes again”, is an item of acronym slang which grew to regular use amongst the United States armed forces during the Vietnam War. It is used colloquially to indicate that an adverse situation is about to repeat itself, and that acquiescence is the wisest course of action.

An alternative etymology relates the expression to the days of sail and avoiding being struck by the boom, which would swing around the mast due to shifts in wind or the vessel's course. Although it originated in the United States military forces, and is still commonly used by United States Air Force fighter crew chiefs, its usage has spread to civilian environments, used to describe unavoidable, unpleasant situations that have inconvenienced one before and are about to yet again.

A Sense of Place: Naming the Lake Berryessa Resorts (The Lake Berryessa News, December, 2012)

A Sense of History, A Sense of Adventure and Romance: Now that the Pensus contract has been terminated, both local folks and the Bureau of Reclamation have returned to using the historical names of the Lake Berryessa resorts. I believe it is important to retain those names, or some version of them, for the good of the lake's future. I will make such a recommendation to Reclamation for inclusion in its next bid prospectus.

In the business world there is a financial concept known as “goodwill”. Goodwill is an accounting concept meaning the value of an asset owned that is intangible but has a quantifiable value in a business. Goodwill typically reflects the value of intangible assets such as a strong brand name, good customer relations, good employee relations and any patents or proprietary technology. Goodwill includes assets with value that are exceptionally difficult to quantify such as brand recognition, customer loyalty, and employee happiness.

The original names of the Lake Berryessa resorts possess this type of financial “goodwill”. In one case, Putah Creek Resort, the case could be made for negative goodwill due to its reputation as a rowdy party spot. Three years ago a new concessioner such as Pensus may have been justified in changing that name to be able to attract different, more family-oriented customers. But four years later the Putah Creek name, of such historical significance, is no longer linked to the previous generation of rowdies and, I believe, can be used again.

The Pensus decision to use plant names for its resorts may have been influenced by the Bureau of Reclamation. But despite protests against the names – even at the first public meeting between Pensus and the local residents – they went forward with them. Unfortunately it was part of the Pensus penchant to ignore the advice of local people familiar with the history and operation of Lake Berryessa.

Below are my original suggestions to David Ffinch more than two years ago when he signed the concession contract and we all learned about the name changes. If you are interested in making your own suggestions, send a message to Jeff Laird, Park Manager at Bureau of Reclamation, Lake Berryessa Field Office, 5520 Knoxville Road, Napa, CA 94558 or e-mail them to jlaird@usbr.gov, or fax them to (707) 966-0409.

Peter Kilkus <pkilkus@gmail.com>
David Ffinch (Pensus)" <finch@pensus.com>
Fri, May 7, 2010 at 9:32 AM
Berryessa feedback - resort names

Good morning David,

Thanks for all the info on your web site. People remain excited about the future of the lake. But the biggest disappointment among the people I talked to on my 200 mile "paper route" to distribute the paper Wednesday and Thursday, and the phone calls and email I have received so far, is the resort names. They are highly unpopular.

Personally I believe you are giving up significant financial "goodwill" by changing them so drastically, especially Steele Park, which has always been known in the Bay Area and Sacramento as the "best resort at Lake Berryessa".

In my opinion, from a marketing perspective, the new names have no sense of place, no sense of history, no sense of adventure and romance. Although a certain amount of re-branding may be necessary, such as changing the name of Putah Creek Resort because of its rowdy history, the chosen names don't elicit any images of recreation or geographical location, nor will they be easy to remember.

Putah Creek Resort could be named Pope Canyon Resort, for example. It places the resort at the north end of the lake and connects it to Pope Valley - a major gateway to the lake for the north Napa Valley, St. Helena, and Calistoga. Steele Park could have become Steele Canyon Resort - keeping the value of the brand, locating it geographically, and sounding more adventurous. Lupine Shores Resort is hard to say and basically meaningless, definitely not memorable. And as someone pointed out, there is very little lupine inside the resort boundary.

None of the names use the words Berryessa or Monticello which have great historical significance and regional name recognition. For example, Rancho Monticello could be Monticello Shores; Berryessa Marina could be Berryessa Point, because of its peninsula, or Big Island Marina since it's close to Big Island which is one of the major features of the lake. Spanish Flat Resort didn't even need a name change. It is integral to the historic Spanish Flat area and community center and well-known around Napa and the Bay Area.

Markley Cove perhaps needed a name change and Mahogany Bay rolls off the tongue but doesn't

signify anything special. I actually never knew that there was a California mahogany tree. "The Mountain Mahogany is a shrub or small deciduous tree that grows in the California chaparral." Most people think of mahogany furniture with wood from the Philippines. With Markley's position so close to the dam and the Yolo County recreation basin, there has to be a better name from a marketing viewpoint.

