



## **Marina Coast Water District**

Regular Board Meeting/Groundwater Sustainability Agency Board Meeting  
April 15, 2019

### Minutes

1. Call to Order:

President Moore called the meeting to order at 6:30 p.m. on April 15, 2019 at the Marina Council Chambers, 211 Hillcrest Avenue, Marina, California.

2. Roll Call:

Board Members Present:

Thomas P. Moore – President  
Jan Shriner – Vice President  
Herbert Cortez – arrived at 7:01 p.m.  
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  
Patrick Breen, Water Resources Manager  
Thomas Barkhurst, Laboratory Supervisor  
Paula Riso, Executive Assistant/Clerk to the Board

Audience Members:

Andrew Sterbenz, Schaaf & Wheeler  
Philip Clark, Seaside Resident, WCC Member  
Kathy Biala, Marina Resident  
Lisa Berkley, City of Marina Councilmember  
Jolene, Dezi, and Bella Green, Pacific Grove Residents  
Jorge Valenzuela, Teamster Union Representative  
MCWD Employees

3. Public Comment on Closed Session Items:

There were no public 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) In the Matter of the Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, California Public Utilities Commission Application (“A.”) 12-04-019
- 2) In the Matter of the Application of California-American Water Company (U 210 W) for an Order (1) Approving a Settlement Agreement with the County of Monterey and the Monterey County Water Resources Agency to Settle and Resolve Claims and Issues Between the Parties and to Promote the Development, Construction and Operation of a Water Supply Project for Monterey County on an Expedited Basis, and (2) Authorizing the Transfer of Authorized Costs Related to the Settlement Agreement to Its Special Request 1 Surcharge Balancing Account, California Public Utilities Commission Application (“A.”) 13-05-017, and related California Supreme Court petition for writ of review.
- 3) City of Marina and Marina Coast Water District, Petitioners v. Public Utilities Commission of the State of California, Respondent (California-American Water Company, et al., Real Parties in Interest), Petitions for Writ of Review, California Supreme Court Case No. S253585
- 4) 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.)
- 5) Marina Coast Water District v, California Coastal Commission (California-American Water Company, Real Party in Interest), Santa Cruz County Superior Court Case No. 15CV00267, Sixth Appellate District Court of Appeals Case No. H045468

Agenda Item 4-A (continued):

- 6) 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)
  
  - 7) 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)
- B. Pursuant to Government Code 54957.6  
Conference with Labor Negotiators  
Agency Negotiators (Keith Van Der Maaten, Jan Shriner)  
Employee Organization: Marina Coast Water District Employees Association
- C. Pursuant to Government Code 54957.6  
Conference with Labor Negotiators  
Agency Negotiators (Keith Van Der Maaten, Jan Shriner)  
Employee Organization: Teamsters Local 890

The Board ended closed session at 7:02 p.m.

President Moore reconvened the meeting to open session at 7:03 p.m.

5. Reportable Actions Taken during Closed Session:

Mr. Roger Masuda, District Counsel, stated that there were no reportable actions taken during Closed Session and direction was given.

6. Pledge of Allegiance:

Vice President Shriner led everyone present in the pledge of allegiance.

7. Oral Communications:

There were no public comments.

8. Presentation:

- A. Adopt Resolution No. 2019-20 in Recognition and Appreciation of Richard Green and to Adjourn the Meeting in his Memory:

Mr. Derek Cray, Operations and Maintenance Manager, introduced this item expressing the District's deep grief over the loss of Richard Green. He then shared his thoughts and fond memories of Richard.

President Moore made a motion to adopt Resolution No. 2019-20 recognizing and appreciating Richard Green, and to adjourn the meeting in his memory. Director Zefferman seconded the motion. The motion was passed.

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

President Moore read the narration and presented the Green family with a copy of the Board's Resolution No. 2019-20.

9. Consent Calendar:

Director Le asked to pull items A, B, C, D, and E from the Consent Calendar.

Vice President Shriner made a motion to approve the Consent Calendar consisting of: F) Consider Adoption of Resolution 2019-22 to Authorize a Notice of Completion for the Repair and Recoat of Reservoir 2 to be Filed with the Monterey County Recorder. President Moore 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			

- A. Receive and File the Check Register for the Month of March 2019:

Director Le asked if the District keeps W-9's on file and questioned the process for approving invoices. Ms. Kelly Cadiente, Director of Administrative Services, answered that W-9's are kept on file if the invoice/rebate amount is over \$600, and all invoices are reviewed and approved by Department Managers prior to payment.

Director Cortez made a motion receive and file the check register for the month of March 2019. 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. Approve the Draft Minutes of the Joint Board/GSA Meeting of March 18, 2019:

Director Le stated that he wanted the April 15, 2019 minutes to reflect that he sent legal counsel questions following the March 18, 2019 meeting which were discussed in Closed Session on April 15, 2019.

