

<b>Minutes</b>	<b>Monthly Board Meeting</b>	<b>Date:</b>
<b>Open Session</b>		July 24, 2014
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**Board members present**

RADM. Francis Johnston, President, Public Member  
 Dave Connolly, Vice President, Public Member  
 Capt. Joe Long, Pilot Member  
 Capt. Steve Roberts, Pilot Member  
 John Schneider, Wet Cargo Industry Member

**Board members absent**

Benjamin De Alba, Assistant Secretary for Rail and Ports, representing the Secretary of the California Transportation Agency  
 Vacant, Public Member  
 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**

Capt. John Carlier, Acting Port Agent; Pacific Merchant Shipping Association (PMSA) Vice President Michael Jacob; Capt. Craig Reeder and Mrs. Mary Reeder; San Francisco Bar Pilots (SFBP) Capts. Bill Greig, Mark Manes, Einar Nyborg; SFBP Business Director John Cinderey; SFBP General Counsel Ray Paetzold, former Board President Knute Michael Miller, California Department of Fish and Wildlife, Office of Spill Prevention and Response Capt. Roy Mathur.

**1. Call to order and roll call**

President Johnston called the Board meeting to order at 9:35 a.m. Staff Services Analyst Kelly Dolcini called roll and found that a quorum had been established.

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**2. Approval of minutes of the June 19, 2014, Board meetings**

Board members were presented with the minutes of the June 19, 2014, meeting for approval.

**MOTION:** Commissioner Long moved to approve the June 19, 2014 minutes. Commissioner Roberts seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

**3. Announcements**

There were no announcements. A court reporter was present to record certain sections of the meeting. President Johnston confirmed with her when and how the record would be taken.

**4. Board member activities**

There were no reports.

**5. Executive Director's report**

**Correspondence and activities since the last meeting:**

Executive Director Allen Garfinkle gave a report of the correspondence received by the Board since the June meeting as described below.

On June 19, 2014, the Pilot Selection Appeals Committee met to review Capt. Scott Adams' appeal of the Executive Director's decision that he did not meet the eligibility requirements to take the Pilot Trainee Training Program exam. Mr. Garfinkle confirmed for the Board that the Committee was presented with a letter in which he detailed Capt. Adams' insufficient command time as the reason he did not meet the exam eligibility requirements. He stated that the Committee was also presented with a letter from Capt. Adams laying out the basis for his appeal. Mr. Garfinkle advised the Board that Capt. Adams' appeal was rejected by the Committee on the grounds that it was not timely filed, and that Capt. Adams did not meet the exam work experience recency requirements contained in regulations.

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On June 23, 2014, Board staff began the Pilot Trainee selection exam process by hosting a written exam at California Maritime Academy (CMA). The written exam was proctored by President Johnston and Board staff. Applicants who passed the written exam moved on to the simulator portion, which occurred later the same week.

Also on June 23, 2014, Board staff received a written brief from Capt. Craig Reeder in support of his appeal of the Board’s denial of his prior request to receive an inland pilot pension.

On June 26, 2014, Board staff received a letter from Richard Aschieris, Port Director of the Port of Stockton, informing the Board that at the Port of Stockton’s Board meeting on June 16, 2014, its Board approved commissions for the following pilots: Captains Alden, Cloes, Fawcett, Haggerty, Hurt, McCloy, Miller, Robinson and Sweeney.

On July 2, 2014, Board staff received a copy of an article from the *Houston Chronicle* titled, “Port of Houston Incidents Rarely Investigated Formally,” which was critical of the past incident investigative practices of the Port of Houston Authority Commissioners, who also function as the Board of Pilot Commissioners. The article was also provided to Commissioners in their binders.

On July 21, 2014, Mr. Garfinkle notified Dr. Robert Kosnik, BOPC’s Medical Review Officer (MRO), that he had approved Dr. Dennis Shusterman as qualified to serve as Examining Physician and acting MRO. Dr. Shusterman is licensed as a physician and surgeon in California, is Board certified as a specialist in occupational medicine by the American Board of Preventive Medicine and has over ten years experience in occupational medicine.

