

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo and Suisun
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December 17, 2009

MINUTES BOARD MEETING December 17, 2009

OPEN MEETING

Call to Order and Roll Call- 10:07A.M.

President Miller, Vice President Tate, Commissioners Johnston, Roberts and Wainwright were all present, constituting a quorum. Commissioner Osen was not able to attend. Ex officio member Dale Bonner, Secretary of the Business, Transportation and Housing Agency was represented by Deputy General Counsel Gabor Morocz, also serving as Acting Executive Director. Also present were Assistant Director Nancy Hall Bennett, Port Agent Capt. Peter McIsaac, Dennis Eagan (Board Counsel), Raymond Paetzold (Maritime Counsel), and Staff Services Analyst Katharine Weir.

1) Request Approval of Minutes

The November 19, 2009 regular board meeting minutes were approved with non-substantive minor changes.

2) Announcements – President Miller

First, President Miller announced that the Board still does not have word on the appointment of a dry cargo industry member. Appointments are backed up throughout the Administration, reflecting the State's fiscal crisis.

Second, the Bureau of State Audits did, as anticipated, issue its final report on its audit of the Board on November 24th. President Miller stated that he would comment on that further later in the meeting.

Third, the former landlord of the Board, Signature Hospitality, has vacated the premises, and the M/V SPIRIT was spirited away earlier this week. Where she now is berthed is not known. The Board is negotiating a new direct lease with the Port of San Francisco through the Facilities Section of the California Highway Patrol and the Department of General Services.

Finally, President Miller reported that he had met with representatives of Shea Labaugh Dobberstein, CPAs, to discuss an audit of all surcharges collected by the San Francisco Bar Pilots (SFBP). He stated that he would report further later in the meeting.

3) Board Member Activities – Acting Executive Director Morocz

Mr. Morocz requested that the transparency of board member activities be placed as a permanent item on future agendas. Examples of topics to be disclosed would be trips taken by board members on behalf of the Board or meetings where board members were representing the Board in an official capacity.

4) Comments from Business, Transportation and Housing Agency Secretary Bonner - Gabor Morocz, Secretary's designee

Mr. Morocz reported that because the CHP was relocating offices in Sacramento and with the holidays coming up, a backlog of functions has been created for the Board in handling financial analysis and contracting matters.

5) Acting Executive Director's Report - Acting Executive Director Morocz

A) Correspondence and activities since the November 19, 2009 meeting:

i) Directive to implement and collect navigation technology surcharge

Ms. Bennett reported that the Board had sent a letter to Capt. Slough and the San Francisco Bar Pilots reminding them that the Navigation Surcharge must be collected effective January 1, 2010.

B) Report on pilot licensing matters:

Ms. Bennett reported that the Board sent a letter to Capt. Coppo regarding his Not Fit For Duty determination by a board physician and subsequent disability status for licensing purposes. Capt. Coppo is currently NFFD and his license renewal has been suspended.

Captain Simenstad and Captain McBride received their annual license renewals after the last board meeting. It was noted that for January, eight pilots are up for renewal of licenses.

C) Facilities:

Ms. Bennett announced that formulation of a new lease agreement is in progress. She also noted that the Board office will be closed in observance of state holiday schedules.

Furthermore, the phone systems are currently being analyzed and there is hope that the finances of the Board will allow for an upgrade in the current fiscal year.

6) Port Agent's Report - SFBP Captain Peter McIsaac

Absence for Medical Reason (AFMR):

Captain Haggerty has been AMFR since Oct 14th after undergoing neck surgery. He recently reported that a second surgery may be required.

Captain Pate has been AMFR since Oct 28th after undergoing rotator cuff surgery.

Pilot Vessel CALIFORNIA – This vessel has been out of service from November 30, 2009, through December 12, 2009, for a scheduled top-end overhaul of the main engine.

Pilot Vessel DRAKE – This vessel is in service and will be inserted into the regular rotation after the first of the year.

American Bureau of Shipping Modifications- Will be done on the P/V CALIFORNIA and P/V SAN FRANCISCO during yard periods in spring of 2010.

Low Sulfur Fuel Oil Potential Issues: There were two incidents in November. One, involving the CHIMBORAZO, was reported last month. The second incident occurred on the CSAV VENEZUELA on November 20, 2009. It lost propulsion while transiting the Oakland Bar Channel. Tug escorts were mandated for the outbound transit.

