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| <p><b>Meeting Date:</b><br/><br/><b>May 28, 2015</b></p> | <p><b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun</b><br/><br/><b>660 Davis Street, San Francisco, CA 94111</b><br/><br/><b>Monthly Board Meeting Minutes</b></p> | <p><b>Page 1 of 11</b></p> |
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**Board Members Present**

RADM. Francis Johnston, President, Public Member  
 Dave Connolly, Vice 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**

Vacant, Dry Cargo Industry Member

**Staff Present**

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

**Public Present**

Port Agent Capt. Peter McIsaac; Pacific Merchant Shipping Association (PMSA) Vice President Mike Jacob; Rollie Caabay and Robert Booker, II of the California State Lands Commission; and, Captain Rene Peinado.

**OPEN MEETING:**

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

President Johnston called the meeting to order at 9:30 a.m. Staff Services Analyst Dolcini called roll and confirmed a quorum.

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

**Approval of Board meeting minutes from April 23, 2015. Board action to approve the April 23, 2015 minutes.**

Board members were presented with the minutes of the meeting held on April 23, 2015, for approval.

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There was no discussion or public comment, and one correction to a date from Commissioner Long.

**MOTION:** Commissioner Livingstone moved to approve the minutes of the meeting held on March 26, 2105, as corrected. Commissioner Schneider seconded the motion.

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

No: None.

Abstain: None.

**ACTION:** The motion was approved.

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

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

There were no announcements.

#### **B) Commendation of Capt. Daniel Bridgeman for his actions in the incident involving the M/V OCEAN LIFE.**

Capt. Bridgeman was not available. President Johnston requested this item be moved to the agenda for the June meeting.

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

There were no reports.

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

#### **A) Correspondence and activities since the April, 2015 monthly meeting.**

Executive Director Garfinkle reported the following correspondence to the Board:

- On April 28, 2015, Board staff received a copy of a letter to Jaci Thomson at the Dept. of Finance from Mike Jacob, Vice President of PMSA and Pete McIsaac, President of the San Francisco Bar Pilots (SFBP), requesting inclusion of funding in the 2015-2016 state budget to pay for the Pilot Fatigue Study required by Harbors and Navigation Code § 1196.5(a), pursuant to Senate Bill 1408 (Chapter 794, Statutes 2012).
- On May 6, 2015, Executive Director Garfinkle received a letter from Norman J. Ronneberg, Jr., Esq., requesting a complete response to Captain Peinado's letter to Executive Director Garfinkle dated March 31, 2015, that he be promptly informed of Captain Peinado's opportunity to take the pertinent Pilot Trainee Training Program entrance examination, and informing him that Captain Peinado will take advantage of all legal remedies available to him to enforce the written agreement he has with the Board. In addition, the letter indicated that Capt. Peinado demands that no one else be advanced

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to a pilot opening unless and until his own situation has been resolved in accordance with the agreement.

- On May 8, 2015, Board staff received a copy of a letter sent to Governor Brown reminding him that the National Transportation Safety Board (NTSB) still is awaiting a full response from the State to its Safety Recommendation M-11-19 issued on November, 4, 2011. He reminded the Board that Acting Secretary Traci Stevens responded in writing to the NTSB on January 12, 2012, indicating the Board would follow up with a detailed response of how the Board's rules and regulations ensure effective oversight of its licensed pilots' promotion of the highest level of safety. Executive Director Garfinkle apprised the Board that he was delayed in preparing the response due to the actions involving the M/T OVERSEAS REYMAR and other Board duties, and that a draft response will be prepared soon.
- On May 11, 2015, Port Agent McIsaac provided him with Capt. Bruce Horton's memorandum providing details of an approach to the Union Pacific Railroad Bridge where there was a delay in obtaining a full lift, and Captain Horton's successful efforts to assist a trainee by taking over the conn and conducted a round turn. This was necessary, as they did not have full confirmation that the bridge would be lifted in time to transit underneath as requested. Captain Horton reported the round turn was completed and the transit under the bridge subsequently took place without incident. The summary of the event also indicated that Vessel Traffic Service (VTS) was notified.
- On May 14, 2015, Office Technician Hjelle and Executive Director Garfinkle attended the Harbor Safety Committee meeting held in San Francisco. They also attended the San Francisco Marine Exchange (SFMX) and Port of San Francisco May Day/Maritime Day Celebration later that afternoon. Executive Director Garfinkle expressed his thanks the Port of San Francisco and SFMX for the successful maritime community gathering.
- On May 18, 2015, Executive Director Garfinkle received a pilot boat dry docking schedule from Chris Johnson, Marine Superintendent at the SFBP. The schedule shows the P/V CALIFORNIA will be in the yard for repairs from June 1 to June 18, the P/V SAN FRANCISCO in the yard from July 6 to July 23, and the P/V DRAKE repairs deferred until 2016.
- On May 19, 2015, Port Agent Peter McIsaac notified Executive Director Garfinkle that the SFBP and the United States Coast Guard (USCG) will be conducting joint rescue drills with at the offshore pilot station on May 20, 2015. He stated the drills have proven to be a good training opportunity for the pilots, and should help to insure a successful outcome in the event of an emergency offshore.
- On May 21, 2015, Executive Director Garfinkle attended a hearing of Assembly Budget Subcommittee No. 3 on Resources and Transportation. On the agenda as issues 28 and 29 were the Board of Pilot Commissioners' Pilotage Rate Increase recommendation, and funding for the Pilot Fatigue Study mandated by Senate Bill 1408 (2012). Executive Director Garfinkle gave a brief explanation of the pilotage rate recommendation process to the Committee. After the committee took public comments, they took actions to move

