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BOARD OF PILOT COMMISSIONERS
MINUTES
February 25, 2010
Morning Session at 9:30 A.M.

OPEN MEETING
Call to Order and Roll Call-9:45 a.m.

President Miller, Vice Present Tate, Commissioners Johnston, Roberts, Wainwright and Sullivan were all present, constituting a quorum. Ex officio member Dale Bonner, Secretary of the Business, Transportation and Housing Agency was represented by Deputy General Counsel Gabor Morocz., Also present were Port Agent Capt. Peter McIsaac, Dennis Eagan (Board Counsel), Raymond Paetzold (Maritime Counsel), Executive Director Allen Garfinkle and Staff Services Analyst Katharine Weir.

1) Approval of Minutes

Commissioner Tate made the motion to accept the January 28, 2010 regular Board meeting minutes. Commissioner Wainwright seconded the motion and the minutes were approved by a unanimous voice vote.

Commissioner Wainwright made the motion to accept the January 11, 2010 regular Board meeting minutes. Commissioner Johnston seconded and the minutes were approved by a unanimous voice vote.

2) Announcements– President Miller

President Miller stated that he was pleased to announce that the Waterfront has a new citizen: Young miss Anne Nabila Bennett was born on Thursday, February 18, at 2:07 p.m. to proud parents Nancy and Matt Bennett. Annie was 7 pounds 11 ounces and 20 inches long at birth. Mother and daughter are home and are being tended by Matt and big brother Tommy. Assistant Director Bennett (Nancy) will be on maternity leave for a while.

Senate Budget Subcommittee Number Two has a pre-hearing conference with staff on March 2nd in Sacramento. Executive Director Garfinkle and President Miller for the Commission, and Member Morocz and Deputy Secretary Fish for BTH, will attend and respond to question from the Committee staff. The Subcommittee will meet on Thursday March 11.

Two bills have been introduced in this session of the legislature that could affect the Board and/or our licensees, and those who pay for pilotage services. They will be on the agenda for the March meeting for discussion and perhaps establishing a Board recommendation regarding support for either or both bills.

AB 1888 (Ma) – Sponsored by the SFBP – would:

Exempt from pilotage fees and the related Board surcharges noncommercial vessels that are maritime academy training vessels (the GOLDEN BEAR) and vessels owned and exhibited by nonprofit museums or foundations (the JEREMIAH O'BRIAN).

Exempt from the requirement to take a pilot private recreational vessels of 750 GRT or less. The current law exemption is for vessels of 300 GRT or less.

Increase minimum charge for piloting a vessel across the bar to $1,500 from $662.

AB 2637 (Chesbro) – sponsored by the Humboldt Bay port authority- would:

Bring the pilots of Humboldt Bay under the jurisdiction of the Board. That is, the Board would have training and licensing responsibility for those pilots (currently there are two). They would be licensed as San Francisco Bar Pilots. We would recommend pilotage rate for movements in Humboldt Bay and surcharges would apply.

The two Humboldt Bay pilots would be admitted to the Board's trainee training program without being required to meet the requirements to sit for the selection exam, and without sitting for the selection exam.

The bill makes a number of syntax changes of uncertain meaning.

The process of contracting with an independent auditor to perform agreed upon procedures with respect to SFBP invoicing, and collection and disbursement of surcharges continues. President Miller stated that it continues to appear that the audit field work can being in April.

3.) Board member Activities - Executive Director Garfinkle

President Miller reported that three Commissioners attended the christening of the new P/V Drake on February 17th, 2010. In addition to President Miller, Commissioners Johnston and Sullivan attended. President Miller inquired whether any Commissioners had other activities to report, or had other activities scheduled in the future? There were none.