There have been three incidents so far in December, the details of which will be reported next month. Captain Dohm, who was in audience, was involved in one.

Recommended Minimum Rest Period Exceptions: There were 19 over 5 days during the month of November. The shortest rest period was 8 hours. Fourteen occurred on Nov 11th when there were 20 pilots on the board. The board was short 2 pilots over a six week period due to the cable laying project.

Pacific Coast Maritime Agency- For the second time in a year they have fallen months behind schedule on their account. They currently owe the SFBP over \$200,000 dating back as far as June. Beginning December 21st all vessels they represent will be required to pay in full prior to dispatch of a pilot for the outbound transit.

Public Vessel Black Eagle- was placed in short term lay-up at Oakland Berth 34. Vessels at that berth have experienced interaction issues in the past. The SFBP has advised the master, the Port of Oakland, and the ship agent that there will be problems and they will need to constantly monitor their lines.

Dispatch Program- At the end of 2008, SFBP switched over to a new dispatch program that is integrated with their billing program. SFBP recently found an error in the vessel move report that over-reported the moves by 2 to 3%. Every time a bill was pulled to make an adjustment it was counted twice in the report, even though only one invoice was produced. The programmer corrected the error last month and SFBP hand-checked three separate months to insure the validity of the data. The end result is the year-to-date vessel move numbers are actually worse than previously reported.

Billed Vessel Moves through Nov 2009 compared to a 3 year average:

Bar Crossings:	-11.3%
Bay Moves:	-30.5%
River Moves:	-38.4%
Total Moves:	-16.1%
GRT:	-7.8%

Compared to the first eleven months of 2008, bar crossings were down 9%, total moves were down 13.4% and gross registered tons were down 7.7 %. In November there were

only 499 bar crossings, which was only the second sub-500 month of the year. Capt. McIsaac was happy to report that exports from Oakland have increased substantially in the last 5 months and the rate of decline on imports has slowed. That should at least stabilize the number of vessel calls into Oakland in 2010.

7) **Reported Safety Standard Violations and Investigations** - Acting Executive Director Morocz

There was one pilot ladder incident that is going to be presented later in the meeting under agenda item #24. No other incidents were reported.

8) **Non-Incidents** - Acting Executive Director Morocz

November 25, 2009: the Maersk BERING had a crewman injury not related to piloting.

December 8, 2009: the APL ITALY lost power under the Golden Gate Bridge. Capt. Dohm was piloting the vessel and was able to direct restarting the engines. (It was also announced that Capt. Dohm would be retiring.)

Capt. McIsaac met with Air Resources Board to discuss the new fuel standards and the potential safety hazards they are causing.

9) **Report of New Incidents** - Acting Executive Director Morocz

No new incidents have been reported.

10) **Incident Review Committee Report**– Commissioner Johnston and Acting Executive Director Morocz

M/V TASMAN RESOLUTION, allision near Light 34, San Joaquin River – Aug. 28, 2009; Mr. Morocz explained that the Committee was not able to obtain needed evidence from the U.S. Coast Guard, and therefore is not ready to report on this incident today. Mr. Morocz asked for an extension of time for this matter to be presented at the January 2010 board meeting. The request for extension was moved and seconded. The Board voted unanimously to approve granting the extension of time until the January board meeting.

11) **Rules and Regulations Committee** - Commissioner Wainwright

Commissioner Wainwright announced that the committee would be meeting in mid-January 2010. The Committee will be planning to discuss the minimum standards for commission investigators and hopes that the language will be ready by the meeting date.

12) **Finance Committee** - Commissioner Osen

Commissioner Wainwright reported for Mr. Osen, Chair of the Finance Committee, that the Finance Committee met on December 17, 2009, to review incremental mill rate adjustment authorized by H&N Code section 1190(a)(1)(A), based on the number of pilots licensed by the Board, as amended by SB 300, effective January 1, 2010. Additionally, the Committee

reviewed the mill rate calculation for final authorization regarding recovery of the pilots' costs of obtaining the P/V DRAKE and making related apron modifications.

Mr. Wainwright stated that the Finance Committee was recommending to the full Board to increase the mill rate calculation based on the number of pilots licensed by the Board, as amended by SB 300, to 0.09107, effective January 1, 2010. The motion was adopted and approved unanimously.

