

ACTION SUMMARY MINUTES
MINUTES OF THE REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
HELD WEDNESDAY, NOVEMBER 17, 2010

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, November 17, 2010 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: Kendall Groom, Chairman
Roy Spina, Vice-Chairman
Frank Franco
George Marcus
Jennette Williams
Mike Rastegar

DIRECTORS ABSENT: None

STAFF, CONSULTANTS,
OTHERS PRESENT: Bob Van Wyk, General Manager-Secretary
Jerry Lakeman, District Engineer
Alan Hofmann, Assistant District Engineer/Design
David Pomaville, Administrative Services Manager
Peter Sanchez, Operations Engineer
Frances Lopez, Office Manager
Paul Merrill, Finance Manager
Paul Allen, Facilities Manager
Karyn Kruser, Staff Analyst
Bob Notley, Senior Engineering Technician
Esther Schwandt, Clerk to the Board

Doug Jensen, General Counsel
John Smith, Assistant General Counsel

Caroline Ponte
Robert Palacios, Public Works & Planning Department,
County of Fresno
Scott Anderson, representing Fancher Creek Properties
Gary Giannetta, Civil Engineer
Hugo Kevorkian, BSK Associates
Dave Iadarola, SolarGen USA, LLC
Steve Geil, Economic Development Corporation

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

2. REPORT OF THE GENERAL MANAGER:

Mr. Van Wyk reported on the following: (1) he distributed a copy of a thank you note from Bob Waterston, Mr. Van Wyk noted Mr. Waterston was on the County Board of Supervisors when we started the Academy/McKinley Avenues Fancher Creek Project; he noted Mr. Waterston was expressing his thanks to the District for completion of this project; (2) the District participated in the "Youth in Government" program sponsored by the Optimist Clubs of Fresno; he stated three students came to the District and shadowed staff; (3) a lawsuit has been filed against the District by Brar Construction; Mr. Smith stated he met with staff today on the best way to defend the District in this lawsuit; Mr. Smith stated he would bring a report at the next Board Meeting to discuss the matter in Closed Session; (4) he had Mr. Lakeman show photographs of the Academy/McKinley Avenues Fancher Creek Project; and, (5) he reported Director Welton has submitted his resignation from the District Board to the County of Fresno noting Director Welton had moved out of the District's boundaries; at the request of several of the Board Members, staff will check with Mr. Welton as to his desire for a Board Dinner in his honor to thank him for his service to the District.

3. APPROVAL OF MINUTES: Minutes of October 11, 2010; October 13, 2010; and October 27, 2010

Approved as Recommended

Motion by: Spina **Second by:** Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: Williams and Rastegar abstained on the Minutes of October 11, 2010; and Williams abstained on the Minutes of October 27, 2010
Absentees: None

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:

Recommend the Board add Authorization to Accept an Easement Agreement with the City of Fresno; Fancher Creek Town Center Property, Contract "BO-20" Centex Homes to the Agenda.

Mr. Jensen noted this item 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 it to the Agenda, and determination that there was need for immediate action on this matter, and the need came to the attention of the District subsequent to the Agenda being posted.

Approved as Recommended added as Agenda Item No. 5a

Motion by: Franco Second by: Spina
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

5.a Authorization to Accept an Easement Agreement with the City of Fresno; Fancher Creek Town Center Property, Contract "BO-20" Centex Homes

Recommend the Board of Directors Authorize staff to Accept an Easement Agreement with the City of Fresno, a non-exclusive easement, for Fancher Creek Town Center Property, Contract "BO-20" Centex Homes.

Mr. Lakeman explained the proposed agreement and the location of the project. He stated the need for the easement relates to a proposal for the Fancher Creek Town Center (FCTC) which is going to build a storm drain pipeline from the FCTC to Basin "BO" along the south side of Fancher Creek. Mr. Lakeman stated the pipeline to Basin "BO" is a relatively recent development, in that the FCTC has yet to break ground. He stated at the same time the property in a portion of the area of the proposed pipeline is being developed by Centex Homes. They had already entered into a subdivision agreement and were installing a trail and landscaping improvements. As District staff noticed the trail was being installed where the pipeline would soon be installed, the District asked Centex to stop work. The FCTC needed to put the storm drain in beneath the trail and it was costly and unproductive to install the trail before the storm drain improvements.

