

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
November 18, 2013
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on November 18, 2013.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

None

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Ernest Pons, Customer Service Supervisor
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Ken Pun, Pun and McGeady
Kate McKenna, LAFCO
Layne Long, Marina City Manager
Paula Pelot, Preston Park Tenants Association
Ken Nishi, Marina Resident
Sara Rubin, County Weekly
Allan Groves, Seaside Resident
Camille Groves, Seaside Resident

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:02 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, Monterey County Superior Court Case No. M105019; Sixth Appellate District Court of Appeals Case No. H038550

2) 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

3) 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)

The Board ended closed session at 6:32 p.m.

President Moore reconvened the meeting to open session at 6:33 p.m.

5. Possible Action on Closed Session Items:

President Moore stated that no reportable actions were taken in closed session.

6. Pledge of Allegiance:

President Moore asked Director Gustafson to lead everyone present in the pledge of allegiance.

President Moore announced that the Public Hearing would begin promptly at 7:00 p.m. and any protests needed to be received before 7:00 p.m.

7. Oral Communications:

Mr. Kenneth Nishi, Marina resident, commented that the Board needed to get creative to save money for the ratepayers. He also asked when his questions regarding the Teen Center would be answered.

8. Consent Calendar:

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

A. Approve the Expenditures for the Month of October 2013:

Director Le stated that he requested more information on several checks and asked when that information would be provided. Mr. Brian Lee, Interim General Manager, answered that it would be provided the next day.

Director Le made a motion to table the October expenditures until the next meeting. Vice President Shriner seconded the motion. Ms. Paula Pelot, Preston Park Tenants Association, questioned if check number 56905 included the mailings for September 6th or October 4th. Mr. Lee answered that the mailings for September 6th and October 4th were not included with this check. The motion was passed.

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

B. Approve the Draft Minutes of the Regular Board Meeting of October 21, 2013:

Director Le asked for a correction to page 8 of the minutes with regards to the statistics mentioned for the Ord Community. He also clarified that Mr. Hunter worked for Whitson Engineers.

Vice President Shriner asked for a change to page 10 of the minutes.

President Moore made a spelling clarification on a speakers name.

Ms. Pelot asked for corrections to page 9 of the minutes and the list of attendees.

Director Le made a motion to table the minutes to the next meeting so staff could make the clarifications. Vice President Shriner seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Abstain	President Moore	-	Yes
Director Le	-	Yes			

President Moore again announced that the Public Hearing would begin promptly at 7:00 p.m. and any protests needed to be received before 7:00 p.m.

9. Staff Reports:

A. Municipal Services Review Update from LAFCO:

Mr. Lee introduced Ms. Kate McKenna, Executive Officer with LAFCO.

Ms. McKenna gave a brief background on Municipal Services Reviews and the purpose and mission of LAFCO.

President Moore reminded the public that they have until 7:00 p.m. to turn in any protests.

Ms. McKenna continued with her presentation.

President Moore asked Ms. McKenna if she could continue her presentation after the District's Public Hearing. Ms. McKenna answered affirmatively.

President Moore opened the Public Hearing at 7:03 p.m.

10. Public Hearing:

A. Receive Public Comment on Proposed Increases in District Rates, Fees, and Charges for the Central Marina Service Area:

Ms. Pelot commented some customers received the notice at their address but it was not in their name, or the notice was in their name but had been mailed to another address. She opined that the data files were grossly corrupted for both the Central Marina and Ord Community areas. Ms. Pelot stated that both the processes were invalidated by the corrupt data files and the Board should not validate either area's protests but should instead restart the process. Ms. Pelot gave several examples of mailings that went to incorrect addresses.

President Moore closed the Public Hearing at 7:09 p.m. and thanked everyone who provided testimony.

The Board asked several clarifying questions regarding mailing lists and margin of error.

B. General Manager's Verbal Report on the Result of Proposition 218 Protests to the Proposed Increases in District Rates, Fees, and Charges for the Central Marina Service Area:

Mr. Lee reported that as of 7:00 p.m. the District received 139 protests and of those, 92 were invalid as they don't receive service from the District, and 47 were valid. He stated that 1,824 protests were needed from Central Marina for a valid majority protest.

Director Le asked for copies of any letters received in addition to the protests.

Agenda Item 10-B (continued):

Ms. Pelot commented that the issue was not how many protests the District received, but how many were never received by the individual who should have received them and were tossed in the trash. She stated that it wasn't about what was returned and how the District dealt with it, there will always be returned mail. Ms. Pelot stated that there could be a legal issue if someone was denied their right to vote because the District failed to provide them appropriate notice.