4) Executive Director's Report– Executive Director Garfinkle

a.) Annual Legislative Report – This is the first one required by the Wiggins Bill. It covers a variety of Commission business including sections on Summary of Major Board Activities, Number of Vessel Movements, Status of Pilot Licenses, Summary of Navigational Incident, and Safety Standard Violations. The report will be sent to the Governor prior to being submitted to the Legislature.

b.) Commission Office Lease - A.D. Bennett and E.D. Garfinkle met with representative of the Port of San Francisco concerning the lease of the Commission office now that our sub-tenancy with Signature Hospitality Group is no longer in force. Various upgrades to the space were discussed in order to sign a lease. Some of these include lighting, entrance door improvement, controllable heating and possible build-out of janitorial space with a more accessible sink.. Maintenance items included water egress correction, water damage repairs, paint, new blinds, and repairs to window chalking.

c.) Fair Political Practices Commission Form 700 - Mr. Garfinkle Reminded the Commission that Fair Political Practice's Commission Form 700 must be filed by Commissioners and certain staff by April 6th, 2010. Commissioners were informed that blank forms were available in their mail slots.

d.) General Services Certification - Mr. Garfinkle commented that all contracts now pending with the state must be accompanied by a Certification Letter to Department of General Services stating that the subject of the contact is "vital and mission critical for this agency or department." Thus far these certification letters have been prepared in conjunction with our pending contracts with University of California Regents for our UCSF Medical Study and for the Comira, Inc. contract.

e.) Report on pilot licensing matters in the past month and current month - Mr. Garfinkle reported that in the month of February seven licenses were renewed. Captains Greig, O'Laughlin, Roberts, Vilas, Pinetti, Wagner and Hoburg. There are no licenses up for renewal in March.

5. Port Agent's Report– Port Agent, Captain Peter McIsaac

Absent for Medical Reasons (AFMR)

Captain Fuller was AFMR from January 18th, 2010 through February 9th, 2010, after injuring his back embarking from a ship.

Pilot Vessel DRAKE will enter the regular rotation March 8, 2010. The P/V California will go to the shipyard in early March for maintenance dry-docking and ABS modification.

Pilot Vessel GOLDEN GATE was out of service on two different days to replace bent propellers due to seasonal floating debris. Today it is out of service while having an oil cooler replaced.

Low Sulfur Fuel Oil Potential Issues – There were four in January. One vessel would not run on dead slow or full and the other three would not start astern unless the hull speed was less than three knots.

Recommended Minimum Rest Period Exceptions (MRP's) – There were seven over three days during the month of January. The shortest rest period was 8.4 hours when a pilot was called in early to cover a river job. Five occurred on January 29, 2010 when there were 21 pilots on the board.

Simulation – The Army Corps of Engineers (ACOE) is planning a major upgrade to the Sacramento Deep Water Ship Channel. Part of that process is to run transit simulations at their Vicksburg, Mississippi facility. There are tow river pilots there now with two more week long sessions planned in March.

Capt. Kleess Remedial Trips – As per agreement with the Board, Capt. Kleess needs to observe both loaded vessel transits to Sacramento and dockings at Stockton berth 12/13. To date he has observed a vessel docking at Stockton. There were only two other vessel's that matched the parameters sicne the agreement was made. There have been no deeply laden transits to Sacramento. Capt. Kleess will be contacting Executive Director Garfinkle to request the terms of the agreement be altered to allow at least some of the Sacramento trips to be done on the ACOE simulator. Mr. Morocz said that an extension may be granted due to the lack of opportunity for observation.

Billed Vessel Moves in Jan 2010 compared to a 3 year average
Bar Crossings: (468) -20.4%
Bay Moves: (80) -50%
River Moves: (24) -26.5%
Total Moves: (572) -26.7%
GRT: (21.9M) -18.8%

6) Reported Safety Standard Violations and Investigations- Executive Director Garfinkle

The MARATHA PROVIDENCE was boarded by the San Francisco Bar Pilot D. Slack at the "SF" Buoy on Saturday, February 13th, 2010. Capt. Slack reported that the: "Manila was twisted, hard and severely worn" and that "ladder rungs were both uneven and not equally spaced". He also checked the boxes on the report that indicated the spreaders and rungs were not horizontal. The report was received at the Board of Pilot Commissioners office by fax on the night of February 13th, 2010, but was not read until Tuesday, February 16th due to Presidents' Day Holiday.

