

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
February 3, 2014
6:00 p.m.

Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on February 3, 2014.

2. Roll Call:

Board Members Present:

Tom Moore – President
Jan Shriner – Vice President – arrived at 6:08 p.m.
Bill Lee
Peter Le

Board Members Absent:

Howard Gustafson

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Jeanine DeBacker, Special Legal Counsel

Audience Members:

Kenneth Nishi, Marina Resident
Margaret Davis, Fort Ord War Horse
Paula Pelot, Preston Park Tenants Association
David Burnett, Marina Resident
Jim Cullen, Monterey Peninsula Regional Water Authority
George Riley, Public Water Now
Robert Donlan, Ellison, Schneider & Harris
Uli Siebeneick, Seaside Resident
Efron Lopez, Marina Resident
Ian Crooks, California American Water Company

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:04 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)

B. Pursuant to Government Code 54956.9

Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b) of 54956.9
One Potential Case, Including Appointment of Special Legal Counsel

C. Pursuant to Government Code 54957

Public Employee Performance Evaluation
Title: Interim General Manager
(Requested by Peter Le)

The Board ended closed session at 7:00 p.m.

President Moore reconvened the meeting to open session at 7:02 p.m.

5. Possible Action on Closed Session Items:

Mr. Roger Masuda, Legal Counsel, stated that no reportable actions were taken in closed session and the Board would return to closed session at the end of the meeting to complete discussion of the items.

6. Pledge of Allegiance:

President Moore asked Mr. Brian Lee, Interim General Manager, to lead everyone present in the pledge of allegiance.

7. Oral Communications:

Mr. Kenneth Nishi, Marina resident, asked what Attorney Masuda fees were and if travel costs were paid by the District.

Mr. Uli Siebeneick, Seaside resident, asked for an update on the discussions with Seaside County Sanitation District with regards to jurisdictional borderlines.

8. Election of Board President and Vice President:

Director Shriner nominated Director Moore for President. Director Moore seconded the nomination.

Director Lee nominated Director Gustafson for President. The nomination failed for lack of a second.

Ms. Paula Pelot, Preston Park Tenants Association, commented that she agrees with the description of the President and Vice President positions and that the only power the President holds is to make appointments. She added that she didn't understand what the discomfort was and noted that the meetings have been very difficult because of actions of the public and the Board, and other than that, the President has done a very good job of running the meetings.

Mr. David Burnett, Marina Resident, voiced his support of Director Moore for President.

Ms. Margaret Davis, Fort Ord War Horse, voiced her support of Director Moore for President.

Mr. Nishi commented that this was a Board decision and three Board members obviously disagreed with the public comments. He stated that Director Moore showed a lack of leadership.

The nomination of Director Moore for President failed.

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

Director Moore made a motion to nominate Director Shriner for Vice President. Director Shriner seconded the nomination. The nomination failed.

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

9. Consent Calendar:

Vice President Shriner made a motion to approve the Consent Calendar consisting of the following items:

- A) Receive and File the Check Register for the Month of December 2013
- B) Approve the Draft Minutes of the Regular Board Meeting of December 16, 2013
- C) Approve the Draft Minutes of the Regular Board Meeting of January 6, 2014
- D) Approve the Draft Minutes of the Special Board Meeting of January 11, 2014

Director Lee seconded the motion. The motion was passed.

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

Director Le noted that he was voting yes for item 9-B and abstaining from items 9-A, C, and D.

10. Action Items:

- A. Review the Status of the Public Information Request of Paula Pelot:

Ms. Pelot noted that there were several items she didn't believe she received and wanted clarification on those items. She suggested that she and the General Manager meet and discuss those items to resolve this issue.

- B. Review the Status of the Response to Questions on the Teen Center:

Mr. Nishi commented that he had not received answers to his questions and voiced his concern over the decision made by the General Manager/District Engineer.

- C. Consider Declaring the Fort Ord Stations Veterinary Hospital Barracks as Surplus District Real Property, Appointing District Negotiator(s), and Specifying Conditions for Sale:

Ms. Davis thanked the Board for sending their support of recognizing the Fort Ord Stations Veterinary Hospital Barracks as a historical site. She suggested the District and the City of Marina work together and get creative in looking for a way to use the building.

Mr. Efron Lopez, Marina resident, commented that too many of the old buildings have been torn down and he would like to see the history of the military be saved by restoring the old buildings.

Agenda Item 10-C (continued):

President Moore made a motion to direct this issue to be discussed at the Joint City District Committee and for staff to prepare a report on limitations, if any, that are in the No-Cost Economic Benefit Conveyance of the property. Vice President Shriner seconded the motion. Ms. Pelot suggested that the Friends of the Fort Ord War Horse be included in the Committee meeting as well. The motion was passed.

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

- D. Discussion and Possible Action Regarding January 23, 2014 request by City of Marina Staff for a Planning Commission Interpretation of Marina Municipal Code Chapter 17.55, Surface Mining and Reclamation Standards, that the Extraction of Water to Determine Its Mineral Content is a Surface Mining Operation:

Mr. Ian Crooks, California American Water Company, explained to the Board what a test borehole entailed.

Mr. Jim Cullen, Monterey Peninsula Regional Water Authority, encouraged everyone to work together and support the water testing without delaying the process.

Mr. Robert Donlan, Ellison, Schneider & Harris, asked for the District's support in the borehole water testing to avoid any further delay.

Mr. George Riley, Public Water Now, asked for clarification on the role the Mayor's Group played in this testing.

Mr. Nishi stated that the comments on the transmittal were false and the District needed to protect the City of Marina.

