

ACTION SUMMARY MINUTES
MINUTES OF THE REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
HELD WEDNESDAY, SEPTEMBER 14, 2011

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, September 14, 2011 at 6:00 p.m. in the Board Chambers of the Fresno Metropolitan Flood Control District at 5469 East Olive Avenue; Fresno, California.

DIRECTORS PRESENT: Roy Spina, Chairman
Kendall Groom
Mike Rastegar
Barbara Goodwin
Frank Fowler
Buzz Burleson

DIRECTORS ABSENT: Jennette Williams, Vice-Chairman

**STAFF, CONSULTANTS,
OTHERS PRESENT:**

Bob Van Wyk, General Manager-Secretary
Jerry Lakeman, District Engineer
David Pomaville, Administrative Services Manager
Peter Sanchez, Operations Engineer
Daniel Rourke, Environmental Resources Manager
Kristine Johnson, Staff Analyst
Brandy Swisher, Program Assistant
Karyn Kruser, Staff Analyst
Paul Merrill, Finance Manager
Esther Schwandt, Clerk to the Board

Doug Jensen, General Counsel; Baker, Manock & Jensen
John Smith, Assistant General Counsel;
Baker, Manock & Jensen
Dave Camenson, Legal Counsel

PRESIDING: Director Spina, presiding as Chairman called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

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2. REPORT OF THE GENERAL MANAGER:

Mr. Van Wyk reported on the following: (1) he distributed a draft copy of a letter the District will be sending to the Fresno Bee regarding the Letter of Map Revision (LOMR) on the Fancher Creek Detention Basin, he noted the draft letter has been reviewed by the Community Relations Committee and the Board Chairman; (2) he noted the District has participated in the past in the COG "One Voice" Trip to Washington DC, he stated a kick off meeting will be held on September 28th for the upcoming "One Voice" trip; he stated he would be putting this item on a future Agenda to see if there is any interest on behalf of the Board for the District to again participate in the "One Voice" trip; (3) the California Special Districts Association (CSDA) will be holding their annual Meeting in Monterey on October 10 – 13, 2011; he stated if there are any Board Members interested in attending, please let the Clerk to the Board know; (4) he distributed a letter from Robin L. Coelho addressed to Mr. Lakeman regarding her appreciation for the District and the LOMR; he noted the District has received several calls and emails from constituents expressing their appreciation for the LOMR; and (5) the State Water Resources Control Board is going to be increasing the District's annual fee by a significant amount (35%); he requested Mr. Pomaville review this item with the Board. Mr. Pomaville then reviewed the proposed fee increase and staff's proposal to work through the various District associations such as the Association of California Water Agencies (ACWA), California Special District's Association (CSDA), and the California Stormwater Quality Association (CASQA) to express concerns with respect to the proposed increases.

3. APPROVAL OF MINUTES: Minutes of August 10, 2011 and August 24, 2011

Approved as Recommended

Motion by: Rastegar Second by: Goodwin
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams

4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:

There was no Business or Presentations from the Floor

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5. ADDITIONS TO THE AGENDA:

There were no Additions to the Agenda.

6. POTENTIAL CONFLICTS OF INTEREST:

Director Rastegar noted a potential Conflict of Interest with Agenda Item No. **12.b. Recommendation from Priorities & Programming Committee: (1) Authorization to Add Projects to the 2011-2012 Capital Improvement Program and Defer Other Projects to Future Funding**, and stated he would therefore be abstaining on this item.

7. PUBLIC HEARING:

There were no Public Hearings scheduled.

