



[www.americanwhitewater.org](http://www.americanwhitewater.org)

Dave Steindorf  
California Stewardship Director  
4 Baroni Drive  
Chico, CA 95928  
530-343-1871  
[dave@americanwhitewater.org](mailto:dave@americanwhitewater.org)

Shasta County Board of Supervisors  
1450 Court St., Suite 308B  
Redding, CA 96001-1680

RE: Shasta County ordinance banning recreational use of the waters of the Pit #4 reservoir.

Dear Supervisors,

I am writing to formally request the modification or revocation of the county ordinance that prohibits all watercraft operations on the Pit #4 reservoir. The existing ordinance is an unreasonable infringement on the rights of the public as guaranteed by the California Constitution and existing statute and case law. In discussions with staff at California Department of Boating and Waterways it does not appear that this closure was approved by the department, as required under section 660a of the Harbors and Navigation Code.

California law recognizes the public's right to recreational navigation on the inland waters of the State, regardless of whether the underlying bed is in private or public ownership. "The public's right of access to navigable streams is a constitutional right." (*People ex rel. Younger v. County of El Dorado* (3d Dist. 1979) 96 Cal.App.3d 403, 406 [157 Cal.Rptr. 815, 817]) citing California Const., art. X, s. 4 and *Marks v. Whitney* ((1971) 6 Cal.3d 251, 98 Cal.Rptr. 790, 491 P.2d 374.) The California Constitution states: "No individual, partnership, or corporation, claiming or possessing the frontage or tidal lands of a harbor, bay, inlet, estuary, or other navigable water in this State, shall be permitted to exclude the right of way to such water whenever it is required for any public purpose, nor to destroy or obstruct the free navigation of such water; and the Legislature shall enact such laws as will give the most liberal construction to this provision, so that access to the navigable waters of this State shall be always attainable for the people thereof." (Cal. Const., art. X, s. 4.) Case law applying this constitutional provision confirms the public right of passage, in a lawful manner, over waters usable only for small-craft recreational boating, irrespective of the ownership of the water bed. (*Pacific Gas & Electric Co. v. Superior Court* (1983) 145 Cal.App.3d 253, 258 [193 Cal.Rptr. 336]; *Lechuza Villas West v. California Coastal Commission* (1997) 60 Cal.App.4th 218, 244 [70 Cal.Rptr.2d 399], *cert. denied* 525 U.S. 868.)

"Members of the public have the right to navigate and to exercise the incidents of navigation in a lawful manner at any point below high water mark on waters of this state which are capable of being navigated by oar or motor propelled small craft." (*People ex rel. Baker v. Mack* (3d Dist. 1971) 19 Cal.App.3d 1040, 1050 [97 Cal.Rptr. 448, 454].)

This includes waterways capable of being navigated only by kayak. (*People v. Sweetser* (5<sup>th</sup> Dist. 1977) 72 Cal.App.3d 278, 283 [140 Cal.Rptr. 82].) Commercial use of a waterway is not required as "a waterway usable only for pleasure boating is nevertheless

a navigable waterway and protected by the public trust.” (*National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 435 n.17 [189 Cal.Rptr. 346, 658 P.2d 709].) citing *People ex rel. Younger v. County of El Dorado* (3d Dist. 1979) 96 Cal.App.3d 403 [157 Cal.Rptr. 815, 817] and *People ex rel. Baker v. Mack* (3d Dist. 1971) 19 Cal.App.3d 1040 [97 Cal.Rptr. 448, 454].)

While the courts have allowed “reasonable restriction” to the public’s right to navigate, the current ordinance is excessive in scope and extends well beyond what is necessary to guarantee public safety. If the concern about public safety is related to the possible hazard of obstructions that occur due to the fluctuation of reservoir levels a more reasonable action would be the marking of hazards by signage and/or buoys, reduced speed limits or even a restriction on motorized operations. These more reasonable restrictions on the public’s right to navigate are commonly used on reservoirs throughout California. Additionally, concerns of the effects of a possible drum gate failure have been addressed in the plan adopted by stakeholders in the relicensing process. This plan requires the installation of a buoy line (as is done at virtually every other dam in the state) at a reasonable distance upstream from the dam.

In closing, there is no basis to support the existing ordinance that creates blanket restriction on watercraft operations on Pit #4 reservoir when a more targeted approach would preserve public safety and preserve the public’s right to navigate.

Respectfully,

A handwritten signature in cursive script that reads "Dave Steindorf".

Dave Steindorf, California Stewardship Director  
American Whitewater