

<p><b>Meeting Date:</b></p> <p><b>July 23, 2015</b></p>	<p><b>Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun</b></p> <p><b>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>Monthly Board Meeting Minutes</b></p>	<p><b>Page 1 of 10</b></p>
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## **MEETING MINUTES**

### **Board Members Present**

RADM. Francis Johnston, President, Public Member  
 Capt. George H. Livingstone, Pilot Member  
 Capt. Joe Long, Pilot Member  
 Jennifer Ferrera Schmid, Public Member  
 John Schneider, Wet Cargo Industry Member  
 Benjamin De Alba, Assistant Secretary for Rail and Ports,  
 representing the Secretary of the California State Transportation Agency

### **Board Members Absent**

Dave Connolly, Public Member  
 Vacant, Dry Cargo Industry Member

### **Staff Present**

Roma Cristia-Plant, Acting Executive Director  
 Dennis Eagan, Board Counsel  
 Kelly Dolcini, Staff Services Analyst  
 Sigrid Hjelle, Office Technician

### **Public Present**

Port Agent Peter McIsaac; Pacific Merchant Shipping Association (PMSA) Vice President Mike Jacob; Robert Booker of the California State Lands Commission; San Francisco Bar Pilots (SFBP) Counsel Ray Paetzold; SFBP Capt. Einar Nyborg; Knute Michael Miller; and Rex Clack, Esq.

### **OPEN MEETING:**

#### **1. Call to Order and Roll Call – President Johnston**

President Johnston called the meeting to order at 9:35 a.m. Staff Services Analyst Dolcini called roll and confirmed a quorum.

#### **2. Review and approval of Board meeting minutes – President Johnston**

**Board action to approve Board meeting minutes from the meeting held on June 25, 2015.**

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Board members were presented with the minutes of the meeting held on June 25, 2015, for approval. Commissioner Long requested an edit to clarify that Captain Carlier was the Acting Port Agent at the June meeting. There was no public comment.

**MOTION:** Commissioner Livingstone moved to approve the minutes of the meeting held on June 25, 2015, as edited. Commissioner Schmid seconded the motion.

**VOTE:** Yes: Livingstone, Schmid, Johnston, Schneider, and Long.  
No: None.  
Abstain: None.

**ACTION:** The motion was approved.

### **3. Announcements – President Johnston**

#### **Announcement of events affecting Board business since the last Board meeting.**

President Johnston announced that Executive Director Garfinkle was taking a well-deserved vacation and that Assistant Director Cristia-Plant was appointed by the Secretary of the California State Transportation Agency as Acting Executive Director in his absence.

### **4. Board Member Activities – Board Members**

#### **Reports by Board members having Board business related activities since the last monthly Board meeting or planned prospectively.**

There were no reports.

### **5. Directors’ Report – Executive Director Garfinkle/Assistant Director Cristia-Plant**

Acting Executive Director Cristia-Plant gave the report in Mr. Garfinkle’s absence.

#### **A) Correspondence and activities since the June, 2015 Board meeting.**

- On June 25, 2015, staff received a letter dated June 22, 2015 sent to Rex Clack, Esq. and Ray Paetzold, General Counsel for the SFBP from Board Counsel Eagan apprising Mr. Clack of the receipt of a subpoena for documents related to the M/V OCEAN LIFE and the Trans Bay Cable, and alerting both to the broad request and the potential opportunity to seek appropriate relief concerning the production of the pilot’s statement or the investigator’s report should they choose to do so.

