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| OPINION                    | : | No. 80-409              |
|                            | : |                         |
| of                         | : | <u>November 7, 1980</u> |
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SUBJECT: FIVE MILES PER HOUR SPEED LIMIT FOR BOATS—The imposition of a five miles per hour speed limit for all boats using Pinto Lake by the City of Watsonville does not require repayment of grant funds to the state under its agreement to improve boat launching facilities unless it has eliminated the substantial use of the project as a small craft launching facility.

The Honorable Marty Mercado, Director of the Department of Boating and Waterways, has requested an opinion on the following question:

Does the imposition of a five miles per hour speed limit for all boats using Pinto Lake by the City of Watsonville require repayment of grant funds to the state under its agreement with the state to improve boat launching facilities which were to be accessible to all on equal and reasonable terms?

CONCLUSION

The imposition of a five miles per hour speed limit for all boats using Pinto Lake by the City of Watsonville does not require repayment of grant funds to the state under its

agreement to improve boat launching facilities unless it has eliminated the substantial use of the project as a small craft launching facility.

## ANALYSIS

Harbors and Navigation Code section 72.5<sup>1</sup> provides:

“The department [Department of Boating and Waterways] subject to the approval of the Legislature in accordance with section 85.2, may grant funds to a county, city, district, or other public agency for the construction and development of small craft launching facilities and shall establish general policies for determining those projects for launching facilities which the department will recommend to the Legislature for grants of Harbors and Watercraft Revolving Fund moneys on the basis of which facilities will serve the public recreational boating needs.

“This program is to build launching facilities in areas not normally considered by other state agencies as suitable to provide for conservation, propagation, and utilization of the fish and game resources of the state.

“The department shall submit any project for which it recommends any grant be made to the Governor for inclusion in the Budget Bill.” Pursuant to section 72.5, the Department of Boating and Waterways (the “Department” herein) adopted Boating and Waterways Launching Facility Grant Regulations (Title 14, section 150 *et seq.* of the California Administrative Code). Section 5154 of those regulations provides:

“5154 Construction and Operation Agreement.

“A construction and operation agreement between the applicant and the department will be entered into after funds are appropriated, specifying that applicant will carry insurance as required by the department and that the completed facility will be operated and maintained for a period of 20 years at no cost to the department. if the applicant fails to construct, maintain or operate the facility in accordance with the terms of the agreement, he may be required, at the option of the department, to reimburse the department for the State’s share of the costs of development on a prorated unexpired term basis.”

On July 17, 1967 the City of Watsonville (the “city” herein) entered into an

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<sup>1</sup> All section references are to the Harbors and Navigation Code unless otherwise indicated.

agreement with the Department by which it received \$80,000 in state grant funds to improve boat launch ramp facilities on Pinto Lake which is located within the city. That agreement provided in part:

“15. The APPLICANT shall have for the period of this agreement the care, maintenance and control of said PROJECT and PROJECT AREA for the purpose of developing, constructing, maintaining and operating said PROJECT and PROJECT AREA and all improvements placed thereon as a public recreational small craft launching facility during said period. APPLICANT shall pay all of the costs of maintaining, operating and replacing and controlling any of the project components and PROJECT AREA which require replacement during the term of this agreement, and STATE shall not be liable during said period for any costs of such maintenance, control or operation.

“16. APPLICANT agrees that if prior to the termination of this agreement said PROJECT should be discontinued as a small craft launching facility or if APPLICANT fails to maintain and operate said PROJECT in accordance with this agreement, APPLICANT, upon demand by STATE, shall repay to STATE the STATE’S share of the cost of construction of the PROJECT on a pro-rated, unexpired term basis. For the purposes of this paragraph, the term of said PROJECT shall be TWENTY (20) years commencing on the day STATE approves acceptance of the PROJECT, and in the event any amounts shall become due to STATE under this paragraph, the amount thereof shall be computed against such construction costs by the ratio that the remaining period, from such date of discontinuance or such failure occurs as determined by STATE, bears to the entire term of the PROJECT.

“17. APPLICANT may at its own expense place or cause to be placed on the PROJECT AREA any structure or structures, alterations and improvements in addition to those set forth in PLANS AND SPECIFICATIONS for the use, enjoyment and protection of the public and reasonably limited to the public recreational boating in the PROJECT AREA.

“18. During the term of this agreement, said PROJECT AREA and PROJECT shall at all times be accessible for the use and enjoyment of all on equal and reasonable terms subject, however, to laws, regulations and ordinances adopted by APPLICANT for purposes of enhancing safety and use of the PROJECT. . . .”

We are advised that on January 8, 1980 the City Council of the city enacted an ordinance which made it “unlawful for any boat, whether propelled by motor, sail or any other force, to be operated upon Pinto Lake by any person at a speed greater than five (5) miles per hour.” We are asked whether by enacting that ordinance the city breached its agreement with the department.

It has been suggested that by restricting boat speeds to five miles per hour all speed boating and water skiing on Pinto Lake has been prohibited, making use of the boat ramp facilities useless to those groups and thus the city breached Paragraph 18 of the agreement by which it agreed that the boat ramp facilities “shall at all times be accessible for the use and enjoyment of all on equal and reasonable terms.”

