

**ACTION SUMMARY MINUTES**  
**MINUTES OF THE REGULAR MEETING OF**  
**THE BOARD OF DIRECTORS OF THE**  
**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**  
**HELD WEDNESDAY, MAY 9, 2012**

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, May 9, 2012 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:** Jennette Williams, Vice-Chairman  
Kendall Groom  
Mike Rastegar  
Frank Fowler  
Buzz Burleson

**DIRECTORS ABSENT:** Roy Spina, Chairman  
Barbara Goodwin

**STAFF, CONSULTANTS,  
OTHERS PRESENT:** Bob Van Wyk, General Manager-Secretary  
Jerry Lakeman, District Engineer  
Alan Hofmann, Assistant District Engineer/Design  
Peter Sanchez, Operations Engineer  
Karyn Kruser, Staff Analyst  
Andrew Remus, Staff Analyst  
Paul Allen, Facilities Manager  
Esther Schwandt, Clerk to the Board

Ken Price, Assistant General Counsel;  
Baker, Manock & Jensen

Chris Shane, Developer of EL Paseo Shopping Center  
(participating by phone at 6:58 pm)

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

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 2 OF 13**

**2. REPORT OF THE GENERAL MANAGER:**

Mr. Van Wyk reported on the following: (1) the Clovis Mayor's Breakfast is scheduled for tomorrow, Thursday, May 10<sup>th</sup> at 7:00 am at the Clovis Veteran's Memorial District; (2) the State of the City of Fresno Luncheon has been scheduled for Wednesday, May 30<sup>th</sup>; (3) staff and Legal Counsel have scheduled AB 1234 training on June 7<sup>th</sup> at the District office; and (4) he displayed the plant that "Hands-On" had sent thanking the District for their Grant.

**3. APPROVAL OF MINUTES: Minutes of April 25, 2012**

**Approved as Recommended**

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

**4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:**

There was no Business or Presentations from the Floor

**5. ADDITIONS TO THE AGENDA:**

Recommend the Board of Directors add Request for Time Payment of Drainage Fees, Redeemer Church, Drainage Area "I" (Bullard & Fruit); and Abandonment of Annadale Avenue, Brawley to Blythe to the Regular Agenda; and High Speed Rail to the Closed Session.

Mr. Price noted these items came up after the preparation and distribution of the Agenda, therefore pursuant to Government Code Section 54954.2(b)(2) it would require Board action to add them to the Agenda, and determination that there was need for immediate action on the matters, and the need came to the attention of the District subsequent to the Agenda being posted.

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 3 OF 13**

**Approved as Recommended adding: Request for Time Payment of Drainage Fees, Redeemer Church, Drainage Area "I" (Bullard & Fruit) to the Agenda as Item 12b; Abandonment of Annadale Avenue, Brawley to Blythe to the Agenda as Item No. 12c; and High Speed Rail to the Closed Session of the Agenda as Item No. 17.**

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

**6. POTENTIAL CONFLICTS OF INTEREST:**

There were no Conflicts of Interest.

**7. PUBLIC HEARING:**

There were no Public Hearings scheduled.

**8. CONSENT CALENDAR:**

- a. Authorization of District Engineer Travel, National Association of Flood and Stormwater and Management Agencies (NAFSMA) 2012 Annual Meeting, Coeur d'Alene, Idaho, August 13 – 16, 2012
- b. Authorization to Renew Basin Lease Agreement for Agricultural Purposes, Basin "CD" (Dakota & Garfield)
- c. Authorization to Schedule 2012-2013 Budget Workshop and Budget Hearing, and Cancel Regular Board Meeting
- d. Engineer's Report of Construction, April 2012
- e. Report of Developer Agreements, April 2012
- f. Quarterly Real Estate Report, April 2012
- g. Ratification of Expenditures, April 2012