Mr. Wainwright reported that the Finance Committee was recommending to the full Board to increase the Pilot Vessel Surcharge from the current level of \$0.00740 per GRT to \$0.00844 per GRT, effective January 1, 2010. Mr. Mike Jacob of Pacific Merchant Shipping Association made a public comment that PMSA was not supportive of the apron modification being captured into the total cost of the P/V DRAKE. The motion for the increase of the surcharge according to the Finance Committee recommendation was adopted and approved unanimously.

Mr. Wainwright noted that staff would be sending a letter to the SFBP and the inland pilot prior to January 1, 2010, informing them of the new surcharge collection rates.

Mr. Miller reported that on December 1st he met with Julie Yasuda, SFBP Comptroller, and representatives of Shea Labaugh Dobberstein (SLB), led by Ron Simonian, CPA, the engagement partner on SFBP's annual financial audit. The group discussed the broad parameters of the audit that the Board has authorized as well as some of the specific elements. The audit would focus on all surcharges collected by the SFBP during calendar 2009 and also on pension surcharges collected and disbursed during calendar 2008 in order to have continuity with the 2007 audit of pension surcharges. Although this initial audit of all surcharges may be contracted for on a non-competitive basis, future audits will be competitively bid. The firm will develop a proposed audit work plan, consistent with the Scope of Work authorized last month by the Board, and a cost estimate. Mr. Miller stated that he anticipates that SLB will communicate those responses to the Board before our January meeting.

13) Pilot Evaluation Committee and Pilot Trainee Selection Process - Captain E. Nyborg

Captain Nyborg reported that the Pilot Evaluation Committee (PEC) met on December 16, 2009.

In closed session, all eight trainees were interviewed individually. The current trainees are: Tylawski, Bridgeman, Martin, Ruff, Merritt, Fawcett, Peery, and Kellerman. Their time in the program ranges from 7 months to 29 months. All trainees are progressing at their own rate. There may be recommendations for 1-3 appointments within the next 3 months.

Fee-Based Trainee Entry Exam

Last month Capt. Nyborg asked the Board to discuss a potential fee-based trainee entry examination. After some study, the PEC has decided to ask the Board to instead consider establishing a Trainee Application Fee. It is the opinion of the PEC that such a fee might discourage careless submissions of applications that do not meet our requirements. It might also help to discourage applicants whose intentions are only to use our exam to practice for a similar exam in another port.

Through the experience of past exams the PEC has found that some applicants are doing exactly that. Mariners are using the Board's test to prepare themselves for a test in another port where they hope to become working pilots. Many pilot groups now model their exams after the one created here. The written exam comes from questions that take many pilot hours to create. The simulator exam also comes at a considerable expense to pilots and Board resources. The Board currently offers a "free opportunity" for mariners to use a very advanced and expensive simulator for 30 minutes of intense practical test-taking experience. The PEC considers this test practicing at the Board's expense a waste of time, money, and effort. The PEC hopes that an application fee would discourage this practice.

Also at stake is the security of the exam process. Applicants who have no stake in becoming a San Francisco Bar Pilot through the competitive process might be more likely to share exam information with other applicants during the test. An applicant that completes his simulator exam might share valuable test material with another applicant who is about to take the test. We currently rely solely on the signed agreement of confidentiality and the idea that shared information would hurt an applicant's chance of success. This safeguard is lost if there is no desire to score higher than other applicants.

The PEC understands that law requires that any fee imposed by a state board be very specific in the manner in which it is levied. The PEC proposes that board staff use the upcoming test as a basis for determining the resources used in processing applications. With a proper accounting, the Board may then establish a documented cost per application that could then be used as a figure to charge future applicants.

The PEC backed away from recommending a fee system that completely covers the cost of administering the exam because it would be too costly for many of the applicants, thus reducing the number, and possibly the diversity of the mariners who want to become pilots. Spending a large sum on short odds would be a very tough decision for many mariners who are struggling financially, especially in today's economic environment. Mr. Nyborg apologized for changing the recommendation of the PEC, but felt that such a change would be more widely supported by the pilot group going forward. Mr. Nyborg forewarned the Board that the support of the pilot membership would be important to the PEC. At this time the PEC has not requested the support of the membership, but would do so if the concept gained traction at the board level.

