

MONTROY LAW

CORPORATION

REPORT TO THE MARINA COAST WATER DISTRICT CONCERNING BROWN ACT INVESTIGATION

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Date: February 21, 2014

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MONTROY LAW

CORPORATION

HILDA CANTÚ MONTROY

February 22, 2014

Ms. Jeanine DeBacker
Marina Coast Water District
11 Reservation Road
Marina, California 93933

Re: Marina Coast Water District— Investigation Report

Dear Ms. DeBacker:

I was retained by the District to conduct an investigation relating to allegations of a Brown Act violation. This letter serves as my report to you pursuant to the engagement letter of January 16, 2014. My understanding is that you will submit the Investigation Report to the Board of Directors at a duly noticed meeting and that I may be asked to attend the Board meeting.

SCOPE OF ENGAGEMENT

The scope of this examination was restricted to allegations by Director Howard Gustafson that there was an attempt to appoint Director Peter Le as Interim General Manager and to take a vote in violation of the Brown Act. The conduct in question allegedly occurred during a closed session of the Board of Directors held on July 15, 2013.

I was asked to serve as a neutral fact-finder to conduct an independent investigation including speaking with persons with knowledge of the matters, the persons involved in the conduct, and any additional persons with relevant information. The purpose of the investigation is to determine and report on what happened at the July 15, 2013, Closed Session and to prepare a written report with findings, conclusions of law, and recommendations.

METHODOLOGY

Interviews were conducted with the following members of the Board of Directors: Howard Gustafson, Tom Moore, Bill Lee, and Jan Shriner. I also conducted an interview of Roger Masuda, General Counsel. Director Peter Le declined to be interviewed.

At the outset, I determined that it would be necessary to inquire not only as to what happened at the July 15, 2013, Closed Session, but also to delve into prior and subsequent meetings wherein the hiring of Brian Lee as Interim General Manager was discussed as this helped to provide context for the July 15, 2013, Closed Session as well as to assess credibility relating to what transpired at the closed session. Inquiry was also made as to conversations held by those

interviewed and documents received concerning the subject of this investigation outside of the closed session at issue.

Extensive handwritten notes were taken contemporaneously with the interviews. These notes were reduced to individual typewritten interview summaries and used for preparation of this Investigation Report. Quoted text in this Investigation Report is from the interview summaries. As part of the investigative process, I reviewed the documents and watched the DVDs of meetings listed in Appendix A. Appendix B comprises exhibits cited in this report. The detailed interview summaries are set forth in Appendix C.

At the conclusion of the interviews and after a review of items listed in Appendix A, an analysis was made wherein I considered all statements and information that I received, made credibility assessments, and weighed the evidence to make factual findings. Once the factual findings were made, a legal analysis was conducted for the making of conclusions of law followed by a listing of recommendations.

BACKGROUND

This investigation was prompted by an email from Director Gustafson to Paula Riso dated December 19, 2013, requested an agenda item for board action as follows:

I would like to place on the agenda action relating to the attempt by Peter Le, Tom Moore and Jan Shriner to hire Mr. Le as the General Manager of MCWD. There was no agenda for the closed session action and a vote was attempted. We need to send this the FPPC and the District Attorney. There are specific dates that will be addressed in the item description.

The email is attached as Exhibit 1. On January 6, 2014, the requested agenda item was considered in open session by the Board of Directors. At that meeting, the District's General Counsel submitted a written report wherein he outlined the agenda item and noted that although no specific date had been provided, it appeared the alleged conduct occurred at the Board's July 15, 2013, Closed Session. See Exhibit 2. The Board deliberated and made a determination to have the subject investigation conducted.

FACTUAL ANALYSIS AND SUMMARY

I received full cooperation from all persons interviewed. The recollection of persons was general in nature. Interviewees not only waited to respond to questions but also made voluntary comments.

A. The Complaint

The complaint by Director Gustafson per his December 19, 2013, email alleges:

1. An attempt by Directors Moore, Shriner, and Le to hire Director Peter Le as general manager at a closed session;
2. An attempted vote in the closed session; and
3. The lack of an agenda for holding the closed session.

B. Negotiations Between Board and Brian Lee

All persons interviewed confirmed that the Board had designated Director Gustafson to negotiate the terms and conditions of an employment agreement with Brian Lee.

On June 17, 2013, in open session, the Board approved the appointment of Brian Lee as Interim General Manager and designated Director Gustafson as the District's negotiator for negotiating the terms Brian Lee's employment agreement. Director Le was absent from the June 17, 2013, Board meeting. See Exhibit 3.

The closed session in question occurred on July 15, 2013. Both Director Gustafson and General Counsel Masuda agreed this was the closed session in question. Per Mr. Masuda, Director Gustafson nodded when Mr. Masuda went over his memo to the Board. In describing his role as negotiator in the negotiation process with Brian Lee, Director Gustafson in his interview stated, "That was the purpose of the July 15, 2013, meeting."

C. The July 15, 2013, Closed Session Agenda

The published agenda for the July 15, 2013, Board meeting included several closed session items. See Exhibit 4. Pertinent to the matter at hand was Closed Session Agenda Item 4D which provided as follows:

4. Closed Session
 - D. Pursuant to Government Code Section 54957.6
Conference with Labor Negotiator (Howard Gustafson)
Unrepresented Employee (Interim General Manager)

The placement of this closed session item on the agenda is consistent with action taken by the Board on June 17, 2013.

D. Director Le Expresses Interest in Interim General Manager Position

Director Moore in his interview stated that after the June 17, 2013 meeting, Director Le approached him to let him know he was interested in the position of Interim General Manager. The assumption discerned from Director Moore is that Director Le approached him as he is the President of the Board. This likely occurred a few days before the July 15, 2013, Board meeting as Director Moore explained that "within 24 to 48 hours" he contacted Special Counsel Jeanine DeBacker and the responsive email correspondence from her is dated July 14 and 15, 2013. Director Moore expressed concerns to Ms. DeBacker regarding conflicts of interest and Peter Le's participation in the contract negotiations with Brian Lee.

There is no evidence to support any contention that Director Le spoke to any other Board Member as to his interest in the Interim General Manager Position. Director Shriner's comments as to her surprise upon hearing of his interest at the July 15, 2013, closed session and Director Lee's absolute statement that he has never spoken to Peter Le other than at Board meetings were credible. It is also obviously clear that Peter Le had not spoken to Director Gustafson about his interest in the position.

E. Special Counsel's Email Correspondence Regarding Conflict of Interest

On July 14, 2013, Special Counsel DeBacker emailed Director Peter Le regarding his conflict of interest and required recusal relating to the general manager position. She copied Director Moore as he had been the one to initiate the inquiry and also copied General Counsel Masuda. Ms. DeBacker's email stated that Peter Le could not be allowed to participate in discussions regarding Brian Lee's contract. At the outset her email states: "You must recuse yourself from the Closed Session and any discussion or vote (closed or public) regarding Brian Lee's candidacy for Interim GM – at the July 15 meeting and any meeting thereafter." See Exhibit 5. Mr. Masuda, followed up and gave further legal reasoning as to why Peter Le could not serve as Interim General Manager. See Exhibit 6.

F. The Closed Session Meeting of July 15, 2013

On July 15, 2013, the Board met in the Marina City Council Chamber. The Board meeting minutes reflect the meeting commenced at 6:45 p.m.; the Board entered closed session at 6:46 p.m.; and the closed session ended at 7:12 p.m. Thus, the Board met in closed session for 26 minutes. The 26 minute closed session includes meeting for other closed session matters not germane to this investigation. Interviewees all recalled that other closed session matters that were on the agenda were discussed at said closed session.

The closed session was held in a different conference room from the Council Chamber. Present in the closed session were General Counsel Masuda and Directors Moore, Gustafson, Shriner and Lee. Everyone interviewed confirmed that Director Le was not present in the closed session. The Board meeting minutes reflect that Director Le arrived at the Council Chamber at 7:02 p.m. All persons interviewed agreed that Peter Le did not enter the closed session meeting. General Counsel Masuda noted that the minutes had been corrected at a subsequent meeting when a member of the community, Mr. Nishi, raised an issue with the minutes as they implied that Director Le was present when roll call was held.

The memories of the four Board Members and of General Counsel as to what transpired in the July 15, 2013, closed session were blurry. They remember generally what happened but not in great detail. Based on what they said and upon a review of minutes of subsequent meetings, it appears the Board Members and General Counsel may have muddled memories as to what transpired at subsequent meetings concerning negotiations with Brian Lee and concerning Director Lee's interest in the general manager position. Director Lee explained upfront that he remembered events but not what happened at each specific meeting.

Director Moore stated that he explained at the outset of the closed session that Peter Le was not present because he had expressed an interest in the general manager position. Such explanation is consistent with the email correspondence that Ms. DeBacker had transmitted to Peter Le. Ms. DeBacker had copied Director Moore with the email correspondence presumably because he initiated the inquiry. Thus, Director Moore knew that Peter Le had a conflict of interest.