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It has taken some time to arrange for City approval and an easement. Mr. Lakeman stated the City is granting an easement because Centex Homes dedicated the area in fee to the City with their final map. The dilemma is that Fancher Creeks Properties and Centex Homes have not been in agreement on various other issues, and now specifically the Developer of Centex Homes is indicating its consent to delay their construction of the trail improvement and allow FCTC to install the storm drain first, but insists on FCTC's participation in the costs for part of the trail improvements currently the sole responsibility of Centex. Fancher Creek Properties has objected, and the District staff is sympathetic to the objection, and District staff has told Centex that we would assure them FCTC would bear costs so that no additional costs would be borne by Centex Homes as a consequence of installing the storm drain pipelines first. However, FCTC wouldn't pay for improvements that Centex Homes was originally responsible to complete. Mr. Lakeman stated the agreement states that we are accepting the easements with the knowledge that these trail improvements will be within the FMFCD easement, but any future improvement beyond those initial improvements are subject to approval by the District. He stated while it is different than our standard language, it was the only deal that was acceptable to the City within a reasonable time line and still being able to control costs.

Mr. Jensen stated we are doing this in the right sequence in that we should start with the pipeline and then build a trail on top of it. He stated there is however a technicality and that is that in the map the land under the pipe is to be dedicated to the City of Fresno, and some question may arise as to when the City of Fresno's dedication becomes effective. He stated that it is clear enough to him that the City is going to end up with the record Title to this property and so having an easement from the City is what we need to proceed.

Mr. Lakeman stated that he has offered to Centex Homes an opportunity to address the District Board of Directors with any shortfall in remediation of the disturbance of the trail area. If Centex is not satisfied, they can come to the Board and voice their concerns and the Board could determine what is fair.

Approved as Recommended

Motion by: Franco Second by: Rastegar
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

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6. POTENTIAL CONFLICTS OF INTEREST:

There were no Conflicts of Interest.

7. PUBLIC HEARING:

There were no Public Hearings scheduled.

8. CONSENT CALENDAR:

- a. Acceptance of Quarterly Investment Report, Third Quarter 2009-2010
- b. Adoption of Resolution Declaring Excess Property, Computer Equipment, Office Supplies and Furniture
- c. Authorization to Exercise First Option Year of Agreement, Annual Membership, Fresno County Economic Development Corporation (EDC)
- d. Authorization to Exercise Option of Contracts:
 - (1) Developed Basin Maintenance, Mow & Edge and Clean Cut, First Option Year
 - (2) Operations Center Landscape, Kovacevich Landscape and Maintenance, Second Option Year
- e. Engineer's Report of Construction, October 2010
- f. Engineer's Report of Projects, October 2010
- g. Ratification of Expenditures, October 2010
- h. Report of Award of Uniform Cost Accounting:
 - (1) Contract "Y-66", Trolley Creek Park Trash Enclosure
 - (2) Annual Hydroseeding Contract of Portion of "3F" (Laverne & Shaw), "3G" (Locan & Barstow), "5F" (Fowler & Vartikian), "AH₂" (Cornelia & Gettysburg), "AW₂" (North & Cherry), "BV" (Shields & Fowler), "EM" (Barstow & Grantland), "EO" (Bryan & Dakota), and Fancher Creek Detention Basin (McKinley & McCall)

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- (3) Contract "AW₁-14", Fence Relocation (Orange & North Avenues)
- i. Report of Pollutant Discharge Incidents, October 2010
- j. Report of Public Concerns, October 2010
- k. Report on Real Estate Activity, October 2010
- l. Submittal of First Quarter Budget Report, Fiscal Year 2010-2011

Approved as Recommended

Motion by: Spina Second by: Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

9. Request from Caroline Ponte for District to Redesign Basin "EJ" (Garfield, n/o Bullard)

Recommend the Board of Directors hear the request of Caroline Ponte and take no further actions pending a proposal from the County of Fresno.

