

**ACTION SUMMARY MINUTES**  
**MINUTES OF THE REGULAR MEETING OF**  
**THE BOARD OF DIRECTORS OF THE**  
**FRESNO METROPOLITAN FLOOD CONTROL DISTRICT**  
**HELD WEDNESDAY, MARCH 28, 2012**

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, March 28, 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:** Roy Spina, Chairman  
Kendall Groom  
Mike Rastegar  
Frank Fowler

**DIRECTORS ABSENT:** Jennette Williams, Vice-Chairman  
Barbara Goodwin  
Buzz Burleson

**STAFF, CONSULTANTS,  
OTHERS PRESENT:**

Bob Van Wyk, General Manager-Secretary  
Jerry Lakeman, District Engineer  
Alan Hofmann, Assistant District Engineer/Design  
Peter Sanchez, Operations Engineer  
Paul Merrill, Finance Manager  
Karyn Kruser, Staff Analyst  
Daniel Rourke, Environmental Resources Manager  
Paul Allen, Construction Manager  
Esther Schwandt, Clerk to the Board

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

Mr. & Mrs. Juan Gomez

**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) he distributed a Resolution that staff is recommending the Board adopt with respect to Agenda Item no. 8a; (2) he distributed the District's Tentative 2012-2013 Budget and Board Meeting Schedule; (3) he distributed a copy of the California Water Boards State Water Resources Control Board letter dated March 27, 2012 addressed to the General Manager; he noted this was significant as it was the last billing for the Clean Water State Revolving Fund Financing Agreement; Mr. Van Wyk stated this upcoming 2012-2013 Budget will be the first time since he has been General Manager that payment of this loan will no longer have to be included; (4) he and Ken Price will be participating in the April 4<sup>th</sup> 10:00 am Webinar by the California Special District Association regarding impact of Redevelopment Agency Dissolutions on Special Districts; (5) Tina Sumner, Director of the Community & Economic Development, Clovis Community Development Agency has informed the District that the District will have a seat on their Oversight Board; Mr. Van Wyk noted he would bring the item of an appointment to this Board at the next Board Meeting; and (6) he asked Mr. Lakeman to brief the Board on the County Board of Supervisors' Hearing on the Annadale Avenue Abandonment. Mr. Lakeman reported the County Board of Supervisors heard the item yesterday afternoon; he noted the County staff made their presentation, and then Mr. Samuelson addressed the Board with respect to his concerns. He stated the Board of Supervisors requested the District Board attempt to resolve the property owners' issues and bring a recommendation back to their Board at their April 24<sup>th</sup> County Board Meeting. Mr. Lakeman stated staff recommended the Board designate an Ad Hoc Committee to review the issues and give staff a specific recommendation to take to the District's April 11<sup>th</sup> Board Meeting, thus having a recommendation for the County Board of Supervisors for their April 24<sup>th</sup> meeting. Director Fowler expressed concern with respect to the Board of Supervisor's request, noting the District has no power under the Streets & Highways Code to take action on the abandonment or force a property owner to grant an easement. Director Rastegar concurred with Director Fowler.

Chairman Spina designated an Ad Hoc Committee appointing Directors Fowler, Spina, and Rastegar to the Committee.

**3. APPROVAL OF MINUTES:** No Minutes were submitted.

**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:**

There were no Conflicts of Interest.

**7. PUBLIC HEARING:**

There were no Public Hearings scheduled.

**8. CONSENT CALENDAR:**

- a. Adoption of Resolution Amending Resolution No. 2012-728 to Transfer Drainage Area "CC" Construction Funds and Special Reserve Funds to the Drainage Area "CC" PPDA Fund
- b. Authorization to Execute Standard Reimbursement Agreement, City of Fresno, Contract "XX-35" (McKinley & Marks) and (McKinley & Hughes)
- c. Report of Pollutant Discharge Incidents, February 2012
- d. Adoption of Resolution Declaring One ¾ Ton Truck as Excess Property and Authorizing its Disposal Through eBay, and Authorization to Purchase Replacement Vehicle Through the State Procurement Contract

**Approved as Recommended**

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

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**9. Authorization to Negotiate Sign Lease to El Paseo Shopping Center, Basin "EH" (Herndon & Golden State)**

Recommend the Board of Directors approve placement of a sign at the southwest corner of Basin "EH" subject to negotiating suitable terms.

Director Rastegar raised concerns with respect to the District tying up that property for a long term lease and the appropriate rate to charge for the lease. Discussion was carried among Board Members, Legal Counsel and staff as to the appropriate terms of the lease. Mr. Lakeman noted this item would be brought back to the Board for final approval; however, the proponents were requesting the Board weigh in as to whether they were interested in the District negotiating with them in the placement of this sign.