The city was authorized by section 660 to enact speed zones for boats operated within the city limits. It seems clear that the five miles per hour limit on Pinto Lake established such speed zone. In 45 Ops. Cal. Atty. Gen. 122 at 127 we said:

“It is recognized that both speed zone and special use area established by these ordinances are quite large, encompassing as they do a twenty-one mile stretch of well-known and widely used navigable river of this State, and that the limitations involved are without exception and somewhat restrictive in their application. In this connection, however, it is well to point out that as measures enacted under the police power, the ordinances are initially subject to the usual restrictions and limitations of police measures that means employed to protect the public health, safety, and general welfare are not arbitrary or discriminatory and are reasonably designed to achieve protection of legitimate public interests. *Miller Board of Pub. Works*, 195 Cal. 477 (1925); 11 Cal. Jur. 2d Constitutional Law, §§ 154–155, pp. 535–540. Such considerations depend largely upon facts giving rise to the regulation in any particular case. The ordinance establishing the special use area recites facts tending to support the local interests protected thereby. While such recitals are by no means conclusive, they do and in construing the ordinance and throw light upon the interests considered by the county to be dominant. *McQuillin, Municipal Corporations*, 1949. Vol. 5, § 16.15, pp. 183–185. It is also well to note that duly enacted local ordinances carry with them the same presumption of validity as statutes. *People v. Walton*, 70 Cal. App. 2d Supp. 862 (1945).”

The Pinto Lake boat speed ordinance was prompted by a joint resolution of the park and recreation commissions of the City and the County of Santa Cruz. That resolution recommended enactment of a five miles per hour speed limit for all boats using Pinto Lake after making recitals including the following statements:

(a) “Due to the comparative small water area of the lake [the lake is 11,000 feet long and 1200 feet wide with a surface area of 132 acres

according to the project feasibility report] the unique configuration of lake shore and the neighboring hills, lands and terrain, the lake presents unique problems relating to noise, water safety, nuisances and erosion of shoreline.”

(b) “The recreational mix of water skiing, fishing, sailing, swimming, speed boating, and other uses present water safety hazards; and public nuisances to adjacent properties. . . .”

Assuming the validity of these facts, the ordinance would appear to be a reasonable means to resolve the conflicting uses and protect the public health, safety and welfare in the use of Pinto Lake and thus a valid exercise of the city’s police power. The ordinance does not attempt to deny all access to the lake which might render the ordinance unconstitutional under the rationale of *People ex rel. Younger v. County of El Dorado* (1979) 96 Cal. App. 3d 403.

While the ordinance is a valid exercise of the city’s police power, the question remains whether enactment of the ordinance requires the city to make a pro-rata repayment of state grant funds under Paragraph 16 of the Agreement. Paragraph 16 requires such repayment: (1) “if prior to the termination of this agreement said PROJECT should be discontinued as a small craft launching facility” or (2) “if APPLICANT fails to maintain and operate said PROJECT in accordance with this agreement.”

We agree that the ordinance effectively precludes the use of the project for water skiing and speed boating. It does not necessarily follow however, that the ordinance will cause a discontinuance of the project as a small craft launching facility or that the city has failed to maintain and operate the project in accordance with the agreement.

Discontinuance of the project as a small craft launching facility is a fact which may or may not occur as a result of the ordinance. If the only users of the boat ramp are speedboaters and water-skiers then the ordinance will result in discontinuance of the boat ramp if the ordinance is enforced. On the other hand if there are other users of the boat ramp whose use will not be affected by the ordinance, the ordinance will not cause a discontinuance of the boat ramp by such users. Only if the ordinance eliminates the substantial use of the project as a small craft launching facility is there a “discontinuance” of the project for that purpose.

By enacting the ordinance did the city fail to maintain and operate the project in accordance with the agreement? The only breach alleged is a violation of Paragraph 18. By that paragraph the parties agreed that the project “shall at all times be accessible for the use and enjoyment of all on equal and reasonable terms.” We believe the word “all” underlined above refers to persons rather than boats. The ordinance does not in any manner

restrict the persons who may use the ramp though of course it does restrict the kinds of boats they may want to launch. Furthermore, the agreement of accessibility is expressly “subject, however, to laws, regulations and ordinances adopted by APPLICANT for purposes of enhancing safety and use of the PROJECT.” The fact that accessibility was expressly subject to the city’s authority to adopt ordinances for the purpose of enhancing safety and use indicates the parties contemplated that patterns of boat use might change, that increased or changed boat uses could conflict with one another and create safety problems, and that the city would be responsible for resolving those conflicts by means of ordinances designed to enhance the safety and use of the project.

Nothing in the agreement provides that one particular group of boaters or water users were to have priority over other users. The agreement incorporates the Pinto Lake Launching Facility Feasibility Report in explanation of the project. That report, dated June, 1967, recites that Pinto Lake is used for fishing but that the principal use is for power boating and waterskiing. An addendum to the report recites that 1830 power boats, about 100 sail boats and many rowboats used the city’s boat ramp facilities in 1963. The report recites that from 1962 to 1966 power boating was allowed only on even numbered days but that the city planned to allow power boating every day. The report predicted that the number of boat launchings would increase with the project and would level off at 5000 per year but nothing in the report indicates what kind of boats would use the new facilities. We find nothing in the report or the agreement which indicates that the parties to the agreement contemplated that initial pattern or boat use of Pinto Lake was to remain unchanged throughout the term of the agreement or that speedboats and water skiers were preferred users of the project facilities.

We conclude that enactment of the ordinance limiting the speed of all boats using Lake Pinto to five miles per hour did not require pro-rata repayment of state grant funds under Paragraph 16 of the agreement unless it has eliminated the substantial use of the project as a small craft launching facility.

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