Ms. Caroline Ponte, residing at 6270 N. Garfield Avenue, Fresno CA 93723, addressed the Board with her concerns regarding the traffic problems in her area, and her request to relocate Garfield Avenue westerly onto Basin "EJ" as she outlined in her letter as attached to the Board Memorandum. She stated she believes it may be possible to find funding sources through ARRA and/or other sources.

Mr. Bob Palacios, Public Works & Planning Department, County of Fresno, addressed the Board stating while the concept proposed by Ms. Ponte is interesting, and the County is not opposed to it, there are no current funds to implement this proposal nor are there any anticipated in the near future. He stated he believes the County's lack of opposition to the concept became misinterpreted as a full pledge support from Ms. Ponte. He stated the existing funding for the County roads does not have enough to keep up with the existing roads and so there is certainly not enough money to take on something extra like this. He stated in looking at the map, he also noted that Garfield is the boundary of the City of Fresno sphere of influence, so he stated he contacted the City Engineer to see if they were

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aware of anything, and they were not, and Scott Mosier, the City's Engineer gave him permission to go ahead and give his comments on this. Specifically, Mr. Mosier's comments were that Garfield is a planned collector, and it would have to be assigned as a major street and require potentially a sphere of influence expansion to the relined area, there is an official plan line that would be required in which that process alone would be \$40,000 which the City does not have funding for. Also, the County believes that this could be a temporary situation with all the traffic, as there has been a lot of construction in the area. He believes this will be alleviated to a certain degree once all the construction has been completed, and Garfield is no longer used as a bypass for those construction areas.

Approved as Recommended, no action was taken.

Motion by: Spina Second by: Williams
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

10. Consideration of Request for Drainage Fee Credit for Engineering Services, Agreement No. 1464(D)-"BQ-10"/"BO-16", Fancher Creek Properties (Belmont e/o Fowler)

Recommend the Board of Directors (i) authorize the total engineering credit for Agreement No. 1464(D)-"BQ-10"/"BO-16" in the amount of \$54,716; and, (ii) authorize the amendment of this agreement to reimburse the developer the eligible costs in the total amount of \$1,024,499 from revenue paid to the District from a community facilities district.

Mr. Scott Anderson, representing the Developer of Fancher Creek Properties, stated they agree with Mr. Lakeman's assessment as outlined in the Board Memorandum. He stated the invoicing they pulled together totaled \$328,000 some of which was tied to street plan, sewer, water and all the different City plans that they would be required to put together. He stated their feeling was that a portion of the storm drain was applicable to some of those street, sewer and water plans which they believe in conversations with Mr. Lakeman, Flood Control disregards and so the challenge as Mr. Lakeman has pointed out is the way the record keeping was done, it is hard to factor out exactly the percentage due to the storm drain, specific to the invoicing. He stated they just go by the determination that Flood Control normally makes regarding the invoicing, and he believes this is certainly more than you would normally see from a developer of this nature. He stated normally the District receives a letter from the Civil Engineer stating that the storm drain improvements

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were “X” amount, or the plans involved with the storm drain were “X” amount and there is never any sort of invoicing or back-up, so that was some of the challenges involved in trying to pull this together in a sustained manner whereby you could come up with a typical 7% engineering fee that is normally applied to projects of this nature. He stated with that, assuming they are not able to capture the entire 7% engineering fee, they concur with Mr. Lakeman.

Mr. Gary Giannetta, a Civil Engineer, addressed the Board stating what is normally done, is staff and survey crew work on projects, so they will go out to a job and they may spend so many hours staking a storm drain, they might stake a sewer, etc., so when they get all their information in, what they end up doing is they bill to that job, they don’t say we worked 2.35 hours on this and it isn’t broken down on any of the projects, but what they do is they deal with the percentage of the construction costs as far as what they end up billing the actual developers for the work.

Director Spina stated in the future, he would hope staff would inform the Developer if we get into a conflict on the engineering costs, the District will ask the Developer for receipts.

