



# Marina Coast Water District

Regular Board Meeting/Groundwater Sustainability Agency Board Meeting  
211 Hillcrest Avenue, Marina  
February 25, 2020

## Minutes

### 1. Call to Order:

President Moore called the meeting to order at 6:30 p.m. on February 25, 2020 at the Marina Council Chambers, 211 Hillcrest Avenue, Marina, California.

### 2. Roll Call:

Board Members Present:

Thomas P. Moore – President  
Jan Shriner – Vice President – arrived at 6:40 p.m.  
Herbert Cortez  
Peter Le  
Matt Zefferman

Board Members Absent:

None

Staff Members Present:

Keith Van Der Maaten, General Manager  
Roger Masuda, District Counsel  
Kelly Cadiente, Director of Administrative Services  
Derek Cray, Operations and Maintenance Manager  
Michael Wegley, District Engineer  
Rose Gill, HR/Risk Administrator  
Patrick Breen, Water Resources Manager  
Teo Espero, IT Administrator

Audience Members:

Andrew Sterbenz, Schaaf & Wheeler  
Philip Clark, Seaside Resident, WCC Member  
Ted Asch, Aqua Geo Frameworks  
Vera Nelson, EKI Environment & Water

### 3. Public Comment on Closed Session Items:

There were no comments.

The Board entered into closed session at 6:32 p.m. to discuss the following items:

4. Closed Session:

A. Pursuant to Government Code 54956.9

Conference with Legal Counsel – Existing Litigation

- 1) Marina Coast Water District vs California-American Water Company, Monterey County Water Resources Agency; and, California-American Water Company, Monterey County Water Resources Agency vs Marina Coast Water District, San Francisco Superior Court Case Nos. CGC-15-547125, CGC-15-546632 (Complaint for Damages, Breach of Warranties, etc.)
- 2) Bay View Community DE, LLC; Bryan Taylor; Greg Carter; and Brooke Bilyeu vs Marina Coast Water District; Board of Directors of Marina Coast Water District; County of Monterey and Does 1-25, inclusive, Monterey County Superior Court Case No. 18CV000765 (Petition for Writ of Mandate or Administrative Mandate, and Complaint for Declaratory and Injunctive Relief and Breach of Contract)
- 3) Marina Coast Water District, and Does 1-100 v, County of Monterey, County of Monterey Health Department Environmental Health Bureau, and Does 101-110, Monterey County Superior Court Case No. 18CV000816 (Petition for Writ of Mandate and Complaint for Injunctive Relief)
- 4) Marina Coast Water District, and Does 1-100 v, County of Monterey, Monterey County Board of Supervisors, and Does 101-110 (California-American Water Company, Real Property in Interest), Monterey County Superior Court Case No. 19CV003305 (Petition for Writ of Mandate and Complaint for Injunctive Relief)

B. Pursuant to Government Code 54956.9(d)(4)

Conference with Legal Counsel – Anticipated Litigation

Initiation of Litigation – Two Potential Cases

The Board ended closed session at 7:05 p.m.

President Moore reconvened the meeting to open session at 7:07 p.m.

5. Reportable Actions Taken during Closed Session:

President Moore stated that there were no reportable actions taken during Closed Session.

6. Pledge of Allegiance:

Mr. Keith Van Der Maaten, General Manager, led everyone present in the pledge of allegiance.

7. Oral Communications:

There were no comments.

8. Consent Calendar:

Director Le requested to pull items C and E from the Consent Calendar.

Director Cortez made a motion to approve the Consent Calendar consisting of: A) Receive the Check Register for the Month of January 2020; B) Receive the Quarterly Financial Statements for October 1, 2019 to December 31, 2020; and D) Approve the Draft Minutes of the Special Joint Board/GSA Meeting of January 23, 2020. Director Zefferman seconded the motion. The motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Cortez	-	Yes	President Moore	-	Yes
Director Le	-	Yes			

C. Consider Adoption of Resolution No. 2020-06 to Approve Updates to the Employee Handbook:

Director Le asked if any employee union had comments on the new version. Ms. Rose Gill, HR/Risk Administrator, answered that legal counsel had reviewed it and most of the changes came from the employee memorandum of understanding that was approved last June but needed to be transferred to the Employee Handbook. Director Le asked if employees were okay with the final version. Ms. Gill answered affirmatively.

Director Zefferman made a motion to adopt Resolution No. 2020-06 approving updates to the Employee Handbook. Vice President Shriner seconded the motion. The motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Cortez	-	Yes	President Moore	-	Yes
Director Le	-	Yes			

E. Approve the Draft Minutes of the Regular Joint Board/GSA Meeting of January 29, 2020:

Director Le commented that on Item C on Page 9 of the minutes, he made a comment asking how many years the District has been using the wrong form and he would like that added into the minutes. President Moore asked if staff could review the audio to clarify the comment.

