

Marina Coast Water District

District Office  
11 Reservation Road  
Marina, California

Special Board Meeting  
October 23, 2012  
5:30 p.m.

Minutes

1. Call to Order:

President Burns called the meeting to order at 5:30 p.m. on October 23, 2012.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Jan Shriner

Staff Members Present:

Jim Heitzman, General Manager  
Roger Masuda, Legal Counsel  
Andy Sterbenz, Engineer  
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

None.

President Burns announced that the Board was going to convene into closed session for items 3-A1, 2, 3 and 4; 3-B; 3-C1 and 2; and, 3-D Pursuant to Government Code Section 54956.9 as set forth on the agenda.

The Board entered into closed session at 5:31 p.m.

3. Closed Session:

- A. Pursuant to Government Code 54956.9  
Conference with Legal Counsel – Existing Litigation  
(Subdivision (a) of Section 54956.9)

1) 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)

2) In the Matter of the Application of California-American Water Company (U 210 W) 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, California Public Utilities Commission No. A.04-09-019

3) In the Matter of the Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, California Public Utilities Commission No. A.12-04-019

4) California-American Water Company v. Marina Coast Water District; Monterey County Water Resources Agency; and Does 1 through 10, Monterey County Superior Court Case No. M120053 (Complaint for Declaratory Relief)

- B. Pursuant to Government Code Section 54956.9 (c)  
Conference with Legal Counsel – Anticipated Litigation  
Potential Initiation of Litigation  
One Case – MCWD Claims against Monterey County and MCWRA
- C. Pursuant to Government Code Section 54956.9(b)(1) and 54956.9(b)(3)(C)  
Conference with Legal Counsel – Anticipated Litigation  
Potential Litigation  
Two Cases
  - 1) Claims of MCWRA and Monterey County against MCWD
  - 2) Claims of California–American Water Company against MCWD
- D. Pursuant to Government Code Section 54956.9 (c)  
Conference with Legal Counsel – Anticipated Litigation  
Potential Initiation of Litigation  
One Case

The Board ended closed session and President Burns reconvened the meeting to open session at 5:55 p.m.

4. Possible Action on Closed Session Items:

Mr. Roger Masuda, Legal Counsel, reported that no action was taken in closed session.

5. Pledge of Allegiance

President Burns led everyone present in the pledge of allegiance.

6. Oral Communications:

No comments.

7. Action Items:

- A. Consider Adoption of Resolution No. 2012-66 to Approve a Professional Services Agreement with Schaaf & Wheeler to Serve as Interim District Engineer for Marina Coast Water District:

Director Nishi made a motion to adopt Resolution No. 2012-66 approving a Professional Services Agreement with Schaaf & Wheeler to Serve as Interim District Engineer for Marina Coast Water District. Vice President Gustafson seconded the motion. President Burns inquired on the cost. Mr. Andy Sterbenz, Schaaf & Wheeler, said it would be at the current hourly engineering cost for Schaaf & Wheeler of \$168. The motion was passed.

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

- B. Discuss and Provide Direction to Staff Regarding the District's Legal Counsel Position:

Mr. Heitzman introduced this item and explained the options available to the District. He said the Board can hire someone on an interim basis until they decide if they want to fill the in-house position or use outside counsel for the District. Mr. Heitzman commented that the firm of Griffith and Masuda has an extensive water background and recommended hiring Mr. Masuda's firm on an interim basis until the Board decides which course of action to take.

Director Nishi voiced his concern over losing more time while trying to find legal counsel that understood the current issues and stated that he was receptive to hiring Mr. Masuda's firm on an interim basis. Mr. Masuda commented that his firm was offering his services at \$225 per hour. Director Lee asked if Mr. Masuda knew any local attorneys socially. Mr. Masuda stated that he had met Mr. Lloyd Lowrey at several seminars and was a member of the Monterey County Bar Association. Mr. Heitzman commented that an outside view could be beneficial to the District.

Vice President Gustafson made a motion to have staff bring a contract with Griffith and Masuda back to the Board for consideration. Director Lee seconded the motion. The motion was passed.

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

President Burns noted that he hadn't asked for public comment as there was no public present at the meeting.

8. Director's Comments:

Director Nishi commented that he had asked for an agenda item so the Board can recognize the employees who lent a hand during the recent emergency at the District. He asked if the item could be placed on the agenda for Friday's special Board meeting.

Vice President Gustafson extended his welcome to Mr. Masuda and Mr. Sterbenz.


President Burns stated that he appreciated Director Nishi's comment, but asked if the District should be checking with the Employee Assistance Program first to find out if the employees want to be recognized.

Director Nishi stated that it is a Board issue. President Burns countered that it was an employee issue. Director Nishi stated that employees don't run the Board. He said that policy is made by the Board.

9. Adjournment:

The meeting was adjourned at 6:07 p.m.

APPROVED:

  
\_\_\_\_\_  
Dan Burns, President

ATTEST:

  
\_\_\_\_\_  
Jim Heitzman, General Manager