Mr. Morocz noted that existing law requires that any fee would have to be based on the actual cost of administering the exam. He viewed this approach as reasonable and thought that the Board should start monitoring costs with the planned test currently scheduled for the Summer of 2010.

Roadmap for the Trainee Entry Exam

At last month's board meeting it was agreed that the next exam would be held during the week of June 28, 2010. Mr. Nyborg asked Ms. Bennett to comment on the progress of test advertising and the various contract issues that are underway. Ms. Bennett reported that the Comira contract was with CHP for review and that she did not expect this contract to hold back the process of the planned testing date.

Progress on the Trainee Entry Simulator Exam

The PEC's work with designing the simulator exam is largely finished. They await the input from Dr. Hertz before dedicating further Board and pilot resources to this process.

Progress on the written portion of the Entry Exam

The PEC finished an initial book list and has not begun the writing of new questions.

Pacific Maritime Institute Train the Assessor course for PEC members

Mr. Nyborg thanked the Board for their support in making it possible for PEC members to attend the PMI course. Members are working on scheduling this class and will keep the Board advised. They anticipate a training date sometime in the spring.

In concluding his report, Mr. Nyborg thanked the Board and staff for its support of the PEC and announced the next PEC meeting to be scheduled for January 20, 2010.

14) Pilot Power Committee - Commissioner Roberts

Mr. Roberts reported that the Committee plans to meet on January 13, 2010.

15) Pension Committee – Vice President Tate

Mr. Tate reported that the Committee still did not feel it had the required information to make a recommendation for the disability pension application of Capt. Dennis Welch. When the necessary materials come in, the Pension Committee will meet.

16) Pilot Vessel Advisory Committee - Commissioner Johnston

Mr. Johnston reported that The Pilot Vessel Advisory Committee met on December 8th to review the request from the San Francisco Bar Pilots for Final Authorization for the completion of the P/V DRAKE and for apron modifications as detailed in the letter request of the SFBP dated Dec. 8, 2009.

The Committee reviewed the Board's previous Necessity Determinations and Preliminary Authorizations for the construction of the new station boat to replace the aging DRAKE, the load-line modifications to the new boat required by the American Bureau of Shipping, and the apron modifications to Pier 9 to accommodate a third station boat. The Committee also reviewed the Board's previous Final Authorization for approximately \$511,000 for initial drawings, design, engineering and propulsion equipment, which was approved last year and is reflected in the current Pilot Vessel Surcharge Rate.

The Committee reviewed the SFBP's requests for Final Authorization as to these elements as well as its request for a Necessity Determination and a Preliminary Authorization for various change orders and actual costs for the construction of the boat, which exceeded the estimates that were available at the time of the SFBP's request for a Preliminary Authorization a year ago. The change orders and costs exceeding original estimates accounted for approximately 6% of the total costs of the station boat. The committee reviewed the change orders and costs and determined that they were reasonable, appropriate and well within the norm for new construction of vessels.

After consulting with the Board's maritime counsel and reviewing the Board's previous Necessity Determination and Preliminary Authorization for the construction of a new station boat, the Committee concluded that it was not necessary to issue a separate Necessity Determination or Preliminary Authorization for the change orders and the construction costs that exceeded original estimates. Accordingly, the Committee proceeded to consider the SFBP's request for Final Authorization to recover its total costs for the station boat, including the costs related to change orders and those exceeding original estimates.

As this is the first new station boat built under the Board's regulation, the Committee requests the Board's concurrence with this treatment of the change orders and costs exceeding original estimates – that is, that they should be reviewed for reasonableness as part of the Final Authorization for the total costs of the new station boat.

The Committee thanked President Miller for reviewing and auditing the costs associated with both the construction of the P/V DRAKE and for the related apron modification. President Miller's thorough review of all materials confirmed that all invoices and documentation are in good order and appropriate to the acquisition of the P/V DRAKE.

On behalf of the Committee, Mr. Johnston made a motion that the Board grant final authorization for the SFBP to recover its costs for the new station boat P/V DRAKE and for the related apron modifications in the following amounts:

- (1) \$120,308 for apron modifications specifically related to accommodate the new station boat;
- (2) \$7,418,641 for the completion of the new P/V DRAKE's construction and delivery, as the amount estimated in November 2008 and set forth in the Board's original Preliminary Authorization;
- (3) \$58,590 for the P/V DRAKE'S compliance with the ABS load-line requirements; and
- (4) \$495,446 for construction change orders and costs exceeding construction estimates.