Vice President Shriner made a motion to approve the draft minutes of the Joint Board/GSA Meeting of March 18, 2019. Director Zefferman seconded the motion. The motion was passed by the following vote:

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

C. Consider Approval of the 2018 Consumer Confidence Report for the Marina Coast Water District Water System, Central Marina and Ord Community:

Director Le asked what locations had the positive Coliform Bacteria tests. Mr. Cray answered that he couldn't recall what locations they were but would provide that information later. Director Le inquired on the testing schedule for lead and copper, and uranium. The Board asked other clarifying questions. Director Zefferman asked to add the area code to Thomas's phone number on the first page.

Director Cortez made a motion to approve the 2018 Consumer Confidence Report for the Marina Coast Water District Water System, Central Marina and Ord Community. 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			

D. Consider Approval of the Water Conservation Commission Public Outreach Event Schedule for 2019:

Director Le made a motion to approve the Water Conservation Commission Public Outreach Event Schedule for 2019 with two Marina Farmer Market events added to the schedule. Director Zefferman seconded the motion.

Vice President Shriner made a substitute motion to approve the schedule as approved by the Water Conservation Commission. Director Cortez seconded the motion. Discussion followed.

Vice President Shriner made an amendment to her substitute motion to approve the schedule as approved by the Water Conservation Commission and ask if staff could attend one or two Farmer's Markets this year. Director Cortez seconded the amended motion.

Agenda Item 9-D (continued):

The motion was passed by the following vote:

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

E. Consider Adoption of Resolution No. 2019-21 to Approve an Update to the Employee Handbook:

Director Le asked if the Human Resources Attorneys have reviewed this item. Mr. Keith Van Der Maaten, General Manager, answered that legal counsel had reviewed this item.

Vice President Shriner made a motion to adopt Resolution No. 2019-21 to approve an update to the Employee Handbook. The motion failed for lack of a second.

Director Le questioned page 52 and the removal of “more than 10 minutes”. President Moore suggested adding the language “when an employee arrives after their scheduled start time”.

Director Le questioned page 91 and why the appeal process was reduced from fifteen to five. Mr. Van Der Maaten said it was to align it with other documents.

Director Le questioned page 93 and if employees would still receive a plaque. Mr. Van Der Maaten answered that it was intended that upon retirement, employees would receive a plaque. President Moore suggested adding that to Section 14.0.

Director Le asked if the changes from the February meeting had been incorporated into this version, specifically the harassment training. Vice President Shriner answered that page 5 has the update included. Director Le stated that there was a new California law and it wasn’t included. Mr. Masuda stated that the Human Resources Attorneys were responsible for making sure the Handbook was up to date.

Vice President Shriner made a motion to adopt Resolution No. 2019-21 to approve an update to the Employee Handbook with the addition of language explaining the scheduled start time. Director Zefferman seconded the motion. The motion was passed by the following vote:

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

10. Action Items:

- A. Consider Adoption of Resolution No. 2019-23 to Approve Amendment No. 3 to the Professional Services Agreement with Akel Engineering Group, Inc. for the Master Plans and Capacity Fees Study for Sewer, Water and Recycled Water:

Mr. Michael Wegley, District Engineer, introduced this item and gave a brief presentation. The Board asked clarifying questions.

Ms. Lisa Berkley, City of Marina Councilmember, asked for a copy of the slides.

Director Cortez made a motion to adopt Resolution No. 2019-23 to approve Amendment No. 3 to the Professional Services Agreement with Akel Engineering Group, Inc. for the Master Plans and Capacity Fees Study for Sewer, Water and Recycled Water. Vice President Shriner seconded the motion. The motion was passed.

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 Racial Discrimination Complaint against District Staff:

Director Le amended his complaint to specify the individuals as the General Manager and the Executive Assistant, and to hire an independent investigator.

Mr. Van Der Maaten introduced this item noting that Director Le's complaint consisted of his name being last on the letterhead and the delay in getting his picture on the District website.

Director Cortez asked if there was also a delay in getting Director Zefferman's picture on the website. Ms. Paula Riso, Executive Assistant/Clerk to the Board, answered that both pictures were delayed.

Director Zefferman suggested a policy on the order of the names on the letterhead and that could be discussed under the next item.

Vice President Shriner noted that both pictures were delayed, and asked if there was any other evidence other than the names on the letterhead.

Director Cortez noted that it was a huge leap to claim race discrimination because of the order of names on letterhead and noted that the picture delay on the website was a process issue. He stated that it was good that Director Le has the platform to let his voice be heard but cautioned against making such a huge leap from what it is.

