

## **General Information**

### **Termination of Pensus Concession Contract**

#### **December 2012**

On Thursday, December 6, 2012, Donald R. Glaser, Regional Director, Mid-Pacific Region, notified Pensus Lake Berryessa Properties LLC that he has decided to terminate their Concession Contract Number 10-LC-20-0184, dated April 28, 2010. Mr. Glaser is the Contracting Officer for this Concession Contract.

The decision is final and is effective Sunday, December 9, 2012, at 3 p.m. when Pensus is directed to cease all planning, development, operations, and maintenance activities at the Chaparral Cove, Blue Oaks, Manzanita Canyon, Foothill Pines, Lupine Shores, and Mahogany Bay Concession Areas and to vacate those locations.

To make the decision, Mr. Glaser carefully reviewed the administrative record, including the Concession Contract and all relevant correspondence and other documents related to the Proposed Termination and visited each recreation area managed by Pensus.

Mr. Glaser determined that Pensus has failed to reasonably perform under the terms of the Contract and has failed to “cure” deficiencies identified in a February 27, 2012, “Notice of Noncompliance with Concession Contract 10-LC-20-0184.” The February notice identified nine areas of noncompliance and prior notices of noncompliance and directed Pensus to cure these areas within specific deadlines. Pensus has also failed to comply with multiple notices, directives, laws and regulations.

On March 14-15, 2012, Reclamation met with Pensus to discuss the February Notice. On March 29, Pensus submitted to Reclamation their “final response” to the February Notice.

On April 5, Reclamation further directed Pensus, through a formal notice, to immediately remove references to an “Occupancy Contract” from two of its websites that advertised fees and conditions not approved by Reclamation.

On May 7, Reclamation presented Pensus with a “Notice of Proposed Termination” which concluded that, based upon Reclamation’s evaluation of Pensus’ March response, Pensus had failed to reasonably cure material areas of noncompliance identified in both the February and April Notices.

The May 7 Notice provided Pensus with the opportunity to request formal dispute resolution, in accordance with the Contract. Pensus and Reclamation then held several meetings as part of the dispute resolution process. The process did not produce a constructive outcome, and formal mediation was terminated on September 19, 2012.

The matter was referred to Mr. Glaser as the Contracting Officer for decision on September 24. On October 4, 2012, Pensus presented the Contracting Officer with an Offer of Settlement for consideration in resolving the dispute; however, Mr. Glaser is not convinced that their offer would lead to improved performance by Pensus or be in the public interest.

Reclamation is committed to continuing to provide safe and enjoyable recreation opportunities at Lake Berryessa and is developing plans for immediate government operation of several concession areas this winter and spring as well as planning for the next 5 years and the long-term. Reclamation is also creating a forum of public agencies, with the opportunity for public involvement regarding recreation and land use activities at Lake Berryessa and to promote effective communication, consideration of interests and the resolution of problems.