On Tuesday, February 16th, 2010, Executive Director Garfinkle initiated an investigation. The Agent for the vessel, Robert Corominas of General Steamship Corporation was contacted at 1000 hours. and notified of the deficiency. The agent indicated he would inform the Master of the ship and request this safety issue be addressed. During the follow up to the investigation Inchcape Shipping Services, representatives of the vessel confirmed that the ladder had been repaired.

7) Non-Incidents- Executive Director Garfinkle

On the morning of February 2nd, 2010, the USNS RICHARD G. MATTHIESEN was departing Selby, near Rodeo, bound for sea. Aboard the ship were San Francisco Bar Pilot M. Hoburg and Trainee Pilot Martin. Two tractor tugs were assisting in the undocking evolution, with one made up on the port bow and one made up centerline aft. According to a statement by the pilot, the ship undocked uneventfully, but when it was approximately halfway through a 180 degree turn to starboard, the centerline chock on the stern, through which the tug's line was passed, suffered a structural failure and broke free of the deck. The tug aft was ordered to stop and shift her line to a chock on the Starboard quarter, and the maneuver was completed without further incident. There were no injuries to the ship or tug personnel. The ship Master, another ship's officer, and both Pilot and Trainee were alcohol and chemical tested.

The ship filed a USCG form 2692 A & B with the San Francisco USCG Marine Safety Office indicating the same scenario as above. The USCG attended the ship with two investigators in Long Beach.

This version of the events was corroborated by the Master of the MATTHIESEN, Captain. Steven S. Barclay, in a written statement. In that statement he adds the chock, although rated for 64 metric tons, had "little to no fillet welds in the three openings in the double plate. It was only welded on the perimeter." Commenting on the visit by USCG investigator in Long Beach, the Master stated "Everyone pretty much agreed that the chock failed, not from seamanship, but a failure of materials."

A motion was made by Commissioner Wainwright to accept the Non-Incident report as presented. Vice President Tate seconded the motion and the report was approved by a unanimous voice vote.

8) Report of New Incidents - Executive Director Garfinkle

Nothing to report.

9) Incident Review Committee Report – Commissioner Johnston and Executive Director Garfinkle

On the morning of January 20th, 2010 the MV MOL PREMIUM arrived from sea bound for Berth 30, Oakland Outer Harbor, starboard side to. The San Francisco Bar Pilot that boarded the ship for the inbound passage is K.J. Carlson

While coming alongside in Oakland, the vessel apparently contacted the dock and some damage (estimated between $10,000 and $25,000) was done to the concrete bull rail

This incident is currently still under investigation by the IRC.

10) Rules and Regulations Committee- Commissioner Wainwright

Commissioner Wainwright reported that the Rule and Regulations Committee met and is making progress through the Rule Making Calendar. Currently working on minimum commission investigator eligibility standards and Portable Pilot Unit Regulations. The committee will meet again on March 23, 2010.

11) Finance Committee– Ex Officio Member Morocz for Commissioner Osen

Mr. Morocz clarified that the Spring Finance letters would provide expenditure authority for the Board. The letter for Port Revel was still at the Department of Finance. Authorization for Cosco Busan costs had been approved. Mr. Morocz also stated that the projected costs reported at the January Board meeting were overstated.