Director Shriner recalled that “as the board members took their seats,” Director Moore stated that Peter Le would not be joining the meeting because he had expressed an interest as a volunteer and wanted to avoid any impropriety so he would not be present in the meeting. Director Shriner described what was said as more of an “announcement” rather than a discussion. Director Lee said that Director Moore said, “He’s not here because he has volunteered to be General Manager.”

Director Gustafson’s recollection that Director Moore stated “first thing right off [that] Peter Le is not here but we have a proposal” was not corroborated by anyone else’s recollection. When asked who “we” meant, Director Gustafson stated he assumed that Director Moore was referring to Director Shriner but that he did not recall her saying anything else. He said “she did not say anything. She is supportive of Tom.” General Counsel Masuda did not recall that she said anything. Director Lee could not recall what she said.

Upon hearing Director Moore’s announcement, Director Shriner said she asked “For free? As a volunteer?” Director Moore responded “That’s right. She then exclaimed, “Wow.” Director Lee also asked “is he willing to resign?” and stated “[that] will never happen. That’s ridiculous.”

The follow up questions and comments to Director Moore’s pronouncement as to why Director Le was not present were more in the nature of surprise and curiosity. The questions and comments were spontaneous and support the lack of knowledge that anyone other than Director Moore had with respect to Director Le’s interest in the position. They also support that prior to the July 15, 2013 Closed Session there was no intent to meet for the purpose of appointing Peter Le as general manager and there was no intent to appoint Peter Le as general manager.

General Counsel Masuda stated that “someone said ‘what about Peter Le serving as General Manager?’” As he does not recall that either Directors Shriner or Lee said anything, the “someone” likely refers to Director Moore. No one else present corroborated that statement. However, as noted below, Director Lee referenced similar language.

Director Lee stated that Director Moore had said “what does the Board think about Peter Le being volunteer General Manager until we hire one” and that Tom Moore “wanted the Board to think about it.” It is not clear this was said at the July 15, 2013, Closed Session. Assuming for the sake of argument that the statement was made on that date, there is nothing in the record to support that Director Moore wanted them to do more than “think about it.” In other words, there is no evidence to support that Director Moore wanted the Board to proceed at that closed session to deliberate and to appoint Peter Le as general manager or that he even supported Peter Le’s desire to be general manager.

Director Lee stated, "So to my mind the question was 'Is Le willing to step down as elected official'" and that Director Moore had said, "I don't know." Director Gustafson stated, "Bill was thinking something like 'that's not going to happen, can't see how we can take this up.' But did not say anything." It is unclear how Director Gustafson knew what Director Lee was thinking since he stated that Director Lee did not say anything. Later in the interview Director Lee said he asked "Is he willing to resign?"

Director Shriner did not recall anything that Director Gustafson said. Director Gustafson stated he put a stop to further discussions and that Director Moore then said, "Let's move on."

Director Lee did not recall an admonition by General Counsel nor words used by Director Gustafson. Director Lee stated that Director Gustafson "was his standard, caustic self" but did not recall exact words and he did not corroborate that Director Gustafson put a stop to any further discussion. Director Lee stated that Director Gustafson did not raise a Brown Act problem in the closed session.

Director Gustafson stated that at the closed session he said, "This is not right. This is not going to happen. I started to get rude." From the chronology and manner in which Mr. Gustafson related what transpired, it appeared he made these comments right after Director Moore let it be known that Peter Le was interested in the position. From what Director Lee said and based on my assessment, it appears that Director Gustafson's objections were to Peter' Le's interest in the position and not based on continued discussions or objections to a Brown Act violation.

General Counsel Masuda stated that Director Gustafson "objected" to the discussion. But, he did not recall the specific objection. Mr. Masuda recalled telling the Board "Yes, you should not be discussing this." Interestingly, Director Gustafson asserted that Mr. Masuda said nothing at the July 15, 2013 Closed Session. Director Lee did not remember that Mr. Masuda said anything. Director Shriner thought that Ms. DeBacker had said something and then said it may have been Mr. Masuda when it was noted to her that Ms. DeBacker was not present. Director Shriner may have been recalling Ms. DeBacker's comments at another meeting as it does not seem plausible that she would confuse Ms. DeBacker with Mr. Masuda.

The scope of the closed session was to confer with the labor negotiator regarding negotiations with Brian Lee as Interim General Manager. While members of the Board had no intent to go beyond that scope, my inquiry endeavored to ascertain if the Board Members had veered beyond the permissible scope of the closed session upon hearing of Peter Le's conflict and his interest in the general position. In the end, their recollections could not be reconciled. For example, (i) Director Gustafson said that Director Lee and General Counsel Masuda did not say anything and that he did not recall that Shriner said anything; (ii) Director Lee said he did make comments; (iii) General Counsel Masuda said he told the Board that their discussion was not appropriate; (iii) Director Shriner recalls making brief comments; (iv) Director Gustafson made comments; and (v) Director Shriner does not recall Gustafson saying anything.

There was absolutely no evidence presented by anyone that a motion was made to appoint Peter Le as Interim General, or that deliberations on his appointment ensued, or that there was an attempted vote, or that a vote was taken by the Board.

G. Perception As To Why Charges Raised

Significantly, although expressed in different ways, the perception of General Counsel Masuda and Directors Moore, Shriner, and Lee was that Director Gustafson has raised the Brown Act issue after the fact because Mr. Nishi, a former director who addresses the Board, persisted in raising the question as to why Director Le did not attend the closed session of July 15, 2013. Apparently, Mr. Nishi raised this issue at various meetings after July 15, 2013. While this may be interesting, the perceived motivation by Director Gustafson had no bearing on my conclusions as to what transpired in the closed session.

H. No Motive To Support The Charges

There was no motive to substantiate the charge that there was an attempt to have Director Le hired at the July 15, 2013, closed session. Director Moore “categorically” denied the charges. He was not interested in having Peter Le become the Interim General Manager as he did not believe it was in his interest or that of the District’s. He realized that Peter Le could not serve in both capacities and envisioned problems for the District with a vacancy, an election, and deadlock scenarios because Director Le generally votes with him and Director Shriner. This sentiment was echoed by Director Shriner who said that when she heard at the July 15, 2013, of Director Le’s interest in the general manager position, she became concerned that the majority on the Board would be lost.

Moreover, Director Moore raised the legal concerns regarding Peter Le’s desire to serve as General Manager with Special Counsel in the first instance. Director Moore was copied on email correspondence by Ms. DeBacker and Mr. Masuda who both raised legal issues and prohibitions against service by a director as general manager. Thus, Director Moore knew before he entered the closed session that Director Le’s desire to serve as general manager was accompanied by legal conflicts, prohibitions, and issues. Director Moore’s recollection concerning what he said in the closed session regarding Peter Le’s absence and interest in serving as general manager was credible.

I. Comments Regarding Director Lee’s Support of Director Le

Somewhat puzzling was why Directors Moore and Shriner and General Counsel Masuda volunteered that Director Lee was supportive of having Director Peter Le become Interim General Manager. They all noted this although they clarified that they did not recall that he made any supportive comments at the July 15, 2013, Closed Session. It may have been to emphasize that Director Lee was the only director to support Peter Le’s quest for the general manager position. Director Lee himself volunteered that he was supportive but only if Director Le stepped down as a director. Without prompting, Director Lee stated that he had let his favorable sentiments for Peter Le as a volunteer director become known but he was not clear when he did this. Director Lee also stated that he had voted against Brian Lee because of the compensation.

J. The August 5, 2013 Board Meeting

There was confusion as to what may have occurred at the July 15, 2013, closed session and what may have occurred at the August 5, 2013, closed session. When shown minutes, recollections related to the August 5, 2013, meeting. Director Moore recalled that in front of himself and Ms. DeBacker, Peter Le “repudiated” his interest in the position at the beginning of the August 5, 2013, meeting. Director Lee recalled saying he wanted to know if Peter Le would be resigning as Director. He said Director Moore went outside and came back to say that Peter Le would not be resigning. Director Shriner noted that the Board wanted to find out if Peter Le was resigning and that Ms. DeBacker went to talk to Mr. Le.

In reviewing the minutes of August 5, 2013, the Board went into closed session, came out of closed session and held open session items; it then went back into closed session and came out of open session to take action on the agreement with Interim General Manager Brian Lee per the closed session; and then returned to closed session.

K. Brown Act Training

The directors have received Brown Act training either online or at training sessions as part of AB 1234 training.

FACTUAL FINDINGS

1. At the June 17, 2013, Board of Directors meeting, Director Gustafson was appointed as the District’s negotiator to negotiate terms of an Interim General Manager employment agreement with Brian Lee.
2. Prior to the July 15, 2013, regular meeting of the Board, Director Le expressed his desire to be the General Manager to Director Moore.
3. Director Moore initiated contact with Special Counsel DeBacker to raise questions regarding Peter Le’s interest in the general manager position.
4. On July 14 and July 15, 2013, Ms. DeBacker emailed Director Le regarding the legal requirement that he must recuse himself from the July 15, 2013, and that he could not seek appointment nor be employed as general manager while serving as member of the Board of Directors. She copied Director Moore and General Counsel Masuda.
5. On July 15, 2013, General Counsel Masuda emailed Director Le with an outline of three legal reasons why he could not serve as general manager. He copied Ms. DeBacker and Director Moore.
6. The July 15, 2013, regular meeting agenda included multiple closed session items.
7. The July 15, 2013, closed session agenda included an agenda item regarding negotiations concerning the terms for a contract with Interim General Manager Brian Lee.

