

ACTION SUMMARY MINUTES
MINUTES OF THE REGULAR MEETING OF
THE BOARD OF DIRECTORS OF THE
FRESNO METROPOLITAN FLOOD CONTROL DISTRICT
HELD WEDNESDAY, OCTOBER 9, 2013

Pursuant to notice, the Regular Meeting of the Board of Directors of the Fresno Metropolitan Flood Control District was held Wednesday, October 9, 2013 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, Chairman
Mike Rastegar, Vice-Chairman
Kendall Groom
Barbara Goodwin
Frank Fowler
Buzz Burleson

DIRECTORS ABSENT: Roy Spina

**STAFF, CONSULTANTS,
OTHERS PRESENT:**

Bob Van Wyk, General Manager
Jerry Lakeman, District Engineer
Alan Hofmann, Assistant District Engineer/Design
Peter Sanchez, Operations Engineer
Frances Lopez, Office Manager
Karyn Kruser, Staff Analyst
Paul Merrill, Finance Manager
Daniel Rourke, Environmental Resources Manager
Gary Newmark, Staff Analyst
Esther Schwandt, Clerk to the Board

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

Greg Eaton, President, Eaton & Eaton Insurance Brokers

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

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 2 OF 9**

2. REPORT OF THE GENERAL MANAGER:

Mr. Van Wyk reported on the following: (1) he distributed a spreadsheet which is a replacement page for Agenda Item No. 8g; (2) he distributed a meeting notice sent by the Department of Water Resources regarding their 2013 Preseason Flood Coordination Meeting; he stated the meeting was held at the District's offices; (3) he distributed a letter from the Department of Water Resources (DWR) officially notifying the District of DWR's commitment of \$6,891,010 in Proposition 1E Grant funds for the District's Dry Creek Flood Control Improvement Project; and (4) he distributed a letter from a constituent, Ms. Carole Laval a neighboring resident at Basin "I" (Bullard & Teilman) expressing her concern with respect to unleashed dogs in the District's basin; Mr. Van Wyk stated staff has addressed Ms. Laval's concerns and will continue to follow-up on the issues she has raised.

Mr. Lakeman addressed the Board with respect to staff's proposed changes to the Proposition 1E Grant District's work plan. Mr. Lakeman stated staff intends on amending the District's work plan by November 19, 2013 which is DWR's deadline. He stated in particular, when staff submitted the work plan to DWR, the land costs were inadvertently duplicated. Mr. Lakeman then reviewed the proposed changes staff is reviewing. Director Goodwin expressed concern with respect to DWR allowing some, but maybe not all of the modifications as proposed by staff. She cautioned staff that they be sure the amended portions are absolutely necessary to keep the project moving, and that staff have a backup plan should the entire grant not be funded. Mr. Lakeman noted staff hopes to capture all of the grant funds, but he concurred that it is a risk when modifying the work plan. Director Fowler expressed his concern that DWR may not accept the changes, and cautioned staff not to lower their assumptions on the work as the bids are coming in higher. Responding to Director Williams' question, Mr. Lakeman stated staff would bring back the item to either the second October Board Meeting or the only November Board Meeting.

**3. APPROVAL OF MINUTES: Meeting of September 11, 2013 and
September 12, 2013**

Approved as Recommended

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

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 3 OF 9**

4. BUSINESS AND PRESENTATIONS FROM THE FLOOR:

There was no Business or Presentations from the Floor

5. ADDITIONS TO THE AGENDA:

There were no Additions to the Agenda.

6. POTENTIAL CONFLICTS OF INTEREST:

Director Goodwin noted a potential Conflict of Interest with Agenda Item No. **12. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION; Significant exposure to litigation pursuant to sub-division (b) of Gov. Code Section 54956.9: (Number of Potential Cases: 1)**, and stated she would therefore be abstaining on this item.

7. PUBLIC HEARING:

There were no Public Hearings scheduled.

