

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Regular Board Meeting
November 8, 2011
6:45 p.m.

Minutes

1. Call to Order:

Vice President Burns called the meeting to order at 6:45 p.m. on November 8, 2011.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Bill Lee – President (excused – out of state on business)

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
Brian True, Capital Projects Manager
Joe Correa, Interim Assistant Operations and Maintenance Superintendent
Patrick Breen, Capital Projects Manager
Paul Lord, Water Conservation Specialist
Rene Magdaleno, Systems Operator I
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Brian McCarthy, Marina Resident
Richard Newhouse, Marina Resident
Bob Holden, MRWPCA
Luane Conley, Marina Resident
Frank Lambert, Marina Resident
Eric Peterson, Marina Resident

Krystal Schneider, CSUMB Student
Megan Spoerre, CSUMB Student

The Board entered into closed session at 6:46 p.m., after announcement per Government Code Section 54957.7(a). Mr. Lloyd Lowrey, Legal Counsel, stated that only items 3A, B, C, and D would be discussed and handouts relating to item 3B were available to the public.

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 54956.95
Liability Claims
Claimant: Ausonio Incorporated
Agency Claimed Against: Marina Coast Water District
- 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 news media, 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
- E. Pursuant to Government Code Section 54957
Public Employee Performance Evaluation
Title: District Counsel

The Board ended closed session at 7:04 p.m.

Vice President Burns reconvened the meeting to open session at 7:05 p.m.

4. Possible Action on Closed Session Items:

Mr. Lowrey reported the following:

- 3-A – the Board of Directors conferred with Legal Counsel, no action was taken.
- 3-B – no action was taken.
- 3-C – the Board of Directors conferred with Legal Counsel, no action was taken.
- 3-D – the Board of Directors conferred with Legal Counsel, no action was taken.
- 3-E – not discussed.

5. Pledge of Allegiance

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

6. Oral Communications:

No comments were made.

7. Presentation:

- A. Consider Adoption of Resolution No. 2011-79 in Recognition of Rene Magdaleno, System Operator I, for 5 Years of Service to the Marina Coast Water District:

Director Gustafson made a motion to adopt Resolution No. 2011-79 recognizing Rene Magdaleno for 5 years of service to the Marina Coast Water District. Director Nishi seconded the motion. The motion was passed.

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

Mr. Jim Heitzman, General Manager, read the narration and presented Mr. Magdaleno with his plaque and gift certificate.

8. Consent Calendar:

Director Nishi requested to pull items C, D, and F from the Consent Calendar.

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

- A) Consider Re-appointment of Dan Amadeo as Public Member to the Water Conservation Commission
- B) Adopt Resolution No. 2011-80 to Approve and Authorize Acceptance and Consent for Recordation Grant of Waterline Easements for the Watkins Gate Well and Pipeline Project from the County of Monterey
- E) Approve the Draft Minutes of the Special Board Meeting of September 30, 2011

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

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

- C) Receive the Quarterly Financial Statements for April 1, 2011 – June 30, 2011:

Director Nishi noted that the expenses were up and the revenue was down and asked that a report be brought back to the Board explaining why that was. He asked if the current course were to continue, what actions would need to be taken. Director Nishi noted that several investment accounts would be maturing soon and asked that the Budget and Personnel Committee receive a report before they are reinvested to make sure the District receives the maximum payback. Director Nishi suggested that the Budget and Personnel Committee also discuss paying off the Rabobank CalPERS loan.

Director Nishi made a motion to approve the Quarterly Financial Statements for April 1, 2011 – June 30, 2011. Director Gustafson seconded the motion. The motion was passed.

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

- D) Approve the Expenditures for the Month of October 2011:

Director Nishi commented that he pulled the item because he wanted to abstain from the vote.

Director Shriner questioned the membership fees paid to FORA. She also questioned the payment to RMC, if it paid services through August, and where could they see the work product for those charges. Ms. Kelly Cadiente, Director of Administrative Services, answered that the payment was for services through August and the Regional Desalination Project monthly reports have the invoices and work by RMC included as part of the report. She noted that the July and August invoices were part of the monthly reports that were included in the August and September board packets.