Mr. Van Der Maaten stated that staff would review the audio and bring the revised minutes back next month.

9. Action Items:

A. Receive the Final Report from Aqua Geo Frameworks on the 2019 Airborne Electromagnetic Survey:

Mr. Van Der Maaten introduced this item explaining that the first Airborne Electromagnetic Survey (AEM) was done in 2017 following years of drought and the 2019 AEM was done following two years of normal rainfall. He introduced Mr. Ted Asch, Aqua Geo Frameworks, and Ms. Vera Nelson, EKI Environment & Water, noting that they would be giving the presentation on the findings of the study. Mr. Asch gave a presentation on the results of the 2019 AEM study and the comparison with the 2017 AEM study. The Board asked clarifying questions.

Ms. Vera Nelson, EKI Environment & Water, gave a presentation explaining that this information will be used for development of the Groundwater Sustainability Plan for the Monterey Subbasin that is due in 2022. The Board asked clarifying questions.

Director Cortez made a motion to receive the final report from Aqua Geo Frameworks on the 2019 Airborne Electromagnetic Survey. Vice President Shriner seconded the motion. The motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Le	-	Yes	President Moore	-	Yes
Director Cortez	-	Yes			

B. Discuss, Consider, and Determine Action on Director Peter Le's Complaint Against the District for Negligence, Discrimination, and Retaliation:

Mr. Roger Masuda, District Counsel, introduced this item giving a brief background on the complaint received from Director Le.

Director Le stated that he hasn't filed the claim yet and he hasn't dropped the claim yet. He asked that when he returns to the meeting, he would like to receive an oral report on the Board's decision and if that's not possible he would like a written decision. Director Le added that the last time the Board never gave him a decision and he had to find out the decision when he read the minutes of the meeting a month later. He then recused himself from the dais and left the chambers.

Director Zefferman asked if there has been any new information from Director Le since the report was written. Mr. Masuda answered that Director Le has never responded to any of his emails. Director Zefferman asked if an oral report could be given to Director Le once he returns. Mr. Masuda answered that President Moore can give Director Le the report upon his return to the dais.

Director Zefferman made a motion to not spend funds investigating the claim any further and to take no action. Director Cortez seconded the motion. Director Cortez asked if the claim was twofold, one about the taxes and one discrimination, or was it now just about discrimination. Mr. Masuda said that was why he wanted to give Director Le the opportunity to indicate what he felt the nexus between the two, but one could infer that Director Le felt staff conspired to send him the wrong 1099 and that was part of a conspiracy to discriminate in retaliatory. Vice President Shriner said she heard Director Le say that he had not filed a claim yet, so is it a matter to be deliberated upon later or never.

Agenda Item 9-B (continued):

Mr. Masuda answered that if it was just a negligent claim, and if Director Le didn't send it to all the Directors, staff could have just handled it in a normal course and reported it to the Board as it relates to a Director. He added that since Director Le alleged discrimination and retaliation, the District's policy is that it had to be addressed sooner rather than later. Mr. Masuda said since Director Le sent the email to all the Directors it becomes a public document and he didn't feel comfortable hiding it and not allowing the Board to consider it and make a recommendation. Director Cortez asked if the employee's union was notified of the claim. Mr. Masuda said he didn't think so. Ms. Kelly Cadiente, Director of Administrative Services, explained how the mix-up with the 1099 happened. She stated that Director Le was the only one to receive reimbursement for attending a conference and it shouldn't have been included in his 1099 as it is not reportable income. Ms. Cadiente said that when staff noticed that it was included, staff corrected the 1099 and only the corrected one was transmitted to the IRS, but unfortunately, both originals were sent to Director Le by mistake. Mr. Van Der Maaten stated that he didn't know who the person was that Director Le referred to as discriminatory and retaliatory and was disappointed that there wasn't more clarity on that. He said he didn't think it was fair for someone to drop a bomb like that then walk away and pretend like they didn't say something. Director Cortez asked what liability there was to the District in case an employee says they feel harassed by a Board member. Mr. Masuda said it was a violation of the Board Procedures Manual. President Moore asked how soon a written report needed to be provided to Director Le following this decision. He noted that Director Le commented earlier that he didn't receive any report after the last decision and didn't find out about it until he received the draft minutes a month later. President Moore added that the video of the meeting was available within days to view publicly and anyone could have seen what the outcome was. Mr. Masuda said that Director Le asked for a verbal report when he returned to the dais. Vice President Shriner stated that it looked like Mr. Masuda did a pretty thorough investigation on the 1099 issue but wanted to know if they should do a more thorough investigation of the discriminatory issue. Mr. Masuda answered that it was up to the Board, but it looked like Director Le was tying the 1099 issue with discriminatory claim. President Moore asked Mr. Van Der Maaten if he investigated once he was aware of the issue. Mr. Van Der Maaten said it was investigated and the results were provided to Director Le. President Moore asked if he was satisfied in those discussions with staff that this was an inadvertent error and staff had little or no knowledge of Director Le. Mr. Van Der Maaten answered affirmatively. President Moore asked Mr. Masuda if he also investigated this issue. Mr. Masuda said he talked to the person who admitted that they made the error. President Moore asked if Mr. Masuda felt they made credible and honest responses. Mr. Masuda answered affirmatively. President Moore asked if Mr. Masuda concluded that this was an inadvertent error. Mr. Masuda answered affirmatively. Director Cortez asked if the Board voted to take no action, would Director Le still have the opportunity to write a formal complaint and would it have to come back before the Board for action again. Mr. Masuda answered that if Director Le receives something from the IRS then he could come back with more evidence. He added that it was the discrimination and retaliation claims that he and the Mr. Van Der Maaten decided needed to go to the Board of Directors as soon as possible. Vice President Shriner asked if it was common to send emails to all Directors and if it was dangerous when it comes to the Brown Act. Mr. Masuda answered that was why he was concerned because emailing everyone makes it a public document. Director Cortez asked if Director Le violated the Brown Act. Mr. Masuda answered that he didn't violate the Brown Act, although normal protocol would be to email the General Manager with the complaint or the Board President if the General Manager was included in the complaint.

