

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

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Board of Pilot Commissioners
Monthly Board Meeting
March 24, 2011
9:30 a.m.
MINUTES

OPEN MEETING**1) Call to Order and Roll Call –**

President Miller called the meeting to order at 9:33 a.m. President Miller, Vice President Johnston, Commissioners Osen, Wainwright and Roberts were present, constituting a quorum. Business, Transportation and Housing Agency was represented by BTH Deputy General Counsel Morocz. Executive Director Garfinkle was on medical leave. Member Morocz participated as Acting Executive Director. Board Counsel (Deputy Attorney General) Dennis Eagan, Staff Services Analyst Brian Vu, and Office Technician Kelly Dolcini also were present.

President Miller announced that Executive Director Garfinkle commenced medical leave on March 14, 2011, at which time BTH Deputy General Counsel Morocz assumed the duties of Acting Executive Director. He will remain in that capacity until Executive Director Garfinkle is fully recovered and returns to his duties.

2) Approval of Minutes**A) Approval of the February 24, 2011 Board meeting minutes.**

President Miller requested approval of the minutes of the February 24, 2011 Board meeting. Commissioner Wainwright moved approval with authority to Board staff to make clerical, non-substantive corrections. Commissioner Roberts seconded the motion, which passed unanimously on a voice vote.

B) Correction to Item 19B of December 16, 2010 minutes.

The previously approved minutes of the December 16, 2010 meeting includes in relevant part the following discussion with respect to agenda item 19B:

“After discussion, Commissioner Wainwright moved that the Board direct staff to proceed to formal rulemaking”.

It is proposed to change that discussion to read as follows:

"After discussion, Commissioner Wainwright moved that the Board direct staff to proceed with the public comment period of the rule making process."

President Miller requested approval of the corrected minutes of the December 16, 2010 Board meeting. Vice President Johnston moved approval with authority to Board staff to make clerical, non-substantive corrections. Commissioner Roberts seconded the motion, which passed unanimously on a voice vote.

C) Correction to Item 2A of August 26, 2010 minutes.

The previously approved minutes of the August 26, 2010 meeting includes in relevant part the following discussion with respect to agenda item 2A:

"Executive Director Garfinkle reported on Board-mandated Sacramento practice trips made by Capt. Guy Kleess in satisfaction of the requirements in a stipulation reached with the Board."

It is proposed to change that discussion to read as follows:

"Executive Director Garfinkle reported on Board-mandated Stockton Berth 12/13 practice trips made by Capt. Guy Kleess in satisfaction of the requirements in a stipulation reached with the Board."

President Miller requested approval of the corrected minutes of the August 26, 2010 Board meeting. Commissioner Roberts moved approval with authority to Board staff to make clerical, non-substantive corrections. Vice President Johnston seconded the motion, which passed unanimously on a voice vote.

3) Announcements - President Miller

President Miller noted that today's meeting would be the last Board meeting at the Pier 9 facility and that the April meeting would be held at the Board's new offices at 660 Davis Street.

President Miller noted that financial disclosure forms – FPPC Forms 700 – were due to be filed with the Executive Director on March 31, 2011. Staff Services Analyst Vu reported that all five serving Commissioners had filed. Member Morocz reported that he had filed with BTH Agency; Board Counsel Eagan reported that he had filed with DOJ. President Miller noted that a Leaving Office disclosure was required of former Commissioners Sullivan and Tate, and that Board Investigators are also required to file. Acting Executive Director Morocz directed staff to follow up with the respective parties required to file who had not already done so.

4) Board Member Activities – Board Members

There were no reports.

5) Executive Director's Report – Executive Director Garfinkle (Acting Executive Director Morocz)

A) Correspondences and activities since the February 24, 2011 meeting.

On March 9, 2011, Executive Director Garfinkle received a letter from the California State Lands Commission thanking him for agreeing to speak at a meeting scheduled for Wednesday March 30, 2011. Executive Director Garfinkle will speak on the nature of the Board's function and operations.