Agenda Item 8-D (continued):

Director Shriner inquired on the Laserfiche system and asked if the District was still utilizing it. Ms. Cadiente answered that the person who was working closely with the Laserfiche system was no longer with the District but staff was working to hire someone to handle the Information Technology support for the District.

Director Gustafson made a motion to approve the Expenditures for the Month of October 2011. Vice President Burns seconded the motion. The motion was passed.

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

F) Approve the Draft Minutes of the Regular Board Meeting of October 11, 2011

Director Nishi commented that he would like the comment by Mr. George Riley on page 5 of the minutes to be expanded and reflect more of what he actually said. Director Shriner voiced her appreciation that the minutes captured the highlights rather than verbatim. She stated her concern that Director Nishi would target a particular member of the public and said that the verbatim minutes would not serve the District that well. Director Nishi disagreed and said that when someone makes false statements and the District doesn't correct them, the District would be responsible for allowing the falsehoods to continue. He said that if someone makes a false statement, it is his responsibility as a Director to make sure that it is clarified and asked that the minutes reflect what was said at the meeting. Director Shriner stated that at a recent training, it was discussed that Directors should not confront and debate with public members on their comments. She said if something erroneous was said, it would be up to the General Manager or Legal Counsel to clarify. Vice President Burns commented that the Secretary's minutes and interpretation of the meeting were good enough for him. Director Nishi commented that the public member stated that the District canceled the Community Involvement Forum and it was not correct. He said that the other two agencies canceled the Community Involvement Forum and the District was the only agency who wanted to keep the forum scheduled. Director Nishi stated that he would like to table the item until next meeting so the minutes could be revised.

Vice President Burns asked what the next step was with this item. Mr. Lowrey answered that in the past, items have been tabled without a motion as long as there were no objections. He said that if there are objections, a motion will need to be made.

Director Shriner commented that verbatim minutes are a breach of violation of the Board Procedures Manual and agreed that there should be more discussion regarding this. Vice President Burns commented that it is impossible for anyone to do actual verbatim minutes.

Agenda Item 8-F (continued):

Director Nishi made a motion to table the October 11, 2011 draft minutes. Director Gustafson seconded the motion. The motion was passed.

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

9. Action Items:

A. Consider Adoption of Resolution No. 2011-81 to Approve the 2011/2012 District Investment Policy:

Ms. Cadiente introduced this item. Director Shriner thanked Ms. Cadiente for the update and review of the Investment Policy and suggested the District pursue a District of Distinction and Accreditation after reviewing all their policies.

Director Gustafson made a motion to adopt Resolution No. 2011-81 approving the 2011/2012 District Investment Policy. Vice President Burns seconded the motion. The motion was passed.

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

B. Consider Adoption of Resolution No. 2011-82 to Approve an Amendment to the Professional Services Agreement with The Paul Davis Partnership for the Imjin Office Park Building C, Suite B:

Mr. Patrick Breen, Capital Projects Manager, introduced this item. Director Shriner asked if this would allow the District to move into the office space. Mr. Breen answered that it was possible. Director Nishi noted that the Resolution number needed to be corrected from 2010 to 2011. He commented that it would be prudent to get a management company and start marketing the available office space. Director Nishi stated that the office at 11 Reservation Road wasn't costing the District anything as it is already paid for, but the new office building cost the District money and the District should be looking into trying to get the money back. Vice President Burns commented that in the past, the District surplused the Reservation Road office and contemplated moving the office to the Ord property.

Agenda Item 9-B (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-82 to approve an Amendment to the Professional Services Agreement with The Paul Davis Partnership for the Imjin Office Park Building C, Suite B. Director Shriner seconded the motion. The motion was passed

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

C. Consideration for Directing Staff to Draft a Request for Proposals for District Legal Services:

Vice President Burns stated that this item was pulled from the agenda.

D. Consider Providing Direction to Staff on Proposed District Reorganization and Job Classifications:

Ms. Jean Premutati, Management Services Administrator, introduced this item explaining that recently there have been several staff members who retired, resigned or left for advancement options. She said that staff would like to look into reorganization of the District departments and job classifications and turning some interim positions to regular full-time positions. Mr. Heitzman clarified that staff was looking for Board consensus to move forward and bring any changes back to the Board for approval. The Board gave their consensus to move forward with reorganization.

