

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Special Board Meeting
April 5, 2010
6:00 p.m.

Minutes

1. Call to Order:

President Nishi called the meeting to order at 6:00 p.m. on April 5, 2010.

2. Roll Call:

Board Members Present:

Ken Nishi– President
Bill Lee – Vice President
Howard Gustafson
Tom Moore – arrived at 6:01

Board Members Absent:

Dan Burns

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Paula Riso, Executive Assistant

Audience Members:

Alison Imamura, Denise Duffy & Associates
Dan Amadeo, Marina Resident
Molly Erickson, Stamp Law Offices
Peter Talbot, HDR Engineering
David Brown, Marina Resident
Lyndel Melton, RMC Water & Environment
Kevin Tilden, Vice President California American Water Company

3. Pledge of Allegiance:

President Nishi asked Director Gustafson to lead everyone present in the Pledge of Allegiance.

4. Oral Communications:

None.

5. Action Item:

- A. Consider Adoption of Resolution No. 2010-20 to Approve a Water Purchase Agreement between Marina Coast Water District, California American Water Company, and Monterey County Water Resources Agency and a related Settlement Agreement for California Public Utilities Commission Proceeding A.04-09-019, "In the Matter of the Application of California-American Water Company (U 210 @) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates."

Mr. Jim Heitzman, General Manager, introduced this item and stated that Mr. Lyndel Melton, RMC Water & Environment, would be giving a presentation on the Regional Water Plan. Mr. Melton gave a brief presentation and update on the Regional Water Plan.

Director Moore asked at what point would the landfill be able to meet all the power requirements for the desalination plant. Mr. Melton answered that it would be able to meet the requirements right away. Director Moore inquired why the North Marina Project was more expensive than the Regional Water Plan. Mr. Melton answered that it was because slant wells were more expensive to build. Director Moore asked what the current status was for this Agreement with the Department of Ratepayers Advocates (DRA) and Monterey Peninsula Water Management District (MPWMD). Mr. Heitzman answered that the MPWMD had already approved the Regional Water Plan and tonight were in the process of another vote with the outcome unknown. The DRA's mission is to keep the rates as low as possible for the CalAm ratepayers, even if that means having the District's ratepayers pay a higher price.

Mr. Lloyd Lowrey, Legal Counsel, commented that although there has been talk that the Agreements have been negotiated behind closed doors, there are several organizations and agencies that represent the public who have participated in the proceedings. It is a litigation process designed by the California Public Utilities Commission (PUC) to be faster and less expensive than litigation.

President Nishi stated that everyone had to sign confidentiality papers and asked legal counsel what was it for and who required it. Mr. Lowrey answered that the Administrative Law Judge required that anyone participating in and/or received information from the alternative dispute process, including all consultants, staff and members of the Board, were required to sign the confidentiality agreement.

Agenda Item 5-A (continued):

Mr. Lowrey commented that approval of the Agreements are conditional and become final upon approval of the Regional Water Project by the PUC.

Director Moore questioned the Advisory Committee meetings as outlined in Section 6.3 of the Water Purchase Agreement (WPA) and asked if they are open to the public. Mr. Heitzman stated the Advisory Committee was comprised of General Managers and would not be a Brown Act sanctioned public meeting. The Outreach Committee, Water for Monterey County, would be the avenue for public and agencies to work together. Mr. Heitzman commented that the Advisory Committee would be making regular updates to the Outreach Committee.

President Nishi asked Mr. Lowrey to reiterate why confidentiality agreements were signed by everyone. Mr. Lowrey stated that the administrative procedure, that is the settlement process and alternative dispute resolution process, was conducted like settlement in litigation. The Administrative Law Judge required that the parties who participated in that process sign a confidentiality agreement.

Director Moore commented that there was concern that the District may not be overly careful to ensure the spending remains reasonable on this project. Mr. Heitzman stated that the PUC was in charge of the rates to CalAm and they would not support any unnecessary spending. Mr. Lowrey commented that there is a provision in the Agreement that the processes the public agencies have to go through are equivalent to the PUC process to ensure the expenditures are reasonable and prudent. Mr. Heitzman said that there are a lot of checks and balances in the Agreement to ensure investments are prudent and a proper use of funds.

Director Moore asked for clarification on the WPA and to ascertain that in 34 – 40 years if the District doesn't think CalAm needs the desalinated water anymore, the District gets the plant. Mr. Heitzman answered that CalAm had that clause put in the agreement so if they are able to find a cheaper, more reliable water source, they can walk away from the desalination plant.

Director Moore questioned the District's proportional share of debt service. Mr. Melton explained that once the District begins taking and using the desalinated water, they have to pay full price of the water and there is no going back. Once the District reaches its allocation share and begins to take the desalinated water, they have to pay the proportional share of the capitalization of the facility, no matter if they fall below the allocation and no longer need it.

Mr. Dan Amadeo, Marina resident, asked if there would be additional public hearings prior to PUC approval. He also stated that the District demonstrated leadership along with the other agencies and you either need to lead, follow or get out of the way.

