

ACTION SUMMARY MINUTES
MINUTES OF THE REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
HELD WEDNESDAY, SEPTEMBER 28, 2011

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, September 28, 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
Jennette Williams, Vice-Chairman
Kendall Groom
Mike Rastegar
Barbara Goodwin
Frank Fowler
Buzz Burleson

DIRECTORS ABSENT: None

STAFF, CONSULTANTS,

OTHERS PRESENT: Bob Van Wyk, General Manager-Secretary
Jerry Lakeman, District Engineer
Alan Hofmann, Assistant District Engineer/Design
Dave Pomaville, Administrative Services Manager
Peter Sanchez, Operations Engineer
Paul Merrill, Finance Manager
Paul Allen, Facilities Manager
Esther Schwandt, Clerk to the Board

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

Karry Wendel, Clean Cut Landscape
Mike McKinney, Mow-N-Edge Corporation

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

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2. REPORT OF THE GENERAL MANAGER:

Mr. Van Wyk reported on the following: (1) the Economic Development Corporation (EDC) would be having their 30th Anniversary Luncheon Meeting on October 27th; he stated the Clerk to the Board would be contacting the Board as to their availability to attend; (2) the District is on the recommended list for receipt of Department of Water Resources, Draft Funding Recommendations for the Proposition 1E Round 1 Stormwater Flood Management Grant Program; He noted staff had received support from the City of Clovis Mayor's Office and City staff, and he also gave credit to Harry Armstrong, David Orth with Kings River Conservation District and Gary Serrato with the Fresno Irrigation District noting their support of the project; and he requested Mr. Lakeman give additional details. Mr. Lakeman noted the total grant amount is \$4.4 million and is 50% State Grant Funds and 50% Local Funds; He stated the District spent \$1.7 million already on eligible work within that Grant; Mr. Lakeman noted there is a great deal of work still to be done as the project is just starting; Director Spina congratulated staff on the success of making it to this round; and (3) he believes on October 13th the District will receive it's Letter of Map Revision (LOMR) from Federal Emergency Management Agency (FEMA).

3. APPROVAL OF MINUTES: No Minutes were submitted.

4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:

There was no Business or Presentations from the Floor

5. ADDITIONS TO THE AGENDA:

Mr. Van Wyk noted there are two recommended Additions to the Agenda.

Recommend the Board add Adoption of Resolution Authorizing the General Manager to Open Bank of the West Account for Fresno Metropolitan Flood Control District Money Purchase Pension Plan.

Mr. Van Wyk 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.

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Approved as Recommended, added as Agenda Item No. 5a

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

5.a. Adoption of Resolution Authorizing the General Manager to Open Bank of the West Account for Fresno Metropolitan Flood Control District Money Purchase Pension Plan

Recommend the Board of Directors authorize the General Manager to open an account with Bank of the West for the Fresno Metropolitan Flood Control District Money Purchase Pension by adopting the Resolution attached to the Board Memorandum.

Director Spina noted the Resolution needed to be amended to show his full name, Roy D. Spina, Jr.

Approved as Recommended, Adopting Resolution No. 2011-716

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

Recommend the Board add CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION: Pursuant to subdivision (a) of Section 54956.9: Brar Construction and Development, Inc. Regarding Contract "RR-61" vs. FMFCD to Closed Session.

Mr. Van Wyk 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 to Closed Session as Agenda Item No. 15

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

6. POTENTIAL CONFLICTS OF INTEREST:

Director Rastegar noted a potential Conflict of Interest with Agenda Item No. 12. **Authorization to Add Projects to 2011-2012 Capital Improvement Program a. Caltrans Basin Connection, Drainage Area "II₁" (Grove e/o Fig)** and stated he would therefore be abstaining on this item.

7. PUBLIC HEARING:

There were no Public Hearings scheduled.

8. CONSENT CALENDAR:

- a. Report of Pollutant Discharge Incidents, August 2011
- b. Award of Contract "AB-43", Pipeline and Manhole, (Herndon Avenue between Marks & Valentine)
- c. Authorization to Enter Into Phased Fee Agreement, Drainage Area "XX", Conditional Use Permit No. 2010-109, Fresno Rescue Mission (Parkway & Clinton)

Approved as Recommended

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

9. Report on Capital Improvement Projects' Change Impact on District's Five-Year Plan

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

Responding to the Board's concerns for understanding the priority of District projects, Mr. Van Wyk stated he would have staff identify their criteria for establishing priority projects, and he would have staff identify the District's specific priority projects for the Board.

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

10. Authorization of Contract "BG-11", Inlet and Lateral, Allocation of PPDA Funding and Adoption of Resolution Authorizing Special Transfer of PPDA Funds, (Church & Minnewawa)

Recommend the Board of Directors authorize the storm drain project (Contract BG-11") in Church Avenue as shown on Exhibit No. 1 with funding from the Drainage Area "BG" PPDA Trust Account to the Capital Projects Fund.