8. Director Peter Le was not present when roll was called at the July 15, 2013, Closed Session.
9. Director Peter Le did not declare a conflict of interest prior to the commencement of the closed session as he was not present at roll call or prior to commencement of the Closed Session.
10. Director Peter Le was not present at the July 15, 2013, Closed Session.
11. Prior to the July 15, 2013 Closed Session, Directors Lee, Gustafson, and Shriner did not know that Director Le was interested in the general manager position.
12. Director Moore stated at the outset of the July 15, 2013 Closed Session that Director Le was not present because he had an interest in being a volunteer Interim General Manager.
13. There were spontaneous comments and questions by Directors Shriner and Lee to Director Moore's announcement that Director Le had expressed an interest in the general manager position.
14. Director Gustafson objected to Director Le's interest in the general manager position.
15. The July 15, 2013 Closed Session lasted 26 minutes and during that period of time, the Board discussed Brian Lee's contract and other items on the closed session agenda for that meeting.
16. There is insufficient evidence to support that terms and conditions for appointing Director Le as general manager were discussed.
17. There is no evidence to support the claim that Directors Moore, Shriner, and Le intended to have the Board discuss the retention of Peter Le as Interim General Manager at the July 15, 2013, Closed Session.
18. There is no evidence to support any claim that a "proposal" to hire Peter Le was made in the July 15, 2013, Closed Session.
19. There is no evidence to support the allegation that Directors Le, Shriner, and Moore "attempted to hire" Director Le at the July 15, 2013, Closed Session.
20. There is no evidence that the directors deliberated on Peter Le's appointment as general manager.
21. There is no evidence that a motion was made to appoint Director Peter Le as General Manager at the July 15, 2013, Closed Session.
22. There is no evidence to support that there was an attempted vote to appoint Director Peter Le as General Manager at the July 15, 2013, Closed Session.

23. Board Members have received Brown Act training in the recent past.

LEGAL ANALYSIS AND CONCLUSIONS

The Board of Directors met in closed session regarding various matters that were part of the closed session agenda. The only closed session item at issue is the one that relates to conferring with the District's labor negotiator concerning negotiations for the Interim General Manager.

A. Question Raised

The legal issue raised is whether the Board of Directors exceeded the scope of permissible discussion on the July 15, 2013 Closed Session item relating to labor negotiations concerning the general manager position.

B. Analysis

The Ralph M. Brown Act (hereafter "the Brown Act") governs meetings conducted by legislative bodies such as city councils, county boards of supervisors, and district boards of directors. It was adopted to ensure the public's right to attend the meetings of public agencies. Gov. Code Section 54950, et seq.) In general, the Brown Act requires that the legislative bodies have open and public meetings. (Gov. Code Section 54953, 54962.) The Brown Act is interpreted liberally in favor of transparency. (See *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App. 4th 547, 555.)

The Brown Act contains very specific exceptions from open meeting requirements where the governmental entity has a need for confidentiality. These exceptions are construed narrowly and only matters expressly excepted may be heard in a closed session. (Gov. Code Sections 54957, 54962; *Rowen v. Santa Clara Unified School District* (1981) 121 Cal.App.3d 231, 234.)

Public agencies such as the District must meet certain requirements before a closed session is held:

1. Each item to be transacted or discussed in a closed session must be briefly described in an agenda for the meeting. (Gov. Code Section 54954.2(a))
2. Prior to adjourning into closed session, a representative of the Board must orally announce the items to be discussed in closed session. (Gov. Code Section 54957.7(a))
3. Once the closed session is completed, the District must reconvene in open session, where it may be required to report votes and actions taken in closed session. (Gov. Code Section 54957.1)

One of the matters that may be discussed in a closed session is labor negotiations. The Brown Act provides in Section 54957.6 as follows:

- (a) Notwithstanding any other provision of law, a legislative body of a local agency may hold closed sessions with the local agency's

designated representatives regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of its represented and unrepresented employees, and, for represented employees, any other matter within the statutorily provided scope of representation.

However, prior to the closed session, the legislative body of the local agency shall hold an open and public session in which it identifies its designated representatives.

Closed sessions of a legislative body of a local agency, as permitted in this section, shall be for the purpose of reviewing its position and instructing the local agency's designated representatives.

Closed sessions, as permitted in this section, may take place prior to and during consultations and discussions with representatives of employee organizations and unrepresented employees.

The Brown Act provides safe harbor language for agenda language relating to labor negotiations which requires that the agenda include the following text: "Conference With Labor Negotiators," Agency designated representative(s) and the Unrepresented employee. (Gov. Code Section 54954.5(f).

Here, the July 15, 2013, agenda conformed with the foregoing language from the Brown Act. It included the following language:

4. Closed Session
 - D. Pursuant to Government Code Section 54957.6
Conference with Labor Negotiator (Howard Gustafson)
Unrepresented Employee (Interim General Manager)

The Board in fact met for that stated purpose. The issue presented is whether the Board exceeded the scope of the permissible closed session. As noted above in the Findings, the Board President did state at the outset that Director Le would not be attending as he had an interest in serving as Interim General Manager and, therefore, had a conflict. Based on their surprise and curiosity comments and questions ensued. One board member also objected. Thus, there was limited discussion.

It was relevant to the July 15, 2013, Closed Session that the Board President explain why Director Le was absent. The Political Reform Act provides that persons with a conflict of interest announce their conflict of interest, recuse themselves, and "leave the room until after the discussion." These rules also apply to closed sessions although the declaration of the conflict is not required to be as detailed. Thus, had Director Le been present prior to the closed session he would have been required to announce his conflict of interest. (Gov. Code Section 87105; Cal. Code Regs. Tit. 2, section 18702.5.) In response to inquiries from members of the public, it

would have been appropriate for Director Le or someone else on the Board to say in open session that Director Le was not present at the subject closed session because he had a conflict of interest.

While there was limited discussion, the findings reflect the following: (i) there was insufficient evidence to support a contention that the Board discussed terms and conditions for retaining Peter Le as general manager; (ii) there was no evidence as alleged that there was "an attempt to hire" Peter Le; (iii) there was no evidence that the Board deliberated on the hiring of Peter Le; (iv) there was no evidence of an attempted vote; and (v) there was no evidence of a vote.

Had there been a discussion on terms and conditions for hiring Peter Le, or deliberations, or a motion, or a vote to hire Peter Le, such action would have exceeded the permissible scope of the July 15, 2013 Closed Session and would have been in violation of the Brown Act. A distinct closed session item would have been required on the agenda.

Yet, it appears the Board Members may not understand the dividing line between appropriate discussion within the scope of a properly agendized closed session item and veering into unrelated discussion. It is unclear whether they stopped the discussion because they really understood the Brown Act parameters or because of an objection made or because of an admonition by General Counsel, or because they were lucky. In any event, the limited discussion regarding Peter Le stopped.

It is clear that while the Board Members may have an appreciation for the Brown Act, they need further training to ensure they do not veer off course and exceed the scope of any closed session they may be attending in the future.

Finally, it bears noting that the Brown Act authorizes but does not require the keeping of a minute book for closed sessions regarding topics discussed and decisions made. Such a minute book is not subject to disclosure under the Public Records Act and is confidential. (Gov. Code Section 54957.2.) Such a minute book may have assisted here: (i) the allegations may never have been made and (ii) it would have been better evidence than the blurry recollections. Such a record also helps governing boards who may be tempted to go off course to stay on course.

C. Conclusion

The Board of Directors did not exceed the scope of permissible discussion at the closed session of July 15, 2013, regarding labor negotiations for the Interim General Manager position.

RECOMMENDATIONS

1. Prior to going into closed session, the Board President or Clerk/Secretary to the Board should announce the agenda items to be discussed.
2. After the closed session, the Board President should announce who was present and who was absent at the closed session. This will include persons who arrive late to the closed session or who leave early from the closed session. These announcements should be

included in the open session minutes. This should be the case even when the Board meets in closed session at the outset of a meeting.

3. If present, prior to going into closed session, members of the Board who have a conflict of interest should announce in public session that they will not be attending the closed session because they have a conflict of interest.
4. Upon coming out of closed session, the Board President should not only make any announcements as required by the Brown Act but also announce if the Closed Session will resume for unfinished business after the open session items.
5. The confusion by those interviewed regarding meetings and regarding what happened at which meeting underscores the need for keeping clearer records of attendance in open and closed sessions as well as a need for the keeping of minutes. The Board should consider the appointment of a confidential level person with responsibilities as follows:
 - a. Take roll call in closed session.
 - b. Record when Directors leave after roll call or arrive after roll call.
 - c. Write down general topics discussed.
 - d. Write down motions made and seconded.
 - e. Write down votes taken by name of Director.
6. Direct the General Counsel to be vigilant and assertive in ensuring that discussion not relevant to the agenda item in the closed session, even if informational only, is not to be undertaken.
7. The District should provide a training session on the parameters of closed sessions to the Board.