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 4 OF 13**

h. Authorization to Contract for Basin Maintenance Services, ARC Fresno

**Director Fowler requested the Board of Directors pull item 8.i.**

**Approved as Recommended, pulling Agenda item 8.i.**

**Motion by: Groom Second by: Fowler**

**Ayes: Williams, Groom, Rastegar, Fowler, Burleson**

**Noes: None**

**Abstentions: None**

**Absentees: Spina, Goodwin**

i. **Report of Public Concerns, April 2012**

**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 Fowler's question with respect to the several complaints the District has received regarding the lack of maintenance at the Fowler Floodway, Mr. Van Wyk explained the history with respect to this item. In particular, he noted the District held the Floodway as an easement for several years, then once the level of protection was met the District had to relinquish the easement. He noted staff went through a detailed notice period and contacted the underlying fee owner of the property (John Bonadelle Jr.). Mr. Sanchez then reviewed photographs of the property showing the lack of maintenance. He stated the District stopped all the maintenance in November. He stated staff has contacted Mr. Bonadelle as to the situation; however, as of today, nothing has been done. Mr. Sanchez noted Code Enforcement has been contacted, which he believed would enforce action. Responding to Director Williams' question as to the staff's involvement, Mr. Sanchez stated staff has contacted Code Enforcement, the Fire Department, et. al. and will continue to stay in the loop on this situation.

The Board of Directors requested staff report back on the status of this item at the next Board Meeting.

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

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 5 OF 13**

**9. Authorization to Issue Check to Purchase Pup Creek Detention Basin No. 2, Roman Catholic Bishop of Fresno, (s/o Herndon, e/o DeWolf Avenues)**

Recommend the Board of Directors authorize purchase of the subject Pup Creek Detention Basin No. 2 property from the Roman Catholic Bishop of Fresno, in the amount of \$312,270.

Mr. Van Wyk disclosed that he is a member of the Catholic Church that is involved in this transaction; however, he has confirmed with Legal Counsel that he has no conflict of interest in this matter. Mr. Price concurred.

**Approved as Recommended**

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

**10. Adoption of Resolution Rescinding Resolution No. 2012-733, Resolution Authorizing Obtaining a Court Order Permitting Entry on Property Owned by Burlington Northern Santa Fe Railroad and San Joaquin Valley Railroad Company/RailAmerica (APN 451-010-14) to Conduct an Environmental Investigation, Basin "CC" Expansion**

Recommend the Board of Directors adopt the attached revised Resolution, "Resolution Authorizing Obtaining a Court Order Permitting Entry on Property Owned by Burlington Northern Santa Fe Railroad and San Joaquin Valley Railroad Company/RailAmerica (APN 451-010-14) to Conduct an Environmental Investigation", said Resolution rescinding Resolution No. 2012-733.

**Approved as Recommended, Adopting Resolution No. 2012-741**

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

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 6 OF 13**

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

**a. Recommendation of the Policy Committee:**

**(1) Adoption of Proposed Policy – Late Payment of Drainage Fees**

The Policy Committee recommends the Board of Directors adopt the Policy on Late Payment of Drainage Fees as attached to the Board Memorandum.

Mr. Van Wyk reported staff has contacted the Clovis Unified School District (CUSD) as to the fees they owe totaling approximately \$1.5 million. He stated with the adoption of this Policy, he has told CUSD that some of their fees may go back to the old rate, and staff will meet with them to review the net impact on the payment of their fee. He stated CUSD has expressed concern and frustration that the fees had not been paid in the past. He expressed his hope that the dialogue with the CUSD would continue and the fees would be paid.

Director Fowler stated that the specific issue of the CUSD's fees was not addressed at the Committee Meeting. He stated his understanding of the Policy is that the fees would be rolled back only if it was the fault of an agency's (cities, County, and/or District) failure. He stated his understanding the issue with CUSD is that they in the past, refused to pay the fees, but were well aware that they owed the fees. Director Fowler stated he personally would not support given the CUSD a break as the Policy specifically states that if the failure to pay the fee was the fault of the developer/property owner owing the fee then they would pay that fee at today's rates.

Mr. Hofmann stated there are only 2 sites that CUSD is fully delinquent in paying the fee. He stated much of the \$1.5 million is for payments that they have not made on schools that have been in existence for a long time. He stated a lot of what staff is attempting to do with CUSD, is get them to admit that they need to pay their proportionate share of the system.

Responding to Director Williams' question as to why CUSD would think they do not have to pay the fee, Mr. Lakeman stated because they do not take out permits from the local agencies. He stated his belief that State Law states that school districts are obligated to negotiate on local fees.

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 7 OF 13**

Director Fowler expressed his belief that CUSD issue should be discussed separately from this Policy due to its complexities.