Mr. Masuda stated that the Board needs to respond to the letter of complaint before them.

Agenda Item 10-B (continued):

Ms. Kathy Biala, Marina Resident, commented that after listening to the two issues, probably the issue of racism does not particularly relate specifically. She added that perception is critical, and perhaps Director Le may have experienced some subtle forms of racism and to not acknowledge that is the point of reference for him is to discount some of his experience.

Ms. Berkley commented that she has no doubt that at times in his life he may have experienced racism and she is sorry for that. She stated that what she sees here is not a case of injustice, but a process that failed, or got a hiccup. Ms. Berkley added that she hopes the District and City can move forward and find the line to end the sexism, racism and discrimination of any sort.

Mr. Jorge Valenzuela, Teamsters Local 890, commented that throwing an accusation of racial harassment at someone is pretty heavy and once accused of it is very hard to get rid of. He stated that maybe this could have been discussed in a different manner, e.g. by asking if there was a reason for the order of names on the letterhead and why it took so long to get the pictures on the website, instead of throwing this huge accusation on someone.

Vice President Shriner commented that the District has a very strong and diverse Board, including highly educated Directors with PhD's, and Director's that are bilingual. She said she would like the Board to stay focused on water and would like to know if there was any other evidence to this claim. Vice President Shriner commented that there has been a lot of negativism over recent months, especially through the campaign months, and encouraged everyone to move past the negativism and represent the people and solve problems in the community.

Director Le said that this allegation is very serious and if the Board were to hire an outside investigator to look at the high-level staff it would be eye opening. He said that the Board thinks they know everything but there is more to discover. Director Le said if the Board makes a decision at this meeting, it may not be the end of this.

Director Cortez said that he appreciates the opportunity to participate in things, being a first-generation citizen in the U.S., especially because he knows he has good ideas. He added that Director Le has good ideas and appreciates hearing them. Director Cortez said that he doesn't believe the problem is just the letterhead and picture, he believes there may be more and Director Le may need to bring them back in a separate item. He said that as to what was being discussed here, the letterhead and picture, the issue has been vetted and the District provided Director Le with a platform for a voice and provided a solution.

Director Cortez made a motion that Director Le's complaint does not warrant further investigation. Vice President Shriner seconded the motion. President Moore commented that this is a sensitive issue and he doesn't see that the evidence presented rises to evidence of racial discrimination and going forward everyone needs to be more sensitive to all those around us.



Agenda Item 10-B (continued):

The motion was passed.

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

C. Consider Adoption of Resolution No. 2019-24 to Approve Revisions to the Board Procedures Manual:

Mr. Van Der Maaten introduced this item.

Director Zefferman asked if he and another Director are discussing an issue and then email legal counsel a question and, according to Section 16-D, having to copy the General Manager and Board President, does that pose a Brown Act violation. Mr. Masuda answered it did not as long as they do not share how they are going to vote.

Director Le suggested that Section 11. Orientation, Training and Preparation of Directors on Page 5 of the Board Procedures Manual the second paragraph read "...the General Manager or designee will make the necessary changes...". Director Le questioned Section 26. Closed Sessions on page 17 and asked if three Directors can discuss a closed session item outside of closed session. Mr. Masuda advised against it. Director Le questioned Section 23. Order of Business and noted that other agencies are very smart and only put one or two items in closed session and allow a lot more time for discussion. He noted that the District has about nine items in closed session and only allows thirty minutes for discussion. Director Le said the Board can do what they want but he doesn't think it's as smart as other agencies.

Director Zefferman suggested they go over the agendized changes first then if there are other suggested changes, they should be agendized for another meeting. The Board agreed to take the four agendized changes one at a time.

Resolution No. 2019-24 was approved with the following revisions to the Board Procedures Manual:

- Change 1, Section 38 – increase Board member compensation from \$50 to \$100 per Board meeting.

The Board asked clarifying questions. Director Cortez said he needed more justification to make this change. Director Le suggested that it would increase the number of people wanting to run for the Board.

Director Le made a motion to approve increasing the Board compensation from \$50 to \$100 per meeting. The motion failed for lack of a second.

Agenda Item 10-C (continued):

Director Zefferman made a motion to leave the compensation at \$50 per meeting. Vice President Shriner seconded the motion. The motion was passed.

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

- Change 2, Section 16-D – legal counsel recommendation clarifying expectations of legal counsel.

Director Le asked clarifying questions and suggested removing “with a copy to the Board President and Legal Counsel” from Section 16-D at the top of page 12. Upon further discussion, the Board agreed to move the sentence at the top of page 12, “All individual director questions relating to an open session item shall be directed to the General Manager.” to Section 16-A.