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- On June 30, 2015, Executive Director Garfinkle received a copy of the Harbor Safety Committee's San Francisco, San Pablo and Suisun Bays Harbor Safety Plan dated June 11, 2015 and provided the information to the Board.
- On July 6, 2015, the Board received a letter from the Port Director of the Port of Stockton listing the qualified pilots of the port for this fiscal year.
- On July 7, 2015, Executive Director Garfinkle attended the California State Transportation Agency's Directors meeting.
- On July 9, 2015, The Executive Director attended a meeting of the Harbor Safety Committee. In addition to obtaining the June Harbor Safety Statistics report, he obtained the following two documents:
  - Marine Safety and Security Information Bulletin 15-05 dated June 30, 2015, which discussed the projected limited anchorage space in the San Francisco Bay and advised shipping companies to plan ahead and make sufficient arrangements based upon the availability of berths and vessel drafts.
  - A copy of a letter dated July 9, 2015, sent to the honorable Dianne Feinstein from Lynn Korwatch, Executive Director of the SF Marine Exchange and Chair of the Harbor Safety Committee. The letter outlines the proposed financial needs to carry out critical maintenance dredging needed for safe navigation in the SF bays exceeding the amount available in the President's proposed FY 2016 budget, and mentions the significant economic impact the SF Bays have to the region and the state. She requested support in closing a \$10-\$20M dredging funding gap.
- On July 13, 2015, a letter from the Secretary of the California Transportation Agency was sent to President Johnston advising him that he has designated Assistant Director Cristia-Plant as Executive Director of the Board while Executive Director Garfinkle is temporarily absent.
- On July 15, 2015, Board staff received an American Maritime Safety Inc. July 2015 E-Newsletter that mentioned the group had filed an amicus brief in support of the United State Coast Guard's (USCG) position that the *Hopper* decision should be reversed. (*Hopper* is a mariner whose license was revoked by the USCG due to a positive drug test, and that revocation was dismissed by an Administrative Law Judge, partly due to the rationale that the software used to generate the random selection failed to meet the test initiation parameters stipulated in 46 C.F.R. Part 16.)
- She briefly reported the current status on the various regulatory change efforts, and indicated that the Board's counsel was currently reviewing rulemaking documents covering amendments to California Code of Regulation §211.5 Commissioner Minimum Standards, §213 Pilot Trainees, 215 Pilot and Inland Pilot Training, and §218 Duties of Port Agent.

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**B) Report on pilot licensing matters in the past month and current month.**

Acting Executive Director Cristia-Plant reported that between the May and June meetings, staff renewed the licenses of Captains Nyborg, Haggerty, D'Aloisio, Kenyon, Slack, Carr, Manes, Larwood, Miller, Long, and Wainwright.

Since the June meeting, there have been no license renewals.

**C) Report on Board surcharges.**

Acting Executive Director Cristia-Plant reported the Board received a check from the San Francisco Bar Pilots for \$89,794.95 for June 2015 revenues as follows:

- Board Operations Surcharge: \$37,936.95
- Continuing Education Surcharge: \$ 7,590.00
- Trainee Training Surcharge: \$44,268.00

**D) Report on legislative activities and contractual matters.**

**Report on Legislative Activities:**

Acting Executive Director Cristia-Plant announced that Assembly Bill (AB) 1432 was amended on June 29, 2015. The original text of the bill was deleted and replaced with language for a pilotage rate increase. The bill was heard by the Senate Committee on Governmental Organization on July 16, 2015, and passed out of committee with 9 aye votes and 3 no votes (Gaines, Runner and Vidak).

She reported AB 1432 was subsequently amended on July 16, 2015, to make a minor technical amendment. The current version of the bill comports with the Board's rate recommendation to the Legislature, with the exception of the start date for the reimbursement of navigation technology equipment and software. The bill sets the start date at January 1, 2016, one year later than the Board had approved. The Board members were provided a copy of the current version of the bill along with a letter dated July 7, 2015, from the SFBP President McIsaac to Senator Hall endorsing the bill.

She confirmed that staff prepared and submitted to the Transportation Agency confidential bill analyses for both bill versions, apprised the Board that AB 1432 will be considered next by the Senate Appropriations Committee after August 17, 2015, when the summer recess is over.

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**Acting Executive Director Cristia-Plant reported the following on Board contracts:**

- The State Controller’s Office is still processing a first draft of the interagency agreement for the SFBP revenue and surcharge audit.
- Regarding the manned model request for proposals (RFP), staff received an RFP timeline from the California Highway Patrol contracting staff. An RFP is scheduled to be issued in October, with responses due in November, and a contract signed the early part of 2016. Staff continues to work on the RFP point scoring criteria.
- Staff is currently working to renew the interagency agreements it has with CMA for trainee training program examination support and pilot continuing education.

**6. Port Agent’s Report – San Francisco Bar Pilot (SFBP) Port Agent Capt. Peter McIsaac**

**A) Monthly report on pilot availability and absences.**

Port Agent Capt. Pete McIsaac reported that two pilots—Captains Chapman and Kelso—have been absent this month, or a portion thereof, for medical reasons.