8. CONSENT CALENDAR:

- a. Adoption of Resolution of Special Transfer of PPDA Funds, Inlet Retrofit Contracts, Various Drainage Areas
- b. Authorization to Exercise Second One Year Option, Undeveloped Retention and Detention Basin Maintenance Contracts, Units A & B with Mow-N-Edge
- c. Authorization to Exercise Joint Powers Insurance Authority (JPIA) Small Claims Option, Property Damage, Martinez Ranches, Inc., Drainage Area "II₁" (Cherry & Belgravia)
- d. Award of Contracts:
 - (1) Contract "BX-35", Storm Drain Facilities (Nees & Temperance)
 - (2) Contract "RR-74" Storm Drain Facilities (Franklin & Broadway)
- e. Cancellation of Regular Board Meetings Scheduled for November and December 2013

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 4 OF 9**

- f. Fourth Quarter Budget Reports:
 - (1) Submittal of Fourth Quarter Budget Report, Fiscal Year 2012-2013
 - (2) Submittal of Fourth Quarter Close-Out Report, Fiscal Year 2012-2013
- g. Ratification of Expenditures, Report of Fund Balances and Activity, August 2013
- h. Report of Pollutant Discharge Incidents, August 2013
- i. Report of Public Concerns, September 2013
- j. Report on Drainage Fee Time Payment Agreements (July-September)
- k. Report on Joint Powers Insurance Authority (JPIA) Worker's Compensation Program Risk Assessment of District Facilities and Operations
- m. Authorization to Extend Janitorial Service Contract with Commercial Cleaning Systems for Two Years, District Operations Center

Director Burleson requested Agenda Item 8l be pulled.

Approved as Recommended, with the Exception of Agenda Item 8l which was pulled.

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

l. Report on Grant and Funding Reimbursement

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 Burleson's question, Mr. Merrill stated since the writing of this Board Memorandum, the California High Speed Rail Authority has now paid the District's invoices in the amount \$30,375.48.

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 5 OF 9**

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

9. Direction to Staff Regarding Placement of District's Dam Failure Insurance

Based on our analysis to date, staff proposes the Board consider one of the following two recommendations:

- (1) No longer place dam failure insurance on any project features, or
- (2) Maintain dam failure insurance on four of the dams at the current coverage and higher deductible excluding Alluvial Drain Detention Basin and Redbank Creek Detention Basin.

Mr. Van Wyk noted Legal Counsel's Memorandum dated September 27, 2013 regarding Dam Failure Liability has been distributed to the Board today. Mr. Price then reviewed Legal Counsel's opinion as outlined in their Memorandum.

Responding to Director Williams' question, Mr. Price stated there is no legal requirement either under Federal or State law that requires the District to carry dam failure insurance. He noted many but not all Special Districts do.

Mr. Greg Eaton, President, Eaton & Eaton Insurance Brokers addressed the Board with respect to the subject of non-admitted carriers in California; his belief that while the District is not required to have dam failure insurance, it does not preclude whether or not the District would be held liable for the resulting damages should an event occur; Eaton & Eaton's dam failure insurance proposal; and, defense costs covered underneath their policy.

Discussion was carried among Board Members and Staff as to the analysis of the low probability of a significant event; the District's policy as to maintenance and inspection of the dams, resulting in the dams being in good condition; the two options as outlined in the Board Memorandum; the small amount of coverage the dam failure insurance would provide to the District; the design of the dams and how unlikely they are to overflow; the possibility of some design faults such as the toe damage which will be repaired; the reasons in the past for placing the dam failure insurance and the significance of no longer carrying dam failure insurance; what some of the other JPIA agencies are doing with respect to dam failure insurance; the current coverage is set to expire October 13th; the risk analysis and what the defense costs could potentially be; the Board's fiduciary responsibilities; the reason staff is proposing to only cover the four Dams; and, the deductible options.