A lease on the Board's new office space has been signed and finalized. The anticipated move in date into the new facility is April 9, 2011. The physical address is 660 Davis Street.

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

In February the Board staff renewed licenses for Captains Hoburg, Kellerman, Aune, Ruff, Wagner, Anderson and Greig. For March, the Board staff renewed the license for Captains Bridgman, Lemke, Martin, Pate, Pinder and Pinetti.

C) Report on surcharges received by the Board.

Staff Services Analyst Brian Vu reported the Board collected surcharges totaling \$469,463.96 broken down as follows: Board operations surcharge \$344,958.96, pilot continuing education surcharges of 69,015.00, and trainee training surcharges of \$55,490.00.

D) Report on legislative activities and contractual matters.

Staff Services Analyst Brian Vu reported on the following contracts:

SFBP contract – CHP is currently awaiting Non-Competitive Bid and issue memo. Once it is received, it will be forwarded to DGS for approval. Staff will also start on a new agreement to replace this one.

Janitorial contract – the new lease currently includes a janitorial service. Staff's initial request was cancelled.

Manned model training – CHP is currently working on the Invitation For Bid (IFB).

Investigator services contract – IFB was released on March 22, 2011. Bids are due by April 22, 2011.

Comira amendment – BTH has completed review of the issue memo. CHP is currently awaiting receipt. They will forward it to DGS for approval.

Alarm contract – Staff has put this on hold in the past due to the uncertainty of relocation. Now that it has been finalized, staff can proceed.

The following will be performed under an "X Number," which is the CHP's means of obtaining a service costing less than \$5000.

Court reporter – Court Reporting, LLC has been notified of the location change.

6) Port Agent's Report - Capt. Bruce Horton

A) Monthly confidential written report on pilots 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 the Harbors and Navigation Code, Section 1157.1.

Captain Rusty McBride was found NFFD on October 15, 2010 by a BOPC designated physician.

Captain Chris Anderson was AFMR beginning March 9, 2011, with an anticipated return to work date of April 6, 2011.

B) Recommended Minimum Rest Period Exceptions:

There were 21 in the month of February. Eight of them occurred on February 10 with the shortest rest period of 8.6 hours, with 20 pilots on the board. Seven of them occurred on February 22 with the shortest rest period 9.2 hours, and 24 pilots on the board.

C) Monthly report on SFBP ship piloting business activity.

Billed moves in February 2011 compared to the three year average were as follows: Bar crossings down .7% (519), bay moves down 26.9% (79), river moves down 22.3% (39), total moves down 4.6% (637) and gross registered tons (GRT) down 4.6% (24.9M). When compared to February 2010, bar crossings are up 12.2%, total moves are up 13.4% and GRT up 16.4%.

The P/V GOLDEN GATE is still out of service, awaiting a replacement engine.

All Commissioners were provided with copies of the Port Agent's confidential written report of pilots who have been absent for medical reasons. After the Board had had the opportunity to read the report, President Miller inquired whether any member wished to go into closed session to discuss the contents of the confidential report. There were no requests.

7) Pilot Evaluation Committee - Captain Nyborg

The Pilot Evaluation Committee met on March 16, 2011. In closed session, all six trainees were interviewed individually. The current trainees include: Fawcett, Laakso, Carr, Johnson, Manes, and Stoltz. Their time in the program ranges from two months to 23 months. All trainees are progressing well at this time. The next scheduled meeting will be held on April 13, 2011.

8) Reported Safety standard Violations and Investigations – Acting Executive Director Gabor Morocz

There was no report.

9) Reportable Piloting Events – Acting Executive Director Gabor Morocz

There were two reportable piloting event investigations in progress that occurred on February 25, 2011. One involved the tug NARRAGANSETT and Tow TRIPOLI while the other involved the M/V MOL PROSPERITY. Executive Director Garfinkle performed preliminary investigations by telephone with USCG on the former and obtained Freedom of Information documents. Board Investigator Jeff Hill was dispatched to the latter. A report will be presented to the Board within 90 days.