Respectfully Submitted,



Hilda Cantú Montoy

Appendix A

APPENDIX A

MATERIALS REVIEWED

- DVD: July 13, 2013 Board Meeting
- DVD: August 5, 2013 Board Meeting
- DVD: December 16, 2013 Marina City Council Meeting
- MCWD Meeting Agenda – January 6, 2014
- MCWD Meeting Agenda – January 6, 2014 Agenda Reports
- MCWD Meeting Agenda – August 19, 2013
- MCWD August 19, 2013 Item 10A – Contract with Lee
- MCWD August 5, 2013 Meeting Minutes
- MCWD Meeting Agenda – August 5, 2013
- MCWD Meeting Agenda – July 15, 2013
- MCWD July 15, 2013 Meeting Minutes
- MCWD June 17, 2013 Meeting Minutes
- Masuda/Le/DeBacker Emails July 15, 2013
- DeBacker/Le Emails July 14 and 15, 2013
- Board Resolution No. 98-1: Resolution of the Board of Directors of Marina Coast Water District Adopting Policy Regarding Directors, General Manager, Officers, Legal Counsel, District Engineer, Auditor, Financial Officer, Consultants, Committees, Enactment of Ordinances and Adoption of Resolutions and Motions
- Board Resolution Nos. 99-18, 2000-05, and 2000-07 Amending Resolution No. 98-1
- Email dated January 24, 2014, from Peter Le stating he did not want to be interviewed
- Organization Chart
- “Royal Calkins: Another Year End List” from Monterey Herald
- Report to Board from General counsel dated December 30, 2013, and considered at January 6, 2014, Meeting

Appendix B

APPENDIX B

EXHIBITS

Exhibit 1 – Email from Director Gustafson to Paula Riso dated December 19, 2013.

Exhibit 2 – Report to Board from General Counsel dated December 30, 2013 and considered at January 6, 2014, Meeting.

Exhibit 3 – Minutes for June 17, 2013, Meeting, pages 1 to 3.

Exhibit 4 – Agenda for July 15, 2013, Meeting

Exhibit 5 – Email Correspondence to Peter Le dated July 14 and 15, 2013, from Jeanine DeBacker.

Exhibit 6 – Email Correspondence to Peter Le dated July 15, 2013, from Roger Masuda.

EXHIBIT 1

Email from Director Gustafson to Paula Riso dated December 19, 2013

Hilda Cantu Montoy

From: Jeanine DeBacker [jdebacker@mstpartners.com]
Sent: Friday, January 17, 2014 9:30 PM
To: Hilda Cantu Montoy
Subject: Marina Coast Water District

Importance: High

Below is the email from Director Gustafson.

From: Paula Riso
Sent: Thursday, December 19, 2013 1:39 PM
To: Brian Lee
Subject: FW: Violation of FPPC and Brown Act Laws

FYI

Paula Riso

Executive Assistant/Clerk to the Board

11 Reservation Road, Marina, CA 93933

Direct - (831) 883-5910

Fax - (831) 883-5960

NOTICE: This communication may contain privileged or other confidential information. If you are not the intended recipient of this communication, or an employee or agent responsible for delivering this communication to the intended recipient, please advise the sender by reply email and immediately delete the message and any attachments without copying or disclosing the contents. Thank you.

From: Howard Gustafson [<mailto:howardg@ci.salinas.ca.us>]
Sent: Thursday, December 19, 2013 1:36 PM
To: Paula Riso
Subject: Violation of FPPC and Brown Act Laws

I would like to place on the agenda action relating to the attempt by Peter Le, Tom Moore and Jan Shriner to hire Mr. Le as the General manager of MCWD. There was no agenda for the closed session action and a vote was attempted. We need to send this the FPPC and the District Attorney. There are specific dates that will be addressed in the item

description. I would also like to place on the agenda recovery of moneys owed to us from Fort Ord Service area and the rates we have not been able to recover because of FORA actions. The recovery should take the form of legal action against FORA or just plain adopt the rates owed from past and then begin to apply current rates.

Regards,

Howard Gustafson

Director

831.384.7666

EXHIBIT 2

Report to Board from General Counsel dated December 30, 2013
and considered at January 6, 2014, Meeting.

GRIFFITH & MASUDA

A PROFESSIONAL LAW CORPORATION

W. Coburn Cook, 1892-1953
Lin H. Griffith, retired

517 East Olive Street
Turlock, California 95380

(209) 667-5501

Fax (209) 667-8176

www.calwaterlaw.com

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*Celebrating Our
93rd Anniversary*

Roger K. Masuda
rmasuda@calwaterlaw.com

December 30, 2013

To: Board of Directors, Marina Coast Water District

From: *Roger K. Masuda*
Roger K. Masuda, Legal Counsel

Subject: Complaint by Director Gustafson as to an Alleged Attempt in Closed Session to Appoint Director Peter Le as Interim General Manager and the Board's Options regarding such Complaint

By email dated December 19, 2013, from Director Howard Gustafson to Paula Riso, Director Gustafson requested the following:

"I would like to place on the agenda action relating to the attempt by Peter Le, Tom Moore and Jan Shriner to hire Mr. Le as the General manager of MCWD. There was no agenda for the closed session action and a vote was attempted. We need to send this the FPPC and the District Attorney. There are specific dates that will be addressed in the item description."

Director Gustafson did not provide any specific dates. The following gives the chronology for the appointment of Brian Lee as Interim General Manager and the Board approval of his Employment Agreement:

June 17, 2013 –Vice President Shriner moved to appoint Brian Lee as the Interim General Manager, seconded by Director Gustafson, passed 3-1 (Dir. Bill Lee). President Moore moved to appoint Director Gustafson as the Labor Negotiator for negotiating the terms of Brian Lee's Interim GM employment agreement, seconded by Director Gustafson, passed 3-1 (Dir. Lee). Director Peter Le was absent.

July 15, 2013 – Board went into closed session at 6:46 PM; Directors Moore, Shriner, Gustafson, and Lee were present. One closed session item was to confer with Labor Negotiator Howard Gustafson regarding salary and benefits for the Interim General Manager, an Unrepresented Employee, pursuant to Government Code Section 54957.6. Director Le arrived at the Board chambers at 7:02 PM and did not participate in the closed session. The Board ended the closed session at 7:12 PM. No reportable action was taken.

August 5, 2013 – After the closed session items and in open session, President Moore moved to direct Special Legal Counsel Jeanine DeBacker to prepare an Interim General Manager employment agreement with Brian Lee with an annual compensation of \$190,000, plus a \$500 monthly car allowance and the other terms agreed upon in a proposed draft contract, for approval at the August 19th Board meeting. Passed 3-1 (Dir. Lee). Director Le was present and participated in the closed session and in open session voted in favor of the employment agreement terms for Brian Lee. Director Gustafson was absent. Jeanine DeBacker was present.

August 19, 2013 – Board in open session adopted Resolution No. 2013-44 approving an Employment Agreement with Brian Lee for the Position of Interim GM. Passed 4-1 (Dir. Bill Lee). Both Director Le and Director Gustafson voted in favor of the Employment Agreement. Jeanine DeBacker was present.

Director Gustafson made a presentation to the Marina City Council at the Council's December 17 meeting, which included his version of what transpired during a MCWD Board closed session. Based upon his public comments and his December 19 email, Director Gustafson appears to be referring to the July 15, 2013 closed session at which he was present.

Closed session deliberations are confidential and protected against disclosure by the attorney-client and deliberative legal privileges and by Board Procedures Manual (BPM) Sections 14.Q, 26, and 43. The Board may vote to waive those privileges and the BPM. MCWD Special Legal Counsel Jeanine DeBacker will have a separate presentation to the Board on the legal requirements and potential legal consequences for disclosing publicly Board discussion occurring in closed sessions. That separate issue will not be addressed in this memorandum.

Upon review of the posted agendas and minutes of the above Board meetings, the Board agenda items, including closed sessions, pertaining to the position and employment agreement of the Interim General Manager were properly noticed and held.

In particular, the July 15 closed session was properly noticed and held to discuss a salary and benefits package for the Interim General Manager and to provide negotiation instructions to Director Gustafson as the designated Labor Negotiator. Director Gustafson himself admits that no vote was taken in closed session to appoint Director Peter Le as Interim General Manager. No such vote would have been proper since appointment of Peter Le as Interim General Manager was not the noticed subject of the closed session. In addition, three different rules of law prohibit Director Peter Le from serving as MCWD's interim or permanent General Manager while remaining a MCWD Director.

First and foremost, the County Water District Law, Water Code Section 30541 states, "A director shall not be the general manager, secretary, treasurer, or auditor."

Second, holding both positions would appear to violate Government Code Section 1090 violation. The first sentence of Government Code Section 1090 states, "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or

board of which they are members.” Whether or not Peter Le received any salary or benefits from the District while acting as General Manager, he would still be entering into a contract of employment with the Board of Directors of which he would be a member.