On July 22, 2014, Board staff received a copy of a letter sent to President Johnston from Capt. David Gates expressing thanks for the opportunity to work on the Pilot Trainee Training Program exam, and to acknowledge others who worked hard to make the exam a success. He particularly wanted to recognize Capt. Mike Noonan, CMA Deck Simulations Manager, who had worked on the five past simulation exams given by the Board.

On July 22, 2014, Board staff received a recommendation from Board Counsel Dennis Eagan concerning the appeal of Capt. Reeder.

On July 23, 2014, Board staff received an interim report on the Pilot Trainee Training Program exam prepared by Dr. Norman Hertz of Progeny Systems Corporation. The report was provided to Board member and made available to the public.

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**Board Licensing:**

Mr. Garfinkle stated that staff renewed licenses for Captains Wehr, Long, Wainwright, Fawcett, Larwood, Kenyon, Cloes, Haggerty, Carr, Alden between the May and June meetings.

Since the June meeting, staff renewed licenses for Captains. Hurt, Slack, Miller, and Nyborg.

**Board Surcharges:**

Mr. Garfinkle reported that the Board received a check for \$135,009.87 for surcharges collected by the SFBP, which included the following:

Board Operations Surcharge: \$33,074.87

Continuing Education Surcharge: \$52,725.00

Trainee Training Surcharge: \$49,210.00

**Legislative Matters:**

Mr. Garfinkle reported that there has been no legislation affecting the Board since last meeting.

**Contractual Matters:**

Assistant Director Roma Cristia-Plant reported that bids were opened on June 27, 2014, in response to the incident investigator request for bid procurement, and that two qualifying bids were received, both from previous contractors. She reported the new investigator contracts are in the preparation stage and are expected to be fully executed in August.

She reported the amendment to the manned model training contract with Artelia Eau & Environment (Port Revel) was fully executed on June 30, 2014, which extended the contract through June 30, 2015. Meanwhile, a request for information (RFI) document was submitted to California Highway Patrol (CHP) to begin the procurement process to contract with the next manned model training provider. The RFI is expected to be disseminated by CHP to the six training providers world-wide by early August. Responses are due from training providers approximately 2 weeks after receipt of the RFI. Upon receipt of RFI responses, staff will work with CHP and Capt. Long, Chairman of the Continuing Education Committee, to develop a Request for Proposal document, which process will select the next manned model training

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provider. She indicated that the expectation is that the new contract will commence in Spring 2015.

She indicated that staff submitted paperwork to CHP to begin the procurement of a surcharge auditor; however, due to other demands on CHP contracting staff, no work has been completed yet on this contract procurement.

Lastly, Ms. Cristia-Plant briefly apprised the Board on the status of the contract with the University of California at San Francisco (UCSF), indicating that UCSF staff has completed several pilot agility tests and physical exams. She also indicated Board staff is preparing a fitness assessment guide that will advise pilots about the new fitness procedures and requirements.

## **6. Port Agent's Report**

Acting Port Agent, Capt. John Carlier gave the Port Agent Report. He reported the following to the Board:

- There were 3 pilots absent for medical reasons.
- The minimum rest period (MRP) report was not available, but Capt. Carlier reported that MRP exceptions had moderated when compared to the previous two months.
- The P/V CALIFORNIA was out of service from June 2, 2014 through July 7, 2014, for annual dry-docking for maintenance and repairs, regulatory renewals, condition survey, and steel replacement under the sewage and grey water tanks. The P/V SAN FRANCISCO was out of service on July 12, 2014, due to a gyrocompass failure. A new gyrocompass is on order and will be installed during its annual dry-docking, which began July 21, 2014. The P/V PITTSBURG was out of Service July 12-13, 2014 due to a main engine starter failure. The P/V GOLDEN GATE was out of service on July 15-16, 2014 due to a cooling system failure.