The motion was seconded and the vote was unanimous in approving and granting the cost recovery.

17) Ad Hoc Advisory Committee on Pilot Selection – Vice President Tate

Mr. Tate stated that he has been working with the CHP and is hopeful that the board will be able to solicit bids from industries that have done similar outreach for recruitments such as the CHP and Clorox.

Capt. McIsaac reported that the SFBP has increased scholarships by 50 percent at the California Maritime Academy to help the diversity pool.

18) Navigation Technology Committee - Commissioner Johnston

Nothing to report

19) Ad Hoc Committee to Review Investigation Procedures - Commissioner Osen

Nothing to report – Commissioner Osen not present

20) Pilot Fitness Committee - Commissioner Roberts

Mr. Roberts reported that the Committee plans to meet on January 13, 2010.

21) Low Sulfur Fuel – Commissioner Osen

Nothing to report – Commissioner Osen not present

22) Executive Director Recruitment – President Miller, Vice President Tate, Assistant Director Bennett

Mr. Miller reported that the Search Committee at its November 30, 2009 meeting did not go into closed session. It did go into closed session at the December 9, 2009 continuation of that meeting and conducted telephone interviews with several applicants but took no other actions.

At the open session on December 9, 2009, the Committee reviewed a draft procedure for evaluating the Executive Director. The Committee recommends that the Board adopt that Procedure today. A copy of it is in the materials for today's meeting.

The Board reviewed the draft Procedure. After discussion it was moved and seconded that the Board adopt the draft procedure. The motion was agreed to on a voice vote and the Procedure was adopted.

23) Board Participation in Hearing Formal Licensing Discipline Actions

Mr. Eagan presented the board with a letter outlining the choices the Board has in conducting formal administrative license discipline hearings under sections 11500-11529 of the Government Code. After review and discussion of the letter the Board decided to sit with the Administrative Law Judge to hear the case for the next hearing, involving Captain Simenstad. A motion accordingly was made and seconded. The vote was unanimous in approving that the Board will sit with the administrative law judge in hearing the case.

24) Presentation by Incident Review Committee of its Investigation Report on the following Safety Standard Violation: IRC Chair Frank Johnston, and Acting Executive Director Gabor Morocz

Report of Pilot Boarding Arrangements Deficiency on the *ATB GALVESTON* and Barge *PETROCHEM PRODUCER* at SFBP Boarding Area, near the San Francisco Sea Buoy, on November 16, 2009.

After hearing a short presentation by Mr. Morocz and taking in the written report, the Board accepted the report and its recommendation unanimously.

25) Bureau of State Audits Report - President Miller

Mr. Miller discussed the Auditor's Report and his letter to Secretary Bonner that addressed the report. Mr. Miller stated that his response focused on the recommendations – almost all of which the Board agrees with and is implementing immediately – and two that the Board is examining to determine the most appropriate way to implement or seek alternatives to past practice.

Mr. Miller stated that the Board's audit team did not agree with all of the findings presented by the BSA, but chose to focus on the recommendations only – looking forward rather than challenging minor disagreements about past practices – in order to move the Board forward swiftly.

Mr. Miller called upon Mr. Mike Jacob, Vice President of the Pacific Merchant Shipping Association, who was present in the audience. President Miller noted that PMSA was the sponsor of SB 1627 (Wiggins, 2008), which mandated the BSA audit, and inquired of Mr. Jacob whether he wished to comment. Mr. Jacob agreed with Mr. Miller's observation that the audit report provided a way forward for the Board.

26) Public Comment on Matters not on the Agenda

There were no comments.

27) Proposals for Additions to Next Month's Agenda

Ms. Bennett presented the Board with options for dates of future monthly board meetings. The Board decided to continue with monthly meetings to be held on the fourth Thursday of each month, with the exception of November and December, where those meetings will fall on the third Thursday of the month.

Commissioner Johnston asked the Board if they would like a presentation regarding the difficulty and intricacies of river pilotage from Capt. Thomas Miller. The Board agreed such a presentation would be beneficial.

28) Adjournment

The Board adjourned at 1:11 p.m.