Third, the common law doctrine of incompatible offices would require that Peter Le forfeit his position as Director upon accepting appointment as General Manager. Under the common law doctrine of incompatible offices, which is part of California law, the same person may not hold two public offices where there is any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory, or removal power over the other. The consequences of holding incompatible offices is that the person is deemed to have forfeited the first office upon accepting the second.

The Board has the following options:

1. Find that the closed session held on July 15, 2013, to confer with Labor Negotiator Howard Gustafson regarding salary and benefits for the Interim General Manager, an Unrepresented Employee, pursuant to Government Code Section 54957.6, was properly noticed and held in accordance with the Brown Act and determine that no further action need be taken.
2. Specifically waive the Board’s attorney-client and deliberative legal privileges and applicable Board Procedures Manual sections and determine that Director Gustafson’s allegations concerning the closed session held on July 15, 2013, to confer with Labor Negotiator Howard Gustafson regarding salary and benefits for the Interim General Manager, an Unrepresented Employee, pursuant to Government Code Section 54957.6, should be investigated further by the Board, including, but not limited to, by retaining an independent investigator, and to bring the results of any such investigation back to the Board for further consideration by a date certain.

[end of memorandum]

EXHIBIT 3

Minutes for June 17, 2013, Meeting, pages 1 to 3

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
June 17, 2013
6:45 p.m.

Minutes

1. Call to Order:

President Moore called the meeting to order at 6:45 p.m. on June 17, 2013.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Peter Le

Staff Members Present:

Brian Lee, Deputy General Manager/District Engineer
James Derbin, Operations and Maintenance Superintendent
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Brian True, Capital Projects Manager
Sean Knight, Associate Engineer
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Andy Sterbenz, Schaaf & Wheeler
Kenneth Nishi, Marina Resident
Ben Smith, Marina Resident
Amelia Dow, Marina Resident
Mike McCullough, MRWPCA
Margaret Davis, Friends of the Fort Ord War Horse

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:46 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)

4) 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 54956.8

Conference with Real Property Negotiator (General Manager, District Counsel)
Property: Water Rights

Negotiating Parties: Clark Colony Water Company and MCWD

Under Negotiations: Price and Terms

The Board ended closed session at 7:01 p.m.

President Moore reconvened the meeting to open session at 7:05 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.

7. Oral Communications:

Mr. Ben Smith, Marina resident, commented that backflow devices are not being installed to plumbing codes and suggested working with the City of Marina and local contractors to make sure the requirements are the same with all entities.

Ms. Amelia Dow, Marina resident, commented that her bill was very high over the last several months although she is very conscious of conserving water. She asked for consideration on her bill.

Mr. Kenneth Nishi, Marina resident, commented that it wasn't appropriate for a Board member to write a guest commentary in the newspaper expressing their own personal opinion and not clarifying that it wasn't a Board policy. He added that if it was on behalf of the Board, he wanted to know when it was discussed.

8. Consent Calendar:

President Moore stated that staff requested to pull agenda items 8-A, 8-E, and 8-F from the Consent Calendar. Mr. Nishi requested to pull agenda items 8-D, 8-F, 8-G, 8-H, 8-I, and 8-J from the Consent Calendar.

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

- B) Adopt Resolution No. 2013-34 to Extend the Current FY 2012-2013 District Budget;
- C) Adopt Resolution No. 2013-35 to Approve a Professional Services Agreement with Mr. Ron Allen to Provide Consultant Services for the Water Conservation Education Program;
- K) Receive the Draft Notes of the Adjourned Regular Board Meeting of June 10, 2013.

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

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

EXHIBIT 4

Agenda for July 15, 2013, Meeting



MARINA COAST WATER DISTRICT

11 RESERVATION ROAD, MARINA, CA 93933-2099

Home Page: www.mcwd.org

TEL: (831) 384-6131 FAX: (831) 883-5995

DIRECTORS

THOMAS P. MOORE
President

JAN SHRINER
Vice President

HOWARD GUSTAFSON
WILLIAM Y. LEE
PETER LE

Agenda

Regular Board Meeting, Board of Directors Marina Coast Water District

211 Hillcrest Avenue, Marina, California

Monday, July 15, 2013, 6:45 p.m. PST

This meeting has been noticed according to the Brown Act rules. The Board of Directors meet regularly on the first and third Monday of each month. The meetings normally begin at 6:45 p.m. and are held at the City of Marina Council Chambers at 211 Hillcrest Avenue, Marina, California.

Mission: Providing high quality water, wastewater and recycled water services to the District's expanding communities through management, conservation and development of future resources at reasonable costs.

Vision: The Marina Coast Water District will be the leading public supplier of integrated water and wastewater services in the Monterey Bay Region.

1. Call to Order

2. Roll Call

3. Public Comment on Closed Session Items *Anyone wishing to address the Board on matters appearing on Closed Session may do so at this time. Please limit your comment to four minutes. The public may comment on any other items listed on the agenda at the time they are considered by the Board.*

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

This agenda is subject to revision and may be amended prior to the scheduled meeting. A final agenda will be posted at the District office at 11 Reservation Road, Marina, 72 hours prior to the meeting. Copies will also be available at the Board meeting. A complete Board packet containing all enclosures and staff materials will be available for public review on Thursday, July 11, 2013 at the District office, Marina and Seaside City Halls, and at the Marina and Seaside Libraries. Information about items on this agenda or persons requesting disability related modifications and/or accommodations can contact the Board Clerk at: 831-883-5910. The next regular meeting of the Board of Directors is scheduled for August 5, 2013.

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)

4) 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 54956.9(b)(1)
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation: One Potential Case
- C. Pursuant to Government Code 54956.8
Conference with Real Property Negotiator (General Manager, District Counsel)
Property: Water Rights
Negotiating Parties: Clark Colony Water Company and MCWD
Under Negotiations: Price and Terms
- D. Pursuant to Government Code 54957.6
Conference with Labor Negotiator (Howard Gustafson)
Unrepresented Employee (Interim General Manager)

7:00 p.m. Reconvene Open Session

5. Possible Action on Closed Session Items *The Board will report out on any action taken during Closed Session, and may take additional action in Open Session, as appropriate. Any closed session items not completed will be discussed at the end of the meeting.*

6. Pledge of Allegiance

7. Oral Communications *Anyone wishing to address the Board on matters not appearing on the Agenda may do so at this time. Please limit your comment to four minutes. The public may comment on any other items listed on the agenda at the time they are considered by the Board.*

8. Consent Calendar *Board approval can be taken with a single motion and vote. A Board member or member of the public may request that any item be pulled from the Consent Calendar for separate consideration at this meeting or a subsequent meeting. The public may address the Board on any Consent Calendar item. Please limit your comment to four minutes.*

- A. Approve the Expenditures for the Month of June 2013
- B. Approve the Draft Minutes of the Regular Board Meeting of July 1, 2013

9. Action Items *The Board will review and discuss agenda items and take action or direct staff to return to the Board for action at a following meeting. The public may address the Board on these Items as each item is reviewed by the Board. Please limit your comment to four minutes.*

A. Consider Public Appointments to the Water Conservation Commission

Action: The Board of Directors will making public appointments to the Water Conservation Commission for one and two-year terms.

B. Receive Presentation of the Preliminary Findings of the Draft 5-Year Rate Study Financial Plan; and Provide Direction to Staff Regarding Preparation of the Final Rate Study

Action: The Board of Directors will receive a draft Rate Study presentation and provide direction to staff regarding final preparation of the Rate Study.

C. Consider Adoption of Resolution No. 2013-42 to Approve an Agreement with Monterey Peninsula Unified School District for Construction and Transfer of Water Infrastructure at Marina High School

Action: The Board of Directors will consider approving an agreement with Monterey Peninsula Unified School District for construction and transfer of water infrastructure at Marina High School.

D. Consider Authorizing the Consent and Waiver of 90-Day Time Limit for a Special Election for East Garrison Public Financing Authority

Action: The Board of Directors will consider approving the Monterey County proposed Consent and Waiver regarding the East Garrison project.

E. Discuss Possible Participation in the Community Labor Day Parade

Action: The Board of Directors will discuss whether to participate in the Community Labor Day Parade.

F. Discuss Director Participation at the California Special Districts Association Conference in Monterey, September 2013

Action: The Board of Directors will discuss whether to participate in the California Special Districts Association Conference.

G. Discuss Communication Flow Between Directors and Staff Regarding Board Packet Items

Action: The Board of Directors will discuss how to create a stress-free communication flow between Directors and staff.

H. Discuss How to Address Director's Comments in Action Minutes

Action: The Board of Directors will discuss how to capture Director's comments while preparing action minutes.