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this item forward. He reported the Committee did unanimously vote to approve an appropriation of \$450,000 for a Pilot Fatigue Study.

- On Wednesday, May 26, 2015, Board staff obtained a copy of an opinion article written by Dan Walters in the *Sacramento Bee* discussing his perception of the misuse of the budget trailer bill process. The article highlighted two proposed budget trailer bill provisions under consideration, one being the SFBP pilotage rate increase. Mr. Garfinkle noted that the Board’s recommendation had yet to be delivered to the Legislature.

Executive Director Garfinkle responded to questions from President Johnston, and indicated that it is unlikely that the next Pilot Trainee Training Program examination can be given early next summer even with CMA’s acquisition of Capt. Gates’ examination preparation services. He reminded the Board that staff will need to contract with a psychometrician, and prior to the program examination preparation process, the psychometrician will need to perform a pilot job analysis, since the last job analysis was done approximately three examinations ago. He indicated that staff will need to start the contracting process for a psychometrician in the near future.

Both Commissioner Long and Vice President Connolly expressed an interest in reviewing the response to the NTSB. Additionally, Vice President Connolly stated the response should: not be treated as an administrative exercise; reference the present and ongoing work of the Pilot Safety Committee; and, that the Board should be proactive in the continual endeavor toward safety. Vice President Connolly also expressed a concern that other pilot oversight organizations may not be taking appropriate actions on safety, and that one recommendation may be a universal database of incidents.

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

Executive Director Garfinkle reported that between the March and April Board meetings, staff renewed the licenses for Captains Livingstone, Fuller, Gabe, Wehr, and Horton.

Since the April Board meeting, he reported that staff renewed the licenses of Captains Weiss, Kirk, Tylawsky, McCloy, Aune, Alden, Hurt, Fawcett and Cloes.

**C) Report on Board surcharges.**

The Board received a check from the San Francisco Bar Pilots for \$68,156.98 for April 2015 revenues as follows:

- Board Operations Surcharge: \$27,241.98
- Continuing Education Surcharge: \$ 5,855.00
- Trainee Training Surcharge: \$35,060.00

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

There has been no legislation affecting the Board since the last meeting, other than the Assembly Budget Subcommittee items discussed earlier.

Assistant Director Cristia-Plant reported the following on Board contracts:

- Staff have been working to complete the contract for the Pilot Fatigue Study. Last month, potential contract provisions were shared between the San Jose State University Research Foundation contract staff and the Board. Board staff are waiting for Dr. Hobbs to refine the proposed study budget by task item, and for the Foundation staff to determine the best way to contract for the proposed study services from National Air and Space Administration.
- The State Controller's Office (SCO) has been working on developing an interagency agreement for the surcharge and pilotage revenue auditor contract. While the SCO originally estimated that the audit could be started in mid-June 2015, and the final report issued by the end of August 2015, the timeline will be pushed back a bit to accommodate the contracting process. She reported the estimated costs of the audit was \$28,000, and if the SCO agrees to a multi-year contract, the SCO anticipates that audit costs would be reduced for future audits.
- BOPC staff will meet with Commissioner Livingstone after the Board meeting today to resume work on the manned model request for proposal procurement document. Work on the minimum qualifications and request for proposal scoring criteria will be the next steps in the process.
- California Highway Patrol (CHP) staff are working on the renewal of the Board/CHP interagency agreement for administrative services. The agreement expires June 30, 2015.
- A final form of an interagency agreement with Caltrans for information technology support services is near. Due to new state information technology requirements, Caltrans has been requested to perform additional services involving disaster technology planning and reporting. Caltrans initially estimated that they could provide minimal services for free, but due to the increased work scope, Caltrans has estimated IT support costs of approximately \$15,000 annually.
- The California Maritime Academy (CMA) has retained Captain Gates to provide Pilot Trainee Training Examination preparation services through the university. As such, Board and CMA staff have agreed to renew the CMA trainee examination contract to include his examination services. The existing interagency agreement will either be amended for both time and money, or a new contract entered into for Pilot Trainee Training entrance examination preparation and administration services.
- Staff has begun a contract amendment to augment the budget for the legal services contract with Remcho, Johnsen & Purcell. Nearly all of the \$50,000 contract amount has been expended, and staff is working with the contractor to estimate the amount of future legal costs for the amendment.



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

- A) Report on the May 20, 2015, Pilot Evaluation Committee meeting.**
- B) Possible recommendation for a determination that a trainee has or trainees have completed the pilot trainee training program. Possible Board action to award a Certificate of Completion to a trainee who has completed the Pilot Trainee Training Program.**
- C) Possible recommendation from the Executive Director for the appointment of a new pilot or pilots. Possible Board action to accept a recommendation from the Executive Director that a trainee holding a Certificate of Completion from the Pilot Trainee Training Program be licensed as a state pilot.**

There was no report of the Pilot Evaluation Committee meeting

**8. Report of the Rules and Regulations Committee – Commissioner Long**

**Report on the May 26, 2015 Rules and Regulations Committee meeting. Possible Board action to accept recommendations from Rules and Regulations Committee regarding amendments to Board regulations.**

Commissioner Long reported that the Rules and Regulations Committee had met on Tuesday, May 26, 2015, and had continued the meeting to the morning of May 28, prior to the Board meeting. Commissioner Long apprised the Board the Committee members discussed the fact that pilots have a specific conflict of interest code that is separate from the Board’s conflict of interest code. He further stated the Committee determined it appropriate for transparency purposes to augment the pilots’ conflict of interest code in the California Code of Regulations, title 2, §222 to add a new subsection (f) to require the Port Agent to file a Statement of Economic Interests similar to the Form 700 the Board members and certain Board staff must file, although that report should be limited to the Port Agent’s interest related to performing his required duties.

Commissioner Long indicated that he felt strongly about transparency, and that the proposed Port Agent Statement of Economic Interest regulation would provide the Board and the public with the appropriate level of transparency. Board Counsel Eagan then reviewed in detail the proposed language of the regulatory amendment.

PMSA Vice President Mike Jacob commented that his organization objected to the rushed nature of the regulation, and that the process being followed for this proposed regulation was not consistent with the Board’s past rulemaking practices. He presented a letter from PMSA dated May 28, 2105, stating a number of substantive and procedural concerns regarding the proposed adoption of the Rules and Regulation Committee’s recommendations presented by the Committee, and further commented that the Board’s rushed action appears to be a litigation strategy since this issue is

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currently being litigated by the Board. Board Counsel Eagan responded that the regulations are not being written, and that the informal writing process is independent of the Administrative Procedure Act. The Board elected to take a recess in order to read and absorb the letter submitted mid-meeting by PMSA.

**BEGAN RECESS: 10:47 a.m.**

**ENDED RECESS: 11:04 a.m.**

Board Counsel Eagan indicated that the Board action directive for this item on the meeting agenda should have been written to direct staff to commence the rulemaking process, which is consistent with past rulemaking practices of the Board. As such, he recommended that the Board table this item and consider it at the next Board meeting.

Commissioner Long moved to consider this item at the June Board meeting. Commissioner Connolly seconded that motion. There was no roll call vote.

#### **9. Reported safety standard violations – Executive Director Garfinkle**

**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.)**

There were no report on safety standard violations.

#### **10. Reportable Piloting Events – Executive Director Garfinkle**

**A) Status report on the passage of the M/V ROOK to Stockton on March 22, 2015, where once docked, the vessel was detained by the USCG Port State Control for lacking navigation charts for the passage from New York Point to Stockton. Possible Board action to grant an extension to present the M/V ROOK Incident Review Committee incident report at the June Board meeting. If an extension is requested, the delay in presenting the report will be due to Board staff workload.**

Mr. Garfinkle reported that not all evidence related to the M/V ROOK has been received, and the incident is still under investigation. He requested an extension to the June Board meeting.

