

Marina Coast Water District

District Office  
11 Reservation Road  
Marina, California

Regular Board Meeting  
February 26, 2013  
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on February 26, 2013.

2. Roll Call:

Board Members Present:

Tom Moore – President  
Jan Shriner – Vice President  
Bill Lee  
Peter Le

Board Members Absent:

Howard Gustafson

Staff Members Present:

Brian Lee, Deputy General Manager/District Engineer  
Roger Masuda, Legal Counsel  
Kelly Cadiente, Director of Administrative Services  
James Derbin, Operations and Maintenance Superintendent  
Andy Sterbenz, Interim District Engineer  
Patrick Breen, Project Manager  
Brian True, Capital Projects Manager  
Jeanine DeBacker, Legal Counsel  
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

None.

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:00 p.m.

4. 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 Sixth Appellate District Court of Appeals Case No. H038550

2) California-American Water Company vs 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)

3) State Water Resources Control Board's Proposed Revocation of Monterey County Water Resources Agency Water Right Permit 11043 authorizing the diversion of up to 168,538 acre-feet per year from the Salinas River

- 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 54957  
Conference with Legal Counsel  
Public Employee Performance Evaluation  
Title: General Manager

The Board ended closed session at 7:02 p.m.

President Moore reconvened the meeting to open session at 7:03 p.m.

5. Possible Action on Closed Session Items:

President Moore stated that no reportable actions were taken in closed session and commented that the Board would return to closed session following the open session items.

6. Pledge of Allegiance:

President Moore asked Vice President Shriner to lead everyone present in the pledge of allegiance.

7. Oral Communications:

No comments.

8. Consent Calendar:

Director Le requested to pull agenda items 8-B and 8-D from the Consent Calendar.

Director Le made a motion to approve the Consent Calendar consisting of:

- A) Adopt Resolution No. 2013-17 to Appoint the Deputy General Manager/District Engineer and the Executive Assistant/Clerk to the Board as Deputy Secretaries
- C) Consider Ordering Business Cards for Directors

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

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

- B. Consider Authorizing the Distribution of a Guest Editorial or Article Promoting World Water Day 2013:

Director Le suggested on the next agenda the District adopt a resolution recognizing World Water Day.

President Moore made a slight correction to the text of the fourth paragraph so that it reads, "Our local water agencies, especially MCWD, ~~will~~ can provide you ~~us~~ with water saving help, including ..."

Director Le made a motion authorizing the distribution of a Guest Editorial or Article promoting World Water Day 2013 as amended. Vice President Shriner seconded the motion. The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

- D. Approve the Expenditures for the Month of January 2013:

Director Le suggested adding to the Memorandum of Understanding between the District and employees that the District will pay professional organization fees so it is memorialized in writing.

Agenda Item 8-D (continued):

Director Le asked that the copies of legal fees he requested be stamped confidential and privileged and delivered to his house. Mr. Roger Masuda, Legal Counsel, said that it was allowable to stamp privileged and confidential and deliver copies of the invoice to Director Le. Director Shriner thanked staff for taking the time to answer Board member questions before the meeting so they are better informed.

Director Le made a motion to approve the expenditures for the month of January 2013. Vice President Shriner seconded the motion. The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

9. Action Items:

A. Consider Adoption of Resolution No. 2013-18 to Approve a Variance Request Regarding Metering for The Promontory Development Project:

Director Le asked if the developer knew the cost to sub-meter for both hot and cold lines. The consultant said that they have not received the cost yet.

President Moore asked that the Resolution be amended to include language about sub-metering each unit. Mr. Lee noted that a revised Resolution was handed out on the dais. Mr. Masuda suggested adding the language under the NOW, THEREFORE, BE IT RESOLVED section that "cold and hot water supply shall be sub-metered for each unit". Director Le asked that additional language be added so that if requested by the District, property owner shall furnish the usage date to the District.

President Moore made a motion to adopt Resolution No. 2013-18 approving a Variance Request Regarding Metering for The Promontory Development Project as revised by the copy on the dais and the two changes just discussed ("cold and hot water supply shall be sub-metered for each unit" and "upon request by the District, property owner shall furnish the usage date to the District"). Director Le seconded the motion. The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

B. Consider Directing the Acting General Manager to Waive Deposit Cost and Set/Remove Fees for the Temporary Fire-Hydrant Connection Needed for the Mud Run:

Director Le commented that he could not support waiving the deposit as it may set a precedent.

Agenda Item 9-B (continued):

President Moore asked how much the deposit for a temporary fire-hydrant connection was. Mr. Lee answered that it was approximately \$1500 but the District code 3.08.05E states that no deposit will be required for government organizations, charities, religious organizations, etc.