10. Informational Items *Informational items are normally provided in the form of a written report or verbal update and may not require Board action. The public may address the Board on Informational Items as they are considered by the Board. Please limit your comments to four minutes.*

A. General Manager's Report

- Correspondence Received by Board or General Manager

B. Counsel's Report

C. Committee and Board Liaison Reports

- | | |
|----------------------------------|-----------------------------------|
| 1. Water Conservation Commission | 6. LAFCO Liaison |
| 2. Joint City-District Committee | 7. FORA |
| 3. Executive Committee | 8. WWOC Report |
| 4. Community Outreach | 9. JPIA Liaison |
| 5. MRWPCA Board Member Liaison | 10. Special Districts Association |

11. Board Member Requests for Future Agenda Items

A. Board Member Requests

12. Director's Comments

13. Adjournment *Set or Announce Next Meeting(s), date(s), time(s), and location(s):*

Regular Meeting:

*Monday, August 5, 2013, 6:45 p.m.,
211 Hillcrest Avenue, Marina*

EXHIBIT 5

Email Correspondence to Peter Le dated July 14 and 15, 2013, from Jeanine DeBacker

Hilda Cantu Montoy

From: Jeanine DeBacker [jdebacker@mstpartners.com]
Sent: Monday, July 15, 2013 9:10 AM
To: peter381
Cc: moore4mcwd@redshift.com; rmasuda@calwaterlaw.com
Subject: Re: Marina Coast Water District

Director Le: As counsel for the District, my response is yes due to the inherent uncertainty of future events.
Thanks, Jeanine.

Jeanine DeBacker
Sent from my iPhone

On Jul 14, 2013, at 3:52 PM, "peter381" <peter381@sbcglobal.net> wrote:

Dear Ms. DeBacker,

Do your opinions still apply if there is no financial interests such as I do not receive any salary or benefits from the District?

I could perform the temporary position with no financial interests during the transition to carry out important projects for the District.

Peter

----- Original message -----

From: Jeanine DeBacker <jdebacker@mstpartners.com>
Date: 07/14/2013 12:17 PM (GMT-08:00)
To: peter381@sbcglobal.net
Cc: moore4mcwd@redshift.com, "Roger Masuda (rmasuda@calwaterlaw.com)" <rmasuda@calwaterlaw.com>
Subject: Marina Coast Water District

Director Le:

I spoke with President Moore, who has explained to me your desire to be appointed / named Interim General Manager (GM) for the Marina Coast Water District. So that we are all on the same page, I have copied both President Moore and Roger Masuda on this email.

Your discussion with President Moore raises two distinct issues: (1) your ability to participate in the discussions in Closed and public sessions regarding Brian Lee's candidacy for Interim GM

(and any vote thereon) and (2) your ability to seek the Interim GM or GM position while a member of the Board of Directors.

1. You must recuse yourself from the Closed Session and any discussion or vote (closed or public) regarding Brian Lee's candidacy for Interim GM – at the July 15 meeting and any meeting thereafter. (We can discuss whether this conflict is still present during any votes for a permanent or future GM candidate. It may be that circumstances change in the future, but at this point I cannot think of a scenario where you would not be acting under a conflict of interest.)

As a Director of the District, you are subject to California Government Code section 1090, which provides:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

Section 1090 has been found by several California courts to apply to "any contract," with no express exclusion for employment contracts.

You have expressed a desire to be named to the Interim GM position – to enter into an employment contract with the District – and thus for Brian Lee not to be named to that position so that you can hold the position. While participating as a Director, then, you will be acting from a position of personal interest which will likely interfere with your unbiased discharge of your duty to the public, or which might prevent your exercise of absolute loyalty and undivided allegiance to the best interests of the District. (See, People v. Elliott (App. 2 Dist. 1953) 115 Cal.App.2d 410). Section 1090 is "concerned with any interest, other than perhaps a remote or minimal interest, which would prevent [public] officials from exercising absolute loyalty and undivided allegiance" to the 558 public entity they serve. Its object is to "remove or limit the possibility of any personal influence, either directly or indirectly, which might bear on an official's decision as well as to void contracts which are actually obtained through fraud or dishonest conduct." (Stigall v. City of Taft, 58 Cal.2d 565, 569). Thus, section 1090 is "aimed at eliminating temptation, avoiding the appearance of impropriety, and assuring the government of the officer's undivided and uncompromised allegiance." (People v. Honig (1996) 48 Cal.App.4th 289, 314)

At this point, we cannot avoid the appearance of bias on this issue and you must recuse yourself from the consideration of Mr. Lee's employment/appointment as Interim GM.

2. You cannot seek appointment, nor be appointed to the Interim GM or GM position while a member of the Board of Directors.

As above, as a Director of the District, you are subject to the conflict of interest provisions of California Government Code section 1090, which covers employment agreements.

By its terms, Section 1090 prohibits you from being named the General Manager (interim or otherwise) while a member of the District's Board of Directors. This is the rule even if you recuse yourself from any discussion or vote on the matter. As a basic starting point, California law prohibits a public official from entering into a contract with himself. (15 Op.Atty.Gen. 123 (1950).) In addition, we have case law directly on point on this matter. In 2001, an California Appellate Court found that a member of board of directors of local sanitary district violated statute prohibiting public officials and employees from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members, when he accepted a position as district manager without first resigning his position as member of board. Finnegan v. Schrader (App. 1 Dist. 2001) 91 Cal.App.4th 572.

The issues raised above affect you as an individual and the District (my client). If any litigation results from the matters discussed in this email, it would be legally appropriate for the District to be named a party.

I hope this information is helpful. If you have any questions, please do not hesitate to contact me. I am best reached by email as I am out of state (and in a different time zone) but will check my emails regularly.

EXHIBIT 6

Email Correspondence to Peter Le dated July 15, 2013, from Roger Masuda

Hilda Cantu Montoy

From: Roger Masuda [rmasuda@calwaterlaw.com]
Sent: Monday, July 15, 2013 10:48 AM
To: 'Jeanine DeBacker'; 'peter381'
Cc: moore4mcwd@redshift.com
Subject: RE: Marina Coast Water District

Director Le:

First, the County Water District Law, Water Code Section 30541 states, "A director shall not be the general manager, secretary, treasurer, or auditor."

Second, probable Government Code Section 1090 violation. The following for your reference is the first sentence of Government Code Section 1090 (which Ms. DeBacker set forth in full below) and the entire Section 1097:

1090. Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.

1097. Every officer or person prohibited by the laws of this state from making or being interested in contracts, or from becoming a vendor or purchaser at sales, or from purchasing script, or other evidences of indebtedness, including any member of the governing board of a school district, who willfully violates any of the provisions of such laws, is punishable by a fine of not more than one thousand dollars (\$1,000), or by imprisonment in the state prison, and is forever disqualified from holding any office in this state.

While somewhat different from the Steve Collins case, both your issue and Steve Collins' case center on Section 1090. Whether or not you received any salary or benefits from the District while acting as Interim General Manager, you would still be entering into a contract of employment with the District. I believe you are focusing on the term "financially interested in any contract." While you might not actually be paid anything as essentially a volunteer, there may be other things, which might be deemed to cause you to have a financial interest in the employment contract. Without additional facts, I don't know what they might be. But will you receive time served credit from PERS even though you are not being paid? Could it be found that you have a financial interest if you intended to apply for the paid permanent General Manager position? Don't know, but it could be a factor.

An important consideration for you is the stated penalties under Section 1097 for violation of Section 1090, namely being forever disqualified from holding any office in California and being possibly prosecuted for committing a felony (by imprisonment in the state prison). Penal Code Section 17(a).

Third, the common law doctrine of incompatible offices would be deemed that you forfeit your position as director upon accepting appointment as Interim General Manager. Under the common law doctrine of incompatible offices, which is part of California law, the same person may not hold two public offices where there is any significant clash of duties or loyalties between the offices, if the dual office holding would be improper for reasons of public policy, or if either officer exercises a supervisory, auditory, or removal power over the other. The consequences of holding incompatible offices is that the person is deemed to have forfeited the first office upon accepting the second. The California Attorney General has determined that a city administrator and a fire chief are both public offices for purposes of the doctrine and specifically found that a person may not serve simultaneously as the City Administrator and Fire Chief of the City of Oroville. The AG has also found that a water district general manager constitutes a public office, but I could not readily find the opinion this morning. A director of the MCWD definitely holds a public office. Therefore, if you were appointed Interim General Manager, you would forfeit your position as a director under the common law doctrine of incompatible offices.

Roger K. Masuda
Griffith & Masuda
A Professional Law Corporation
517 E. Olive Street
Turlock, CA 95380
www.calwaterlaw.com
voice (209) 667-5501
fax (209) 667-8176
Founded 1920

From: Jeanine DeBacker [mailto:jdebacker@mstpartners.com]
Sent: Monday, July 15, 2013 8:10 AM
To: peter381
Cc: moore4mcwd@redshift.com; rmasuda@calwaterlaw.com
Subject: Re: Marina Coast Water District

Director Le: As counsel for the District, my response is yes due to the inherent uncertainty of future events.
Thanks, Jeanine.

Jeanine DeBacker
Sent from my iPhone

On Jul 14, 2013, at 3:52 PM, "peter381" <peter381@sbcglobal.net> wrote:

Dear Ms. DeBacker,

Do your opinions still apply if there is no financial interests such as I do not receive any salary or benefits from the District?

I could perform the temporary position with no financial interests during the transition to carry out important projects for the District.