**MOTION:** Vice President Connolly moved to grant an extension to the investigation. Commissioner Schneider seconded the motion.

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

Abstain: None.

**ACTION:** The motion was approved.



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- B) Status report on the grounding of the USNS MATTHEW PERRY (T-AKE 9) on March 20, 2015, during a flat tow from Berth 4E at BAE Systems Ship Repair facility to their Dry dock #2. Possible Board action to grant an extension to present the USNS MATTHEW PERRY Incident Review Committee incident report at the June Board meeting. If an extension is requested, the delay in presenting the report will be due to Board staff workload.**

Mr. Garfinkle reported that the incident was still being investigated. He requested an extension to the June meeting.

**MOTION:** Vice President Connolly moved to grant an extension to the investigation until the June Board meeting. Commissioner Schmid seconded the motion.

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

No: None.

Abstain: None.

**ACTION:** The motion was approved.

- C) Status report on the interaction between the M/V FUJI GALAXY, underway into the Port of Stockton and the M/V CS SARAFINA moored at berth 10, Port of Stockton, on April, 28, 2015, wherein the M/V CS SARAFINA suffered damage to her gangway.**

Executive Director Garfinkle apprised the Board that this investigation is open, and that a Freedom of Information Act request was submitted to the USCG within three days of the incident. He stated no action is necessary since the 90-day deadline is July 27, 2015.

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

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

Executive Director Garfinkle reported that since the last Board meeting, of the six marine casualties reported to the Harbor Safety Committee by the USCG, there were three reported loss or reduction of ship propulsion events, none of which were attributable to fuel switching.

He also reported that the Harbor Safety Committee reported 97 propulsion/power incidents in 2014, that issues with low sulfur fuel are not over, and that many of the occurrences were reported by the SFBP.

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**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.**

There was no report.

**13. Report on Fair Political Practices Commission decision to include Port Agent in Board’s Conflict of Interest Code – Executive Director Garfinkle**

**Report regarding the decision of the Fair Political Practices Commission concerning appeal by Pacific Merchant Shipping Association (PMSA) from Board denial of PMSA’s petition to include Port Agent in the Board’s Conflict of Interest Code. The Board may go into closed session to discuss with the Executive Director, any matters subject to attorney-client privilege as per Government Code §11126(e) of the Bagley-Keene Open Meeting Act.**

Executive Director Garfinkle reported that a hearing on this case schedule for July 24, 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 v. 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 briefing was complete and that a hearing is scheduled for June 2, 2015.

**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 COMMISSIONS, 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).**

There was no report.

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**16. 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.**

Commissioner Livingstone reported that the Pilot Safety Committee had met to address recommendations 5 and 6 from the USCG investigation report on the M/T OVERSEAS REYMAR. He indicated that the Committee discussed recommendation 5, low/restricted visibility training, and how to enhance this training already contained in the training curriculum, and in the process, the Committee intends to review and update all of the Combination Course training modules. He also stated that the Committee is supportive of recommendation 6, *in-situ* review process, but would like to address the restricted visibility training recommendation fully before bringing anything further back to the Board.

**17. Public Comment on matters not on the Agenda.**

Captain Rene Peinado addressed the Board, and stated that he contacted several of the Board members in the past month to discuss his settlement with the Board, and has so far not received any responses. He encouraged all Board members to call him.

Board Counsel Eagan indicated that Captain Peinado's request to speak individually to Board members is inappropriate, and reminded the Board that items requiring an action must be discussed in an open meeting. President Johnston then recommended to Executive Director Garfinkle to add an agenda item regarding Captain Peinado's Board settlement to the June 25, 2015 Board agenda. Captain Peinado responded that he would be on a ship and unavailable for the June meeting, and that July would be better suited to his schedule.

**18. Proposals for additions to next month's agenda.**

Executive Director Garfinkle apprised the Board that the June agenda will also include reports from the Rules and Regulations Committee, the Pilot Power Committee, the Pilot Safety Committee, and proposed changes to the Port Agent conflict of interest regulation.

**19. Adjournment.**

There being no further business before the Board, the meeting was adjourned at 11:28 a.m.



Allen Garfinkle, Executive Director