

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Regular Board Meeting
August 9, 2011
6:45 p.m.

Minutes

1. Call to Order:

President Lee called the meeting to order at 6:45 p.m. on August 9, 2011.

2. Roll Call:

Board Members Present:

Bill Lee – President
Dan Burns – Vice President
Howard Gustafson
Jan Shriner
Kenneth K. Nishi

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Thomas Barkhurst, Water Quality Chemist
Paul Lord, Water Conservation Specialist
Brian True, Capital Projects Manager
James Derbin, Interim Operations and Maintenance Superintendent
Patrick Breen, Capital Projects Manager
Gary Rogers, Associate Engineer
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Tom Moore, Marina Resident
Richard Newhouse, Marina Resident
George Riley, Monterey Resident
Bob Holden, MRWPCA
Luana Conley, Marina Resident
Suresh Prasad, Marina Resident
Candace Ingram, Ingram Group
Carlos Ramos, Carmel Resident
Efrem Valentin, Marina Resident

The Board entered into closed session at 6:45 p.m., after announcement per Government Code Section 54957.7(a).

3. Closed Session:

- A. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)
Ag Land Trust v. Marina Coast Water District and Does 1-100, Monterey County Superior Court Case No. M105019 (First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief)
- B. Pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: General Manager
- C. Pursuant to Government Code Section 54956.9
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b)
One Case

A letter dated June 21, 2011, from the Monterey County Board of Supervisors transmitted a “Summary of Preliminary Findings Regarding Director Stephen Collins’ Business Relationship With RMC Water and Environment and Marina Coast Water District.” The Summary, prepared by Remcho, Johansen & Purcell, LLP, states that certain conduct raises questions about the validity of contracts to which Marina Coast Water District is a party. Based on the statements in the Remcho Summary, and based on reports in the Monterey Herald this morning, a point has been reached where, in the opinion of the MCWD Board based on the advice of its legal counsel, there is a significant exposure to litigation against MCWD.
- D. Pursuant to Government Code Section 54959.9
Conference with Legal Counsel – Anticipated Litigation
Potential Initiation of Litigation (c)
One Case

The Board ended closed session at 7:07 p.m.

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

4. Possible Action on Closed Session Items:

Mr. Lloyd Lowrey, Legal Counsel, reported the following:

- 3-A – the Board of Directors conferred with Legal Counsel and no action was taken.
- 3-B – the Board of Directors met on the evaluation of the General Manager and no action was taken.
- 3-C – the Board of Directors conferred with Legal Counsel and no action was taken.
- 3-D – the Board of Directors conferred with Legal Counsel and no action was taken.

5. Pledge of Allegiance

President Lee asked Mr. James Derbin, Interim Operations and Maintenance Superintendent, to lead everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Tom Moore, Marina resident, commented that More Transparency is a non-profit association that raises money to pay for the filming and re-broadcasting of Marina Coast Water District Board meetings. He said donations can be sent to: More Transparency, P.O. Box 693, Marina, CA 93933.

Mr. Moore commented that for more than a year, the Marina City Council and staff have been trying to get development started at the Cypress Knolls area of the former Fort Ord. He said that it appears that communications may have broken down between the City and the District regarding water for this site. Mr. Moore asked if the District has informed the City about the state of the agreement that enabled a Water Supply Assessment and Written Verification of Supply (WSA/WV) to be issued for the original Front Porch project at Cypress Knolls. He asked if the District informed the City that a new WSA/WV will have to be approved for any new proposed development at the Cypress Knolls site and that District records indicate that there may be little or no water available for this purpose in the City's water allocation from FORA.

Mr. Moore commented that he was disappointed that the Board has not answered his question from July 12th about whether or not the Board took action to authorize the Markman Report regarding the allegations related to the conflict of interest issue. He stated that if the Board took action, it appears to not have been documented in Board minutes; and, if the Board didn't authorize the Markman Report, then it appears as though the Board has lost control of the District and has simply become a rubber stamp for the General Manager.

7. Presentation:

- A. Consider Adoption of Resolution No. 2011-49 in Recognition of Community Member, Mr. Steven Reeves, for his Dedicated Service to the Marina Coast Water District as a Member on the Water Conservation Commission:

President Lee noted that Mr. Reeves was unable to attend the meeting.

Director Nishi made a motion to adopt Resolution No. 2011-49 in recognition of Community member, Mr. Steven Reeves, for his dedicated service to the Marina Coast Water District as a member on the Water Conservation Commission. Director Gustafson seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

8. Consent Calendar:

Mr. Moore requested to pull item B from the Consent Calendar.