10) Rules and Regulations Committee – Commissioner Wainwright

Commissioner Wainwright reported that the Rules and Regulations Committee met on March 3, 2011 at 1:00 p.m. All members were present and the Committee's full agenda was considered.

Commissioner Wainwright reported that:

- A. Section 210 clean-up has been submitted to OAL this month where they are awaiting approval of the minutes.
- B. Section 218 – published this month
- C. Section 217 – currently with OAL; review will be complete March 18, 2011.
- D. Section 211.5 – currently with OAL; review will be complete March 15, 2011.

President Miller announced that the Board next would consider agenda item 12 and return to agenda item 11 later in the meeting.

12) Surcharge Audit – President Miller

President Miller reported on the progress to date on the Board's surcharge audit being conducted by Shea Labaugh Dobberstein, CPA's. President Miller has reviewed draft audit reports for 2008 pension surcharges, and all surcharges for 2009. The firm is preparing draft audit reports for all surcharges for 2010. President Miller stated his expectation that all reports would be available for Finance Committee and Board review at their next meetings.

13) Pilot Fitness Committee – Commissioner Roberts

A) Report on March 16, 2011 Pilot Fitness Committee meeting.

Commissioner Roberts reported that the Board's Pilot Fitness Committee met on March 16, 2011 at 9:30 a.m. All members were present and the Committee's full agenda was considered.

Commissioner Roberts reported that the UCSF draft study was discussed in much detail and will most likely be ready for the April Board meeting. The timetable is as follows:

- April 13, 2011 – The Pilot Fitness Committee will reconvene at 2:00 p.m.
- April 15 – Dr. Kosnik will send the final copy to the Commissioners
- April 28 – The study will be formally presented to the Board

The next scheduled meeting of the Pilot Fitness Committee is April 13, 2011 at 2:00 p.m.

14) Low Sulfur Fuel – Commissioner Osen

Commissioner Osen reported that there will be a meeting on April 16, 2011 at the UCSG.

15) Ad Hoc Working Group on Trainee Recruitment – Commissioner Wainwright

Commissioner Wainwright reported that the Board's Ad Hoc Working Group on Trainee Recruitment met on February 28, 2011 at 10 a.m. The Committee discussed command time requirements between inshore and off shore applicants, applicants qualifying for the exam and the point system. Commissioner Wainwright also reported that Committee Chair Tate volunteered to stay on.

16) Continuing Education Committee – Commissioner Roberts

There was no formal report. Commissioner Roberts updated the Board that June Port Revel tickets had been purchased.

Commissioner Osen asked if they were refundable tickets. He also questioned if that was necessary.

President Miller stated that this issue would be referred to continuing education.

17) Pilot Power Committee – Commissioner Roberts

Commissioner Roberts reported that the Committee met on March 16, 2011. All members were present and the Committee's full agenda was considered.

Commissioner Roberts reported that there the 60 pilot maximum would stay constant and in reviewing the 237(d) data along with the most recent retirement surveys, no additional trainees were needed. Commissioner Roberts recommended that the Committee revisit this in July to reassess.

18) Report of the Attorney General's Office – Board Counsel Dennis Eagan

Board Counsel Eagan reported that in regards to the Cosco Busan, he has been advised that a final settlement document has been executed with CalTrans.

Board Counsel Eagan also reported that a number of lawsuits (environmental damages) could be executed May of this year.

19) Discussion of Consent Bill AB 1025 – President Miller

President Miller discussed the content of the bill which is sponsored jointly by PMSA and SFBP. The bill makes changes to (1) delete references to inland pilots (except in sections having to do with the Pilot Pension Plan), (2) requires the Board to charge a fee to each applicant to the training program who participates in any written or simulator examinations, and (3) would require that the Secretary of BTH appoint the Board's Assistant Director. Presently the Governor appoints the Assistant Director.