8. CONSENT CALENDAR:

- a. Authorization to Distribute 2012 Clean Stormwater Grants
- b. Authorization to Exercise Joint Powers Insurance Authority (JPIA) Small Claims Option Property Damage, Liberty Mutual Insurance Company/Ryan Wagner, Drainage Area "CX" (Nees w/o Cedar)
- c. Authorization to Execute Standard Developer Agreement, CUP 2009-255, Drainage Area "BM" (Butler & Temperance Avenues), Willie Bynum, Lidestri Food Inc.
- d. Award of Contracts:
 - (1) Contract "ZZ-16", Paving, Crystal Avenue Cul-de-sac (Crystal s/o Whitesbridge)
 - (2) Contract "CZ-56", Roadway Improvement, Basin "CZ" (Chestnut s/o Nees) and Adoption of Resolution Authorizing Special Transfer of PPDA Funds
- e. Ratification of Expenditures, August 2011

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Approved as Recommended, pulling items 8f and 8g

Motion by: Rastegar Second by: Fowler
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams

f. Report of Public Concerns, August 2011

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

Responding to Director Goodwin's question, Mr. Sanchez stated in this year's Budget, there are funds to retrofit the inlets with a framework and a chain, and staff is attempting to get three contractors working at the same time, to hit the areas where the thefts seem to be occurring the most. Responding to Director Spina's question, Mr. Sanchez stated to fabricate the lid it costs approximately \$120.00. He stated currently staff has one employee working full time to replace the inlets. Mr. Sanchez then reviewed the situation and the steps staff has taken up to this point.

As the report was submitted for informational purposes only, no further action was taken.

g. Review of District Fact Sheets

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

Director Burleson noted on one of the Fact Sheets entitled "Urban Storm Drain Service" the sheet contained past Board Members, and he therefore recommended that the names of the Board of Directors not be listed to avoid this in the future.

As the report was submitted for informational purposes only, no further action was taken.

9. Authorization to Make Nominations of District Representatives on Various Association of California Water Agencies (ACWA) Committees

Recommend the District Board of Directors approve the following nominations to the ACWA Committees:

1. Nominate the District's Legal Counsel, Doug Jensen to the Legal Affairs and State Legislative Committees;
2. Nominate the District's General Manager to the Local Government Committee; and,
3. Should an individual Board Member be interested in serving on a Committee, authorize such nomination.

Director Groom requested nomination to the ACWA Finance Committee.

Approved as Recommended, including the Nomination of Director Groom to the ACWA Finance Committee.

Motion by: Rastegar Second by: Goodwin
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams

10. Authorization to Revise the District's Retirement Plans:

- a. **Adoption of Resolution to Revise the Money Purchase Pension Plan to Permit In-Service Distribution at Age 65 from Mass Mutual Annuity Contracts and Define Plan Trustees**

Recommend the Board of Directors adopt the Resolution attached declaring the General Manager-Secretary and Chairman of the Board of Directors as co-Trustees under the Plan and adopt the resolution attached to the Board Memorandum allowing for in-service distributions at age 65.

Mr. Pomaville distributed a revised Resolution and requested the Board adopt this Resolution in place of the one attached to the Board Memorandum.

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Discussion was carried among Board Members, Legal Counsel and Staff as to the issue of liability by the Trustees.

Mr. Camenson addressed the issue of liability of the Trustees, noting the Trustees are in charge of the assets of the plan, and stated so long as the Trustees act in good faith they have performed their duty and alleviated themselves from personal liability in investments. He stated in the plan documents, ICMA has been delegated with some of the responsibilities that were previously held by the Trustees. He then then reviewed some of the other duties that are placed upon the Trustees.

Mr. Van Wyk noted the Board of Directors adopted a resolution that provides that the District will provide representation in the event a member of the Board or certain Staff Members are held responsible for some action they took within the scope of their duties. Mr. Jensen stated this is different because this is personal fiduciary liability and he therefore stated the real important aspect, is to be sure that the delegation of that responsibility to the investment manager/advisor is in place to the satisfaction of both Trustees.

Mr. Camenson noted there are Errors and Omission Insurance Policies that can be provided to the Trustees. Director Spina requested staff review the District's Errors and Omission Insurance Policies. Mr. Pomaville noted staff believes we have significant coverage; however staff will certainly review the terms of the insurance to the satisfaction of the Trustees.

Responding to Director Burleson's question, Mr. Pomaville stated it would be difficult for the District to be the Trustee and ICMA cannot be the Trustee.