**Approved as Recommended**

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

**(2) Juan Gomez Drainage Fee Payment Proposal, CUP 2009-026  
Drainage Area "AS"**

The Policy Committee recommends that the Board of Directors affirm the Drainage Fee of \$82,055 for CUP 2009-026, inclusive of the Drainage Fee for 5.4292 acres of previously developed areas (calculated at the industrial land use rate of earlier permits) and the drainage fee for current development of an additional interim use on 9.6626 acres (calculated at the 2009 rate schedule for open space land use). The Committee also recommends that the Board of Directors authorize a payment agreement with Mr. Gomez containing the following provisions:

- (1) consent to recording a Memorandum of the Agreement disclosing the fee payment agreement;
- (2) consent to recording a lien against the property if Mr. Gomez fails to make any payment on time;
- (3) no interest or administrative charge with respect to payments made on time; and,
- (4) if Mr. Gomez fails to execute an agreement containing the above provisions and to comply therewith, he must pay drainage fees calculated at the rates in effect at the date of payment of those fees.

Mr. Lakeman reviewed the item as outlined in the Board Memorandum, noting the Policy Committee recommends that Mr. Gomez be provided the opportunity to pay his remaining outstanding drainage fee (\$82,055 less \$16,450 Mr. Gomez paid on March 29, 2012) in the amount of \$65,605 in four annual payments of \$16,401.25, each due one year following the adoption of the Late Payment Policy.

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 8 OF 13**

Responding to Director Williams' question, Mr. Van Wyk stated Mr. Gomez did not want to consent to recording a Memorandum of the Agreement disclosing the fee payment agreement, as he did not see this any different than recording a lien against the property.

Responding to Director Burluson's question, Mr. Lakeman stated staff has informed Mr. Gomez of the Committee's recommendation to the Board. Director Burluson and Williams stated they believe the District is being more than fair.

Director Fowler initiated discussion with respect to taking legal action. Mr. Van Wyk stated Mr. Jensen had been requested to prepare statutory guidance on the pros and cons of the placing of a lien for the full Board's consideration this evening. Mr. Price stated Mr. Jensen was at the ACWA Conference, and unfortunately had not communicated that to him, but Legal Counsel can get bring the information to the next Board Meeting.

Responding to Director Williams' question as to recording an exception on the title report as to fees being owed, Mr. Price stated it could be recorded as a public document, but he questioned whether or not it was enforceable.

Discussion was carried among Board Members as to the best way to proceed.

**Board of Directors authorized waiting one year to see if Mr. Gomez makes the next payment before discussing whether to insist on the lien language in the agreement.**

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

**11. Request from El Paseo Shopping Center to Lease Portion of Basin "EH" for Sign (Herndon & Golden State)**

**Recommend the Board of Directors hear Mr. Shane's proposal and direct the District's negotiator Bob Van Wyk as to any action.**

Director Williams reported she had spoken to experts on this matter and reviewed with the Board the information she had obtained as to comparable signage lease rates.

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 9 OF 13**

Director Burleson noted his concern with respect to the District having to pay the relocation expenses, noting his belief that this should be at the developer's expense, not the District. Director Williams noted her belief Legal Counsel would review the terms of the lease to protect the District's interest and against any excess costs in this matter.

Chris Shane, Developer of EL Paseo Shopping Center, addressed the Board (by phone) with respect to El Paseo's proposal. To address the Board's concerns, he stated they would (1) carry liability insurance, specifics of which they are open to and would name the District as an additional insured; and (2) be willing to have a security deposit sufficient to cover costs should it be necessary to remove or replace the sign. He also noted the anchor tenant is Target, they are requesting an initial least of 20 years with four 20 year options to extend, with the options exercisable by the developer, not the District, and at a rate of \$7,500.00 per year.

Responding to Mr. Lakeman's question, Mr. Shane stated if exercising the lease extensions were at the District's option, then they would not be able to proceed with the proposal, it would have to be at the developer's option.

Discussion was carried among Mr. Shane, Board Members and staff as to the potential for other entities to require the relocation of signs, but yet not fully compensating the sign owners, and whether this should be at the District's or developer's expense.

Director Fowler expressed his concerns as to a long term lease. Director Burleson noted he did not believe the small amount the Developer was going to compensate the District warranted the District entering into this type of agreement. He also expressed his concern with respect to the District being responsible for any relocation costs. Director Fowler concurred. Director Rastegar expressed his concern, noting the potential for additional development of Freeway 99 in the future, and his belief the risks to the District could be potentially huge, especially given the small amount the District would be compensated.