When compared to a three-year average, bar crossings were up 2.2% during the month of June at 550. There were 93 bay moves, up 19.5% and 40 river moves, up 19.4%. Total moves, when compared to a three-year average were up 5.2% at 683. Gross registered tonnage was up 8.9% at 30,414,863. When compared to 2013, total moves are up 6.9% and gross registered tonnage is up 8.2%

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**7. Pilot Evaluation Committee**

Capt. Einar Nyborg gave a report on Pilot Evaluation Committee (PEC) activities since the last Board meeting. He reported that the Pilot Trainee Training Program entrance exam was successful, and that it was noted to be a difficult and high quality exam by the examinees. He praised Dr. Hertz and said he provided effective guidance to the pilots and Board staff, participating in the exam process from the planning stage through exam administration.

He stated thirty-three applicants took the written exam, with twenty-five applicants passing on to take the bridge simulation exam component. He indicated the simulation exam component ran smoothly, and that he wished to recognize Mike Noonan of CMA and Capt David Gates for their efforts in the simulation exam component. Capt. Gates put in over 400 hours of work on the simulation exercise, which greatly reduced the impact on pilots who would have otherwise been removed from piloting duty or time off in order to complete the task.

The Pilot Trainee Training Program exam was the culmination of over a year of work on the part of the PEC, Board staff, CMA staff and 39 pilot volunteers. In total, pilots have contributed more than 143 pilot days to the project. This is time pulled from piloting duties or days off-duty, greatly impacting Minimum Rest Period exceptions during concurrent periods of Board mandated pilot training and heavy ship traffic volume.

Capt. Nyborg further reported that the PEC met on July 23, 2014, to review the progress of the sole trainee, Capt. Cevan LeSieur. He reported that Capt. LeSieur’s total time in the Pilot Trainee Training Program was 16 months, and that he is progressing well in the evaluation stage of the program. In this phase, he is piloting with no input from the supervising pilot unless safety demands it. After at least three consecutive months of a 4.0 evaluation average, he will qualify for recommendation for Board licensure.

**8. Reported safety standard violations**

There have been no safety standard violations since the last meeting.

**9. Reportable piloting events**

On November 29, 2013, there was an interaction between the M/V ESSEX STRAIT and the M/T CHAMPION EXPRESS in the Port of Stockton. The M/T CHAMPION EXPRESS

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alleged gangway damage as a result of the interaction. The 90-day deadline for reporting on the incident occurred on February 27, 2014; and the report was presented under Agenda item 17.

On May 15, 2014, the TUG Z FIVE was involved in an allision with the Union Pacific Railroad Bridge fendering system while taking part in a dead-ship tow of the USNS PONCHATOU LA while transiting from the Reserve Fleet to Mare Island. The 90-day deadline for reporting to the Board on this incident is August 13, 2014. Mr. Garfinkle asked for an extension due to facets of the investigation being incomplete and the August meeting occurring after the 90-day deadline.

**MOTION:** Commissioner Long moved that the Board approve an extension to the August, 2014 Board meeting. Commissioner Schneider seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

**10. Low Sulfur Fuel**

Mr. Garfinkle gave the report on loss of propulsion due to the suspected impact of low sulfur fuel and utilized data provided by the Office of Spill Prevention and Response. He reported that there were nine (9) loss of propulsion incidents during the month of June, 2014. Of those incidents, one was related to fuel switching and three were suspected to be related to fuel switching.

Additionally, Mr. Garfinkle shared the U.S. Coast Guard’s Harbor Safety Committee report, which listed loss of propulsion incidents occuring within the jurisdiction of U.S. Coast Guard Sector San Francisco in June, 2014.

**11. Implementation of Pilot Fitness Regulations**

Mr. Garfinkle reported that the pilot medical assessments and fitness determinations, pursuant to the contract with UCSF, had commenced.

Commissioner Roberts suggested the Executive Director write a letter to the three previous Board-appointed physicians to thank them for their service and confirm termination of services. Mr. Garfinkle confirmed that he already sent service termination letters to the prior Board-

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appointed physicians, but that he would also send a letter thanking each physician on behalf Board for their excellent services these past many years.