Peter

----- Original message -----

From: Jeanine DeBacker <jdebacker@mstpartners.com>
Date: 07/14/2013 12:17 PM (GMT-08:00)
To: peter381@sbcglobal.net
Cc: moore4mcwd@redshift.com, "Roger Masuda (rmasuda@calwaterlaw.com)" <rmasuda@calwaterlaw.com>
Subject: Marina Coast Water District

Director Le:

I spoke with President Moore, who has explained to me your desire to be appointed / named Interim General Manager (GM) for the Marina Coast Water District. So that we are all on the same page, I have copied both President Moore and Roger Masuda on this email.

Your discussion with President Moore raises two distinct issues: (1) your ability to participate in the discussions in Closed and public sessions regarding Brian Lee's candidacy for Interim GM

(and any vote thereon) and (2) your ability to seek the Interim GM or GM position while a member of the Board of Directors.

1. You must recuse yourself from the Closed Session and any discussion or vote (closed or public) regarding Brian Lee's candidacy for Interim GM – at the July 15 meeting and any meeting thereafter. (We can discuss whether this conflict is still present during any votes for a permanent or future GM candidate. It may be that circumstances change in the future, but at this point I cannot think of a scenario where you would not be acting under a conflict of interest.)

As a Director of the District, you are subject to California Government Code section 1090, which provides:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity. As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

Section 1090 has been found by several California courts to apply to "any contract," with no express exclusion for employment contracts.

You have expressed a desire to be named to the Interim GM position – to enter into an employment contract with the District – and thus for Brian Lee not to be named to that position so that you can hold the position. While participating as a Director, then, you will be acting from a position of personal interest which will likely interfere with your unbiased discharge of your duty to the public, or which might prevent your exercise of absolute loyalty and undivided allegiance to the best interests of the District. (See, People v. Elliott (App. 2 Dist. 1953) 115 Cal.App.2d 410). Section 1090 is "concerned with any interest, other than perhaps a remote or minimal interest, which would prevent [public] officials from exercising absolute loyalty and undivided allegiance" to the 558 public entity they serve. Its object is to "remove or limit the possibility of any personal influence, either directly or indirectly, which might bear on an official's decision as well as to void contracts which are actually obtained through fraud or dishonest conduct." (Stigall v. City of Taft, 58 Cal.2d 565, 569).) Thus, section 1090 is "aimed at eliminating temptation, avoiding the appearance of impropriety, and assuring the government of the officer's undivided and uncompromised allegiance." (People v. Honig (1996) 48 Cal.App.4th 289, 314)

At this point, we cannot avoid the appearance of bias on this issue and you must recuse yourself from the consideration of Mr. Lee's employment/appointment as Interim GM.

2. You cannot seek appointment, nor be appointed to the Interim GM or GM position while a member of the Board of Directors.

As above, as a Director of the District, you are subject to the conflict of interest provisions of California Government Code section 1090, which covers employment agreements.

By its terms, Section 1090 prohibits you from being named the General Manager (interim or otherwise) while a member of the District's Board of Directors. This is the rule even if you recuse yourself from any discussion or vote on the matter. As a basic starting point, California law prohibits a public official from entering into a contract with himself. (15 Op.Atty.Gen. 123 (1950).) In addition, we have case law directly on point on this matter. In 2001, an California Appellate Court found that a member of board of directors of local sanitary district violated statute prohibiting public officials and employees from having a financial interest in any contract made by them in their official capacity, or by any body or board of which they are members, when he accepted a position as district manager without first resigning his position as member of board. Finnegan v. Schrader (App. 1 Dist. 2001) 91 Cal.App.4th 572.

The issues raised above effect you as an individual and the District (my client). If any litigation results from the matters discussed in this email, it would be legally appropriate for the District to be named a party.

I hope this information is helpful. If you have any questions, please do not hesitate to contact me. I am best reached by email as I am out of state (and in a different time zone) but will check my emails regularly.

Jeanine DeBacker

Appendix C

APPENDIX C

INTERVIEW SUMMARIES

HOWARD GUSTAFSON

Howard Gustafson has served on the District Board for 20 years. He has tried to raise the issue of the illegal conduct at the closed session before but was “shut down” as a “point of order” raised by Director Shriner. On one such occasion he got upset and left early. He said he finally went to the Marina City Council meeting in December and brought it up there. After that, he asked that it be placed on the agenda for the District.

I asked him regarding his selection as negotiator at the June 2013, Board Meeting. Director Gustafson was selected by the Board to be the negotiator for selection of the Interim General Manager. He understood he was only to negotiate with Brian Lee and return to the Board with “contract information” and the “monetary amount” for the Board’s review. “That was the purpose of July 15, 2013.”

On July 15, 2013, Director Gustafson showed up at the City Council Chamber for the District Board Meeting. “Peter Le was not there. I was surprised. We went to closed session at the Council office.” Director Gustafson said no one said where Peter Le was when the roll was taken but then said, “Paula may have said ‘Peter will be here later.’” The Council office is about 1 and ½ minutes away from the Chambers. Peter Le was not there. Present were “Roger Masuda, Tom Moore, Bill Lee, Jan Shriner, and me.” Everyone was sitting down during the closed session.

“The first thing, right off,” Tom Moore said “Peter Le is not here but we have a proposal.” Tom Moore said Peter Le was willing to be General Manager for nothing—just for the experience.

Director Gustafson said, “This is not right. This is not going to happen. I started to get rude.” “Tom then said, ‘that’s enough. We’re not getting anywhere. Let’s move on.’”

Director Gustafson said Tom Moore had spoken in closed session about “how much savings there would be for the District, working free, available all the time and his experience as an engineer.” Director Gustafson said “Jan Shriner and Tom were fighting for it.” By that he said he meant fighting for Peter Le to be hired. When asked who he meant when Tom Moore used the term “we” at the beginning of the closed session, he said “he made the assumption that “we” meant Jan Shriner.

I asked what Jan Shriner said. Director Gustafson said Jan Shriner “did not say anything. She is supportive of Tom.” He then said that she made an “inferential comment” but did not remember it: “something like ‘this would save money.’ The exact words elude me.” He said that “Bill was

thinking something like ‘that’s not going to happen, can’t see how we can take this up.’ But [Bill] did not say anything.”

I asked him if a vote was taken. He said no vote was taken and that he had said, “No way in hell a vote is going to happen.”

Director Gustafson spoke about Peter Le having a chip on his shoulder, that his way is the only way and that he wants to take over.

Director Gustafson “looked at Roger Masuda; his lips were sealed.” He was “expecting Roger to say if he’s on the Board, must wait six months or a year; rules are set.” It’s a revolving door rule. “Roger probably assumed that because there was no money involved, it was okay.” He was thinking “of the potential to make money.” Gustafson then said “This is totally illegal—what the hell are you doing? We are not going to take a vote. Tom then ended it.”

Roger Masuda “did not do a thing, did not say anything. . . I was flabbergasted.” Director Gustafson said he “suspected Roger had a conversation before the meeting; it was reported so innocently. I was amazed.”

After the Board stopped talking about Peter Le, there was discussion regarding the Brian Lee contract and discussion on the status of other items in closed session.

Director Gustafson did not recall any documents concerning this matter and that there may have been documents on another matter from a law firm. Director Gustafson did not take notes. He said Jan Shriner takes notes and that Peter Le “profusely writes [notes].” Roger Masuda did not take notes as his “arms were crossed and his mouth tight.”

Director Gustafson said the Peter Le discussion took ten minutes. “There was Tom’s explanation; Jan Shriner and everyone listening. Then listening to my ‘not going to happen, where in the hell is Peter Le—is this why he is not here.’” He said there was no response and “Tom was just red in the face.”

Director Gustafson was later told that during the closed session Peter Le walked into the Council Chamber, but he did not go to the Closed Session. “He [Peter Le] expected a vote.” He believes that Roger Masuda is back pedaling in that he told Ken Nishi: “There was no money discussed.” He said that Ken Nishi has questioned the Board. Ken Nishi is a former director.

The District has provided training in the form of AB 1234 every two years; he does his online. There has been training on the Brown Act and conflicts of interest, and the former General Manager provided “HR training.”

ROGER MASUDA

Roger Masuda started out by clarifying the minutes of July 15, 2013. He noted that a Ken Nishi who used to be on the Board attends the meetings and speaks to various items. He said that during public comments Ken Nishi questioned the July 15, 2013, minutes. There was in fact a

correction to the minutes on the floor to reflect that Peter Le was not present at 6:45. But the minutes have not been technically corrected.

He thinks the first time the July 15 closed session came up was at the December 17, 2013, Marina City Council meeting. He made reference to the DVD from the Marina City Council meeting.

When asked if the July 15 closed session is the meeting at issue, he responded that "it is obvious to me that it was the July 15, 2013, meeting." At the January 6, 2014, Board meeting, Director Gustafson confirmed it was the July 15 Board meeting. Director Gustafson said "yes" and "nodded" when the date July 15 was referenced.

Background on the directors was brought up by Mr. Masuda. Gustafson has been on the Board 20 years; Tom Moore has been on the board for 16 years, lost his seat in 2010, and regained his seat in 2012. He explained the board members are elected at large.