E. Consider Adoption of Resolution No. 2011-83 to Amend the Board Procedures Manual:

Mr. Lowrey commented that he was asked what consequences would flow from a Board member not observing Board policy. He stated that as with the Crescent City case, consequences could be censure, removal from committees or preventing the Board member from placing anything on the agenda for a specified amount of time.

Mr. Eric Peterson, speaking as a public member, commented that this action was childish and it was the boys picking on the girl. He commented that it was questionably legal and suggested dropping the revision.

Ms. Luana Conley, Marina resident, voiced her disapproval stating that the proposed penalty was vague, contradictory and punishing. Ms. Conley expressed her support for Director Shriner and the need for transparency.

Mr. Frank Lambert, Marina resident, agreed with the last two speakers in regards to transparency and reminded the Board that they work for the ratepayers.

Agenda Item 9-E (continued):

Mr. Lambert encouraged the Board to work with Director Shriner in her quest for information.

Director Gustafson commented that this amendment wasn't directed at any one individual. He added that the Board handled themselves professionally and the District has all the water they need at some of the lowest rates in the region.

Director Shriner questioned the procedure and commented that there have been breaches in the Policy and gave examples of areas where those breaches occurred. She suggested a progressive discipline depending on the violation and also suggested a procedure to warn someone if they are perceived to be in violation so that an action might be taken prior to a disciplinary action. Director Shriner voiced her concern for the disciplinary action of not being able to place any items on the agenda and asked Mr. Lowrey for the Government Code that supports this kind of disciplinary action.

Director Gustafson commented that this procedure was discussed at the Board Workshop.

Mr. Lowrey stated that this procedure and the Crescent City case were discussed at the Board Workshop and also under District Counsel comments at a recent Board meeting. He added that the disciplinary action was based on the Crescent City case and not the Government Code.

Director Nishi suggested placing a time limit of one year for first offense and two years for a second offense. Mr. Lowrey recommended that the language remain as proposed in Section 43 and leave it to the Board's determination per each circumstance.

Director Nishi suggested deleting Section 34 – Minutes of Board and Board Committee Meetings. Vice President Burns stated that the Board Procedures Manual was approved at the last meeting with all the latest changes. He said that he was the one who asked that the consequences for violation be clearly placed in the Board Procedures Manual so there would not be any questions if something came up later. Mr. Lowrey explained that the specific changes to be considered were the language changes in Section 1 and Section 43. He said any other changes would need to be agendized for another meeting.

Director Shriner made a motion to table this item until there is more specificity to the Violation of Policies and the procedure of being warned of, decided upon, what steps can be taken prior to an actual censure, and preventing an indefinite time period. Vice President Burns commented that if something did happen, he assumed that a third party would become involved and it would not be left entirely up to the Board. Mr. Heitzman commented that it was up to the Board to decide if the action was so grievous that a third party would be needed to resolve the issue. The motion died for lack of a second.

Agenda Item 9-E (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-83 to amend the Board Procedures Manual. Director Nishi seconded the motion.

Director Shriner made a substitute motion to not include Section 43 in the amendment. The motion died for lack of a second.

The motion to adopt Resolution No. 2011-83 to amend the Board Procedures Manual was passed.

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

F. Consider Appointing Alternate Members to the Budget and Personnel and Executive Committees:

Director Gustafson made a motion to appoint Director Nishi as an alternate member to the Budget and Personnel and Executive Committees. Vice President Burns seconded the motion. The motion was passed.

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

10. Staff Report:

A. Receive a Verbal Update on the Formation of the Operations and Maintenance Committee for the Regional Desalination Project:

Mr. Heitzman stated that he had a very productive meeting with the City Managers, Monterey Peninsula Water Management District, and Monterey County regarding formation of an Operations and Maintenance Committee (O&M) for the Regional Desalination Project. He said that it would take a number of staff meetings to determine a process to create a committee, what the roles and responsibilities might be, and if the process moves forward, it will be brought back to the members who want to participate.