Director Williams noted obviously the protections would need to be in the District's favor and her understanding that the options to extend were to be for both parties. Therefore, she stated she did not believe the developer would be willing to move forward under the Board's conditions. Mr. Shane concurred, however he reminded the Board of the benefits of this development to the City and the community, and noted it will be one of the largest retail projects under construction in the western United States.

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 10 OF 13**

Director Groom noted his interest in trying to work something out, insuring of course that the District is protected, as he supported what the proponents were doing.

Director Fowler suggested staff respond in writing to Mr. Shane as to what the District will accept and not accept as discussed above. Should something be able to be worked out from that with Mr. Shane, then staff can bring the item back to the Board. The rest of the Board concurred with that suggestion.

**No action by the Board of Directors was taken**

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

**a. Recommendation of the Policy Committee:**

**(3) Adoption of Amended Policies:**

- (a) Drainage Fees: Administration of Master Plan Engineering Services Fee**
- (b) General Fund/Developer Reimbursement from PPDA, Where State Revolving Loan Fund Exists**

The Policy Committee recommends that the Board approve:

(1) Eliminating the priority of reimbursement of the General Fund for non-cash payments of the Master Plan Engineering Fee from developers; and,

(2) Payment of developer payables in State Revolving Fund Loan drainage areas directly from the Pre-Paid Drainage Assessment Account without the extraordinary accounting effort to transfer these amounts to the General Fund and then loan them back to the Pre-Paid Drainage Assessment Account for such payments.

**Approved as Recommended, Adopting the Amended Policies (1) General Fund/Developer Reimbursement From PPDA, Where State Revolving Loan Fund Exists; and (2) Drainage Fees: Administration of Master Plan Engineering Services Fee as attached to the Board Memorandum**

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 11 OF 13**

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

**12.b.      Request for Time Payment of Drainage Fees, Redeemer Church,  
Drainage Area "I" (Bullard & Fruit)**

Recommend the Board of Directors authorize the use of the time payment provisions for payment of the drainage fee associated with the subject project.

Director Williams suggested waiving the requirement of the lien, since it was a small amount (\$6,218.00).

**Approved as Recommended, Along with Waiving the Requirement of a Lien**

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

**12.c.      Abandonment of Annadale Avenue, Brawley Blythe**

Recommend the Board of Directors approve the granting of an easement over the southerly ten (10) feet of the District property for access with the other arrangements generally as outlined by staff on the attachment to this memorandum.

**Approved as Recommended**

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

**REPORT OF GENERAL COUNSEL**

Mr. Price reviewed the status and the total Legal Fees expended to date by Baker, Manock & Jensen with respect to the issue of the Oversight Board for the Successor Agency of the Redevelopment Agency of the City of Fresno. Mr. Van Wyk reviewed the importance of the item to the District.

**CLOSED SESSION**

Mr. Price noted the Board would not need to meet in Closed Session on Agenda Items No. 15 and No. 16.

15. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION  
Pursuant to Subdivision (a) of Section 54956.9:

**City of Fresno vs. The Oversight Board for the Successor Agency of the Redevelopment Agency of the City of Fresno; et. al. Case No. 34-2012-80001121**

16. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to sub-division (b) of Section 54956.9:

**Initiation of Order Permitting Entry – Petition (Civ. Code Section 1245.010[a]);  
Property Location = APN 451-010-14 Owners BNSF and San Joaquin Valley  
Railroad, Basin “CC” Expansion**

The Board then convened in Closed Session at 7:51 pm to consider the following litigation:

14. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION:  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9:

**Simonian Property, Basin “BL” Expansion**

17. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
Significant exposure to litigation pursuant to subdivision (b) of Section 54956.9(b):

**High Speed Rail**

**FMFCD BOARD MEETING MINUTES  
WEDNESDAY, MAY 9, 2012  
PAGE 13 OF 13**

The Board then convened in regular session at 8:07 pm. Mr. Price stated no reportable action was taken in Closed Session.

**ADJOURNMENT**

**Adjourned Board Meeting at 8:08 pm**

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

  
\_\_\_\_\_  
BOB VAN WYK  
GENERAL MANAGER/SECRETARY

  
\_\_\_\_\_  
DATE