



Marina Coast Water District

Regular Board Meeting/Groundwater Sustainability Agency Board Meeting
211 Hillcrest Avenue, Marina
October 21, 2019

Minutes

1. Call to Order:

President Moore called the meeting to order at 6:30 p.m. on October 21, 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 6:34 p.m.
Peter Le

Board Members Absent:

Matt Zefferman

Staff Members Present:

Keith Van Der Maaten, General Manager
Roger Masuda, District Counsel
David Hobbs, District Counsel
Kelly Cadiente, Director of Administrative Services
Derek Cray, Operations and Maintenance Manager
Michael Wegley, District Engineer
Patrick Breen, Water Resources Manager
Rose Gill, HR/Risk Administrator
Paula Riso, Executive Assistant/Clerk to the Board

Audience Members:

Andrew Sterbenz, Schaaf & Wheeler
Philip Clark, Seaside Resident, WCC Member
Mark Kelly, Cal Am Consultant
Tina Walsh, Marina Resident
Harvy Biala, Marina Resident
Therese Kohlerer, East Garrison Resident
Bruce Delgado, City of Marina Mayor
Vera Nelson, EKI Environment and Water
Tammy Jennings, Monterey Resident

Lisbeth Visscher, Marina Resident
Evy Smith, Marina Resident
Lisa Berkley, City of Marina Councilmember
Brian McCarthy, Marina Resident
Alex Miller, Seaside Resident
Susan Schiavone, Seaside Resident
Steven Rice, Marina Resident
Sarah Babcock, East Garrison Resident
Judi Lehman, Carmel Resident

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 (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.
- 2) 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.)
- 3) 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
- 4) 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)
- 5) 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)
- 6) 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)

Agenda Item 4 (continued):

- 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 7:04 p.m.

President Moore reconvened the meeting to open session at 7:05 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.

6. Pledge of Allegiance:

Director Cortez led everyone present in the pledge of allegiance.

7. Oral Communications:

Ms. Evy Smith, Marina Resident, addressed the Board about the lack of hot water recirculation systems in her home and the 128 other homes in the Dunes Development. She commented that she was looking for a variance from the District. Ms. Smith noted that the District had given a variance to Seaside Highlands when it was noticed that there were no hot water recirculation systems installed. She stated that the Infrastructure Agreement with Shea Homes states the District has the right to inspect the facilities including special fixtures including hot water recirculation systems. Ms. Smith commented that the Developer pays for inspections from MCWD and they were not done on these homes. She noted that the inspection forms were modified after the discovery in 2016. Ms. Smith stated that hot water recirculation systems were required in new construction but were not installed in 129 Dunes homes, although some were fixed with the Grundfos system. She also commented that the pipes were not insulated according to Code and there were no thermal expansion tanks in 83 homes with backflow preventers. Ms. Smith said master control valves were not installed as per MCWD regulations. She commented that she felt the General Manager bypassed the variance process. In conclusion, Ms. Smith provided a list of objectives she would like to see done. The list includes:

- Retain/restore ratepayers fair market home values to meet code and ordinances by providing assistance in remedying homes not at code (Can we file for a variance so we can be at code?)
- Amend and resend October 25, 2018 letter to Shea
 - o Ratepayers with recirc unit (Grundfos) DO NOT meet code (first 5' pipe insulation or any other pipe insulation)
 - o Does Recirc unit PLUS first 5' of pipe insulation meet code of MCWD and City? Qualify for a Variance?
 - o Please arrange inspections of both and provide approvals of inspection to homeowners.
- Amend staff report dated November 19, 2018 for inconsistencies

Agenda Item 7 (continued):

- MCWD conducted analysis?
- Definition of recirc unit vs. the code definition of recirc system
- Eliminate “MCWD does not have specific oversight in construction and installation matters...”
- Fine Shea Homes as creating a public nuisance
- Penalties to GM for violation of Brown Act, not following MCWD procedures in IA, suppression of information to ratepayers and MCWD Board, ignoring ratepayers as governing body of public water agency. Capitulation to Shea.
- Penalties to Board of Directors for allowing GM to abuse role of MCWD to ratepayers
- Establish Ratepayers council/platform/committee to determine impacts to ratepayers of Board and Staff actions
 - Survey ALL homeowners with Grundfos retrofit for how recirc unit performs.
 - Perform scientific testing and analysis of Grundfos water usage, amount of time for hot water vs. a full piped recirc system performance.