12) Pilot Evaluation Committee- Captain David Gates for Einar Nyborg

a.) The PEC Committee met on February 10, 2010. In closed session all eight trainees were interviewed individually. The current trainees include, Tylawski, Bridgman, Martin, Ruff, Merritt, Fawcett, Peery, and Kellerman. Their time in the program ranges from 9 months to 31 months. All trainees are progressing at their own rate. There may be recommendations for one or two appointments at the March meeting.

b.) Trainee Entry Exam – Various status reports on the Trainee Entry Exam were presented. The Executive Director stated that he has contacted a list of publications that may publish free notices of the application process as the Commission operating budget does not allow for much paid advertising. All the state maritime academies and the federal maritime academy career centers have been notified of the exam.

c.) The PEC intends to travel to Washington to attend a Train the Assessor course on April 24th, 2010.

d.) Status of Trainee Drug Testing Program – this program is working well, but needs to be transferred over to the custodianship of the Board.

14) Pilot Fitness Committee- Commissioner Roberts – Reported that work with UCSF was continuing. Next Committee meeting: March 15th.

The Commission took a short recess at 11:00 a.m.

The Commission resumed the meeting at 11:23 a.m. There was a quorum present.

15) Pilot Pension Committee – Commissioner Tate

a.) Pension Application of Capt. Welch – Commissioner Tate read the following recommendation:

Agenda Item 15A, Feb. 22, 2010 Board meeting
Disability pension application of
Captain Dennis Welch

The Pension Committee met on February 22, 2010, to consider the disability pension application of Captain Dennis Welch under the San Francisco Pilot Pension Plan (Harb. & Nav. Code, §§ 1160-1168). The Committee considered medical evidence submitted by Captain Welch, including the attached January 14, 2010 letter from Dr. John Gunderson, a Board physician. It also had before it the attached letter dated February 19, 2010, from Board Counsel Dennis Eagan, which set forth the issues before the Committee, including an issue of statutory interpretation concerning the date on which entitlement to a disability pension becomes effective.

Having considered these matters, the Committee recommends approval of Captain Welch's application for a disability pension and recommends the following determinations by the Board in support of that recommended action.

1. There is competent medical evidence that Captain Welch is disabled from performing the duties of a pilot.
2. There is competent medical evidence that Captain Welch's disability is of permanent or extended and uncertain duration.
3. There is competent medical opinion that Captain Welch's disability became of permanent or extended and uncertain duration on September 15, 2009.
4. Captain Welch was licensed as a pilot on December 1, 1987, and has no periods of suspension. He therefore has, within the meaning of subdivisions (a)(1)(D)(ii) and (c) of section 1163 of the Harbors and Navigation Code, 22 full years of service as a pilot through September 15, 2009.
5. The last year prior to disability was 2008, and the five years of audited annual average net income per pilot to be used in calculating Captain Welch's initial target monthly pension amount are 2004 through 2008.
6. Applying the formula set forth in subdivision (a)(1)(D)(ii) of section 1163 of the Harbors and Navigation Code, and subject to final confirmation by the San Francisco Pilot Pension Plan's fiduciary agent, Ghirardo CPA, Captain Welch's initial target monthly pension amount is $15,674.92.
7. Entitlement to that pension begins with the benefit payment period beginning November 1, 2009. The first payment to Captain Welch will be made in May 2010, during the benefit payment period commencing May 1, 2010. In reaching this recommendation, the Committee interpreted subdivision (a)(2) of section 1163 of the Harbors and Navigation Code as entitling a pilot to a disability pension effective with the benefit payment period next following the date on which the

pilot became disabled, rather than with the benefit payment period next following the date of the Board meeting at which the Board determined that the pilot had become disabled.

Commissioner Tate moved to accept the Committee recommendation as read. Commissioner Johnston seconded the motion. Commissioner Sullivan requested to defer the motion to allow more time to consider the recommendation. Chairman Tate noted that due process has been observed in consideration of this motion and it should not be held up by pension educational issues. A member of the public, PMSA Vice President M. Jacob, expressed concerns over precedent set by retro-active payment. Commissioner Roberts called the question. A voice vote was taken. Chairman Tate and Commissioners Roberts, Johnston, Miller, Wainwright voted aye, Commissioner Sullivan voted nay. Motion carried.

b.) Pension Application of Capt. Ware – Commissioner Tate read the following recommendation:

Agenda Item 15B,
Feb. 22, 2010 Board meeting
Pension application of Captain Stephen Ware

The Pension Committee met on February 22, 2010, to consider the pension application of Captain Stephen Ware under the San Francisco Pilot Pension Plan (Harb. & Nav. Code, §§ 1160-1168). The Committee had before it the attached letter dated February 12, 2010, from Board Counsel Dennis Eagan, which set forth the issues before the Committee, including two issues of statutory interpretation: (1) when Captain Ware's retirement should be deemed effective and (2) what five years of audited annual average net income per pilot should be used in calculating his pension benefit.

Having considered these matters, the Committee recommends approval of Captain Ware's application for a pension, with an effective retirement date of April 1, 2010, and recommends the following determinations by the Board in support of that recommended action.

1. Captain Ware was licensed as a pilot on December 18, 1980, and resigned as a pilot on March 11, 1993. He had no periods of suspension. He therefore has, within the meaning of subdivisions (a)(1)(D)(ii) and (c) of section 1163 of the Harbors and Navigation Code, 12 full years of service as a pilot.
2. On December 3, 2009, Captain Ware e-mailed Assistant Director Nancy Bennett and advised that he would reach age 62 in March 2010 and wished to apply for a pension. This was his first and only retirement application. He was eligible to retire at age 60 in 2008, and might have applied for retirement before February 2008 for retirement effective April 1, 2008, after reaching age 60 in March 2008, but he did not do so. Subdivision (a)(3) of section 1163 of the Harbors and Navigation Code requires that applications for retirement with an effective date of April 1 of a given year must be submitted before February of that year. Based on this statutory language, the effective date of Captain Ware's retirement is April 1, 2010, not April 1, 2008.
3. Subdivision (a)(1)(D)(ii) of section 1163 of the Harbors and Navigation Code provides that the five years of audited annual average net income per pilot that are to be used in calculating a pension are the five years "prior to the pilot's or inland pilot's retirement." Because the effective date of Captain Ware's retirement will be April 1, 2010, not April 1, 2008, the five years of average net income per pilot that are to be used in calculating his pension are 2005 through 2009, not 2003 through 2007.

4. The issue was raised whether the five years of audited annual average net income per pilot to be used in the pension calculation should be the five years preceding Captain Ware's resignation as a pilot on March 11, 1993, when he was 44 years old. Based on the above-quoted language that the five years to be used are those "prior to the pilot's or inland pilot's retirement," and also upon prior actions of the Board involving this same issue regarding the retirements, some years after resignation, of Captain Jack Going (in 1998) and Captain Ronald Charlesworth (in 2002), the Committee declined to use the five years prior to resignation, and reaffirmed that the five years to be used are those prior to retirement (here, 2005 through 2009).
5. Applying the formula set forth in subdivision (a)(1)(D)(ii) of section 1163 of the Harbors and Navigation Code, and subject to final confirmation by the San Francisco Pilot Pension Plan's fiduciary agent, Ghirardo CPA, Captain Ware's initial target monthly pension amount is $8,549.96.

Commissioner Tate moved to accept the Committee recommendation as read. Commissioner Roberts seconded the motion. PMSA Vice President Mike Jacob noted that this is highly irregular outcome and not what the statute should say, but he wanted to evaluate if this is what the statute says. Commissioner Sullivan urged the Board to defer to the next meeting. Commissioner Johnston noted the concerns but believes counsel has done a thorough job in evaluating the law. Commissioner Roberts noted that the Pension Committee worked long and hard to develop these recommendations. A voice vote was taken. Chairman Tate and Commissioners Roberts, Johnston, Miller, and Wainwright voted aye, Commissioner Sullivan voted nay. Motion carried.

16) Low Sulfur Fuel– Commissioner Osen was not present

Nothing to report.