Director Gustafson made a motion approve Consent Calendar consisting of items:

- A. Adopt Resolution No. 2011-57 to Authorize the General Manager and/or the Deputy General Manager/District Engineer to Sign an Amendment to Extend the License Agreement with the Regents of the University of California for the Well No. 32 Replacement/Well No. 34 Installation Project
C. Approve the Draft Minutes of the Special Joint Board Meeting of July 8, 2011
D. Approve the Draft Minutes of the Regular Board Meeting of July 12, 2011

Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

- B. Approve the Expenditures for the Month of July 2011:

Mr. Moore inquired if check number 52321 to Dilbeck & Sons was a progress payment or the total amount. He asked if check number 52256 to Friedman Dumas & Springwater was for one month's work or, if not, why they aren't billing on a monthly basis so the Board can keep better track of the charges.

Director Gustafson made a motion to approve the expenditures for the month of July 2011. Vice President Burns seconded the motion.

Agenda Item 8-B (continued):

Director Shriner commented that she would like to have the public member's questions answered. She asked staff if the payment to Dilbeck & Sons was the entire payment.

Mr. Carl Niizawa, Deputy General Manager/District Engineer, answered that Dilbeck & Sons was the contractor for the FORA building and the payment was a scheduled payment towards a \$2 million contract.

Director Shriner inquired on the payment to Friedman Dumas & Springwater.

Director Nishi asked if staff could get back to Mr. Moore and the Board and provide an answer on both questions that were asked. Mr. Jim Heitzman, General Manager, answered that they would.

Vice President Burns suggested adding more information in the register to further explain the payments.

Director Shriner commented that she would be voting no on this item because she would like to see everyone more prepared for the meeting.

The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	No	President Lee	-	Yes
Director Nishi	-	Yes			

9. Action Items:

- A. Reconsider Adoption of Resolution No. 2011-55 to Review a Request by the General Manager under Government Code Sections 995-996.6 and 825-825.6 and Authorize the District to Engage Legal Counsel for the General Manager:

Mr. Heitzman recused himself from the room at 7:19 p.m.

Mr. Lowrey introduced this item and explained that Director Shriner asked for the opportunity to move reconsideration of the action taken to approve the request by the General Manager for the District to engage legal counsel. He explained that the request was timely and properly submitted and is now in front of the Board for reconsideration.

Mr. Lowrey advised that the Board is guided, but not bound, by Robert's Rules of Order. He stated that Robert's Rules of Order says that the purpose for reconsidering a vote is to permit correction of hasty, ill-advised, or erroneous action, or to take into account additional information that has developed since the taking of the vote.

Agenda Item 9-A (continued):

Mr. Lowrey noted that if the Board determines, based on the information that was presented in the Board packet and the supplemental information sent to the Board (Markman Report and the July 15th letter from County Counsel McKee), that the matter was hasty, ill-conceived or ill-advised, then they can vote to reconsider the matter after which they could reconsider the matter.

Mr. Lowrey opined that from a legal standpoint, procedurally the action taken was taken deliberately, not hastily. He said it is up to the Board to determine if the action was ill-conceived or ill-advised. Mr. Lowrey stated that when he proposed it to the Board, it was not ill-conceived or ill-advised. He added that the question if there was new information presented that would relate not to actions by the County, but to the District and Mr. Heitzman. Mr. Lowrey stated that he had not seen any new information, but it was for the Board to judge.

Director Shriner stated that the Directors were presented with the contract at the meeting and did not have a copy of it ahead of time or on the dais upon arrival. She said that when she was listening to the discussion, there were concerns over the fact that there was no cap on the contract amount or time limit. Director Shriner read a paragraph from the Markman Report and voiced her concerns over the expense, the reasonable cost to the ratepayers, and the fact that others involved did not have a blanket defense or indemnification. She asked that, as a Board, they could serve the ratepayers better by having a cap to the contract amount.

Director Nishi asked if the Board needed to vote to reconsider this item. Mr. Lowrey answered that the first step was to vote to reconsider the item but as of yet, no motion had been made. Director Nishi asked if the Board had to listen to this discussion all night if a motion is never made. Mr. Lowrey answered that the President can call a halt to the discussion if no motion is made.

Director Shriner made a motion to reconsider the adoption of Resolution No. 2011-55 to review a request by the General Manager under Government Code Sections 995-996.6 and 825-825.6 and authorize the District to engage Legal Counsel for the General Manager. The motion failed for a lack of a second.