Ms. Lisa Berkley, City of Marina Councilmember, invited the public to take a beach walk on October 26th to see the Cal Am slant wells. She also invited everyone to attend the Coastal Commission meeting on November 14th in Half Moon Bay to oppose the Cal Am desal plant.

President Moore commented that the Board would consider Action Item 11-A before Item 8 - Consent Calendar.

11. Action Items:

- A. Consider Adoption of Resolution No. 2019-74 Making Determination of Lack of Unused Capacity in MCWD Water Conveyance Facility per California-American Water Company Request (Water Code § 1813):

President Moore explained the procedures for this item; 1) staff would give a report, 2) take clarifying questions for staff, 3) receive comments from Cal Am, 4) take clarifying questions for Cal Am, 5) open public comment, 6) close public comment, 7) Cal Am respond to public, 8) staff and Board member respond to public and Cal Am, 9) President asks for a motion, and, 10) vote on motion.

Mr. Keith Van Der Maaten, General Manager, introduced this item and gave a brief presentation. He noted that California-American Water Company (Cal Am) never notified MCWD of the intent to connect to the Water Conveyance Pipeline, and MCWD only found out about it through a USA marking request. Mr. Michael Wegley, District Engineer, discussed the pipeline and where Cal Am was proposing to tie into the line. Mr. Van Der Maaten reviewed the next steps and the results of the staff analysis on the capacity available in the pipeline. The Board asked clarifying questions. No comment was made by Cal Am.

Ms. Tina Walsh, Marina resident, commented that ratepayers paid for the pipeline and they support staff's analysis. She provided the Board Clerk with a written letter of support for the record.

Agenda Item 11-A (continued):

Ms. Lisbeth Visscher, Marina resident, voiced her support of staff stating the pipeline was not for profit and thanked staff for their service.

Ms. Susan Schiavone, Seaside Resident, commented that the pipeline should be kept for what it was intended to do. She voiced her support for Measure J.

Mr. Brian McCarthy, Marina Resident, voiced his support of MCWD staff.

Mr. Harvey Biala, Marina Resident, voiced his support of staff's conclusion and hard work.

Unknown Marina resident voiced her plea for MCWD not to allow the "for profit" Cal Am to take over the pipeline.

Ms. Therese Kohlerer, East Garrison, voiced her support of staff's analysis of the unused capacity in the pipeline and all the other citizens' comments. She also asked the Board to adopt the resolution before them.

Mr. Bruce Delgado, City of Marina Mayor, commented that Cal Am uses guerilla tactics and hearing how they were planning on tying into the District's pipeline without asking gives him a clearer vision of how Cal Am works. With regards to the 70% provision of capacity, he wanted to know if there would be room Pure Water Monterey water if it exceeds the 70% capacity.

Ms. Melody Chrislock, Public Water Now, commented that she supports whatever the District needs to do to adopt the resolution to stop Cal Am from using the pipeline. She would like to see the project stopped as it is not needed.

Ms. Berkley commented that she echoed everything everyone already said and supported the District's unbiased report.

Unknown resident asked the Board to read the fine print and realize that any decision of the Board will affect many people.

Mr. Van Der Maaten commented that in response to Mayor Delgado's question, there is available capacity in the District's pipeline that could be used for Pure Water Monterey Expansion which can possibly reduce the size of the pipeline that Pure Water Monterey Project will need to install.

Vice President Shriner voiced her appreciation to the public for attending and participating in the meeting.

President Moore commented that although the District and Cal Am have been in a tiff over several things, the District is not hostile to the needs of the Peninsula. He commented that the District is trying to be good citizens to help where they can without hurting the citizens they are primarily serving.

Agenda Item 11-A (continued):

Director Le made a motion to adopt Resolution No. 2019-74 Making Determination of Lack of Unused Capacity in MCWD Water Conveyance Facility per California-American Water Company Request (Water Code § 1813). Vice President Shriner seconded the motion. The motion was passed by the following vote:

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

8. Consent Calendar:

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

Vice President Shriner made a motion to approve the Consent Calendar consisting of: A) Receive the Check Register for the Month of September 2019. Director Cortez seconded the motion. The motion was passed by the following vote:

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

B. Approve the Draft Minutes of the Regular Joint Board/GSA Meeting of September 16, 2019:

Director Le noted that on page 4 of the minutes, Barbara Montanti's position was incorrect. He also asked Item D on page 10 of the minutes state "Director Le asked questions and made a motion."