Agenda Item 5-A (continued):

Mr. Lowrey stated he had a few technical points he wanted to cover; 1) the Environmental Findings that are in the Resolution were reviewed by Alison Imamura, Denise Duffy & Associates, and Mr. Lowrey himself; 2) Mr. Lowrey handed each member of the Board a copy of the Addendum to the Coastal Water Project (CWP) Environmental Impact Report (EIR); 3) Mr. Lowrey stated that on November 17, 2009, RMC Water & Environment gave a presentation to the Board of Directors on the Final EIR for the CWP. The PUC certified the Final EIR on December 30, 2009. Mr. Lowrey stated that at the February and March 2010 Board meetings, the Final EIR was on display with several references made to them, and CD's were provided to each Board member for review at their own leisure; and 4) Mr. Lowrey stated that page 4 of the Resolution, Section 9.6 should read, "The Directors reviewed and discussed the Final EIR at the meeting on November 17, 2009, and discussed the certified Final EIR in February and March 2010..."

Mr. Lowrey stated that the Addendum he just handed out was prepared by a PUC consultant to address certain errata, misspellings, punctuation, and to provide responsive comments to the six letters that were not responded to in the Final EIR and it doesn't change any of the analysis.

Mr. Lowrey stated the action the Board is taking is conditional, based on the Findings that are set forth in the Resolution, and the Resolution includes the Mitigation Monitoring and Reporting Program that comes out of the Final EIR. The Resolution if approved will approve the Settlement Agreement conditionally, and the Water Purchase Agreement conditionally.

Mr. Heitzman commented that there may be some non-substantive items that may need to be revised and asked that the Board allow the General Manager and/or Legal Counsel to make those changes. One of the changes may be removing the MPWMD from the Advisory Committee if they choose to oppose or not support the project, or, if they choose to support the project, include them in the Advisory Committee. Mr. Lowrey added that there is a comment referencing 4.15 and it should be 4.16.

Mr. Peter Talbot, HDR Engineering, commented that it is pleasant to hear positive comments from members of the public and not complaints. He congratulated everyone for their courage, vision, and hard work on this project. Mr. Talbot added that HDR would love to be part of this great project.

Mr. Kevin Tilden, Vice-President California American Water Company, commented that CalAm is supportive of this agreement and it satisfies Order 95-10, the Cease & Desist Order and improves the health of the Carmel River.

Agenda Item 5-A (continued):

Ms. Molly Erickson, Stamp Law Offices, stated that she was representing the Ag Land Trust and then handed out information to the Board of Directors and to staff. She mentioned that she was attending the meeting for three reasons: 1) the Ag Land Trust filed a lawsuit against the District earlier that day; 2) Ms. Erickson submitted a letter dated April 5, 2010 with attachments A-Z (there were also handouts from the Department of Ratepayer Advocates); and, 3) there are concerns that the meeting agenda violated the Brown Act by not disclosing action was going to be taken on A) approving the Regional Project, B) adopting Findings including the Statement of Overriding Considerations; C) consider the Final EIR and an addendum; and, D) approve and adopt mitigation measures. Ms. Erickson asked that the Board of Directors take time to read through the information provided before taking any action.

President Nishi recessed the meeting from 7:39 until 7:49 p.m. to allow everyone time to read through the information Ms. Erickson provided.

Mr. Lowrey commented that Ms. Erickson asked that copies of letters submitted to the Monterey Peninsula Water Management District earlier that morning be handed to the Board of Directors for review as well.

President Nishi asked Mr. Lowrey to give his opinion of the proposed Brown Act violation. Mr. Lowrey stated that he believed the verbiage on the agenda was adequate and not a Brown Act violation.

Vice President Lee made a motion to adopt Resolution No. 2010-20 approving a Water Purchase Agreement between Marina Coast Water District, California American Water Company, and Monterey County Water Resources Agency and a related Settlement Agreement for California Public Utilities Commission Proceeding A.04-09-019, "In the Matter of the Application of California-American Water Company (U 210 @) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates." and allowing the General Manager and/or Legal Counsel to make non-substantive changes to the documents. Director Gustafson seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Lee	-	Yes
Director Gustafson	-	Yes	President Nishi	-	Yes
Director Burns	-	Absent			

6. Director's Comments:

Director Gustafson thanked staff for all their years of hard work on the Project.

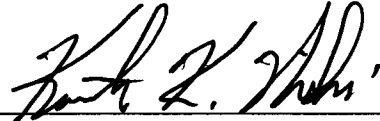
Vice President Lee thanked staff and commented that it has been a long time in coming and now the District was one step closer.

President Nishi commented that you have to pay your dues and take a little extra criticism, and sometimes it gets difficult taking all these hits.

7. Adjournment:

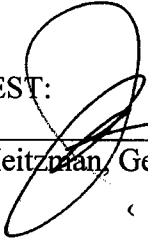
The meeting was adjourned at 8:00 p.m.

APPROVED:



Kenneth K. Nishi, President

ATTEST:



Jim Heitzman, General Manager