Capt. Nyborg inquired about why there are no blood tests required with pilot medical exams. He pointed out that it would be a good way to detect diseases and other illnesses. Past Board President Knute Michael Miller, chairman of the Pilot Fitness Committee, explained that the Board’s physical assessments are not meant to take the place of a routine medical physical examination, and are designed to assess a pilot’s fitness for duty. He further stated that it is in a pilot’s best interest to have a personal physical for general health purposes.

**12. Report of Pilot Power Committee**

Commissioner Long, Chairman of the Pilot Power Committee, gave a report on the July 8, 2014 committee meeting, and noted that upon Capt. Lesieur’s completion of the Pilot Trainee Training Program, there will be 60 pilots on the roster. The most recent retirement survey (July, 2014) indicated that there will be 17 possible retirements by 2018.

Mr. Garfinkle presented the Board a summary of the Pilot Trainee Training Program examination process, his second examination process since he has been on staff at the Board, as follows:

- Thirty-eight candidates met the eligibility requirements and were approved to take the written examination at CMA held on June 23, 2014.
- Thirty-three applicants actually sat for the written examination, with five eligible applicants not participating for various reasons. The examination was proctored by Board staff and President Johnston.
- Applicants were allowed four and half hours to answer 150 questions. He heard comments from some applicants that it was a difficult written examination.
- Subject matter experts also took the written examination at the same time, and the results from the subject matter experts were used in a modified “Angoff” session to derive the exam cut score.
- Twenty-five applicants passed the written test and participated in a simulator exercise that was administered at CMA facilities on June 26-28, 2014. The simulator session tested a variety of areas, and another modified “Angoff” session was conducted to determine the cut score for this examination portion.
- Points from the application qualification review, the written examination and the simulator session were scaled to achieve a 150 point scoring scale.



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- Thirteen applicants passed the examination and are to be recommended to the Board to be placed on a list with a three-year list duration.
- Candidates will be selected in rank order to enter into the Pilot Trainee Training Program based upon the projected need for new pilots. Although there are no guarantees that a candidate on the list will be selected to enter into the program, given projected pilot retirements, it is possible that all thirteen candidates will have the opportunity to participate in the program.
- The next Pilot Trainee Training Program examination is projected to be offered in two to three years.

Mr. Garfinkle expressed his sincere thanks for the astounding support from the many individuals who participated in the examination process, and specifically mentioned the San Francisco Bar Pilots, Capt. Gates, the CMA staff, especially its simulator crew, and Dr. Hertz.

Capt. Long presented the Board with the list of 13 mariners who qualified for entry into the trainee program based on their experience, scores on the written examination, and points in the bridge simulation.

**MOTION:** Commissioner Roberts moved to approve the list of qualified Pilot Trainee Training Program candidates. Commissioner Long seconded the motion

**ACTION:** The motion passed unanimously on a voice vote.

Capt. Long further apprised the Board that, due to the large number of retirements predicted in the coming years, the Committee voted to propose that the Board add four trainees to the Pilot Trainee Training Program as soon as possible with two additional trainees to be added in early 2015.

**MOTION:** Commissioner Long moved to direct Board staff to contract with the top four trainees on the list to enter the Pilot Trainee Training Program as soon as possible and the next two trainees on the list in February, 2015. Commissioner Roberts seconded the motion.

There was additional discussion among the Board members of the appropriateness of adding the two additional trainees to the motion, versus making a motion to add them at a later date. Capt. Nyborg commented that he and the PEC support Capt. Long's suggestion and that it was important to give as much notice as possible to trainee candidates to allow each adequate time to make personal arrangements to enter the program.

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**ACTION:** The motion passed unanimously on a voice vote.

**13. Report of Pilot Fitness Committee**

Fitness Committee Chairman Knute Michael Miller reported that the Committee had met on July 23, 2014, with all Committee members participating. He stated that the Committee also reviewed implementation of the new fitness protocols under the new UCSF contract.