Vice President Shriner made a motion for the District to send a letter to the Marina Planning Commission with several recommendations. Director Le seconded the motion. President Moore suggested some additions to the motion. Vice President Shriner restated her motion as the following:

1. Allowing the borehole testing could undermine some agreements within the District's 1996 Annexation Agreement
2. The boreholes are not for test well purposes
3. The testing would be limited to this one instance on the CEMEX property
4. There is an on-going dispute between the District, Cal Am and the County of Monterey for approximately \$20 million
5. The District has direct access to all the data from the boreholes and test wells
6. Cal Am makes assurances that there will be no negative impact to the 180 and 400 foot aquifers

Agenda Item 10-D (continued):

Director Lee called for the question.

The motion was passed.

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

E. Consider Director Appointments to Committees of the Board and to Outside Agencies for 2014:

Vice President Shriner made a motion to continue the current committee assignments with the exception of FORA and LAFCO and requested those committee appointments be brought back to the next meeting. Director Le seconded the motion. The motion was passed.

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

F. Consider Adopting Resolution No. 2014-01 to Appoint an Ad Hoc Committee to Discuss the Recycled Water Pipeline with the Monterey Regional Water Pollution Control Agency and Specifying the Scope of the Committee's Duties and Legal Authority:

Director Le made a motion to appoint himself and President Moore to an Ad Hoc Committee to discuss the existing water line and any proposal from FORA, the Monterey Regional Water Pollution Control Agency or any other agency with the following specifications:

1. The Committee has no legal authority other than to direct staff to provide information to the Committees
2. The Committee will provide a report to the Board every regular Board meeting
3. The Ad Hoc Committee doesn't have authority to act on behalf of the Board.

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 | | | |

G. Consider Adopting Resolution No. 2014-02 to Appoint an Ad Hoc Committee to Discuss the Annexation of the Ord Community and Specifying the Scope of the Committee's Duties and Legal Authority:

Director Le made a motion to appoint himself and President Moore to an Ad Hoc Committee to discuss the annexation of the Ord Community with the following specifications:

Agenda Item 10-G (continued):

1. The Committee has no legal authority other than to direct staff to provide information to the Committees
2. The Committee will provide a report to the Board every regular Board meeting
3. The Ad Hoc Committee doesn't have authority to act on behalf of the Board.

Vice President Shriner seconded the motion. Mr. Siebeneick asked when the public would be informed of the discussions of the jurisdictional boundaries and why nothing has been done for over seven years. Mr. Siebeneick was informed that there have been discussions between the District and the Seaside County Sanitation District over the past several years. The motion was passed.

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

H. Consider Preliminary Draft 2014 Agenda, Goals, and Work Program:

No action was taken on this item.

- I. Consider a Scope of Topics for the Community Outreach Committee to Discuss with the Community:

Director Lee made a motion to continue the meeting until 2:00 a.m. unless finished earlier. President Moore seconded the motion. The motion was passed.

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

Ms. Pelot asked for clarification on what the Community Outreach Committee's duties were. Direction was given and no action was taken on this item.

- J. Review the Non-Compliance of Section 16 of the Board Procedures Manual:

No action was taken on this item.

- K. Consider Revising Sections 9, 17, 23, and 42 of the Board Procedures Manual:

Direction was given for staff to bring revisions to section 42 of the Board Procedures Manual in March and a complete revision of the Board Procedures Manual to a meeting in May. No action was taken on this item.

L. Consider Adoption of Resolution No. 2014-03 to Provide Legal Representation for Director Le During the Investigation of Employee Complaints Against His Actions

Director Le removed himself from the dais and the Council Chambers.

Vice President Shriner made a motion to adopt Resolution No. 2014-03 to provide legal representation for Director Le during the investigation of employee complaints against his actions for a maximum of six hours. The motion died for lack of a second.

Director Le returned to the dais.

11. Informational Items:

A. General Manager's Report:

Mr. Lee reviewed the items provided in the Board packet.

B. Counsel's Report:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner stated the next meeting was scheduled for February 6, 2014.

2. Joint City District Committee:

President Moore commented that the January meeting was canceled and the next meeting was scheduled for February 26, 2014.

3. Executive Committee:

No meeting was held.

4. Community Outreach Committee:

Vice President Shriner noted that there would be a meeting soon. Director Le stated that they would be meeting with CSUMB students in February and March.

5. MRWPCA Board Member:

President Moore gave a brief update of the January 27, 2014 meeting.

6. LAFCO Liaison:

No report.

7. FORA:

President Moore gave a brief update of the January 10, 2014 meeting.

8. WWOC:

No report.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison

Vice President Shriner gave a brief update of the January 21, 2014 meeting.

12. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Vice President Shriner made a request.

President Moore made a request.

Director Lee made a request.

13. Director's Comments:

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

President Moore recessed the meeting from 11:23 to 11:27 p.m.

The Board returned to closed session at 11:27 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)

B. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b) of 54956.9
One Potential Case, Including Appointment of Special Legal Counsel

C. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: Interim General Manager
(Requested by Peter Le)

The Board ended closed session at 12:20 a.m.

5. Possible Action on Closed Session Items:

Mr. Masuda reported that with a vote of 4-Ayes (Le, Lee, Shriner, Moore), 0-Noes, 1-Absent (Gustafson), the Board authorized hiring Special Proposition 218 Counsel, Ms. Patty Quilizapa, Aleshire & Wynder, to advise the Board and District staff on Proposition 218 issues.

14. Adjournment:

The meeting was adjourned at 12:22 a.m.

APPROVED:



Thomas P. Moore, President

ATTEST:


Brian C. Lee, Deputy Secretary