

|  |   |                           |
|--|---|---------------------------|
| <p><b>Meeting Date:</b><br/><b>October 7, 2020</b></p> | <p><b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun<br/>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p> | <p><b>Page 1 of 5</b></p> |
|--|---|---------------------------|

**Board Members Present**

Dave Connolly, President, Public Member  
 Joanne Hayes-White, Vice President, Public Member (via telephone)  
 Captain Robert Carr, Pilot Member (via telephone)  
 David Hoppes, Dry Cargo Industry Member (via telephone)  
 Captain Einar Nyborg, Pilot Member (via telephone)  
 Captain Oscar Prada, Tanker Company Industry Member (via telephone)  
 Stephanie Dougherty, Designee of the Secretary of the California State Transportation Agency (CalSTA) (via telephone)

**Board Members Absent**

Vacant, Public Member

**Board Staff Present**

Allen Garfinkle, Executive Director  
 Roma Cristia-Plant, Assistant Director  
 Dennis Eagan, Board Counsel (via telephone)  
 Alethea Wong, Administrative Assistant II

**Public Present (in person)**

Captain Joe Long, San Francisco Bar Pilots (SFBP) President and Port Agent, and Captain Anne McIntyre, SFBP Business Director.

**Public Present (via telephone)**

Mike Jacob, Pacific Merchant Shipping Association (PMSA) Vice President and General Counsel; Knute Michael Miller, Past Board President; Brian Spillane, Matson; John Schneider, Marathon Petroleum; and Bryan Brandes, Port of Oakland.

**OPEN MEETING AGENDA**

**1. Call to Order and Roll Call (President Connolly)**

President Connolly called the meeting to order at 9:30 a.m. Administrative Assistant II Wong called the roll and confirmed a quorum.

**2. Public comment on matters on the agenda or not on the agenda.**

There were no public comments.

|  |   |                           |
|--|---|---------------------------|
| <p><b>Meeting Date:</b><br/><b>October 7, 2020</b></p> | <p><b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun<br/>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p> | <p><b>Page 2 of 5</b></p> |
|--|---|---------------------------|

**3. Discussion of whether the Board should itself commence a pilotage rate hearing pursuant to Title 7, California Code of Regulations, section 236(a), and, if so, the issues to be covered at the hearing. Possible Board action to order commencement of a pilotage rate hearing pursuant to Title 7, California Code of Regulations, section 236(a), and to identify the issues to be covered at the hearing. (Commissioner Hoppes)**

Commissioner Hoppes noted that his suggestion at the September Board meeting was for the Board to consider doing something to aid the pilots with their pandemic-related fiscal situation, and that he did not call for a rate hearing, as listed on the agenda. He said that he rather would like to have a discussion of the issues.

Ms. Dougherty noted that correspondence from PMSA and the shipping industry are part of the meeting materials, and that she has had discussions with representatives of both the pilots and the shipping industry on the pilots' fiscal issues.

Executive Director Garfinkle gave a brief summary of the staff report that included the statutes and regulations on the rate setting process, 2018 and 2019 SFBP audited income statement data, and monthly gross tonnage and pilotage revenue for 2019 and through August 2020.

Vice President Hayes-White commented that she believed that a solution should be found to address the pilots' pandemic-related fiscal issues, but also is not certain if the solution involves a pilotage rate hearing. Commissioner Prada agreed with Vice President Hayes-White, and added that with the large amount of work involved in a rate hearing, rate hearing work may further delay the Incident Review Committee's work on several outstanding investigations. He also agreed that pilots and shipping industry representatives should meet again to discuss a solution.

Commissioners Nyborg and Carr both commented there is a need to solve the pilots' fiscal issues, they are not sure why discussions between the stakeholders have stalled, and that potentially future discussions could involve the Board in a public forum. Commissioner Carr also commented that as a Board member, he would like to consider all possible avenues to resolve the issue. Port Agent Long commented that a solution will require legislative action, and that it is appropriate to report the pilots' fiscal issues to the Board, since the pilots are a regulated entity and the Board is the regulator.

Mr. Jacob thanked Board staff for providing a staff report for today's meeting, mentioned PMSA's letters submitted to the Board for the meeting, and conveyed the following:

- In context of Executive Director Garfinkle's comments that any stakeholder can petition the Board for a rate hearing, the Port Agent's fiscal reports to the Board, while informative, are not a substitute for a petition to the Board for a rate hearing.

|  |   |                           |
|--|---|---------------------------|
| <p><b>Meeting Date:</b><br/><b>October 7, 2020</b></p> | <p><b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun<br/>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p> | <p><b>Page 3 of 5</b></p> |
|--|---|---------------------------|

- He would like clarification on the Board’s responsibilities if it calls for a rate hearing, a quasi-adjudicative hearing, instead of one or more stakeholders petitioning the Board for a hearing, including the Board’s role to put together the evidence and to lay out the arguments, obtaining expert testimony about what is happening in the industry, and the possibility of the Board hiring a Certified Public Accountant.
- He agrees that the pilots are regulated by the Board.
- There have been negotiations between the stakeholders on resolving the pilots’ pandemic-related fiscal issues. He confirmed that the shipping industry is ready to address the issues, agrees that something must be done. and he looks forward to working on a resolution.