Mr. Miller reported that the Committee discussed the role and relevance of the use of actigraphy in the upcoming pilot fatigue study mandated by SB 1408. Two subject matter experts participated in the Committee meeting by teleconference--Charles Czeisler, M.D. and Laura Barger, Ph.D., both of the Department of Sleep Medicine at Harvard University and Brigham and Women's Hospital in Boston. Both researchers have been retained as sleep/fatigue consultants by the SFBP to recommend pilot fatigue mitigation measures for the group. The researchers conveyed to the Committee that in the course of the study for the SFBP, they made a determination that, given the data provided by the SFBP on the work schedules of the pilots, it was not necessary to determine the quality of the pilots' sleep through the use of actigraphy, but rather it was more important to determine a pilot's opportunity for sleep/rest, and that they concluded the use of actigraphy was not essential to conducting a successful pilot fatigue study that focuses on rest opportunities.

Mr. Miller stated that it was the opinion of the SFBP researchers that actigraphy would involve the pilots in a human research study, in which participation must be voluntary. Their opinion was that, because not all pilots can be expected to willingly participate in any study, the resulting data obtained from a relatively short time of actigraph use from a few volunteers would not be representative of either the overall pilot population or even of the behavior of those same volunteers on non-monitored days, resulting in misleading conclusions because of the self-selection inherent in such a small sample.

Mr. Miller informed the Board that the Committee came to no resolution whether the Board's pilot fatigue study should require the use of actigraphy or not, that the Committee directed Board staff and Mr. Miller to more fully discuss this issue with the three government researchers who have expressed an interest in participating in the study, and to report the results of those conversations to the Committee at its next meeting.

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Mr. Miller reported that the Committee had reviewed cost estimates from researchers from three government agencies (one California, two from out of state), and that the study cost estimates vary considerably – from approximately \$250,000 to \$1.2 million. The Committee consensus was to recommend that the Board direct staff to submit a budget change proposal in the amount of \$400,000 to obtain appropriation to fund a pilot fatigue study in the 2015-2016 fiscal year.

**MOTION:** Vice President Connolly moved that the Board recommend that staff pursue a budget change proposal for authorization to spend \$400,000 in the 2015-2016 fiscal year for a pilot fatigue study as required by SB 1408 (2012). Commissioner Roberts seconded the motion

**ACTION:** The motion passed unanimously on a voice vote.

**14. Report on Public Records Act litigation.**

Board Counsel Eagan reported that the court of appeal denied the Public Records Act request by PMSA, but the superior court did approve PMSA receiving reimbursement for attorney fees and costs associated with the litigation, Because it is not clear in the superior court’s decision who is to pay the legal fees, an appeal has been filed on the Board’s behalf.

**15. Report on Fair Political Practices Commission decision to include the Port Agent in the Board’s Conflict of Interest Code.**

This item was discussed in closed session.

**16. Report on the April 26, 2012 appeal by Capt. Craig Reeder of the Board’s denial of his application for an inland pilot pension.**

This item was moved to the end of the meeting and also discussed in closed session.

**17. Incident Review Committee incident report on the M/V ESSEX STRAIT.**

Discussion of this item was moved to later in the meeting.

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**18. Incident Review committee incident report on the USNS PONCHATOULA.**

There was no report because the Board approved an extension of time for the Incident Review Committee to present the report under Agenda item #9.

**19. Board discussion of best practices in maritime safety.**

Vice President Connolly reported that he had been considering the topic of best practices as it relates to risk mitigation in the maritime domain. He concluded that pilotage involves its own risk mitigations, and while the Board’s licensure code, strict fitness regulations, rigorous entrance exam and trainee program, as well as oversight by the Port Agent and Executive Director and the Board, is on the cutting edge of maritime safety thought, he believes that the Board can do better.

Mr. Connolly further stated that he attended an International Maritime Organization meeting at which maritime safety hazards and risk assessments were discussed, and that while human error is inevitable, he believes the Board can proactively learn from historical maritime mistakes, and that it has an opportunity to make changes and improvements on risk prevention and risk mitigation measures. He went on to note that the opportunity to enhance risk prevention and mitigation measures should be considered by the Board’s Pilot Safety Committee. Commissioner Roberts and Mr. Jacob both stated the Board has come a long way in regards to pilot safety issues, but that there is always room for improvement. Both Commissioners Roberts and Long confirmed support for and offered assistance with such risk mitigation efforts at future Pilot Safety Committee meetings.