Approved as Recommended, Adopting Resolution No. 2011-717

Motion by: Goodwin Second by: Fowler

Ayes: Spina, Williams, Groom, Rastegar, Goodwin, Fowler, Burleson

Noes: None

Abstentions: None

Absentees: None

11. Award of Undeveloped Basin Maintenance Contracts, Units A and B for Maintenance of Undeveloped Retention and Detention Basin Sites

Recommend the Board of Directors authorize staff to enter into contracts with Mow-N-Edge for Unit A and Unit B. Said Contracts are to include an initial term of twelve months with two one-year extension options.

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Mr. Karry Wendel, representing Clean Cut Landscape, addressed the Board noting they were second low bidder on the contracts. He stated a week later, the low bidder informed the District that the pricing they had submitted was not accurate and requested to increase their bid price. He stated at that point, from what he knows of State Contract Law and the Business and Profession Code, the bid was changed after the bid opening and he believes that effectively renders the bids non-responsive. He stated subsequently, the low bidder agreed to stand by the original bid. Also, he stated in the summary of the companies as shown in the Board Memorandum, District staff shows that Clean Cut Landscape is the only company that is financially strong, has sufficient resources, manpower and skill to perform the required services.

Mr. Van Wyk stated Mow-N-Edge Corporation submitted letters to the District, informing the District of errors in their bids and requesting amendments. Mr. Van Wyk stated staff informed Mow-N-Edge that the District would not accept changes in the bids; that Mow-N-Edge either stands by its bid, or they forfeit their bid. He stated subsequently Mow-N-Edge submitted a letter stating they would stand by their original prices as listed in the bid packet.

Mr. Price concurred, noting the District did not give any of the bidders an opportunity to change their bid, it was either stand by the bid or the bid would be rejected. He stated at that point, simply because the bidder says I made a mistake, does not render their bid inoperable. Mr. Price stated since the bidder has stated he will stand by his bid, he believes the bid is valid.

Discussion was carried among Board Members, Legal Counsel and staff with respect to the errors in the bid.

Director Goodwin requested in the future under the discussion section of the Board Memorandum, she would like the narrative of each company to follow the process the District uses to evaluate the proposals. Specifically, under each company's narrative, it would include information as to: (1) ability to perform, (2) quality of performance, (3) size of workforce, etc.

Mr. Mike McKinney, Mow-N-Edge Corporation, addressed the Board noting since 1989, they have done work for the District. He stated they have performed the undeveloped basin maintenance contract in the past for the District, so they are very familiar with the nature and scope of the work. He noted while they did have a minor error in their bid, he believed it was a fairly insignificant amount. He stated they are not currently staffed; however they are in the process of interviewing and will have adequate staff in place to perform the work.

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Discussion was carried among Board Members, Legal Counsel, staff and Mr. McKinney with respect to staffing issues for Mow-N-Edge Corporation.

Approved as Recommended

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

12. Authorization to Add Projects to 2011-2012 Capital Improvement Program:

b. Basin "CX", Basin Mowstrip (Nees w/o Cedar)

Recommend the Board of Directors authorize the addition of Basin "CX", Basin Mowstrip (Nees w/o Cedar) Capital Improvement project as described in the Board Memorandum.

Mr. Hofmann distributed an updated Project Summary.

Approved as Recommended

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

Director Rastegar recused himself from the proceedings due to a potential conflict of interest and left the dais at 7:09 pm.

a. Caltrans Basin Connection, Drainage Area "II₁" (Grove e/o Fig)

Recommend the Board of Directors authorize the addition of Caltrans Basin Connection, Drainage Area "II₁" (Grove e/o Fig) Capital Improvement project as described in the Board Memorandum.

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Approved as Recommended

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

Director Rastegar returned to the dais at 7:14 pm.

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

No items were submitted.

REPORT OF GENERAL COUNSEL

Messrs. Smith and Lakeman reported on a meeting the District held with the Fresno Unified School District on the relocation of Basin "II₁" and gave the Board the status of this item.

CLOSED SESSION

The Board then convened in Closed Session at 7:16 pm to consider the following litigation:

15. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION:

Pursuant to subdivision (a) of Section 54956.9: Brar Construction and Development, Inc. Regarding Contract "RR-61" vs. FMFCD

The Board then reconvened in regular session at 7:33 pm. Mr. Smith stated no reportable action was taken in Closed Session.

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ADJOURNMENT

Adjourned Board Meeting at 7:33 pm.

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



BOB VAN WYK
GENERAL MANAGER/SECRETARY



DATE