11. Public Hearing Action Item:

A. Approval by the Board of Directors of the Proposition 218 Protest Count and Determination by the Board of Directors Whether a Valid Majority Protest Occurred:

Director Le made a motion to approve the Proposition 218 protest count and determination by the Board of Directors that a valid majority protest did not occur. Vice President Shriner seconded the motion. President Moore asked if the motion could include asking staff to investigate errors in the mailing list. Mr. Masuda stated that if the Board had serious concerns over how the protest process was conducted, he would recommend they table the action until staff reports back. President Moore asked if Director Le would amend his motion and table this item. Director Le declined to amend his motion. Ms. Pelot commented that those Board members who ran on a platform of accountability and transparency should prove it if they really believe in it. She reiterated that there was a corrupt data file and stated that the Board should not validate this vote and redo both of the processes. The motion failed.

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

President Moore made a motion to table this item until the next regular meeting. Director Gustafson seconded the motion. President Moore clarified that his motion included asking legal counsel to see if there is any case law that bears on the issue of misdirected notices; and staff investigating any errors that may have been in the mail process. Director Gustafson stated that his second included that direction. Mr. Masuda suggested staff look into any errors first before asking legal counsel to incur any costs.

Vice President Shriner voiced her concern over the mantra about the transparency issue and commented that the District had no intention to disregard the law or funnel the process and didn't see it as a transparency issue but mistakes are sometimes made.

Ms. Pelot commented that she has made a public records request for the data output file, was waiting for the documents to be produced, and volunteered to continue assisting the District in identifying things.

Agenda Item 11-A (continued):

Mr. Allan Groves, Seaside resident, commented on the severity of errors in the mailing and that the District should look at how many customers did not get the notice and what percentage may have responded had they received the notice.

Director Le asked for the date of file received from the County. He added that he has asked for a copy of the file but has yet to receive it.

The motion to table this item was passed.

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

9. Staff Reports:

A. Municipal Services Review Update from LAFCO (continued):

Ms. McKenna continued her presentation and gave a status update on the Municipal Services Review and stated that she would continue working with staff to resolve the outstanding issues including the jurisdiction ones with Seaside County Sanitation District (SCSD). The Board commented on Ms. McKenna's presentation.

Vice President Shriner asked to be provided the recommendation made by the Ord Ad Hoc Committee.

Mr. Masuda asked if the fact that the District is a resident voting District and SCSD was a Board member appointed District, held any significance with the decision LAFCO will make. Ms. McKenna answered that LAFCO has been neutral in their two administrative drafts and would like to see the two Districts resolve the issue on their own.

Mr. Nishi commented that the policy makers should either be involved in the negotiations or give direction on the negotiations. He stated that the District is the only member of the Monterey Regional Water Pollution Control Agency that has rights to any water sent over to them. Mr. Nishi added that Seaside would be better off having the District provide the services so they can have rights to the recycled water.

B. Armstrong Ranch Update:

Mr. Lee introduced this item stating that the District had been approached by an individual interested in leasing or buying part or all of Armstrong Ranch and asked for Board direction.

The Board asked several clarifying questions.

Agenda Item 9-B (continued):

Mr. Nishi asked for clarification on what Armstrong Ranch means. Mr. Lee answered that the discussion was just about Armstrong Ranch and did not go into detail over how many acres it involved. Mr. Nishi advised that if the District decides to lease the land for agriculture, they make it a condition that they have to take recycled water from the District and not drill new wells into the potable water system.

President Moore directed staff to investigate what portion of Armstrong Ranch it entails and bring back a written proposal for Board discussion.

12. Action Items:

A. Receive Clarification of Audit Process of the 2013 Audit

Mr. Lee introduced this item. Mr. Ken Pun, Pun and McGeady, stated he was looking for direction from the Board on how to proceed on reviewing the audit draft and audit opinion. Discussion followed.

President Moore stated that since the draft audit was available, all the Board members should get a copy of it and the Audit Ad Hoc Committee can, under the scope of their duties, decide if there is any additional work that needs to be done and bring that recommendation back to the Board for consideration.

Ms. Pelot commented that she recalled the purpose of the Audit Ad Hoc Committee was to determine if there was need for an additional scope of work.

Mr. Nishi voiced his concern that there wasn't a transmittal on this item and no one knew what to expect. He stated the auditor works for the Board and needs to receive direction from the Board. Mr. Nishi added that this audit is a State mandated audit, not a forensic audit and if the Board wants a forensic audit, it needs to be agendaized.

President Moore directed the draft audit to be provided to all the Board members; the Audit Ad Hoc Committee will look at it; the audit will be brought back to the next meeting for consideration; and, take into consideration any Audit Ad Hoc Committee recommendations for an additional scope of work.

Mr. Masuda commented that the auditor is here to determine whether the District is keeping their financials in accordance with generally accepted accounting principles and whether they are reasonable or not. He stated that the auditor is not here to advise the District whether or not this is the best practice to use and if that was what the Board was looking for, they would need to hire a separate consultant to look at that.

Agenda Item 12-A (continued):

Mr. Lee clarified that the auditor would send him the draft audit and he would forward it to all Board members.