**Approved as Recommended, with Notice to the Proponents that the Board does have Concerns as to a Long Term Lease**

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

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

**a. Recommendation of the Policy Committee; Juan Gomez Drainage Fee Payment Proposal, CUP 2009-026 Drainage Area "AS"**

The Policy Committee recommends:

- (1) A Drainage Fee of \$82,055 for CUP 2009-026, inclusive of the drainage fee for 5,4292 acres of previously developed areas and the drainage fee for current development of an additional interim use on 9.6626 acres;
- (2) The allowance of the fee payment under the interest provisions for time payment pursuant to the District's Drainage Fees Ordinance; and

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- (3) Securitization of the time payments with a Deed of Trust on the property or other security in substance and form suitable to both the General Manager-Secretary and Legal Counsel of the District.

Mr. Lakeman noted one correction to the recommendation item no. 2), as it was not clear to staff what the Committee wanted to do with respect to the Gomez issue as to whether or not to charge interest.

Director Fowler noted his belief the Committee agreed that if it was the fault of a public agency that the fee was not imposed, then the property owner would not be charged interest or the new fee if they agree to pay within the 6 month grace period.

Mr. Lakeman and Mr. Van Wyk reported staff and Legal Counsel met with Mr. and Mrs. Gomez on Monday, March 26, 2012. At that meeting, Mr. and Mrs. Gomez indicated that: (1) they are unwilling to provide a security or have a lien placed on their property; (2) they do not want to pay the fees until they receive drainage service; and (3) they expressed their concern that there are a number of properties in the area of this property that had activity, that should have had permits and should have paid drainage fees.

Mr. Juan Gomez addressed the Board stating his biggest concern is the request of the District for a lien, noting he can guarantee that the fees will be paid long before there is service to that area. He noted they are currently not developing anything on that site, while he appreciates the District working with them on a time payment option, and has no problem with paying the fee with or without interest, they would not consent to a lien on the property.

Director Spina noted Mr. Gomez was putting the District in a tough situation, and the District is not in the position to make that exception.

Mr. Gomez reiterated his offer to pay even the \$172,000 now, so long as he receives service to that property. Mr. Gomez noted they were aware that the fees were not paid, but at the time they were intending on developing the land, now they are at the point of not developing anything, but are just using the land.

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Director Rastegar noted he did not believe this issue was going to be resolved this evening, and perhaps additional discussion would be needed. Director Fowler noted his belief the other two Committee Members should be present before the Board takes an action. Director Fowler also noted this is a much bigger issue as there are approximately over 200 properties (approximately \$4.5 million) who have not paid fees. He stated the District at this point has no plan on how to address those properties. He stated the Board may need to consider how they want to enforce the District's Ordinance and until that issue is decided then he is not sure how we want to proceed with the Gomez issue.

Mr. Lakeman noted there is a standing agreement between the District and Mr. Gomez, so that once a Policy is adopted the Board has something unique to this property and that is a contract.

Director Spina suggested letting the Gomez issue go, until the Committee has made a recommendation to the Board on a Policy regarding Payment of Late Drainage Fees, and the Board has taken action on that Policy. Director Fowler stated since Mr. Gomez is not agreeing to item 3 of the Policy Committee's recommendation, regarding a Deed of Trust placed on his property, then he would prefer this item be deferred until the other Committee Members are in attendance at a subsequent Board Meeting before a determination is made.

**Not Approved as Recommended, No Action was Taken.**

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

**REPORT OF GENERAL COUNSEL**

Mr. Jensen reported on Legislative items of interest to the District. Mr. Van Wyk noted there is a lot of legislation with respect to the dissolution of Redevelopment Agencies and the Oversight Boards, and noted this will be reflected in some of Legal Counsel's bills. He noted Mr. Jensen is also on the ACWA State Legislative Committee. Mr. Jensen noted he divides his expenses with the District and other agencies he represents. Director Fowler requested Staff and Legal Counsel watch Governor Brown's proposal to write a re-definition of mandates in order to prevent the State paying local agencies for mandates.

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Mr. Smith reported he was retiring. He stated he has appreciated the opportunity to serve the District and expressed his thanks to Doug Jensen. Mr. Jensen thanked and expressed his appreciation for Mr. Smith and his 36 years of service. Mr. Smith thanked Board Members, former Board Members and staff, and expressed his respect to Mr. Harrison, noting Mr. Harrison had a vision and implemented that vision over many years for the District. He noted he greatly respected Mr. Harrison. Director Spina thanked Mr. Smith for his many years of service to the District and the good job he has done, and wished him well on his retirement. Mr. Van Wyk noted Mr. Smith's loyalty and dedication to the District.

**CLOSED SESSION**

A Closed Session was not convened.

**ADJOURNMENT**

**Adjourned Board Meeting at 7:05 pm**

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

*Bob Van Wyk*  
\_\_\_\_\_  
BOB VAN WYK  
GENERAL MANAGER/SECRETARY

*April 6, 2012*  
\_\_\_\_\_  
DATE