Not approved as Recommended, the Board of Directors instead: (i) authorized the total engineering credit for Agreement No. 1464(D)-“BQ-10”/“BO-16” at 7% of construction cost or a total of \$67,900 (rounded to nearest \$100); and, (ii) authorized the amendment of this agreement to reimburse the developer the eligible costs in the total amount of \$1,037,683, from revenue paid to the District from a community facilities district.

Motion by: Franco Second by: Spina
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

11. Authorization to Execute Agreement with the Redevelopment Agency of the City of Fresno to Provide Funding for Contract “ZZ-28”

Recommend the Board of Directors authorize staff to execute an agreement with the RDA for a funding contribution in the amount of \$250,000 towards Contract “ZZ-28” with reimbursement from future drainage fee revenue within Drainage Area “ZZ”.

Approved as Recommended

Motion by: Rastegar Second by: Williams
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

12. Authorization to Schedule the Public Hearing for Adoption of the Drainage Fee Update, 2011

Recommend the Board of Directors authorize the noticing of a Public Hearing for amendment of the Schedule of Drainage Fees and Costs in accordance with the Drainage Fee Ordinance.

Approved as Recommended

Motion by: Franco Second by: Spina
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

13. Consideration of Extending Dependent Coverage for Dental and Vision Insurance from Age 25 to Age 26

Recommend the Board of Directors authorize the District to allow dental and vision eligibility for dependent children to match the definition of eligibility for the medical plans.

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Not approved as Recommended, the Board of Directors deferred this matter to be discussed during the 2011-2012 Budget Hearings along with evaluation of the total employee benefits program.

**Motion by: Rastegar Second by: Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None**

14. Discussion Regarding Big Dry Creek Dam Repair Options

Recommend the Board of Directors authorize installation of additional piezometers as determined to be necessary.

Approved as Recommended

**Motion by: Spina Second by: Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None**

15. Presentation by SolarGen USA, LLC, Regarding Use of District Property for Solar Power Generation

Recommend the Board of Directors receive a report from SolarGen USA, LLC and provide direction to staff on future consideration of locating solar energy facilities on District property.

Mr. Dave Iadarola, representing SolarGen USA, LLC addressed the Board with respect to their interest in conducting a pilot project with the District to determine if power production on District land is a viable long-term and mutually beneficial concept. He then briefed the Board on the SolarGen Company, and its vision and concept for the Valley. Mr. Iadarola stated at no cost to the District, SolarGen would evaluate, interconnect and permit the project, noting they would take all the risks insuring the District is not unduly burden. He stated they are proposing to lease a District property for 20 years, thus the District would be creating a revenue stream on property that was previously unproductive.

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Director Spina noted he believed this would not be feasible for the District's active basins, and does not see where the District would have land that they would not need for the next 20 years. He stated while he is not against the proposal, and sees this as where the future is in this State; however, he does not see how it can work with the District properties, as the District needs its land for District purposes.

Mr. Steve Geil, CEO representing the Economic Development Corporation, addressed the Board with the history of where this idea came from, noting three years ago their Board decided to focus on water technology and clean and renewable energy. He stated that led to his meeting representatives of the SolarGen Company. He noted here is a private company willing to put up all the money, and is asking the District for their worst basin they have, noting they are talking about a pilot program that can be monitored to see whether the benefits will be realized. He stated he has the same concerns that staff included in the Board Memorandum. He stated this is being on the forefront of using not only the assets the District has, but the technologies that will be developed out there to actually bring about a better usage of our assets. Mr. Geil stated the reason he supports this proposal, is he believes for Fresno County and what the focus is at the Economic Development Corporation, the fact they are trying to bring more and more water companies here to establish and be on the forefront on water technology, it's a way to bring the District into that picture, be a part of advancing those technologies, and putting us on the map in a different way.

Responding to Director Franco's question as to the next step, Mr. Van Wyk stated staff has identified sites that they believe would be feasible, and he stated the District would need to enter into an agreement with SolarGen holding the land for them, and then identifying whether we will be able to put together a project, then entering into a long term agreement with them. Mr. Van Wyk then reviewed one of the areas staff believes may be a feasible site for a pilot project.