**B) Monthly report on SFBP ship piloting business activity.**

Port Agent McIsaac reported the SFBP continually monitors the dispatch list for possible minimum rest period exceptions, and the variety of mitigating measures employed if a rest period exception is likely to result during a rest period of less than ten hours. He reported that the SFBP currently has 58 licensed pilots, that there were 34 minimum rest period exceptions in June, principally due to work roster being short of three pilots who were in training. He also reported on pilot vessel repairs and down time.

Port Agent McIsaac reported the following vessel move data when compared to a three-year average:

- Bar Crossings 526 moves/-13.3%
- Bay Moves 156 moves/+30.7%
- River Moves 48 moves/+27.5%
- Total Moves 730/-4.5%
- Gross Registered Tons (GRT): 29.7 million/-9.9% year to date (YTD)

He further reported that when comparing year-to-date (YTD) piloting activity in 2015 to 2014, total moves were down 9%, and GRT was down 15%.

He stated that traffic into the Port of Oakland is presently very slow, due to there being only six gangs of longshoremen to cover all work. As of July 21, 2015, he reported the anchorage outside the Port of Oakland was full and there were 12 vessels drifting

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offshore. Many ships that are usually in and out of the Port in one day, are now being delayed up to six days.

- C) Monthly confidential written report of pilots who have been absent for medical reasons (AFMR) presented to Board. Board may go into closed session to discuss contents of the Port Agent’s confidential report as authorized by Harbors and Navigation Code § 1157.1.**

There was no discussion of the confidential written report of pilots who have been absent for medical reasons. There was no closed session discussion of this item.

**7. Pilot Evaluation Committee – Captain Einar Nyborg**

**Report on the July 22, 2015, Pilot Evaluation Committee meeting.**

Committee Chairman Capt. Nyborg reported that the Committee had met on July 22, 2015, and that all trainees are progressing well at this time. Two new trainees will begin the program in September.

Capt. Nyborg next reported that he had just returned from manned model training at Port Revel and that he thought the program was outstanding.

**8. Reported safety standard violations – Executive Director Garfinkle/Assistant Director Cristia-Plant**

**A report on reported safety standard violations since the last Board meeting. (Reports received between the issuance of this notice and the meeting will be reported on.)**

Acting Executive Director Cristia-Plant reported that on July 19, 2015, Capt. Sean Gabe submitted a report to Executive Director Garfinkle apprising him that the rungs on a rope pilot ladder were not horizontal on the M/V JIAN HUA when he boarded the vessel at 5:40 a.m. Staff notified the USCG Sector San Francisco of the suspected deficiency.

**9. Pilot Fitness Committee - Chairman Miller**

**A) Report on the July 22, 2015, meeting of the Pilot Fitness Committee.**

Committee Chairman Miller reported that the Committee had met on July 22, 2015, to discuss the contract with San Jose State University Research Foundation as well as substitution for the NASA researcher identified in its original proposal.

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- B) Review and consideration of an amendment to the Pilot Fatigue Study proposal received from the San Jose State University Research Foundation (SJSURF) to substitute a SJSURF researcher on the study team for the researcher from the National Aeronautics and Space Administration (NASA). Possible approval of committee recommendation to accept a revision to the Pilot Fatigue Study proposal received from the SJSURF to substitute a SJSURF researcher for the NASA researcher as originally proposed, and to include the revision in the contract with the SJSURF.**

Chairman Miller reported that Dr. Alan Hobbs joined the Committee meeting telephonically and explained that due to subcontracting provisions, it was determined that Dr. Erin Flynn-Evans would work pro bono on the fatigue study, and that he is requesting to include Mr. Kevin Gregory as part of the study team. Mr. Miller indicated that Mr. Gregory will be a full-time employee of the SJSURF, but will work in Dr. Flynn-Evan's NASA lab and under her supervision for the study. Mr. Miller stated that the Committee members requested additional clarification from Dr. Hobbs of Dr. Flynn-Evans and Mr. Gregory's study responsibilities, and that the Committee anticipates meeting to review this information in time to make a recommendation regarding clarifications to the study work scope to the Board at its August 27, 2015, meeting.