President Miller noted that Executive Director Garfinkle had, at the Board's request, prepared a draft amendment to Harbors and Navigation Code section 1156.6 that is intended to improve administration of the Board's responsibilities with respect to investigating reports of pilot ladder safety violations.

President Miller stated that the Board could take a position of "support," "oppose," or "neutral" on the bill and give direction to staff for filing a bill analysis in that vein with BTH Agency. The Board could also recommend support for an amendment to the bill should one be introduced. Neither BTH nor the Board can introduce an amendment.

President Miller moved that the Board establish a position of "support" for AB 1025 as introduced and that it direct staff to prepare a bill analysis and forward it to BTH Agency. Vice President Johnston seconded the motion. President Miller called for discussion by the Board and comment by the public. There was none. Whereupon the motion passed unanimously on a voice vote.

President Miller moved that the Board support an amendment to AB 1025 along the lines of the draft amendment previously presented to the Board by Executive Director Garfinkle that is intended to improve administration of the Board's responsibilities with respect to investigating reports of pilot ladder safety violations. Vice President Johnston seconded the motion. President Miller called for discussion by the Board. There was none. President Miller called for comment from the public.

PMSA Vice President Mike Jacob responded that PMSA supports the provision to improve pilot ladder safety investigations, and would support its inclusion in the bill provided that all parties agreed to it. He further pointed out that reference to AB 1025 as a "consent bill" was not appropriate because that term is one used with procedural attributes within the Legislature and it is not presently known whether the bill will be placed on the Consent Calendar. Mr. Jacob suggested that it would be more appropriate to refer to AB 1025 as a "consensus bill." President Miller acknowledged the importance of the distinction and agreed that the bill should be thus addressed going forward.

President Miller called for further discussion and comment from the public. There was none. Whereupon the motion was passed unanimously on a voice vote.

President Miller announced that the Board would take a brief recess, after which, the Board would take up agenda item 11. The Board stood in recess at 10:38 a.m.

The Board reconvened at 11:06 a.m.

President Miller noted that, by inspection, all Board members were present and that a quorum was established. Board staff and Board Counsel also were present.

11) Finance Committee - Commissioner Osen

A) Report on Finance Committee activities since last meeting.

Commissioner Osen stated that the Finance Committee had not met since the last Board meeting.

B) Board Action to specify bar crossing mill rate to be charged by licensees during the calendar quarter beginning April 1, 2011 pursuant to Harbors and Navigation Code section 1191(a)(1)(A).

Commissioner Osen addressed the Board and noted that the Board, quarterly, determined the mil rate charge that Board licensees could charge for piloting vessels across the bar.

The Board reviewed calculations submitted by SFBP to effectuate the mil rate changes specified pursuant to Harbors and Navigation Code section 1190(a). The calculations included reference to "audited average income per pilot", an element necessary to compute the statutorily required rate adjustment. The 2010 SFBP audited financial statements were not yet available and there was no immediately available mechanism to verify the 2010 "audited average income per pilot."

President Miller proposed that the Board defer action on agenda item 11B until later in the meeting in order to allow SFBP representatives to determine what verification of "audited average income per pilot" might be available from its independent auditors. Without objection, the Board deferred further consideration until later in the meeting. President Miller announced that the Board would return to consideration of agenda item 11B at 1:00 p.m.

The Board next considered agenda item 20.

20) Rate Hearing – President Miller, Acting Executive Director Morocz, and Board Counsel Eagan

Responding to requests for pilotage rate adjustment received from both PMSA and SFBP, the Board has scheduled a rate hearing to begin on April 6, 2011, continuing on April 7 and April 8. The Board will discuss procedures to be followed; Board staff will respond to questions from the Board and from the public.