Director Le made a motion to approve the draft minutes of the regular joint Board/GSA meeting of September 16, 2019 with the corrections noted. Vice President Shriner seconded the motion. The motion was passed by the following vote:

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

C. Consider Adoption of Resolution No. 2019-73 to Approve Revisions to the Policy for the High-Efficiency Toilet Rebate Program:

Director Le questioned what a "free rider" was. Mr. Breen, Water Resources Manager, answered that phrase was someone who was going to replace their toilet anyway, and not just to conserve water.

Agenda Item 8-C (continued):

Director Le questioned how the cost allocation for the rebates is decided. Mr. Breen answered that there were some large toilet replacement projects scheduled for the Ord Community which was why the Ord budget was so large. The Board asked clarifying questions. President Moore noted a typo for the UHET rebate and clarified that it should read "...when all toilets at an account are retrofitted to UHET toilets."

Director Cortez made a motion to adopt Resolution No. 2019-73 to approve revisions to the policy for the High-Efficiency Toilet Rebate Program with the corrections; and, asked for a follow-up in 6 months to see how the revised rebate program was working. Vice President Shriner seconded the motion. The motion was passed by the following vote:

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

9. Marina Coast Water District Groundwater Sustainability Agency Matters

A. Action Item:

1. Consider Adoption of Resolution No. 2019-GSA03 to Authorize the General Manager to Apply to the California Department of Water Resources to Obtain a Grant under the 2019 Sustainable Groundwater Management (SGM) Grant Program Planning – Round 3 Grant Pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) (Wat. Code, § 79700 et seq.) and/or the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68) (Pub. Resources Code, § 80000 et seq.):

Mr. Van Der Maaten pointed out a typo in the first line of the Detailed Description. It should read Marina "Coast" not Marina "Cost".

Mr. Breen introduced this item and explained what the Grant was going to be used for. Vice President Shriner thanked staff for working on the Grant funding for this work.

Vice President Shriner made a motion to adopt Resolution No. 2019-GSA03 to authorize the General Manager to apply to the California Department of Water Resources to obtain a Grant under the 2019 Sustainable Groundwater Management (SGM) Grant Program Planning – Round 3 Grant Pursuant to the Water Quality, Supply, and Infrastructure Improvement Act of 2014 (Proposition 1) (Wat. Code, § 79700 et seq.) and/or the California Drought, Water, Parks, Climate, Coastal Protection, and Outdoor Access For All Act of 2018 (Proposition 68) (Pub. Resources Code, § 80000 et seq.). Director Cortez seconded the motion.

Agenda Item 9-A1 (continued):

The motion was passed by the following vote:

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

10. Return to Marina Coast Water District Matters

11. Action Items:

B. Consider Adoption of Resolution No. 2019-75 to Approve Reclassification of the Assistant Engineer to an Associate Engineer Position Within the Engineering Department:

Ms. Rose Gill, HR/Risk Administrator, introduced this item explaining the need for additional higher-level engineering staff. The Board asked clarifying questions.

Vice President Shriner made a motion to adopt Resolution No. 2019-75 to approve reclassification of the Assistant Engineer to an Associate Engineer position within the Engineering department. Director Cortez seconded the motion. The motion was passed by the following vote:

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

C. Consider Approving Funding for Director Le to Attend the Association of California Water Agencies Fall Conference in San Diego:

Director Le removed himself from the dais and the chambers at 8:28 p.m.

Mr. Van Der Maaten introduced this item and explained that the budget for Director conferences does not have enough remaining funds for this conference. He stated that there is available funds in the employee training budget that could be used to fund this conference.

Vice President Shriner noted that ACWA does hold a meeting in Monterey in May and stated that when she was the ACWA/JPIA representative, she tried to attend the local conferences to save District funds. Director Cortez asked why the budget was set at such a low amount. Mr. Van Der Maaten answered that in the past there hasn't been a lot of interest from Board members in attending training or conferences. He noted that if there was more Board interest, the next budget could be increased to reflect that. President Moore stated that he supported Board member training and attending conferences. Director Cortez commented that he sees this training/conference budget item as a benefit and not an entitlement. He would like to make sure that Directors who take advantage of this benefit are ethically aligned with the Board Procedures Manual in their behavior. Director Cortez said that in the future, when a Director requests to go to a conference, the Board needs to make sure that Director is in line with the BPM and that the Board is not supporting behavior that doesn't abide by the BPM.