Director Le made a motion to direct the Acting General Manager to waive the deposit cost and only charge for the set/remove fees for the temporary fire-hydrant connection needed for the Mud Run. Vice President Shriner seconded the motion. The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

C. Consider Adoption of Resolution No. 2013-19 to Approve Adjustments to Deputy General Manager/District Engineer's Pay for Working Out-of-Classification as Acting General Manager:

Mr. Lee commented that this item was to promote him, as the Deputy General Manager/District Engineer, to Acting General Manager until the General Manager returns from his leave of absence and increase his pay 5% for the duration. Mr. Masuda added that this resolution also waives the 20-day waiting period.

Director Lee noted that the General Manager's salary was set at a higher level because he was hired to accomplish certain goals. Mr. Masuda commented that the General Manager does not have a salary schedule and the 5% adjustment was on the Deputy General Manager/District Engineer's salary schedule and there is no relationship between the two.

Director Le asked staff to verify the dollar amount of increase he was told.

Vice President Shriner commented that this position was not vacant in the traditional sense. Mr. Masuda answered that the word vacant was superfluous and the Board was assigning the Deputy General Manager/District Engineer to act as the General Manager in his absence.

President Moore asked for clarification on the Salary Range and Steps. Ms. Kelly Cadiente, Director of Administrative Services, clarified the difference between the Salary Range and Steps.

Vice President Shriner made a motion to adopt Resolution No. 2013-19 approving a 5% adjustment to the Deputy General Manager/District Engineer's pay for working out-of-classification as Acting General Manager and waiving the 20-day waiting period. Director Le seconded the motion.

Agenda Item 9-C (continued):

The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | Yes    | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

D. Consider Adoption of Resolution No. 2013-20 to Approve the Board Meeting Schedule and Venue for 2013:

Director Le questioned the meeting date of September 2, 2013 and if they should hold or cancel it. He stated that he would like to keep the September 2<sup>nd</sup> meeting date and they could cancel it later if need be. Vice President Shriner suggested moving the meeting to Tuesday, September 3<sup>rd</sup> because the City Council meetings move to Wednesday following Monday holidays.

Ms. Paula Riso, Executive Assistant, noted that the cost per hour for AMP changed from \$75 to \$80 per hour.

President Moore asked staff to investigate the cost for the District to put webstream meetings on the District website.

Mr. Masuda commented that the revised Resolution was on the dais and part of the revision was to note that the meeting may specify a start time other than the regular time specified above upon approval of either the Board President or Vice President.

Vice President Shriner made a motion to adopt Resolution No. 2013-20 approving the Board meeting schedule and venue for 2013 as revised. Director Le seconded the motion. The motion was passed.

|                    |   |        |                        |   |     |
|--------------------|---|--------|------------------------|---|-----|
| Director Lee       | - | No     | Vice President Shriner | - | Yes |
| Director Gustafson | - | Absent | President Moore        | - | Yes |
| Director Le        | - | Yes    |                        |   |     |

10. Staff Report:

A. FORA Water and Wastewater Oversight Committee (package from the Feb. 20, 2013 meeting):

Director Le cautioned staff that there will be changes on the CIP and to advise FORA of that fact. He asked for an Excel file for the water consumption.

Vice President Shriner questioned page 56 of the packet and the unmetered Army housing units.

Agenda Item 10-A (continued):

Mr. Sterbenz explained the flat-rate charges for unmetered accounts and the Army housing projects. There were clarifying questions on capacity charges for Army developments.

11. Informational Items:

A. General Manager's Report:

Mr. Lee reported that he has attended several meetings and met with other agencies over the last several weeks. He attended the FORA Admin meeting and WWOC meeting and definitely sees opportunity to improve communication with FORA in the 2013/2014 budget process. Mr. Lee stated that he attended the LAFCO meeting and they don't have a problem with the District's Resolution No. 2012-88. He said that there was a meeting regarding the MOU between the District, MRWPCA and MCWRA. Mr. Lee also attended a meeting with Cal Am regarding the General Jim Moore pipeline and communication looks to be improving between the agencies. He thanked the Board and staff for a very informative special Board workshop on February 23<sup>rd</sup>. Mr. Lee met the MPWMD General Manager, Mr. Dave Stoldt. He also met with the Mayor of Marina and City Manager and will continue those communications as well. Mr. Lee handed out budget schedules and noted that the District is already behind schedule. He informed the Board he would be heading out of town for the weekend but would be available by phone.

B. Counsel's Report:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner said they haven't met since the last Board meeting and the next meeting was March 7<sup>th</sup>. She noted that she had a conflict on that date and asked if Director Lee would attend as the alternate. Director Lee stated that it would depend on his work schedule.