B. Validate the Number of Proposition 218 Protests Tabulated on October 21, 2013 for the Proposed Increases in District Rates, Fees, and Charges for the Ord Community:

Director Gustafson made a motion to table this item. Vice President Shriner seconded the motion. Director Le commented that he would like staff to check the addresses one-by-one and review the information Ms. Pelot has put together.

Ms. Pelot commented that this was not about the returned mail but about the pieces of mail that were never received by the intended and asked that the District verify the data file used for the mailing. She added that the mantra was not about transparency as much as it was about accountability and that she has been asking that the District do this correctly. Ms. Pelot noted that she had gone door-to-door hanging protest forms on each door in the Seaside Highlands area which was why there were such a large number of protests received from them. She stated that she did not think it was because they had received the notices in the mail.

The motion to table this item was passed.

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

C. Consider Second Reading of the Altered Ordinance No. 56 Approving New District Rates, Fees & Charges for Marina Water and Wastewater:

Mr. Lee introduced this item. Mr. Masuda clarified when the different rate increases would take effect.

President Moore made a motion to approve the second reading of the altered Ordinance No. 56, an Ordinance amending Sections 6.08.030, 6.08.060, 6.08.080, 6.08.090, 6.08.100, 6.12.020, 6.12.040, and 6.12.050 of the District Code changing rates, fees and charges for water and sewer services for the Central Marina Service area, and waive the reading of the entire Ordinance. Vice President Shriner seconded the motion. The motion was passed.

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

D. Consider Adoption of Resolution No. 2013-57 to Amend Section 16 of the Board Policy Manual:

Mr. Lee introduced this item explaining that revised copies of Section 16 and a handout from Mr. Masuda regarding the legal framework governing relationship between the Board and General Manager were on the dais. Mr. Masuda explained the points he wanted to make with his handout and how it could impinge on the General Manager's ability to do his job.

Director Gustafson left the meeting at 9:03 p.m.

Director Lee made a motion to continue the meeting until 2:00 a.m. unless finished earlier. Director Le seconded the motion. With a vote of 4-Ayes, 0-Noes, 1-Absent, the motion was passed.

Discussion regarding staff contacting legal counsel continued and clarifications were suggested.

President Moore made a motion to direct staff to bring a clean copy of Section 16 with the suggested revisions and a report on any sections of the Board Procedures Manual that may be contradictory to the revisions to the first meeting in January 2014. Director Shriner seconded the motion. Director Le stated that he would prefer to adopt the changes now and revise them later if there are changes that need to be made. Discussion followed.

President Moore modified his motion to bring a clean copy of Section 16 with the suggested revisions to the next meeting for consideration. Director Shriner seconded the modified motion. The motion was passed.

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

13. Informational Items:

A. General Manager's Report:

Mr. Lee commented that the District send a letter to the City of Marina regarding the Prop 218 process and that a copy of that letter was provided to the Board. He stated that he and President Moore met with the City of Seaside's Mayor Rubio and City Manager Dunn to discuss the Seaside County Sanitation District's and MCWD's boundaries and discussions will continue. Mr. Lee advised the Board that there was a small sewer spill in Preston Park on November 13th due to root intrusion. Finally, he noted that he would be on vacation from November 21st through December 1st and, although Mr. James Derbin would have local authority, Mr. Lee would be available by phone and email.

B. Counsel's Report:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner commented that there was discussion on a joint project with the Community Outreach Committee and that a per capita water usage chart was presented that showed consistent water usage since 2000.

2. Joint City District Committee:

President Moore commented that the next meeting was scheduled for December 18th.

3. Executive Committee:

No meeting was held.

4. Community Outreach Committee:

Director Le said that they met with local organizations and service clubs and suggested they start meeting with elected officials of different agencies to discuss items of mutual interest.

5. MRWPCA Board Member:

President Moore stated that the next meeting was November 25th.

6. LAFCO Liaison:

Director Le reported that there was no meeting in November.

7. FORA:

President Moore stated that the next meeting was December 13th and there was a colloquium on December 12th and 13th with eighteen guest speakers. He also gave an update on FORA activities.

8. WWOC:

Mr. Lee stated the next meeting was scheduled for December 4th.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison

No report.

14. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Director Lee suggested emailing the requests to the Board President.

Vice President Shriner requested to receive a review of the 2008 Ad Hoc Committee LAFCO process and an update on the procedure/timeline for the Interim General Manager.

Director Le requested a roadmap of what the District wants to do during the next year; staff finish work on the Board Procedures Manual and Strategic Plan; and discuss recruitment of the General Manager position.

President Moore suggested discussing negotiating strategies with respect to Seaside County Sanitation District.

15. Director's Comments:

Director Le, Vice President Shriner, and President Moore made comments.

16. Adjournment:

The meeting was adjourned at 10:25 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Brian C. Lee, Deputy Secretary