Board Counsel Eagan discussed the procedures in effect for the hearing and noted that copies of evidence would be prepared for review by all Commissioners. President Miller noted that the Open Meeting Act prohibits discussion by Commissioners with each other, with the parties, or with the public of the evidence submitted or the substance of the petitions that will be the subject of the hearing.

21) Pilot Pension Committee – President Miller

A) Review report by Board Counsel of Board's findings with respect to Capt. Reeder's pension request considered at the February 24, 2011 Board meeting. **Possible Board action to approve report of the Board's findings.**

President Miller reported that Capt. Reeder was denied grounds for a pension based on subdivision(c)(4) of section 1164 of the Harbors and Navigation code.

Commissioner Wainwright made a motion to accept the proposed findings as drafted. Commissioner Roberts seconded the motion, which passed unanimously on a voice vote.

B) Reconsideration of Board action at its February 24, 2011 meeting directing an increase to pension benefits under Harbors and Navigation Code section 1167. **Possible Board action rescind the action taken at February Board meeting.**

Commissioner Osen addressed the Board and stated his views that the Board had not properly considered the adjustment of target pension benefits at its February Board meeting. His principal points were:

1. The Board failed to review the benefits received by retired or disabled pilots and inland pilots and their surviving spouses. Commissioner Osen believes that "review" requires considering on an individual basis the benefits received by pension plan beneficiaries and that the Board did not do this.
2. The Board did not consider maritime industry practice in deciding whether to increase benefits. Commissioner Osen believes that the statute requires such a consideration whether or not maritime practices is brought to the attention by the Board by the pilots or by industry.
3. Only the maximum increase of 50 percent of the cumulative three-year increase in the CPI was presented by the chairman of the Pension Committee in his recommendation to the Board. Commissioner Osen believes that the Board should have considered other levels of adjustment.

Other Commissioners stated their views. Several took issue with Commissioner Osen's interpretation of Harbors and Navigation Code section 1167 and his assertion that the Board did not properly consider the adjustment at its February meeting.

After discussion by the Board, Commissioner Osen moved that the Board rescind its action taken at the February Board meeting in which it voted to increase target pensions by 2.1 percent pursuant to Harbors and Navigation Code section 1167. Commissioner Roberts seconded the motion but noted that he would not vote for the motion.

President Miller called for further discussion by the Board. There was none. He then called for comment by the public. PMSA Vice President Mike Jacob stated that PMSA agreed with Commissioner Osen's interpretation of subdivision (a) of section 1167, but not his interpretation of subdivision (b). Mr. Jacob reiterated PMSA's objection to the Board taking action on any pension issues in absence of regulations.

The motion failed on a roll call vote, one aye, four noes, Commissioner Osen voting in the affirmative.

C) Possible reconsideration of Pension Committee recommendation to increase target pensions as per Harbors and Navigation Code, Division 5, Chapter 3, Section 1167 (partial COLA increase). **Possible Board action to increase target pension amounts.**

The Board, having voted not to rescind its action taken at the February Board meeting, did not consider agenda item 21B.

The Board returned to consideration of agenda item 11B at 1:20 p.m.

11. Finance Committee

B) Board Action to specify bar crossing mill rate to be charged by licensees during the calendar quarter beginning April 1, 2011 pursuant to Harbors and Navigation Code section 1191(a)(1)(A).

Representatives of the San Francisco Bar Pilots stated that their independent auditor had not issued the audit report for the year ended December 31, 2010, which report, when issued, will include the "audited average income per pilot." After discussion, the Board agreed to continue its meeting to April 1, 2011 at 8:00 a.m. when it would again take up agenda item 11B with the expectation that the audited financial statements would be available to the Board at that time.

22) Public Comment on Matters not on the Agenda

There were none.

23) Proposals for Additions to Next Month's Agenda

There were none.

24) Adjournment

At 1:29 p.m., there being no further business before the Board other than further consideration of agenda item 11B, the Board agreed to continue its meeting at 8:00 a.m. on Friday, April 1, 2011.

Continuation of Board Meeting of March 24, 2011.