Again, these are my opinions and I don't want to offend you or the people you have developing marketing strategy. But if there is any way you can change the names that have been proposed, I believe it would be a positive move.

+++++

In a later email I said, "I'd like to repeat my previous suggestion to rethink your proposed resort names. There is a wide general dissatisfaction with the names, especially Lupine Shores. Our local CBS affiliate, KPIX, just completed an Eye on the Bay two-part segment about the Lake Berryessa region that will air in late September. Part of the story they will tell is the history of the Berryessa Valley and the flooded Town of Monticello. The history of our region stretches back hundreds of years. I think you are missing an opportunity by ignoring that.

Since I haven't been privy to your detailed marketing strategy, I don't know what "themes" you proposed for the various resorts as was required in the bid. But using the well-known local history and geography in your thematic marketing (and resort names) would seem to be one approach."

On a more humorous note here are arguments I sent to David Finch against the use of Lupine Shores as a resort name. He had a very good sense of humor and enjoyed my comments. He actually told me that he agreed to change the name from Lupine Shores to Lupin Shores. Later he was apparently convinced by someone in his company to retain the original name.

Lupins or lupines (North America) are the members of the genus *Lupinus* in the legume family. Lupine may be one of several things: Predatory or wolf-like, something that is like, or relating to, a wolf (*canis lupus*); a variant spelling for lupin, a flowering plant – lupine is not the primary spelling.

Pensus may wish to form a sister resort arrangement with Lupin Lodge in Los Gatos: "Lupin Lodge: A Clothing-Optional Getaway For All Seasons Luxury Camping...Try a Lupin Yurt at Lupin Lodge ...the ultimate value in clothing-optional relaxation and nude recreation in the San Francisco Bay Area. Members escaping the pressure-cooker of nearby Silicon Valley swear that only a few hours spent au naturel at Lupin provide the de-stressing equivalent of a seven-day cruise. Just imagine how relaxing an Eden-like vacation or holiday getaway might feel at one of California's most scenic naturist resorts. Consider a romantic weekend in a comfortable cabin, try an enchanting overnight in an exotic yurt or simply camp under the stars and trees in the fabulous Santa Cruz Mountains."

David declined.

Feds Final Folly: The Destruction of Steele Park Resort
(The Lake Berryessa News, February, 2013)

Public Law 96-375's unintended destructive consequences become visible. As the Bureau of Reclamation's Katrina-like process at Lake Berryessa lurches on to an unknown resolution, local

residents and previous lake recreation users are fed up with the Feds. This was made clear to Supervisor Diane Dillon at the latest Berryessa Highlands community meeting. Both Supervisor Dillon and Congressman Mike Thompson are clearly frustrated by their apparent helplessness to do anything about Reclamation's lack of progress in signing the new contract for the five major west shore resorts. The Steele Park Resort contract is especially important since it has a major impact on the water and sewer rates for Berryessa Highlands residents.

Four of the resorts have been closed since the middle of last summer. Steele Park is shutting down soon and will be demolished during the next nine months. The Pensus Group was chosen last May to manage these five resorts, but Reclamation has been unable to finalize a contract with them since that time. In several public statements, Reclamation claimed that there would be a smooth transition and recreation services would be only minimally affected as the resorts were all upgraded and improved. Tragically, this has not happened, although the Reclamation refrain has remained, "We are making good progress and expect the contract to be signed soon." The first such statement was made in May, 2008 and last publicly-stated deadline expired last week with no action.

Why did this happen? Follow the money. The table below gives the annual revenue of each of the five Pensus-designated resorts as well as its appraised value. These figures are from public documents that were part of the bid process. Under normal circumstances in the transition of a business ownership, the new owner would pay the previous owner fair-market value for its permanent facilities as well as for other property and equipment it might want to keep. This approach is actually codified in Public Law 96-375: "...if a new concessionaire assumes operation of the concession, require that new concessionaire to pay fair value for the permanent facilities to the existing concessionaire."

But this would mean that the entry cost for any new concessionaire would be \$32M. They would then have to make major capital improvements costing tens of millions more. And all this for resorts that had only produced a previous GROSS annual revenue stream of about \$12M. At least \$4M of that revenue had been rental payments from the long-term mobile home owners - essentially pure profit since the resorts provided almost no services to those tenants.

Resort	Annual Revenue	Appraised Value (by Reclamation)	Mobile Home Revenue	Mobiles: % of Total Revenue
Berryessa Marina	\$1.61M	\$3.3M	\$0.76M	47%
Putah Creek	\$1.03M	\$4.15M	\$0.38M	37%
Rancho Monticello	\$3.32M	\$11.22M	\$2.1M	63%
Spanish Flat	\$2.09M	\$4.06M	\$0.78M	37%
Steele Park	\$2.62M	\$9.59M	\$0.66M	25%
Total	\$12.61M	\$32.32	\$4.68M	37%

Not only would any new owners be faced with a major capital investment program, but at the same time 37% of their pure profit was also eliminated. This is a tough financial nut to crack during a contract term set by Reclamation of only 30 years.