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 6 OF 9**

Director Williams noted her preference to not carry the dam failure insurance; however, at a minimum she would recommend increasing the deductible to minimize the District's costs. Director Fowler concurred noting his belief the dams are not operated to full capacity and are not used to recharge/store water; however, he believed there was a public perception that would tend to make him lean towards Option 2 of carrying the dam failure insurance of only four of the dams and raising the deductible even though he does not believe realistically the District needs the dam failure insurance. Director Rastegar expressed his belief that he is unsure why the District would carry dam failure insurance based on the current available information. Director Groom stated he was leaning towards the District self-insuring; Director Goodwin stated she would lean at this moment towards Option 2; and, Director Burleson stated he was willing to proceed with self-insurance.

Mr. Van Wyk stated his recommendation to the Board of Directors, if he only had one to give the Board would be Option Number (1) No Longer Place Dam Failure Insurance on any Project Features.

Approved as to Recommendation Number (1) Directed Staff to no Longer Place the Dam Failure Insurance on any Project Features

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

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

- a. Report on Board of Directors Attendance at Various Meetings, Oversight Board for the Successor Agency of the Clovis Redevelopment Agency, Director Spina**

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

The Clerk to the Board stated the written report would serve as Director Spina's report due to his absence this evening.

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 7 OF 9**

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

b. Recommendations from the Administrative Committee:

(1) Authorization to Modify the Capital Expenditures, 2013-2014 Budget

Recommend the Board of Directors review the proposed modification to the current Capital Expenditures and approve the modification of the 2013-2014 Budget to include the expenditures identified on Attachment No. 1 and increase the revenue by an equal amount.

Approved as Recommended

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

(2) Authorization to Amend Authorized Position Schedule:

(a) Accounting: Convert Accounting Technician Position to Accountant

Recommend the Board of Directors amend the District's 2013-2014 authorized position schedule to convert one Accounting Technician III position to Accountant I in the Accounting Department.

Approved as Recommended

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

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 8 OF 9**

(b) Rural Streams: Require Registered Civil Engineer for Rural Streams Program Manager

The Administrative Committee recommends the Board of Directors amend the District's 2013-2014 authorized position schedule to require license as a Registered Civil Engineer for the Rural Steams Program Manager position.

Approved as Recommended

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

(3) Recommendation to Amend the District Human Resources Policies and Procedures Section HR-314 to Include Clerk to the Board II in Management/Administrative Leave

The Administrative Committee recommends the Board of Directors amend the District's Human Resources Policies and Procedures HR-314 Management and Administrative Leave to include the Clerk to the Board II receive five (5) days of Management Leave annually.

Approved as Recommended

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

REPORT OF GENERAL COUNSEL

Mr. Jensen stated there were no items to report.

Director Goodwin recused herself from the proceedings due to a potential conflict of interest and left the dais at 7:38 pm.

**FMFCD BOARD MEETING MINUTES
WEDNESDAY, OCTOBER 9, 2013
PAGE 9 OF 9**

CLOSED SESSION

The Board then convened in Closed Session at 7:38 pm to consider the following litigation:

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

(Number of Potential Cases: 1)

The Board then convened in Closed Session at 8:15 pm to consider the following litigation:

- 13. PERFORMANCE EVALUATION**
Review of General Manager/Secretary pursuant to Government Code §54957.0

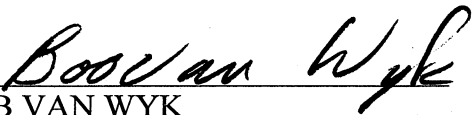
Director Goodwin returned to the dais at 8:15 pm.

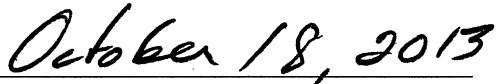
The Board then convened in regular session at 8:41 pm. Chairman Williams stated no reportable action was taken in Closed Session with respect to Agenda Item No. 12, and the Board conducted the Evaluation of the General Manager in Closed Session with respect to Agenda Item No. 13.

ADJOURNMENT

Adjourned Board Meeting at 8:42 pm

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



BOB VAN WYK
GENERAL MANAGER-SECRETARY


DATE