Agenda Item 9-B (continued):

President Moore suggested the reason Director Le sent the email to all Directors was perhaps because Director Le didn't trust staff or the Board President and wanted everyone to be aware of his complaint.

Vice President Shriner suggested making a substitute motion to encourage everyone to follow the Board Procedures Manual and not harass staff. Mr. Masuda stated that it was a separate issue and would have to be agendized and discussed at another meeting. Director Zefferman commented that there has been a lot of discussion on this and it comes down to if the Board thinks it was credible that there was a conspiracy by staff to have an obscure error on Director Le's paperwork in order to harass him. He added that to him it was not a credible thing that happened. Director Cortez concurred with Director Zefferman.

The motion to take no action was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Le	-	Recused	President Moore	-	Yes
Director Cortez	-	Yes			

Director Le returned to the dais at 8:53 p.m. President Moore informed Director Le that with a vote of 4-Ayes and 0-Noes, the Board voted to take no further action on his claim.

C. Discuss and Consider Adoption of Resolution No. 2020-07 Ratifying Comments Submitted to Monterey One Water on the Draft Supplemental Environmental Impact Report for the Proposed Pure Water Monterey Expansion Project, Providing Policy Direction to District Staff Regarding the Pure Water Monterey Project and Pure Water Monterey Expansion Project, and Appointing a Real Property Negotiator:

Mr. Van Der Maaten introduced this item explaining that the Board authorized staff to work with legal counsel to provide comments on the Supplemental Environmental Impact Report (SEIR) for the Proposed Pure Water Monterey Expansion Project, and those comments were provided on January 30, 2020. He stated that this Resolution was to ratify those comments and is affirmation from the Board that the District supports the Expansion Project and appoints a real property negotiator for the potable and recycled water pipelines. The Board asked clarifying questions.

Vice President Shriner made a motion to adopt Resolution No. 2020-07 ratifying comments submitted to Monterey One Water on the Draft Supplemental Environmental Impact Report for the proposed Pure Water Monterey Expansion Project, providing policy direction to District staff regarding the Pure Water Monterey Project and Pure Water Monterey Expansion Project, and appointing a Real Property Negotiator. Director Cortez seconded the motion. Discussion followed. The motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Le	-	No	President Moore	-	Yes
Director Cortez	-	Yes			

- D. Consider Providing Direction Regarding the Nomination to the Coastal Network, Seat B, of the California Special Districts Association Board:

Director Le asked to combine Items 9-D and 9-E for discussion at the same time. President Moore agreed.

- E. Consider Providing Direction Regarding the Nomination to the Coastal Network, Seat C, of the California Special Districts Association Board:

Director Le made a motion to not take any action on Items 9-D and 9-E. Vice President Shriner seconded the motion. The motion to was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Cortez	-	Yes	President Moore	-	Yes
Director Le	-	Yes			

- F. Receive the Marina Coast Water District FY 2019-2020 Mid-Year Report:

Ms. Cadiente introduced this item. The Board asked clarifying questions.