Reclamation's solution to this dilemma was to re-interpret Public Law 96-375 and, despite its own appraisal, declare the present facilities of no value to the incoming concessionaire, and require the present resort owners to remove or demolish everything, including restaurants, motels, launch

ramps, roads - back to bare ground. In a May 19, 2008 letter Reclamation stated: "Based upon evaluation of the successful proposal and subsequent confirmation with the successful offeror, The Pensus Group LLC, Reclamation has determined that all permanent facilities in your Resort concession area must be removed by the end of the concession contract." Of course, since this was impossible to accomplish by the end of contracts, which expired for some resorts in only two months, Reclamation asked for a demolition plan. At least one submitted plan gave a time-frame for completion of many years.

The fallout from this debacle has been very damaging to the local Lake Berryessa community. The resorts provided hundreds of jobs. Steele Park Resort had a payroll of 50 people during its summer operations. When Steele Park essentially ceased most operations at the end of last year, Capell Valley Elementary School lost about 10 students, bringing its enrollment to less than 50 students. The Napa Valley Unified School District is preparing to close the local school and bus the children to the City of Napa every day. (See the Capell School article in this issue.)

But the closures also impacted many local and other Napa County businesses. Favorite restaurants have lost 40% of their business. Local service businesses have also lost 30%-40%, some up to 50%, of their revenue. Just one closed resort, Rancho Monticello, has eliminated approximately \$500,000 worth of purchases from local and regional suppliers annually. This doesn't include the loss to Reclamation of \$105,000 per year in franchise fees from the resort.

The real tragedy is that none of this ever had to happen. During the controversial government process that led up to the present situation, several common-sense plans were proposed, LBVSPT A+ and the Resort Operators Plan, which would have accomplished the goals of improving all the resorts without destroying them first. At least one of the bidders for the new concessions, the Lago Group, a consortium of present concession owners and local business people, would have kept these five resorts open. But their bid was apparently disqualified on a technicality.

Steele Park Resort was arguably the best resort on the lake. It has one of the best views from its older but well-kept restaurant. The mobile homes blended with the environment with their subdued "Steele Park grey" mandatory color. They were well-maintained with expensive interior upgrades - some selling for up to \$100,000 only 5 years ago. Their owners would have given them to the new concessionaire for free to be used as upscale short-term rentals under the new contract. Instead mobile home owners are paying \$3,000 to \$5,000 to demolish them and the demolition continues at a swift pace. Once again real people's lives and livelihood have been seriously damaged - with no end in site.



A Perfect Storm of Disappointment for Lake Berryessa!

(The Lake Berryessa News, December, 2012)

The Winter That Never Happened. The Bureaucracy That Never Could. The Corporation That Never Did.

Humans are apparently born with an imprinted blame model they use to analyze the world around them. But objectively assessing responsibility for the outcomes of decisions and actions is not as simple as saying, "It's your fault." There's a difference between the truth of a credible persuasive argument and the "truthiness" of an implausible but appealing conclusion.

Popularized several years ago on the Colbert Report, "truthiness" refers to the quality of preferring concepts or facts one wishes to be true, rather than concepts or facts known to be true. The American Dialect Society voted truthiness as the word of the year in 2005.

After an unusually wet fall, winter, and spring followed by a cool summer, we have now had an unusually dry fall and winter. Although spring and summer are still in the future, many people are willing to speculate on who or what to "blame" for the odd weather. Is it global climate change caused by human activity or just another natural cycle caused by volcanic activity or Mother Nature? In the 1950s when an odd weather event occurred my grandmother always said, "Sonny, it's the atom bomb!" But you can't blame the weather on the truthiness of the weather reports.

NAPALACHIA

by Bill Scholer



The first element of Lake Berryessa's "Perfect Storm of Disappointment" has been the weather. Everyone hoped the lake would fill up and spill over Glory Hole this year. Won't happen.

The second element of this perfect storm has been the actions of, or the lack thereof, of the Bureau of Reclamation. Despite the unnecessary destruction of a recreational culture at the lake, the continued mishandling of essentially every component of the bid and contract process, and a refusal to expedite the bureaucratic requirements for the resort redevelopment, they continue to rely on the truthiness of their public and private statements. "Reclamation intends for recreation at Lake Berryessa to continue essentially uninterrupted, other than occasional temporary closures in various locations for developmental activities." (2008)

In some cases they actually seem to prefer truthiness to veracity. "After a very extensive process and unprecedented public input, we are on the verge of being able to restore access to the lake by the general public. That has not been the case over the past 50 years." (2010)

It has now been more than eleven years since the Bureau of Reclamation initiated the process that destroyed a recreational culture at Lake Berryessa with the collateral effect of severely damaging the local business and residential community. A series of short-term Park Managers have held that position during this period. The latest resignations of the Park Manager, Concessions Manager, and Maintenance Manager at the Lake Berryessa BOR office are not encouraging.