Call to Order and Roll Call

President Miller called the meeting, continued from March 24, 2011, to order at 8:06 a.m. President Miller, Vice President Johnston, Commissioners Wainwright and Roberts were present, constituting a quorum. Member Morocz, representing Business, Transportation, and Housing Agency participated by telephone. Executive Director Garfinkle, Staff Services Analyst Vu, and Office Technician Dolcini were present. Board Counsel (Deputy Attorney General) Eagan also was present.

The Board took up consideration of Agenda Item 11B.

B) Board Action to specify bar crossing mill rate to be charged by licensees during the calendar quarter beginning April 1, 2011 pursuant to Harbors and Navigation Code section 1191(a)(1)(A).

President Miller noted that Shea Labaugh Dobberstein, the SFBP independent auditor, had completed its audit of the SFBP financial statements for the year ended December 31, 2010 and had issued its audit report. On page 4 of the report, the average net income per pilot for 2010 is stated to be \$393,207.

Mr. John Cindery, SFBP Business Director, reviewed the calculation of the adjusted bar crossing mill rate based on 2010 gross registered tonnage and audited average net income per pilot. Executive Director Garfinkle confirmed the methodology and arithmetic accuracy of the calculations.

Commissioner Wainwright moved that the Board specify the bar crossing mill rate to be charged by licensees during the calendar quarter beginning April 1, 2011 pursuant to Harbors and navigation Code section 1191(a)(1)(A) to be \$0.09116 per GRT. Vice President Johnston seconded the motion.

President Miller called for additional discussion by the Board and comment from the public. There was none. Whereupon the motion passed on a unanimous voice vote.

President Miller asked that Port Agent (Capt.) Horton, who was present for the meeting, alert SFBP staff of the Board's action and the adjustment to the bar crossing mill rate. Capt. Horton stated that he would do so. President Miller observed that Executive Director Garfinkle would follow up with correspondence later in the day.

There being no further business to come before the Board, the Board adjourned at 8:20 a.m.

**BEFORE THE BOARD OF PILOT COMMISSIONERS FOR THE
BAYS OF SAN FRANCISCO, SAN PABLO, AND SUISUN**

Pension Application of CAPTAIN) CRAIG E. REEDER Under) Sections 1163(a)(1)(D) and) 1164(c) of the Harbors and) Navigation Code) <hr style="width: 80%; margin-left: 0;"/>	[Proposed] FINDINGS
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At its meeting of February 24, 2011, the Board of Pilot Commissioners determined on two separate and independent grounds that inland pilot Captain Craig E. Reeder was not entitled to a pension under the San Francisco Pilot Pension Plan. The first ground was that he did not meet the eligibility requirement of subdivision (c)(5) of section 1164 of the Harbors and Navigation Code, which requires that, "for services provided after January 1, 1994," an inland pilot must have performed "a minimum of 75 assignments per calendar year unless excused from performance of that requirement due to medical needs satisfactory to the board." The second ground was that he did not meet the eligibility requirement of subdivision (c)(4) of section 1164 of the Harbors and Navigation Code, which requires that, "since January 1, 1987," an inland pilot must have "held himself or herself out as providing pilotage assistance to the entire shipping industry consistent with the inland pilot's license." The Board makes the following findings in support of each of these determinations.

**REQUIREMENT OF 75 ASSIGNMENTS PER
CALENDAR YEAR AFTER JANUARY 1, 1994**

1. Subdivision (c)(5) of section 1164 of the Harbors and Navigation Code provides as follows:

(c) Except as provided in subdivision (d) [regarding disabled inland pilots], an inland pilot shall be eligible for the pension provided in Section 1163 if the inland pilot meets all of the following requirements: [9] . . . [9] (5) For services provided after January 1, 1994, performs a minimum of 75 assignments per calendar year unless excused from performance of that requirement due to medical needs satisfactory to the board.