B. Consider Adoption of Resolution No. 2011-58 to Approve Revisions to the Finance Department Reorganization, Job Description and Salary Schedules

Mr. Niizawa stated that staff was requesting that this item be pulled from the agenda. President Lee pulled this item from the agenda.

- C. Consider Adoption of Resolution No. 2011-59 to Approve Submittal of the Clean Water State Revolving Fund Financial Assistance Application to the State Water Resources Control Board and Designate the General Manager as the Authorized District Representative:

Mr. Niizawa introduced this item. Vice President Burns asked if the application was for the Regional Urban Water Augmentation Project, the Regional Desal Project or both. Mr. Heitzman answered that it was for the Regional Desalination Project.

Director Nishi asked if there was an amount the District was seeking. Mr. Heitzman answered that no amount had been determined yet. He said that this action is to authorize staff to continue with the application process and then later to seek an amount based on construction design among other things. Director Nishi asked if there was a cap. Mr. Heitzman answered that there was no cap, but it would be associated with construction only costs and the District is looking at approximately \$125 million at around 2.8% interest.

Director Gustafson made a motion to adopt Resolution No. 2011-59 approving submittal of the Clean Water State Revolving Fund Financial Assistance Application to the State Water Resources Control Board and designate the General Manager as the authorized District representative. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	No	President Lee	-	Yes
Director Nishi	-	Yes			

- D. Consider Adoption of Resolution No. 2011-60 to Authorize the General Manager and/or Deputy General Manager/District Engineer to Execute a Consultant Services Agreement with Evans Group International, LLC for Services Related to the Regional Desalination Project

Mr. Heitzman introduced this item.

Director Shriner asked if the advisory group was still meeting. Mr. Heitzman answered affirmatively. Director Shriner asked how this contract was different from the Project Management contract that RMC already has. Mr. Heitzman answered that Mr. Evans would be doing different work from RMC on the project. He stated that Mr. Evans sits above and is trusted by all three parties, Monterey County Water Resources Agency (County), California American Water Company (Cal Am), and the District. Mr. Heitzman said that Mr. Evans has far reaching experiences, not only with Federal and State Government but with financiers across the world. He said that Mr. Evans is heavily relied on by the Mayors and the parties, and any of them can go to him to get an unbiased response. Director Shriner stated that RMC's contract is \$28 million and now this contract for Mr. Evans is \$300 an hour. She asked if there was a cap to the contract.

Agenda Item 9-D (continued):

Mr. Heitzman answered that Mr. Evans' going rate is \$1,200 an hour and, as a result of a long relationship with the District, Mr. Evans has agreed to only charge the District \$300 per hour. He added that in the future, Mr. Evans may be hired by "the parties" because he has worked well with the Mayors, Cal Am and the County. Mr. Heitzman stated that long ago, Cal Am had agreed for the District to pay Mr. Evans from the Reimbursement Agreement and the Line of Credit. Director Shriner asked if the project fails and doesn't happen, would those expenses still be covered by Cal Am. Mr. Heitzman answered that it depended on what fails the project. He said that if the project fails due to an action of the District Board, they may not be covered, but if the Water Purchase Agreement is followed, in the District's opinion, they would be covered.

Director Gustafson made a motion to adopt Resolution No. 2011-60 authorizing the General Manager and/or Deputy General Manager/District Engineer to execute a Consultant Services Agreement with Evans Group International, LLC for services related to the Regional Desalination Project. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

- E. Consider Adoption of Resolution No. 2011-61 to Approve a Request for Proposals to Provide Legal Review of Documents Related to the District's Water and Wastewater Operations:

Mr. Heitzman stated that staff was pulling this item.

- F. Consider Adoption of Resolution No. 2011-62 to Authorize the General Manager and/or Deputy General Manager/District Engineer to Enter into a Professional Services Agreement with Davies Public Affairs for Public Outreach Services:

Mr. Niizawa introduced this item and gave a brief review of the consultants that turned in proposals. He also explained that there are other agencies, such as the Monterey Peninsula Water Management District, who have hired permanent staff members specifically for Public Outreach, which is an ongoing annual expense.

Ms. Luana Conley, Marina resident, commented that she went online and viewed the Davies Public Affairs website and found they promote "minimizing damage by managing the message and the messenger". Ms. Conley commented that Davies is a crisis manager and if the District had better outreach they wouldn't have a crisis. She urged the Board to be more open and transparent. Ms. Conley stated that she found this proposed action objectionable.