Director Shriner asked who attended the meeting. Mr. Heitzman answered that City Managers from the Peninsula, the Monterey Peninsula Water Management District General Manager, and a representative from the Monterey County Water Resources Agency attended the meeting. Director Shriner said that the Carmel Pine Cone reported that several Mayors attended. Mr. Heitzman answered that no Mayors were invited to the meeting, only staff.

Agenda Item 10-A (continued):

Director Shriner asked which cities were represented. Mr. Heitzman responded that the Cities of Carmel, Monterey, Pacific Grove, Sand City, Del Rey Oaks, and Seaside were represented. Director Shriner asked if everyone invited had attended. Mr. Heitzman answered affirmatively. Director Shriner clarified that Mr. McKee from the County attended. Mr. Heitzman answered that Mr. McKee, and Mr. Phillips attended for the County, and Mr. Stoldt attended for the Monterey Peninsula Water Management District. Director Shriner asked what was discussed. Mr. Heitzman replied that they discussed the O&M Committee; what might be a potential O&M, should it be technical, governance, or policy making; what might be some liabilities, what process would be needed to move forward in order to make it a legal group with some authority; and a variety of other questions as this was the first meeting. Director Shriner asked if there was a general sense of consensus for the purpose of the Committee. Mr. Heitzman answered that there was a general sense of consensus that meetings will need to continue and the District appreciated that a majority respected the District for opening this up and recognizing that there should be some participation from the Peninsula.

Director Shriner asked if there were any attorneys present aside from Mr. Phillips. Mr. Heitzman answered that Mr. Phillips was County staff and not an attorney. Director Shriner asked what his title was. Mr. Heitzman answered that Mr. Phillips was the Interim General Manager for the Monterey County Water Resources Agency. Director Shriner asked if there were any attorneys present. Mr. Heitzman answered that Mr. McKee, County Counsel, was present. Director Shriner asked if any meeting minutes would be distributed to the public or if any press release would be sent out to the media. Mr. Heitzman said that if the press called, he would be happy to talk to them as this meeting was not secret, but there were no press releases scheduled. Director Shriner voiced her concern that there were no minutes or public invited to these meetings. Mr. Heitzman answered that possibly in the future there would be minutes and public invited, but right now only staff is meeting to discuss the process and it is not an attempt to be a secret meeting. He added that it is routine for staff, including City Managers, to meet all day long and work without public participation and minutes taken. Mr. Heitzman said that if Director Shriner was directing him to have minutes taken of his entire day, he would look into it.

B. Receive an Update on the Monthly Water Meter Charge for Upsized Meters Due to Fire Protection Sprinkler Systems

Mr. Carl Niizawa, Deputy General Manager/District Engineer, introduced this item explaining that most agencies did not have a large rate difference between their ¾" and 1" meters.

Mr. Brian McCarthy, Marina resident, thanked the Board for the ability to comment on this item. He noted that the District has been aware of this issue for the last several years and he has personally been advocating this issue since November 2010. He encouraged the Board to be leaders and to incentivize sprinkler systems rather than have the opposite effect. Mr. McCarthy requested the Board look at charging the same meter charge for both ¾" and 1" meters.

Agenda Item 10-B (continued):

Mr. McCarthy commented that if the Board should decide not to change the meter charges, or if they decide to charge a special rate that includes a premium, he suggested that the Board simultaneously do the same for the corporate ratepayers to offset the rate for residential customers.

Director Gustafson commented that the Marina City Council was the one who required residential fire sprinklers for new or remodeled homes.

Director Shriner inquired if the capacity charges were connected to the size of the meter installed. Mr. Brian True, Capital Projects Manager, answered that capacity charges are based on the Equivalent Dwelling Units and the use of the structure. Director Shriner asked if there was a way to pass the meter cost to the builder. Mr. True stated that there were a number of ways the District could look at reducing costs, and one would be a Rate Study.

Director Nishi commented that the only need for a meter is to prevent theft of water and the probability of using a lot of water in a residential fire is very slim, so he suggested having a 1" residential meter at a ¾" rate. There was discussion on the set up for lateral pipelines to a residence.