2. Captain Reeder was licensed continuously as an inland pilot from February 17, 1988, through February 16, 2001.

3. Captain Reeder performed piloting services under his inland pilot's license after January 1, 1994, and ceased piloting on or about February 2000.

4. Captain Reeder admits that he did not perform a minimum of 75 piloting assignments for any calendar year after January 1, 1994.

5. Captain Reeder has applied for credit for years of service under the Pension Plan only for the years 1988 through 1993.

6. Captain Reeder interprets subdivision (c)(5) as serving only to limit the years of service that an inland pilot may claim for purposes of calculating a target monthly pension amount under Harbors and Navigation Code section 1163. In other words, an inland pilot who did not perform a minimum of 75 assignments for years after January 1, 1994, is still eligible for a pension, but cannot claim a year of service for years after that date in which he did not perform the minimum number of assignments. Accordingly, because he does not meet the minimum-assignment requirement for any year after January 1, 1994, he has applied for credit for years of service only for years prior to January 1, 1994.

7. The Board interprets subdivision (c)(5) as stating one of five requirements for eligibility for a pension, all of which must be established by an inland pilot who applies for a pension. In other words, subdivision (c)(5) sets forth a requirement regarding eligibility for a pension, not the calculation of the pension amount, and an inland pilot whose period of licensure extended beyond January 1, 1994, is not eligible for a pension if he cannot establish that he performed at least 75 piloting assignments per calendar year after that date.

8. Because Captain Reeder does not meet the eligibility requirement of subdivision (c)(5), he is not entitled to a pension under the San Francisco Pilot Pension Plan.

**REQUIREMENT OF HOLDING ONESELF OUT AS PROVIDING
PILOTAGE ASSISTANCE TO THE ENTIRE SHIPPING INDUSTRY**

9. Subdivision (c)(5) of section 1164 of the Harbors and Navigation Code provides as follows:

(c) Except as provided in subdivision (d) [regarding disabled inland pilots], an inland pilot shall be eligible for the pension provided in Section 1163 if the inland pilot meets all of the following requirements: [¶] . . . [¶] (4) Since January 1, 1987, has held himself or herself out as providing pilotage assistance to the entire shipping industry consistent with the inland pilot's license.

10. Throughout his period of licensure as an inland pilot, Captain Reeder was employed as a master by Exxon Shipping Company and later by SeaRiver Maritime, a successor company to Exxon Shipping.

11. He received six months vacation each year from Exxon Shipping and later SeaRiver Maritime. During vacation periods, he did some piloting under his inland pilot's license for Exxon Shipping and later SeaRiver Maritime.

12. With the exception of one occasion where he provided volunteer piloting services on a historical paddle-wheel tugboat during a Maritime Day cruise, all of his piloting was done on vessels of these two companies during periods of vacation.

13. Captain Reeder states that he had a oral contract with an agent, Bill Capasso, to assist him in finding work as an inland pilot. He says he did not make any payments under the contract because Mr. Capasso never found him any work.

14. Mr. Capasso could not remember the precise times that he had inquired on Captain Reeder's behalf about work, but said he was available for that purpose up until the time Captain Reeder quit working in 2000, and that when he and Captain Reeder would occasionally run into each other they would discuss possible piloting employment. Mr. Capasso stated that he never thought he would be able to find jobs providing income of more than about \$2,000 a year for Captain Reeder because Captain Reeder had not, prior to the-amalgamation of the bar pilots and the inland pilots in 1985, acquired a reputation with ship owners and ship's agents and because he had not networked with inland pilots, which would have provided a mechanism for trading overflow work back and forth among the few remaining inland pilots.

15. Although Captain Reeder was issued a radio telephone call number by the Marine Exchange for the San Francisco Bay Region, the Exchange issues these pilot designators to pilots who work for only one company, as well as to those who do work for more than one company. Possession of a pilot designator therefore does not imply a conclusion by the Exchange that Captain Reeder was holding himself out as providing pilotage assistance to the entire shipping industry.