The third element of this perfect storm has been the lack of performance by the Pensus Group since they signed a contract with Reclamation in the spring, 2010. The Pensus Group has not yet completed their required Environmental Assessment and seems to be having financial problems - in part due to Reclamation's policies. The public lawsuits against Pensus for lack of payment to local businesses and their recent default on a major real estate loan in Phoenix are unsettling.

Pensus has been consistently positive in their public comments about their commitment to their Lake Berryessa development project. There's a lot of "truthiness" to their statements, but little visible progress.

"Pensus has been working diligently with Reclamation to refine the conceptual site plans and obtain the rate approvals and permits that are necessary for the installation of our full complement of planned amenities and services. We are very keen to start installations as soon as possible, but the planning and permitting processes have proven to be much more tedious, time consuming and expensive than anticipated. We had hoped to start installation of the marinas within a few months of contract execution, which took place in late April 2010, and we had expected to be able to install initial lodging units for the season 2011. Unfortunately we will not be able to complete any significant new installations in 2012. We are, however, hopeful for the 2013 season."

In his latest public comment to the Lake Berryessa News on February 27 explaining that the Phoenix loan default does not affect Pensus' ability to finance its Lake Berryessa project, Mr. Ffinch also strongly reiterated that Pensus is committed to the Lake Berryessa project and is hopeful that the Bureau of Reclamation will allow Pensus to proceed soon. Later that same day, Mr. Ffinch received a letter from Reclamation demanding corrective action for non-compliance issues!

"We (Reclamation) acknowledge the concern over the development of new facilities at Lake Berryessa by Pensus Lake Berryessa Properties and we are working with them to ensure compliance with all terms and conditions of our concession contract.

We have recently notified Pensus in writing of several areas requiring corrective action. The contract provides Pensus the opportunity to address or "cure" those areas of concern. The intent of the notification and cure process is to assist contractors to be successful; it is not punitive. Pensus has informed us that they will respond to our notice. Pensus must correct all areas of concern within 30 days or, in some cases, provide a plan for correcting the problem."

Pensus President David Ffinch, in a statement to the Lake Berryessa News on March 5, provided his response to the Bureau of Reclamation letter.

"On February 27th 2012 at 6:41PM Pensus received, by email from Reclamation, a 32-page 'Notice of Noncompliance'. The document was submitted to Pensus with absolutely no prior indication from Reclamation, either in writing or verbally, that Pensus was not in compliance on any substantive issues excepting a few very minor operational items.

Pensus is of the opinion that most of the assertions of non-compliance are both invalid and unsubstantiated. Pensus provided an initial response to Reclamation on February 28th, 2012 and requested that the Noncompliance Document not be published until, at a minimum, we have been afforded the time to prepare a comprehensive response. Within 14 days Pensus will submit, to Reclamation, a further response which will address each and every assertion of noncompliance accompanied by factual support documentation."

By their actions during the last few years, it appears to many observers that Reclamation is actually trying to make Pensus fail in order to keep Lake Berryessa closed. It is much easier on Reclamation management if there is nothing here to manage. The local Reclamation office reaps no benefit from operational resorts, i.e., they make no money for their local budget. The franchise fees the government receives go directly into the Department of the Interior's general fund, not to the local BOR office, and are a miniscule amount compared to their costs. And the BOR has admitted in a public statement several years ago that recreation is not in their charter – they are water managers, not recreation specialists. Lake Berryessa appears to be one of the few, if not the only lake in the United States, where Reclamation is responsible for managing recreational facilities. Isn't it time for a change?

In August 2000, Reclamation hired a private contractor to study future management options for the lake, and the Bureau of Land Management (BLM) was considered as a possible manager. However, in March 2001, BLM sent a letter to Reclamation stating they felt the timing was not right to consider assuming management, and they requested that the study be put on hold. For the foreseeable future, Reclamation would remain as the manager of the lake. However, at some point after contract expiration, a managing partner such as the BLM could assume responsibility for recreation management at Lake Berryessa. Most of the public land in the Lake Berryessa area is under BLM control already.

Whether truth or "truthiness" prevails in this perfect storm is still unclear. Caught in the middle are the real people of Lake Berryessa – struggling businesses (one less now that the Crossroads is closing) and desperate homeowners. The situation, already dire, is becoming untenable.

We all just want this perfect storm to end.