#### **10. Pilot Safety Committee – Commissioner Livingstone**

##### **Report on the June 30, 2015 Committee meeting.**

Committee Chairman Commissioner Livingstone reported the Pilot Safety Committee met on June 30, 2015, and discussed the restricted visibility portion of the combination course pilot continuing education training. He also reported that he along with Assistant Director Cristia-Plant met on July 14, 2015, with Veronica Boe, retired Pilot Capt. Greg Waugh, and Vic Schisler of the California Maritime Academy (CMA) to discuss expanding the pilot combination course training to include additional information on restricted visibility piloting training, and to update other training modules. He reported that the entire combination course will be reviewed when the continuing education contract with CMA is renewed, and that he plans to meet again with the CMA staff again in September.

#### **11. Loss of Propulsion/low sulfur fuel report – Executive Director Garfinkle/Assistant Director Cristia-Plant**

**Report on loss of propulsion events, including those suspected to be due to low sulfur fuel issues arising since last meeting.**

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Acting Executive Director Cristia-Plant reported that since the last Board meeting, there was one reported loss or reduction of ship propulsion event reported to the Harbor Safety Committee by the USCG, and that this event was not were attributable to fuel switching.

**12. Report on the status of Public Records Act litigation – Board Counsel Eagan**

**Report on Public Records Act litigation: Pacific Merchant Shipping Association vs. BOPC and Peter McIsaac as Port Agent, Writ of Mandate. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Board Counsel Eagan reported that no date has been set for the Court of Appeal to hear the arguments in this case.

**13. Report on Board of Pilot Commissioners vs. Fair Political Practices Commission litigation initiated by the Board on March 3, 2015 – Executive Director Garfinkle/Assistant Director Cristia-Plant**

**Progress report on Board of Pilot Commissioners vs. Fair Political Practices Commission. The Board may go into closed session to discuss with the Executive Director/Assistant Director, any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Acting Executive Director Cristia-Plant gave a brief summary of the timeline of litigation events. She apprised the Board that the hearing date for the case is scheduled has been rescheduled to September 25, 2015.

**14. Report on litigation, Craig E. Reeder vs. State Board of Pilot Commissioners initiated by Captain Craig Reeder on December 17, 2014 – Board Counsel Eagan**

**Progress report on Reeder vs. Board of Pilot Commissioners. The Board may go into closed session to discuss with the Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Board Counsel Eagan reported that oral argument before the Superior Court of California is scheduled for July 29, 2015.



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**15. Report on Stipulation for Settlement and Mutual Release in Peinado vs. Board of Pilot Commissioners, Case No. 964430 – Board Counsel Eagan**

**Report regarding the Stipulation for Settlement and Mutual Release in Peinado vs. Board of Pilot Commissioners, Case No. 964430. The Board may go into closed session to discuss with Board Counsel any matters subject to attorney-client privilege as per Government Code §11126(e).**

Board Counsel Eagan reported that a letter dated July 1, 2015, had been sent to Capt. Peinado’s attorney that explained the existence of a principal defect in Mr. Peinado’s request to qualify to sit for the Pilot Trainee Training Program entrance examination, and that the Board’s interpretation of the requisite sea time outlined in the written settlement between the parties was further clarified by transcripts the Board’s counsel had read into the record at the time of the settlement. He confirmed the Executive Director has provided the court records cited in the letter to Mr. Peinado’s attorney, and that the Board has not received a response to its letter.

**16. Comments from Rene Peinado regarding his settlement with the Board stemming from the 1993 Trainee Training Program entrance exam. – Rene Peinado**

Mr. Peinado did not attend the meeting.

**17. Board discussion of best practices in maritime safety – Vice President Connolly**

**A Board discussion of best practices in maritime safety and/or lessons learned from Incident Review Committee incident reports or other sources, and possible development of policies and procedures.**

Vice President Connolly was not present at the meeting and the item was not discussed.

**18. Public comment on matters not on the agenda.**

Mr. Booker stated to the Board that the State Lands Commission would be sending out a customer service survey in the near future and would include the Board in its correspondence.

**19. Proposals for additions to next month’s agenda.**

There were no proposals.

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**20. Adjournment.**

**MOTION:** Commissioner Long moved to adjourn the meeting. Commissioner Livingstone seconded the motion.

**VOTE:** Yes: Long, Schneider, Johnston, Livingstone, and Schmid.

No: None.

Abstain: None.

**ACTION:** The motion was approved and the meeting was adjourned at 10:06 a.m.



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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini and Roma Cristia-Plant