16. The yearly renewal of Captain Reeder's inland pilot license by the Board under Harbors and Navigation Code section 1142, subdivision (b) is a reflection of his piloting work for his employer during vacation periods; it does not imply a Board determination that he was piloting vessels for more than one company.

17. Captain Reeder concedes "that to become a pilot one needed to make one's self known in the local industry. . . . There was a lot of hand shaking, introduction and networking involved. I believe that pilots were hired only if known and proven by reputation. A new entrant had to become known, experienced and proven." One means of becoming known and networking is membership in the Marine Exchange. The Marine Exchange facilitates marine commerce in various ways. During Captain Reeder's period of licensure, the Exchange published in alternate years the Golden Gate Atlas and the Marine Exchange Membership Directory and Service Guide. Both publications listed the members and also the names of persons providing various types of maritime services, including piloting. Other licensed inland pilots, including Captains R.L. "Jack" Frost, Donald Kofoid, and Wally Slough, were members of the Marine Exchange and were listed in these publications. Captain Reeder never joined the Marine Exchange, and his piloting services were not listed in the Exchange's publications.

18. Captain Reeder states that he sought work from four entities: Westar Marine Services, a company whose work towing barges does not require a pilot's license; Williams Dimond, a ship's agent; Union Oil; and Chevron Shipping. None of these four contacts resulted in piloting work.

19. Another inland pilot, Captain Wally Slough, invited Captain Reeder on a river piloting trip and offered to share river piloting work. Captain Reeder never responded to Captain Slough's offer.

20. Captain Reeder's piloting work while on vacation for his employers, Exxon Shipping and SeaRiver Maritime, was intermittent. For instance, his required monthly report to the Board for August 1993 actually covers three months: June, July, and August 1993. It states: "For This Month I Had No Pilotage Charged at the Rates Specified in the Schedule of Ship Pilot Fees, Pacific Maritime Region, San Francisco Bay and Tributaries." The succeeding report, for the multiple months of September, October, November, and December 1993, contains this same language and the following additional statement: "No Pilotage for Oct, Nov and Dec 1993. No Pilotage for September 1993." Another report, for "all of 1994," states: "During the year 1994 I was unable to secure employment as an Inland Pilot though I actively seek such work." Another report, for October 1995, states: "For This Period January 20, 1995 Thru October 20th 1995 I Had No Pilotage Charged at the Rates Specified in the Schedule of Ship Pilot Fees, Pacific Maritime Region, San Francisco Bay and Tributaries."

21. Had Captain Reeder made a diligent and good faith effort to hold himself out as an inland pilot available to the entire shipping industry over the 13 years he was licensed as an inland pilot, the Board concludes that such an effort would have resulted in at least some piloting assignments from companies other than his employer.

22. The Board expressly does not base its finding concerning "holding out" on Captain Reeder's failure to hold himself out "since January 1, 1987." The Board initially refused to license Captain Reeder and did not license him until February 17, 1988. Through no fault of his own, Captain Reeder could not have held himself out as providing pilotage assistance to the entire shipping industry prior to February 17, 1988, slightly a year after commencement of the required period of holding out.

23. Because Captain Reeder does not meet the eligibility requirement of subdivision (c)(4), he is not entitled to a pension under the San Francisco Pilot Pension Plan.

DECISION BASED ON SEPARATE AND INDEPENDENT GROUNDS

24. The Board's decision that Captain Reeder is not eligible for a pension is based on two separate and independent grounds: (1) that he does not meet the eligibility requirement of subdivision (c)(5) of section 1164 of the Harbors and Navigation Code, concerning the minimum 75 trips per calendar year after January 1, 1994, and (2) that he does not meet the eligibility requirement of subdivision (c)(4) of section 1164 of the Harbors and Navigation Code,

concerning the requirement that he must have held himself out since January 1, 1987, as providing pilotage assistance to the entire shipping industry.

DATED:

K. MICHAEL MILLER
President