**MOTION:** Vice President Connolly moved that the Board refer the issue of maritime safety best practices for consideration at a future meeting of the Pilot Safety Committee. Commissioner Long seconded the motion.

**ACTION:** The motion passed unanimously on a voice vote.

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**20. Public Comment on Matters Not on the Agenda**

SFBP Counsel Ray Paetzold reported to the Board that the representative of the California Air Resources Board will inspect the P/V PITTSBURG in early August as part of the application for funding from the Carl Moyer Grant Program to make capital improvements to the vessel.

Capt. Nyborg reported that the SFBP has formed an internal committee to identify issues related to pilot boarding and recommendations to improve pilot safety. In response, Commissioner Roberts requested that the committee report its findings and recommendations to the Board at a later date.

**21. Proposals for Next Month's Agenda**

There were none.

**16. Report on the April 26, 2012 appeal by Capt. Craig Reeder of the Board's denial of his application for an inland pilot pension.**

At the request of Capt. Reeder, Capt. Roberts recused himself from consideration of this Agenda item, although he stated that he believed he could be unbiased in the matter. A record of this Agenda item was separately prepared by a court reporter.

Capt. Reeder made a presentation to the Board of the issues he felt pertinent to his appeal of its prior decision to deny him an inland pilot pension. There were no questions of Capt. Reeder by Board members. Board Counsel Eagan asked several questions of Capt. Reeder, and also apprised the Board of several key issues related to its prior decision and the current issues of Capt. Reeder's current appeal request. Mr. Garfinkle asked a question of Capt. Reeder related to his collection and payment of pilotage surcharges, if any, and Capt. Reeder indicated that he did not recall collecting any surcharges.

**MOTION:** Commissioner Long moved to consider the appeal of Capt. Reeder's inland pilot pension denial by the Board in closed session. Commissioner Schneider seconded the motion

**ACTION:** The motion passed unanimously on a voice vote.

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President Johnston called for a short recess.

**RECESS: 12:03 p.m.**

**RESUMED OPEN MEETING: 12:15 p.m.**

**17. Incident Review Committee report on the M/V ESSEX STRAIT**

President Johnston recused himself from participation as a member of the Board so that he could participate in the meeting as chairman of the Incident Review Committee (IRC). Vice President Connolly presided over this agenda item in his absence.

Mr. Garfinkle presented a report on behalf of the IRC. He described the events that occurred on the morning of November 29, 2013. The M/V ESSEX STRAIT departed Stockton Berth 21 with two tugs assisting. The M/T CHAMPION EXPRESS was berthed at Stockton #9 and experienced motion along the dock as the M/V ESSEX STRAIT passed in the channel causing damage to its accommodation ladder. After investigating the incident, the IRC concluded that the pilot was proceeding carefully and prudently, and that the M/T CHAMPION EXPRESS accommodation ladder was likely not properly rigged to withstand the motion of passing ships in the channel.

The Committee recommended that the Board find no pilot error and close the case with the stipulation that the Board staff prepare a “lessons learned – best practices” presentation on vessel interaction for professional development purposes.

**MOTION:** Commissioner Roberts moved to accept the recommendation of the Committee. Commissioner Long seconded the motion.

**ACTION:** The motion passed unanimously by a voice vote.

The Board then went into closed session to discuss Agenda items 15 and 16.

**BEGIN CLOSED SESSION: 12:47 pm.**

**END CLOSED SESSION AND RESUME OPEN MEETING: 1:44 p.m.**

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The Board voted in closed session to deny the pension request appeal of Capt. Reeder.

**21. Adjournment**

There being no further business before the Board, the meeting was adjourned at 1:45 p.m.

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Allen Garfinkle, Executive Director

Prepared by: Kelly Dolcini