Director Zefferman made a motion to approve the recommended change to Section 16-D and move the sentence at the top of page 12, “All individual director questions relating to an open session item shall be directed to the General Manager.” to Section 16-A and striking “with a copy to the Board President and Legal Counsel.” Vice President Shriner seconded the motion. The motion was passed.

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

- Change 3, Section 11 – include new language how the Board of Directors will be listed on the District letterhead.

President Moore made a motion to approve the recommended language with the change to the second paragraph so it reads “...the General Manager or designee will make the necessary changes...”. Director Cortez seconded the motion.

Vice President Shriner made a substitute motion to remove the Director’s names from the letterhead and list them alphabetically on the District website. Director Zefferman seconded the motion. Director Le said this is odd and most agencies in California list names of Directors. Director Cortez commented that the District is in transition and does not recommend removing the names at this time. Vice President Shriner handed President Moore samples of agencies that do not list their members. President Moore commented that he recommended leaving the names on the letterhead. The motion failed.

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

Agenda Item 10-C (continued):

President Moore amended his original motion to approve the recommended language with the change to the second paragraph so it reads "...the General Manager or designee will make the necessary changes..." with an amendment to include updating all social media as well as the website and to order updated letterhead once the current stock is gone. Director Cortez seconded the amended motion. The motion was passed.

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

- Change 4, Section 23 – adding language that if there is insufficient time to cover closed session in the time allotted prior to open session, the Board may decide to adjourn to an additional closed session after the conclusion of open session.

Vice President Shriner made a motion to approve the recommended language. President Moore seconded the motion. The motion was passed.

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

10. Staff Reports:

A. Receive the 1<sup>st</sup> Quarter 2019 MCWD Water Consumption Report:

Ms. Cadiente introduced this item. Director Le suggested putting numbers on the graphs for the jurisdictions instead of colors. He also asked for a copy of a total annual production report. President Moore commented that the smaller graphs will be difficult to put a number on. Ms. Cadiente said she would work on the reports to make them more readable.

B. Receive the 2019 Sewer Flow Report through March 31, 2019:

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

C. Receive a Status Update on the FY 2019-2020 Budget:

Ms. Cadiente introduced this item.

Director Cortez made a motion to continue past 10:00 p.m. President Moore seconded the motion. Director Cortez was asked if he intended to continue until the current item is done or until the entire agenda is done. Director Cortez withdrew his motion.

Agenda Item 10-C (continued):

Director Le made a motion to continue past 10:00 p.m. and finish the agenda including closed session. President Moore seconded the motion. The motion was passed by a vote of 3-Ayes, 2-Noes (Cortez, Shriner), 0-Absent, 0-Abstained.

The Board asked clarifying questions. Director Le pointed out some corrections to page 64 of the packet.

12. Informational Items:

A. General Manager's Report:

1. Update on the Ord Community Service Agreements:

Mr. Van Der Maaten stated that a presentation was given at the FORA Administrative Committee and key points were handed out at that meeting to which he received a lot of input. He said that drafts, with input included, would be provided at the May 1<sup>st</sup> FORA meeting.

B. Counsel's Report:

No report was given.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner gave a brief update and noted the next meeting is May 2nd.

2. Joint City District Committee:

President Moore said they would be meeting on May 1st.

3. Executive Committee:

President Moore noted that the next meeting is May 14th.

4. Community Outreach Committee:

Director Cortez gave a brief update.

5. Budget and Personnel Committee:

Director Cortez gave a brief update.

6. M1W Board Member:

President Moore gave a brief update and noted the next meeting is on April 29th.

7. LAFCO Liaison:

Director Cortez noted the next meeting is April 22nd.

8. FORA:

Director Zefferman gave a brief update.

9. WWOC:

Mr. Van Der Maaten gave a brief update and noted the next meeting is April 25th.

10. JPIA Liaison:

Director Le stated that there was a meeting on May 6 and 7th.

11. Special Districts Association Liaison:

President Moore stated they met on April 16th and gave a brief update.

12. SVGSA Liaison:

No update was given.

13. Correspondence:

There were no comments.

14. Board Member Requests for Future Agenda Items:

President Moore noted that they can email in their requests.

15. Director's Comments:

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

President Moore recessed the meeting from 10:24 to 10:29 p.m.

4. Closed Session:

The Board reentered into closed session at 10:29 p.m. to discuss the following items:

The Board ended closed session at 11:04 p.m.

President Moore reconvened the meeting to open session at 11:05 p.m.

5. Reportable Actions Taken during Closed Session:

Mr. Masuda stated that there were no reportable actions taken during Closed Session and direction was given.

16. Adjournment:

The meeting was adjourned in honor and memory of Richard Green at 11:06 p.m.

APPROVED:



Thomas P. Moore, President

ATTEST:



Paula Riso, Deputy Secretary