- G. Consider Approving the 2019 Year in Review Report:

Mr. Van Der Maaten introduced this item noting that a revised version was on the dais that included the missing email address.

Vice President Shriner made a motion to approve the revised 2019 Year in Review Report as provided on the dais. Director Cortez seconded the motion. President Moore suggested adding to the first page (Message from the General Manager) language to the second paragraph, five lines down to read “...Agency that fell apart in 2011 as a result of a County Water Resources Agency Board member and decisions of Cal Am Water...” Director Cortez suggested removing the parenthesis (yes, we are still in litigation). President Moore had several grammatical corrections and Director Zefferman suggested that he just list them to get this report finished. President Moore listed the following grammatical corrections:

Under ‘Message from the General Manager’

- 1) first paragraph, third line, “...systems, making it official...”;
- 2) second paragraph, last sentence, “...providing solutions to the region’s water supply challenges.”;
- 3) last paragraph, the line spacing is different from the other paragraphs;

Under ‘01: Water Sources’

- 1) third bullet to read, “...and urinal rebates were approved;
- 2) fourth bullet to read, “...This was a record year for...”;
- 3) fifth indented bullet to read, “Improved score by (add percentage)% on 2018 water Loss Audit...”;
- 4) the last bullet, second sentence to read, “Originally created in 1991, the WCC was reorganized in ~~late 2018~~ into 2019 and ~~made a lot of progress~~;

Agenda Item 9-G (continued):

- 5) the last bullet, third sentence to read, "...began formulating recommendations ~~on~~ for future water conserving programs."
- 6) last paragraph to read, "In 2020 Water Resources Department will turn to,,"

Director Zefferman made a substitute motion to adopt the 2019 Year in Review as provided on the dais and to include President Moore's suggested edits. Vice President Shriner seconded the substitute motion. The substitute motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Le	-	No	President Moore	-	Yes
Director Cortez	-	Yes			

10. Staff Reports:

- A. Receive a Capacity/Capital Surcharge Reserve Fund Activity Report:

Ms. Cadiante introduced this item. Director Le asked clarifying questions.

11. Workshop:

- A. Strategic Plan and Goal Setting Workshop:

Director Zefferman noted that given the time, perhaps they should move this to a future meeting.

Director Zefferman made a motion to postpone this item to a future meeting when they have more time to discuss it. Director Le seconded the motion. The motion was passed by the following vote:

Director Zefferman	-	Yes	Vice President Shriner	-	Yes
Director Le	-	Yes	President Moore	-	Yes
Director Cortez	-	Yes			

12. Informational Items:

- A. General Manager's Report:

No report was given.

- B. Counsel's Report:

No report was given.



C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Mr. Breen stated they met on February 6th, seated the new Commissioner, and the next meeting would be March 5, 2020.

Noting it was 10:00 p.m. Vice President Shriner made a motion to continue past 10:00 p.m. to finish the remaining items on the agenda. Director Le seconded the motion. The motion was passed by a vote of 5-Ayes, 0-Noes, and 0-Abstentions.

2. Joint City District Committee:

President Moore stated the next meeting would be February 26, 2020.

3. Executive Committee:

President Moore stated that they met on February 11th and the next meeting is scheduled for March 10th.

4. Community Outreach Committee:

Director Cortez gave a brief update stating they worked on the Board Procedures Manual. Director Zefferman added that they were looking to streamline the manual and would continue to work on it next month.

5. Budget and Personnel Committee:

Director Cortez gave a brief update.

6. M1W Board Member:

President Moore gave a brief update.

7. LAFCO Liaison:

No report was given.

8. FORA:

Mr. Van Der Maaten gave a brief update.

9. WWOC:

No report was given.

10. JPIA Liaison:

Director Le noted there was an upcoming meeting in Monterey in May.

11. Special Districts Association Liaison:

President Moore noted the next meeting was scheduled for April 21st.

12. SVGSA Liaison:

No report was given.

13. Board member Requests for Future Agenda Items:

President Moore noted that the Board members can email in their requests. Director Le stated that he wanted an item on the RUWAP with regards to the cost, the state of the project, the financing of the project, the cost of the water, and what the District will charge customers for the water.

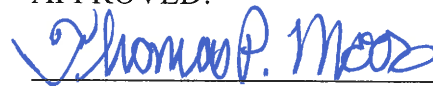
14. Director's Comments:

Director Le, Director Zefferman, Director Cortez, Vice President Shriner, and President Moore made comments.

15. Adjournment:

The meeting was adjourned at 10:12 p.m.

APPROVED:



Thomas P. Moore, President

ATTEST:



Paula Riso, Deputy Secretary