It was the consensus of the Board that staff proceed with discussions with SolarGen on their proposal.

Director Franco left the dais at 7:31 pm.

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16. Authorization to Circulate Draft of Updated District Standard Plans and Specifications

Recommend the Board of Directors review the proposed Standard Plans and Specifications and submit comments or recommendations to staff at the December Board meeting or prior to the January Board Meeting. At that time, the Board of Directors will be requested to adopt the new Standard Plans and Specifications, subject to any modifications which the Board may wish to include. It is further recommended that the Board of Directors authorize circulation of the Draft of the proposed District Standard Plans and Specifications for comment.

Director Franco returned to the dais at 7:33 pm.

Mr. Smith noted given the holidays he would suggest having a longer review time than December 31st.

Mr. Van Wyk stated staff wanted to try and get these adopted by January 1, 2011, but since they would not be making that deadline, extending the time review to January 31, 2011 would be fine.

Approved as Recommended, with Review Time Period to be Determined by Staff.

Motion by: Spina Second by: Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

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

- a. Authorization of District Travel to Participate in Council of Fresno County Governments (COG), One Voice, Washington DC, Director Groom, February 26 – March 3, 2011**

Recommend the Board of Directors authorize sending Director Groom as the District's representative to join the "One Voice" Council of Fresno County Governments (COG) Delegation to Washington DC on February 26 – March 3, 2011. It is further recommended the Board authorize the travel expenses be paid on behalf of Director Groom.

Approved as Recommended

Motion by: Williams Second by: Rastegar
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

- b. Report on Board of Directors Attendance at Various Meetings:**
(1) Director Groom, San Joaquin River Conservancy (SJRC)

Recommend Director Groom give a verbal report of the SJRC meeting held November 10, 2010.

Director Groom gave a verbal report.

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

- (2) Director Welton, Association of Metropolitan Water Agencies (AMWA)**

As Director Welton was unable to attend, Mr. Lakeman will give a verbal report of the AMWA meeting held on November 4, 2010.

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Mr. Lakeman gave a verbal report. Mr. Lakeman stated the majority of the discussion at the AMWA meeting was, "should AMWA terminate its existence" noting the difficulty in getting a quorum.

The Board of Directors Directed Staff to Send a Letter to AMWA Chairman Harry Armstrong indicating that FMFCD concurred with the dissolution of the Association of Metropolitan Water Agencies (AMWA); The Board further recommended and supported the transfer of the entity's assets to the Water Awareness Committee or other similar water related non-profit.

**Motion by: Franco Second by: Spina
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None**

c. Proposal to Assign the Administrative Committee to Review District Compensation and Benefits Programs

Recommend assigning the Administrative Committee review of the District's compensation and benefit programs as outlined in the Board Memorandum.

Discussion was carried among Board Members as to the items listed in the Board Memorandum that should be assigned to the Administrative Committee and those items that should be assigned to the full Board.

The Board of Directors assigned the Administrative Committee to review the District compensation and benefit programs as listed in the Board Memorandum, items: (1) Review the background and structure of the current compensation and benefits program offered by the District; (2) Develop criteria for comparing benefits to other employers in the local market; (4) Review and evaluate long-term liabilities and strategies to manage those liabilities; and (5) Review how information is presented in the budget to more effectively communicate current staffing levels, recommended changes, and the long-term fiscal impact of budget decisions. The Board further directed that item: (3) Evaluating the approach and process used to review executive, technical, and administrative compensation be deferred to the full Board.

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Motion by: Rastegar Second by: Franco
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None

REPORT OF GENERAL COUNSEL

Mr. Jensen stated there were no items to report.

CLOSED SESSION

A Closed Session was not convened.

ADJOURNMENT

Adjourned Board Meeting at 8:19 pm.

Motion by: Franco Second by: Rastegar
Ayes: Groom, Spina, Franco, Marcus, Williams, Rastegar
Noes: None
Abstentions: None
Absentees: None



BOB VAN WYK
GENERAL MANAGER/SECRETARY



DATE