Agenda Item 11-C (continued):

President Moore made a motion to approve funding for Director Le to attend the Association of California Water Agencies Fall Conference in San Diego. Director Cortez seconded the motion. The motion failed by the following vote:

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

President Moore asked for this item to be returned to the November meeting.

12. Staff Reports:

A. Receive an Update on the Ord Lift Station Easement:

Mr. Wegley gave a brief update on the easement. Director Le asked what the delay was in getting the easement. Mr. Wegley answered that staff has been working with Seaside and there has been a lot of information going back and forth. Director Le asked what the problem was with the existing lift station and if there had been spills. Mr. Wegley answered that there had been a few spills, including a force main break and a pump failure. The District did have to ask for help from Monterey One Water and Seaside to keep up with the flows and not allow them to go out to the ocean. Director Le asked if there have been any fines? Mr. Wegley answered not yet and have shown the State that the District is working on correcting the issues.

B. Receive a Report on Current Capital Improvement Projects:

Mr. Wegley gave a brief update on current CIP projects. The Board asked clarifying questions. President Moore cautioned staff to be careful of the historic row of Eucalyptus trees on Beach Road when working on that project.

C. Receive the 3rd Quarter 2019 MCWD Water Consumption Report:

Ms. Kelly Cadiente, Director of Administrative Services, introduced this item and reviewed the latest water consumption report and explained the variances in the report. The Board asked clarifying questions.

D. Receive the 2019 Sewer Flow Report through September 30, 2019:

Ms. Cadiente introduced this item. There were no questions on this item.

13. Informational Items:

A. General Manager's Report:

Agenda Item 13-A (continued):

1. Update on Developer's Deposit Policy:

Mr. Van Der Maaten gave a brief update on the Developer's Deposit Policy explaining that staff is still working on improving the policy.

2. Update on Well 12 and Watkins Gate Well:

Mr. Van Der Maaten gave a brief update on Well 12 and Watkins Gate Well. He stated that Well 12 has been placed as inactive and Watkins Gate Well has been rehabbed and is back on-line.

3. Update on SBVGSA Final Plan:

Mr. Van Der Maaten gave a brief update on the SBVGSA Final Plan and noted that District staff has provided comments and is monitoring it to make sure the comments are being included. The Board asked clarifying questions.

B. Counsel's Report:

No report was given.

C. Director's Report:

Director Le commented that if anyone had any questions, they could ask him and noted that there were slides on the CSDA website. Mr. Masuda stated that he attended the conference as well and was impressed with the speakers at the conference.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Mr. Breen gave a brief update and noted the next meeting is scheduled for November 7th.

2. Joint City District Committee:

President Moore noted the next meeting was moved to October 30th.

3. Executive Committee:

President Moore gave a brief update and noted the next meeting is scheduled for November 12th.

4. Community Outreach Committee:

Director Cortez stated that there was no meeting in October and the next meeting is scheduled for November 12th.

5. Budget and Personnel Committee:

Vice President Shriner stated that there was no meeting in October and the next meeting is scheduled for November 12th.

6. M1W Board Member:

President Moore gave a brief update and noted the next meeting is scheduled for October 28th.

7. LAFCO Liaison:

Director Cortez stated the next meeting is scheduled for October 28th.

8. FORA:

No report was given.

9. WWOC:

Mr. Van Der Maaten noted the next meeting was October 24th.

10. JPIA Liaison:

No report was given.

11. Special Districts Association Liaison:

President Moore stated they met on October 15th and gave a brief update.

12. SVGSA Liaison:

No report was given.

14. Board member Requests for Future Agenda Items:

President Moore noted that the Board members can email in their requests. Director Le said he had already emailed his request. Director Le also asked to review the comments of the Pure Water Monterey EIR at the next meeting

15. Director's Comments:

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

President Moore recessed the meeting from 9:31 p.m. to 9:38 p.m.

The Board reentered into closed session at 9:38 p.m. to discuss the following item:

4. Closed Session:

- B. Pursuant to Government Code 54956.9(d)(4)
Conference with Legal Counsel – Anticipated Litigation
Initiation of Litigation – Two Potential Cases

President Moore reconvened the meeting to open session at 10:28 p.m.

5. Reportable Actions Taken during Closed Session:

Mr. Masuda stated that there were no reportable actions taken during Closed Session.

16. Adjournment:

The meeting was adjourned at 10:29 p.m.

APPROVED:


Thomas P. Moore, President

ATTEST:


Paula Riso, Deputy Secretary