2. Joint City-District Committee:

The next meeting is February 27, 2013.

3. Executive Committee:

No meeting was held.

4. Community Outreach:

Director Le commented that the Outreach Committee will meet with the Marina Chamber of Commerce at 5:30 pm on March 11<sup>th</sup> at CSUMB University Center.

5. MRWPCA Board Member:

President Moore noted that the MRWPCA voted to allow the expenditure of \$800,000 to pursue groundwater replenishment projects and they have \$75,000 in grants and \$300,000 pledged from the MPWMD for that work. He added that both sides recognize that the reclaimed water rights are not a resolved issue. President Moore noted that Dennis Allion was voted in as Board Chair. He said that they were also looking at refinancing bonds that were issued in 2003 and 2006.

6. LAFCO Liaison:

Director Le stated that the Municipal Services Review would be discussed next month.

7. FORA:

President Moore stated that FORA had a special meeting to overturn a Board approved motion in January which modified an action the Board took in August regarding FORA fees. He said there was also discussion between the developers and FORA regarding fees.

8. WWOC:

The information was provided in item 10-A.

9. JPIA Liaison:

Vice President Shriner said that there was a letter in the packet.

10. Special Districts Association Liaison

President Moore commented that the next meeting was April 16<sup>th</sup>.

11. CalDesal:

No report.

12. Correspondence:

President Moore noted that there was correspondence provided in the packet.

13. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Director Le asked if President Moore still had his list of items. President Moore answered that he did. Director Le suggested a joint meeting with FORA to discuss water sources and the CIP.

Agenda Item 13-A (continued):

President Moore asked when Director Le envisioned the meeting taking place. Director Le suggested meeting sometime in April. He also asked to talk about the Ord Community Sphere of Influence. Director Le asked if the Board should bring back the Monterey Downs WSA for discussion on how to avoid any lawsuits. Mr. Masuda stated that if someone wanted to sue the District, then the District would be sued. He added that in this case, if anyone will sue it will be over the EIR and they would be suing the City of Seaside. Director Le stated that he would like to tie the budget with the CIP and the rate study. Mr. Lee answered that they are doing a detailed review of the CIP. Director Le wanted to know when the Board can give input on the Rate Study. Mr. Lee stated that staff is compiling information to give to the Rate Study consultant and when they receive it, they will provide staff a schedule.

Vice President Shriner said that the Marina Water Alliance contract is due to be brought back in March. She said she would like to have a proclamation for the videographers for over five years of public service. Vice President Shriner asked to discuss the consideration of legal support for the General Manager in the Collins investigation as there was supposed to be a cap on the cost but right now it seems to be unlimited. President Moore suggested first getting a report on that and legal counsel can decide if it should be in closed session or not.

Director Lee asked if this was the appropriate place to do this as the President and Vice President already put the agenda together and by doing this, it just draws the meeting out longer.

B. Notice Date for Public Participation Workshop – March 12, 2013:

Ms. Riso noted that the workshop was set for March 12, 2013 from 6:30 to 8:30 p.m. in the District boardroom. President Moore asked how the noticing would go out. Ms. Riso answered that the notices would be posted on the District website, at the Seaside and Marina Libraries, Marina Post Office, and Seaside and Marina City Halls. She added that they would be emailed to the Board packet distribution list and put in the Marina Gazette with public notices sent to the Herald.

C. Notice Date for Strategic Planning Workshop – April 13, 2013:

Ms. Riso stated the workshop was set for April 13, 2013 from 9:00 a.m. to 1:00 p.m. and the location was still to be determined.

14. Director's Comments:

Director Lee said that this had been a great meeting and thanked everyone for the work that had been done.

Director Le asked Mr. Lee if he inquired about the letter when he and Mr. Stoldt met. Mr. Lee said that it was a very informal meeting and they did not discuss the letter. He said staff will continue to look for the letter.

Agenda Item 14 (continued):

Vice President Shriner thanked staff for the flow of information and taking time on Saturday for their extra work.

President Moore thanked staff for their hard work over the last several months and their dedication to making the District a better place. He complimented the Board members on getting their questions to the General Manager ahead of the meeting so they could be answered and keep the meeting moving along.

The Board took a break from 8:16 - 8:26 p.m. then returned to closed session at 8:26 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 Sixth Appellate District Court of Appeals Case No. H038550

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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

The Board returned to open session at 9:43 p.m.

4. Possible Action on Closed Session Items:

President Moore stated that no reportable action was taken.

15. Adjournment:

The meeting was adjourned at 9:43 p.m.

APPROVED:

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Thomas P. Moore, President

ATTEST:

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Brian Lee, Acting General Manager