Agenda Item 9-F (continued):

Mr. Moore inquired why the proposals were not included in the packet, and he hoped that, as the District's outreach member, Director Gustafson was not disappointed about this action.

Mr. Carlos Ramos, Carmel resident, thanked the Board and staff for the wonderful job they were doing under the circumstances. He commented that Davies is a very reputable firm. Mr. Ramos stated that the District is critical to both the Monterey Peninsula and Monterey County. He said that for the District to stand still and try to continue to do business as people are being uncivil, unrealistic, taunting, and outright bullies, is difficult and he applauded them. Mr. Ramos stated that his humble recommendation is to hire this firm.

Vice President Burns commented that he would have liked to see the Request for Proposal and see what deliverables the District is getting for \$100,000.

Director Nishi thanked Mr. Ramos for his wonderful comments. He commented that he agreed with Vice President Burns' comment. Director Nishi stated that he would like to see what the hourly rate and scope of work was. He asked if this was the firm that the County Weekly said was \$375 per hour with a \$5,000 retainer. Director Nishi commented that he has been pushing to get the public outreach moving forward, not for crisis, but for transparency and getting out information.

Director Nishi said that he cannot make a decision until all the information is received and made a motion to table this item pending more information. Director Shriner seconded the motion.

Director Gustafson commented that he disagreed with an earlier speaker and said that he has not heard from the public about anything bad about the water, although there are some circles that fight everything and make up stories. He added that the best community outreach program was the public REPOG group who was the one that created the Regional Desal Project.

Director Shriner commented that she would prefer to spend Board time with answers that the public brings up rather than refuting the public's opinions. She asked where the Davies firm was located. Mr. Niizawa answered that they were located in Santa Barbara. Director Shriner noted that there was only one local firm and asked if their cost was higher or lower than Davies. Mr. Niizawa answered that their hourly cost was lower, but that the District was looking for the most qualified individual with competitive rates. Director Shriner commented that there was a well defined perspective and frame from local people and was pleased that there was a cost cap on this item.

The motion to table this item was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

G. Consider Adoption of Resolution No. 2011-63 to Amend the Professional Services Agreement for General Engineering Services with Schaaf & Wheeler Consulting Civil Engineers for the Well No. 34 Installation:

Mr. Gary Rogers, Associate Engineer, introduced this item.

Director Shriner commented that she appreciated the cost cap and inquired on the 24 amendments to the contract asking if it was common. Mr. Rogers answered that this was a general contract that began in 2007 for various services and many projects have applied to this contract.

Director Nishi asked if, in the beginning, there was an engineer's estimate for the total package of Well 34. Mr. Rogers stated that he believed the construction estimate was approximately \$1.5 million and the design cost, including this current proposal, is approximately \$206,000. Director Nishi said at the beginning of the project, there was an engineer's estimate of the cost and asked what it was. Mr. Rogers said that things have changed quite a bit since the engineer's estimate and he wasn't quite sure what it was.

President Lee stated that Mr. Rogers will provide the answer to the Board at a later time.

Director Nishi asked if the project was part of the Prop. 50 grant funding and asked if it was open-ended. Mr. Heitzman answered that it was not open-ended in either time or funds. Director Nishi asked if there was time to hold this for the next meeting. Mr. Heitzman answered that time is of the essence and if it wasn't completed in time, the District would have to return all the money received for the project.

Director Nishi made a motion to adopt Resolution No. 2011-63 amending the Professional Services Agreement for general engineering services with Schaaf & Wheeler Consulting Civil Engineers for the Well No. 34 Installation and have staff provide the engineer's estimate to the Board. Director Gustafson seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

H. Consider Revising the Director Appointment to the Joint City District Committee and the Liaison to the Monterey Regional Water Pollution Control Agency

President Lee stated that he would like to appoint Director Gustafson to replace Vice President Burns on the Joint City District Committee and Director Nishi to replace Vice President Burns on the Monterey Regional Water Pollution Control Agency.

Agenda Item 9-H (continued):

President Lee made a motion to appoint Director Gustafson to the Joint City District Committee and Director Nishi to the Monterey Regional Water Pollution Control Agency. Director Gustafson seconded the motion. Director Shriner asked why the changes were suggested. President Lee answered that Vice President Burns asked to be removed from both Committees. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

10. Staff Report:

A. A Receive 2nd Quarter 2011 Ord Community Water Consumption and Sewer Flow Report:

Mr. Brian True, Capital Projects Manager, introduced this item.