17) Board Officer Elections – Executive Director Garfinkle

Executive Director Garfinkle asked if there were nominations for the office of President. Vice President Tate nominated Commissioner Miller to serve another term as President of the Board. Commissioner Johnston seconded the motion. Commissioner Tate then explained how it happens that Commissioner Miller is in a position to serve a fourth term as president

Our regulations provide that both the president and vice president will be elected to one-year terms and that they may serve no more than two consecutive terms. This is an unusual limitation, according to Anita Scuri of the Department of Consumer Affairs who served as our government counsel until June 30 of last year. She knows of no other board or commission that has such a limitation.

Last year, the Board voted to amend Regulation 206 to eliminate the term limitations for both the president and vice president. The rulemaking process has not yet addressed that change. As things stand today, however, the two consecutive year term limit is still the rule.

For that reason, Vice President Tate explained, he may not serve as vice president after today's meeting (His first term began in February, 2008.)

However, President Miller's situation is different. He was elected President in January, 2007 with his term beginning on February 1, 2007. he was re-elected to a second term which ended on January 31, 2008. Thereafter, the office of the presidency was vacant until the February 2008 Board meeting. At

the February meeting, Commissioner Miller was again elected president. His term followed the two previous terms, but because of the vacancy, his terms were not consecutive. This anomaly was inquired into by the BSA auditor who did not find fault with it in their report.

Vice President Tate then observed that, consistent with Board Regulations as they presently stand, Commissioner Miller is eligible to serve one more term as president.

Executive Director Garfinkle asked if there were other nominations. There were none. He then called for the yeas and nays on a voice vote. The vote was unanimous (Commissioner Miller abstaining) in favor and Commissioner Miller was reelected to serve as President of the Board.

Executive Director Garfinkle asked for nominations for the office of Vice President. Commissioner Tate nominated Commissioner Johnston to serve as Vice President of the Board. President Miller seconded the motion. Executive Director Garfinkle asked if there were other nominations. Hearing none, he called for the yeas and nays on a voice vote. The vote was unanimous (Commissioner Johnston abstaining) in favor and Commissioner Johnston was elected to serve as Vice President of the Board.

President Miller stated his appreciation of Commissioner Tate's work as Vice President and thanked him for his service.

18) Public Comment on Matters not on the Agenda

There were none.

19 Proposals for Additions to Next Month's Agenda –

1.) Vice President Johnston proposed for the Board to hear a presentation by Capt. Miller regarding piloting on Stockton waters.

2.) President Miller added that the Board would hear a presentation by Schmidt regarding pensions.

It was noted that the next Board Meeting will be held March 25, 2010.

President Miller announced a short recess at 12:00 p.m. He also announced that the Board would enter closed session when if reconvenes as authorized by the Open Meeting Act, Government Code Section 11126(e)(1):

The Commission resumed in closed session at 12:06 p.m.

CLOSED MEETING

The Board convened in closed session to address the following item, as authorized by the Open Meeting Act, Government Code Section 11126(e)(1):

20) Confer with the Board's litigation counsel regarding pending litigation in ***United States of America v. M/V COSCO BUSAN, et al.,*** U.S. District Court Case No. C 07 06045 SC; ***Regal Stone***

Ltd., et al. v. Cota, San Francisco Bar Pilots Assn., et al., U.S. District Court Case No. C-08-05098; ***People of the State of California (Caltrans) v. Regal Stone, Ltd, et al.***, U.S. District Court Case No. C-08-2268 SC; ***Anderson, et al. v. Cota, et al.,*** San Francisco Superior Court Case No. CGC-08-483409: and ***Regal Stone v. People of the State of California***, Sacramento Superior Court Case No. 34-2009-00035918, including cross-actions, counter-claims, and related actions pending in federal and state court arising out of the same incident.

The Board conferred with Deputy Attorney General Jeffrey Vincent.

The Board took no actions.

OPEN MEETING

The Board reconvened in open session. President Miller announced that the Board had conferred with litigation counsel and that it had taken no actions.

21) Adjournment

President Miller adjourned the meeting at 2:40 P.M