Director Goodwin initiated discussion with respect to liability issues as they relate to loans. Mr. Pomaville noted the District has had some experience with loans, noting ICMA administers the loan documentation, and the funds are taken directly from the employee's checking account. He stated there have been no issues with the loans. Mr. Camenson stated with respect to the loans, he believed that the responsibility should be on ICMA as well.

Responding to Director Spina's question, Mr. Camenson stated he would recommend the Trustees make themselves comfortable with the duties they will be taking; specifically he would recommend that the Trustees review the document that says that ICMA has the responsibility for the investments.

It was decided that staff would provide reports to both Trustees on the plan, to include outstanding loan balances.

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Director Burleson expressed his concern with respect to questions regarding the liability issues.

Approved as Recommended, adopting the amended resolution distributed this evening, Resolution No. 2011-714.

**Motion by: Groom Second by: Goodwin
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler
Noes: Burleson
Abstentions: None
Absentees: Williams**

b. Adoption of Resolution to Define Plan Trustees for the 457 Governmental Deferred Compensation Plan

Recommend the Board of Directors adopt the Resolution attached to the Board Memorandum declaring the General Manager-Secretary and Chairman of the Board of Directors as co-Trustees under the 457 Governmental Deferred Compensation Plan.

Mr. Pomaville distributed a revised Resolution and requested the Board adopt this Resolution in place of the one attached to the Board Memorandum.

Approved as Recommended, adopting the amended resolution distributed this evening, Resolution No. 2011-715.

**Motion by: Rastegar Second by: Fowler
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler
Noes: Burleson
Abstentions: None
Absentees: Williams**

11. Review of Stormwater Quality Annual Management Report

Report submitted for informational purposes only, no action is required by the Board unless specific direction is to be given to staff.

Director Spina stated he was impressed with the detail, and noted a needed correction to Attachment No. 5 “Public Outreach Activity Summary”. Specifically, the years did not show correctly.

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As the report was submitted for informational purposes only, no further action was taken.

12. Board Reports, Workshops, Correspondence and Requests for Future Agenda Items:

- a. Recommendation from Community Relations Committee; Authorization to Print the Summer 2011 Issue of the Flood Line Newsletter**

The Community Relations Committee recommends the District Board of Directors approve publication and distribution of the Summer 2011 issue of the Flood Line newsletter.

Approved as Recommended

**Motion by: Goodwin Second by: Fowler
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams**

Director Rastegar recused himself from the proceedings due to a potential conflict of interest and left the dais at 7:00 pm.

- b. Recommendation from Priorities & Programming Committee:**

- (1) Authorization to Add Projects to 2011-2012 Capital Improvement Program and Defer Other Projects to Future Funding:**

Additions:

- a. Barstow & Fresno Pipeline Modification, Drainage Area "L"**
- b. Burgan Pipeline North of Butler, Drainage Area "BM"**
- c. Valve and Weir, Drainage Area "AB" (Marks & Herndon)**
- d. Pup Creek Outfall Structure to Dry Creek, Drainage Area "3A" (Shaw & Willow)**
- e. Big Dry Creek Detention Basin Fence & Grading (Freeway 168 at Ashlan)**

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- f. Big Dry Creek Diversion Channel Erosion Repair (Auberry Road/Diversion Channel)**
- g. Basin "G" Reconfiguration (Winery & Olive)**

Deferrals:

- a. Basin "B/E" (s/o Gettysburg e/o First) Fence Expansion**
- b. Pump Station Basin "A" (Florence e/o Maple)**
- c. Internal Pipe and Pump Station, Basin "AE" (San Jose & Marty)**
- d. Pump Station Completion, Basin "BC" (Willow & Teague)**
- e. Pump Station, Basin "CW" (Fresno & Nees)**

Recommend the Board of Directors authorize the addition and deferral of the Capital Improvement projects as described in the Board Memorandum.

Director Fowler expressed concern with the projects proposed to be deferred in light of the Five-Year Plan, in particular pump stations, noting he believed an analysis should have been done which shows what projects will now not be getting done with this proposal, and how does this affect the District's Five-Year Plan, noting the substantial changes staff is proposing.