There was consensus that staff return this item to the Board and provide alternative options for consideration. Director Shriner suggested giving a rate decrease to ratepayers until this matter is investigated. Director Gustafson clarified that a rate decrease was not on the agenda and could not be voted on.

C. Receive 3rd Quarter 2011 Ord Community Quarterly Water Consumption and Sewer Flow Report

Mr. True introduced this item and noted that the unmetered water use for Ord Community – Army has decreased due to installation of meters.

Director Shriner inquired on the spike in water use in 2007 for the Ord Community – Marina. Mr. True answered that it was due to development projects and dust control.

Director Nishi questioned the water use for the Seaside Golf Course on page 126 of the packet. Mr. True explained that the number for 2010 was only 8 months of usage as the project didn't start until April 2010. Director Nishi questioned the MCWD WSA Estimate on page 128 and asked why no numbers were inserted. Mr. True answered that the MCWD WSA Estimate is only inserted when the District's numbers and the Developers numbers do not match. Director Nishi commented that Seaside Highlands is over their allocation and asked what was going to be done about it.

10. Informational Items:

A. General Manager's Report:

Mr. Heitzman noted that the District Thanksgiving Potluck was going to be held on November 17th at noon at the Ord office.

B. District Engineer's Report:

No report.

C. Counsel's Report:

Mr. Lowrey commented that previously he had been asked if a Board member misses a Closed Session, could they be briefed on what transpired. He confirmed that they could be briefed on what they missed per Government Code Section 54963 as long as they are authorized to receive the information.

Mr. Lowrey asked for Board consensus to reconvene to closed session at the end of the meeting because he had additional information to give the Board.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Nishi commented that the minutes are included in the packet.

2. Joint City-District Committee:

Director Nishi commented that the minutes are included in the packet.

3. Budget and Personnel Committee:

Vice President Burns commented that the minutes are included in the packet.

4. Executive Committee:

Vice President Burns commented that the minutes are included in the packet.

5. Community Outreach:

Director Gustafson commented that they were still working on getting together the outreach proposals.

6. MRWPCA Board Member:

Director Nishi commented that the meeting was boiler-plate.

7. FORA

Director Nishi said he missed the meeting due to mediation and the alternate was out of town.

8. LAFCO Liaison:

Director Nishi commented that the meeting was boiler-plate

9. JPIA Liaison:

Director Shriner commented that she is getting information on the ACWA Conference, November 28-30 and stated that there were several training opportunities that might be useful to the Board. She said that she had distributed a Districts of Distinction Accreditation packet in which one requirement is six hours of training over the last five years.

10. Special Districts Association Liaison

Director Gustafson commented that Assemblymember Monning was there to discuss the State budget.

11. CalDesal:

Vice President Burns commented that there was a meeting at the end of the month in which he and the General Manager would attend.

12. Regional Desalination Reports:

Vice President Burns commented that the report was in the packet.

11. Director's Comments:

Director Shriner commented that she had a list of website information, recommended by the CSDA, that agencies should be providing on their websites. She encouraged the District to consider the Districts of Distinction Accreditation.

Director Gustafson stated that the District has been recognized nationally for transparency in government accounting and budgeting.

Agenda Item 11 (continued):

Vice President Burns asked if the Strategic Planning was postponed until after the New Year. Mr. Heitzman answered that it was.

The Board returned to closed session at 8:36 p.m.

3. Closed Session:

- B. Pursuant to Government Code Section 54956.95
Liability Claims
Claimant: Ausonio Incorporated
Agency Claimed Against: Marina Coast Water District

The Board reconvened to open session at 8:41 p.m.

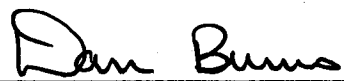
4. Possible Action on Closed Session Items:

Mr. Lowrey stated that the Board of Directors conferred with Legal Counsel, instructions were given and no action was taken.

12. Adjournment:

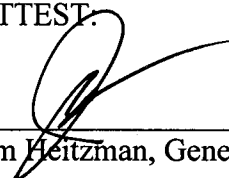
The meeting was adjourned at 8:41 p.m.

APPROVED:



Dan Burns, President

ATTEST.



Jim Heitzman, General Manager