Director Nishi noted that there was a large difference between the metered and unmetered accounts for CSUMB on page 97 of the packet. He also asked what the reason was for the large increase of water use for Seaside on the bottom of page 97. Mr. True answered that it was contributable to the water now being provided for the Bayonet/Blackhorse golf course. Director Nishi questioned why page 101 did not show a reduced number of unmetered accounts since the Army had been replacing meters over the last year. Mr. True answered that the meters the Army replaced were in the Stillwell Kidney area and were not part of this calculation. Director Nishi stated that there were 300 new meters put in and asked staff to update him where they are in the report at a later time. Mr. Heitzman commented that the meters that were installed were new accounts and did not affect the unmetered accounts which remained stable. He added that staff will provide information to Director Nishi at a later time. Director Nishi also noted that the Marina portion of the Ord Community showed a reduction in water use.

11. Informational Items:

A. General Manager's Report:

No report.

B. District Engineer's Report:

No report.

C. Counsel's Report:

Mr. Lowrey passed out a copy of an article that he wrote about conflicting duties between individual values and duties, and representation values and duties, and will be published in the *Gilroy Today* newspaper.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

President Lee noted that the minutes were in the packet on page 119. Director Nishi commented that the Commission met on July 7th and made a recommendation to the Board regarding the in-school education program. He stated that when the Commission makes a recommendation to the Board, the minutes should be made available to the Board when they are considering the item.

2. Joint City-District Committee:

President Lee commented that the minutes were in the packet on page 122. Mr. Heitzman commented that there was good dialogue at the meeting. Director Nishi voiced his concerns that the District recommended a fix to the Teen Center problem and added that he hoped the fix was legal. Director Nishi noted that the minutes said Councilmember Ford made a comment that someone was attending the Marina City Council meetings and making comments about the District being delinquent in paying someone and that he would get more information and let Mr. Heitzman know what it was about. Director Nishi asked that Mr. Heitzman informed the Board when he found out what the details were.

Director Shriner inquired about the members on both the Water Conservation Commission and the Joint City District Committee and noted that a husband and wife were on the Water Conservation Commission and the same Marina City Councilmember was on both Committees as well.

3. MRWPCA Board Member:

President Lee commented that the meeting was boiler-plate.

4. LAFCO Liaison:

Director Nishi stated that there was no meeting in July.

5. FORA:

Director Nishi commented that the FORA Board didn't pass the budget and they voted to hire an auditor and will come back in 60 days.

7. JPIA Liaison:

Director Shriner said nothing happened.

8. CalDesal:

Vice President Burns commented that CalDesal was working with the State Water Resources Control Board to develop criteria for brine discharge and ocean outfalls. He said that there was a conference call coming up in the next week.

9. Executive Committee:

President Lee stated that the Committee met with the General Manager in closed session and there was nothing to report.

10. Community Outreach:

Director Gustafson said there was nothing to report.

11. Regional Desalination Reports:

Mr. Heitzman commented that the Advisory Committee met earlier that day and finally approved the April minutes but not the March minutes. Director Shriner commented that there was a Community Involvement Forum at the Monterey Plaza on August 23rd.

6. Special Districts Association Liaison:

Director Gustafson commented that they met and took care of business and it was boiler-plate.

E. Director's Comments:

Director Shriner commented that she was amazed that Mr. Lowrey had time to write the article with everything going on at his office and with the District.

Director Nishi asked for an update on the status of the water loan to the Monterey Peninsula Water Management District to be placed on the next agenda explaining when the District will get the water back and why it is taking so long. He also asked to have the RFQ for the attorney on the next agenda.

12. Correspondence:

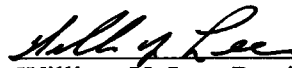
President Lee commented that the District received a CAFR award. Mr. Heitzman stated that the award was from the Government Finance Officers Association when an agency's budget is put together in such a way that it is readable and understandable to the public.

Director Nishi congratulated staff on a good job and asked that the correspondence be date stamped in the future.

Adjournment:

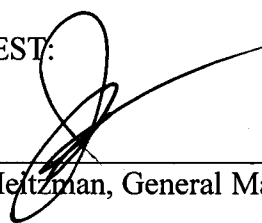
The meeting was adjourned at 8:12 p.m.

APPROVED:



William Y. Lee, President

ATTEST:



Jim Heitzman, General Manager