Board Counsel Eagan responded to Commissioner Nyborg and stated that the Board is allowed to initiate a rate hearing and can also limit the scope of the hearing if it chooses to do so. He clarified for Port Agent Long that the Board does not petition itself, but will perform an investigative role in the hearing process by soliciting information from the pilots and the industry regarding the pandemic’s fiscal impacts.

SFBP Business Director Captain McIntyre confirmed for Commissioner Hoppes that the SFBP pays operating costs then distributes excess revenue to pilots, that there are no reserves, and that the SFBP is currently managing revenues slightly differently now due to COVID-19. There was some discussion between Commissioner Hoppes and Port Agent Long about the depth of the revenue shortfall, somewhere between \$6 and \$10 million, that the SFBP prepared forecasts in May reflecting a 20% reduction in revenue this year compared to 2019, and that the SFBP is in the process of updating its projections. Port Agent Long also commented that there will be projected expenses associated with updating the dispatch system.

Executive Director Garfinkle responded to Commissioner Prada’s concern about additional burden to Board staff to conduct a rate hearing, and that it takes effort from all parties involved to conduct the hearing. He summarized a list of tasks Board staff will need to accomplish when conducting a rate hearing. He added that if legislation impacting pilotage revenue is in a budget trailer bill, the change could become effective as early as July 2021, but more likely in January 2022 through the regular legislative process.

Vice President Hayes-White left the meeting at 10:31 a.m.

Mr. Jacob requested a retraction from Port Agent Long regarding his comment made at the August Board meeting that PMSA is not being an honest broker, and stated that he was unsure why this has not happened yet. He noted that if the Board instructed the stakeholders to continue discussions to work on a fiscal solution, the shipping industry would do so.

|  |   |                           |
|--|---|---------------------------|
| <p><b>Meeting Date:</b><br/><b>October 7, 2020</b></p> | <p><b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun<br/>660 Davis Street, San Francisco, CA 94111</b></p> <p><b>BOARD MEETING MINUTES</b></p> | <p><b>Page 4 of 5</b></p> |
|--|---|---------------------------|

Port Agent Long stated that SFBP has no issues with meeting with the shipping industry representatives to discuss a fiscal solution, and encourages Board and CalSTA involvement to aid the stakeholder conversations. He stated that the SFBP has not made a petition for a rate adjustment due to the lack of SFBP staff resources available to work on gathering the information for the hearing. He noted that two prior SFBP rate hearing petitions in the last decade were not successful.

Executive Director Garfinkle commented that Board staff will adjust to the workload if the Board decides to move forward with a rate hearing. He noted that the challenging issue for the Board may be determining how to limit the scope of the hearing.

Board Counsel Eagan responded to Commissioners Hoppes and Carr and noted that President Connolly has already been involved in at least one of the discussions between the stakeholders, and commented that having one commissioner know more than another can cause problems. He added that it is possible the Board could recommend to the Legislature a temporary surcharge instead of a temporary pilotage rate increase.

President Connolly called for a short recess.

**RECESS STARTED:** 10:53 a.m.  
**RETURNED TO OPEN SESSION:** 11:03 a.m.

Mr. Jacob noted that there is an inconsistent interpretation of the regulations between the Board staff report and Board Counsel’s comments, and that he would like clear guidance on the rate hearing process if the Board calls for a rate hearing instead of a stakeholder petition.

President Connolly summarized that there are now two paths to a potential resolution to the pilots’ pandemic fiscal issues:

- The Board calls for a rate hearing and limits the scope of the hearing to pandemic-related fiscal impacts.
- One or more of the stakeholders petition the Board for a rate hearing.

Port Agent Long also requested that Board Counsel Eagan clarify the process and the role of the Board if the Board calls for rate hearing.

Commissioner Nyborg noted that as a Finance Committee member, he has found that having a surcharge is an easy way to measure and track specific revenue. Commissioner Hoppes agreed, and stated the stakeholders should continue negotiations, potentially with the

|  |  |                    |
|--|--|--------------------|
| <b>Meeting Date:</b><br><b>October 7, 2020</b> | <b>Board of Pilot Commissioners for the Bays<br/>of San Francisco, San Pablo, and Suisun<br/>660 Davis Street, San Francisco, CA 94111</b><br><br><b>BOARD MEETING MINUTES</b> | <b>Page 5 of 5</b> |
|--|--|--------------------|

assistance of a couple of Board members so as to not violate the Bagley-Keene Open Meeting Act. Port Agent Long commented that having one rate payer present during fiscal negotiations with the pilots may not be enough, and that the Board should be present during rate discussions between the stakeholders since the Board is the regulator.

**4. Public comment on matters not on the agenda. (President Connolly)**

There were no comments from the public.

**5. Proposals for the next Board meeting agenda. (President Connolly)**

Board Counsel Eagan agreed to draft an agenda item for the October Board meeting so that the Board could continue the discussion of potential ways to facilitate a solution to the pilots' pandemic-related fiscal issues.

**6. Adjournment.**

President Connolly adjourned the meeting at 11:43 a.m.

Submitted by:



---

**Allen Garfinkle**  
**Executive Director**