Director Spina stated he shared some of Director Fowler's concerns, noting the proposed amount for Basin "G" is a substantial amount for the basin reconfiguration.

Director Fowler stated he did not have a problem in supporting the proposal; however, he would like to see what drops off or has the potential to drop off the Five-Year Plan due to these changes.

Director Goodwin concurred, and recommended in the future, any long range plans should be looked at by the Committee in terms of potential implications to the Five-Year plan.

Approved as Recommended with the addition that an analysis be brought back to the Board as to the impacts of these changes to the District's Five-Year Plan.

Motion by: Fowler Second by: Groom
Ayes: Spina, Groom, Goodwin, Fowler, Burleson
Noes: None
Abstentions: Rastegar
Absentees: Williams

Director Rastegar returned to the dais at 7:36 pm.

(2) Authorization to Execute Agreement with Fresno Unified School District, Relocation of Portion of Basin "II₁" (Grove e/o Fig)

Recommend the following: (1) The Board authorize acceptance of the Original Replacement or the Alternate Replacement at FUSD's discretion with the conditions identified in the material attached to the Board Memorandum; (2) The Board identify the terms for FUSD to offer to purchase full parcels for basin expansion and the extent of FMFCD participation; and, (3) Authorize FMFCD to participate in condemnation proceedings to the extent FUSD lacks authority for the above recommendation.

The Board then continued discussion in Closed Session as follows:

CLOSED SESSION

The Board convened in Closed Session at 7:45 pm to consider the following:

15. CONFERENCE WITH REAL PROPERTY NEGOTIATIONS:

- a. Pursuant to subdivision (a) of Section 54956.8: Real Estate Negotiations, Relocation of Basin "II₁", Fresno Unified School District (Grove e/o Fig)**

The Board then convened in regular session at 8:09 pm. Mr. Jensen stated no reportable action was taken in Closed Session, and the Board conferred with the Real Property Negotiator.

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The Board then continued with the following item:

(2) Authorization to Execute Agreement with Fresno Unified School District, Relocation of Portion of Basin "II₁" (Grove e/o Fig)

Mr. Smith stated he would recommend the Board stipulate that on item no. 3) if the District concludes that there is enough of an issue for FUSD that the District would proceed with the condemnation proceedings, so long as the District is made whole.

Approved as Recommended, with a stipulation on item no. 3) that if the District concludes there is enough of an issue for FUSD, that the District would proceed with the condemnation proceedings, so long as the District is made whole.

Motion by: Fowler Second by: Rastegar
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams

13. Authorization to Execute Common Use Agreement with Fresno Irrigation District, Storm Drain Crossing of Bullard Canal, Drainage Area "AB" (Herndon & Marks)

Recommend the Board of Directors authorize staff to enter into a Common Use Agreement with FID at Herndon and Marks for operation and maintenance of facilities included in Contract "AB-43".

Discussion was carried among Board Members, Legal Counsel and staff with respect to Fresno Irrigations District's (FID) liability provision which pushes FID's negligence to FMFCD and is not customary or reasonable. Mr. Lakeman stated while staff concurs with Legal Counsel's admonition that the liability provision of the agreement is not appropriate, Staff recommends executing the agreement in order to complete the project, while continuing to pursue improved language in a joint effort with other local agencies that have similar experiences with FID. Staff proposes once the agencies have agreed upon reasonable language, the agencies will jointly request FID improve the agreement language for future projects with all the agencies.

Director Burleson expressed his concern with respect to the liability issue.

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Approved as Recommended

Motion by: Rastegar Second by: Fowler
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler
Noes: Burleson
Abstentions: None
Absentees: Williams

REPORT OF GENERAL COUNSEL

Mr. Jensen reported on Legislative items of interest to the District.

ADJOURNMENT

Adjourned Board Meeting at 8:22 pm.

Motion by: Burleson Second by: Groom
Ayes: Spina, Groom, Rastegar, Goodwin, Fowler, Burleson
Noes: None
Abstentions: None
Absentees: Williams



BOB VAN WYK
GENERAL MANAGER/SECRETARY



DATE