At some point Peter Le talked to Tom Moore regarding serving as General Manager. Tom Moore conveyed that to special counsel Jeanine DeBacker. She sent an email to Peter Le regarding legal issues presented and copied Tom Moore as he had been the person who raised legal questions with Ms. DeBacker and also copied Mr. Masuda. Peter Le responded and said there would be no salary or benefits then Roger Masuda "chimed in on the emails" and gave his reasons why Peter Le could not serve. "The Water Law was only one law."

Roger Masuda checked his time records and saw no entries regarding telephone calls with Peter Le. He "probably" talked to Tom Moore who knew that Peter Le could not serve based on the emails. Peter Le did not show up at the July 15, 2013, closed session. The closed session was held at a separate conference room. He does not maintain closed session notes. He has started informal notes because of questions and issues raised concerning litigation matters. But he has no notes for this meeting. He doubts that other items listed on agenda were discussed at the July 15, 2013, closed session and does not recall the "anticipated litigation" item at all. He has no notes for the July 15, 2013, closed session.

Item D on the agenda regarding the Interim General Manager was discussed. He explained confusion on this item as the Board was not sure what to pay Brian Lee.

Mr. Masuda volunteered background regarding the directors. Peter Le and Tom Moore were elected in November 2012. Peter Le was vocal regarding the then General Manager. The General Manager eventually went on stress leave; at the time of the July 15, 2013, closed session, the Board was also negotiating with the release of the General Manager. Peter Le is a registered Civil Engineer, WWTP Operator at Soledad.

During the closed session someone brought up, "What about Peter Le serving as Interim General Manager?" Jan Shriner did not say anything. He had no recollection that she said anything. Jan Shriner is very upset about Gustafson's allegations and feels falsely accused.

“Howard objected to the discussion.” Mr. Masuda then said, “Yes, you should not be discussing this. We should not be talking about this.” He told the Board it was not appropriate and that Peter Le could not serve as Interim or otherwise. Mr. Masuda had already sent an email to Peter Le that “you can’t do both.” By “both” he meant “be on the board and Interim General Manager.” The Board went on to talk about Brian Lee and parameters for compensation and benefits.

Mr. Masuda stated the only director that supported Peter Le was Bill Lee. But he did not recall when or where Bill Lee said he was “pro Peter Le and had lots of respect for him.” Mr. Masuda did not recall that Bill Lee said anything on July 15, 2013. He noted that Bill Lee had voted no on action items regarding the ultimate contract between the District and Brian Lee and said in open session that Brian Lee should not be paid more. Brian Lee was making \$160,000 as District Engineer and \$170,000 as Acting General Manager.

Mr. Masuda “matter of factly” told the Board they should not talk about Peter Le. He does not remember much about the July 15, 2013, meeting. Tom Moore started talking about Peter Le; Gustafson “objected;” and discussion ceased when Roger Masuda said discussion was inappropriate. Roger Masuda referenced page 2 of his memo to the Board at January 6, 2014, meeting wherein he discussed Director Gustafson’s presentation before the Marina City Council on December 17, 2013. Mr. Masuda stated that in the DVD Director Gustafson “never says a vote was taken.” And Mr. Masuda also stated that no motion was made to hire Peter Le.

I inquired as to whether the hiring of Peter Le came up at the August 5, 2013, closed session. He answered “doubt it because Peter Le was present. At some point, he said I am not interested in being General Manager.” He does not recall when Peter Le said that but he assumes it occurred before the August 5, 2013, meeting and said he assumed Jeanine Backer talked to him before the August 5, 2013, meeting. On August 19, 2013, the Board voted on the formal resolution and employment contract for Brian Lee. Because of the detail provided at the August 5, 2013, meeting, there was not much discussion other than Bill Lee saying the salary was too high. Ms. DeBacker had done a lot of the work because Howard Gustafson [the named negotiator] was not participating.

Roger Masuda does not know why Director Gustafson waited until December to raise the issue regarding an incident that occurred in July. He then said, “Gustafson is sick and tired of Peter Le; they did not see eye to eye.”

TOM MOORE

Tom Moore commenced his relationship with the District in the late 80’s when the Board asked him to be on the Water Conservation Committee. He was then appointed to office and subsequently ran and succeeded. This is his 18th year on the Board. He has participated in various Brown Act trainings by CSDA and ACSA.

Mr. Heintzman’s last day as General Manager was May 31, 2013. Brian Lee, Deputy General Manager/District Engineer, became the Acting General Manager. “I advocated for Brian Lee.” There was a need to negotiate with him while he was Acting General Manager. The Board

needed to do something for Brian Lee to be Interim General Manager. Tom Moore has no recollection of the June 17, 2013, Board meeting when Howard Gustafson was selected by the Board as its negotiator to negotiate terms and conditions of a contract with Brian Lee. Howard Gustafson was not his first choice. But, he “went with it.”

He stressed “this is my opinion only. Bill Lee voted no for Brian Lee’s contract because Bill Lee is an advocate of Peter Le.” Bill’s opinion of Peter Le was very high through June 2013.

Tom Moore realized that if the Board made Peter Le General Manager then Peter Le would have to step down. He envisioned problems: a vacancy, election, deadlock scenarios because Peter Le generally votes with Moore and Shriner.

“After the June 17 Board meeting, Peter Le met with me. Peter Le said he’d like to be Interim General Manager and “I was very surprised.” Within 24-48 hours he contacted Jeanine DeBacker or Roger Masuda and reported Le’s “desire” and expressed concerns regarding conflicts of interest and participation in Brian Lee’s negotiations. She responded that Peter Le could not be allowed to participate in discussions regarding Brian Lee’s contract. Tom Moore later said he had “triggered” the communication with Jeanine DeBacker.

“Peter Le works very hard, but I’m not sure he works effectively.” Peter Le had looked into it and told him there were other districts where a board member was Interim General Manager. Peter Le has subsequently learned that cannot be true. “Peter finds sources and grabs on hard. If clearly shown, then backs off.”

With respect to the August 5, 2013, Board session, as “walking over to closed session—no that happened after Peter learned couldn’t possibly do that,” Jeanine DeBacker and Tom asked Peter Le: “Do you repudiate?” In front of the two of them, Peter Le repudiated. Questions were raised as to when exactly that happened since the minutes reflect the Board met three different times in closed session on August 5, 2013. Tom Moore said he was “95% confident” the repudiation occurred prior to the first closed session held on August 5, 2013.

Tom Moore spoke of Ken Nishi, a former director, who “loves gotchas.” He sits in Chamber while closed sessions are held. “This whole issue arises from Nishi’s puzzlement as to why Le was not there.”

The request from Peter Le occurred before the July 15, 2013, Board meeting. Peter Le was not present on July 15. “I had no interest in Le being General Manager. I did not attempt to make him General Manager. My closest was to explain why he was not present. I categorically deny the allegation.”

Inquiry was made not as to what was discussed but whether the other July 15 closed session items were discussed. He said Item A was typically a progress report; he did not remember Item B; “maybe Item C.” He was not sure of the sequence for closed session items. “Howard was difficult as a negotiator.” He was not doing what he was supposed to do in a timely manner.

Between June 19 and July 15, the Board was struggling on the amount of pay and benefits for Brian Lee. "I tried to figure how to make it work." Mark Armstrong Luca had been hired for \$140,000; Jim Heintzman was hired at \$238,000. Former director Nishi and Gustafson negotiated with Jim Heintzman. There was tension; no one wanted to pay Brian Lee more than \$200,000.

Tom Moore is unable to remember details of the July 15 closed session. He remembers discussing the car allowance for Brian Lee. The only thing he said he recalled was "He has expressed an interest; that's a conflict; and that is why he [Le] is not here. Now let's talk about Brian Lee." He turned over to Roger Masuda. "Unless Bill Lee chimed in and I don't have specific recollection. "The closest I would have said is 'Peter Le has proposed this; that is why he's not here. Roger explain."

Tom Moore vehemently said, "I absolutely did not promote it [Le's hiring]. It was not in my interest, nor in the interest of the District." There was no vote regarding Peter Le; no consensus regarding hiring Peter Le. They proceed with discussions on negotiating with Brian Lee.

Question was asked as to why he believes that Director Gustafson raised the issue in December. "I am convinced that Howard hears what he wants to hear." As an example, he explained how newspaper editor Royal Calkins named him "one of the ten most interesting politicians." But "Howard says Royal named him number two 'best' politician in Monterey County." He said that Mr. Nishi helps Howard interpret things: "explains why [Le] not there at the closed session because Moore was promoting him." Gustafson dislikes Peter Le.

"Bill Lee was a promoter of Peter Le but whether he was backer of Peter Le in that closed session, I don't know." Tom Moore "speculated" that Bill Lee voted no for Howard Gustafson as negotiator because Bill Lee knew that Howard does not like Peter Le.

When asked if Howard Gustafson put a stop to the discussion of Peter Le in closed session, Tom Moore laughed and said, "classic Howard, classic Walter Mitty. Howard stopped the Board. No."

As to notes in closed session, Tom Moore said the closest is Roger Masuda. Some directors takes notes; no one takes minutes. The previous Board Counsel advised against it.

As to Howard Gustafson bringing up the allegations regarding the July 15 closed session, he said that Howard may have raised something on "a couple of occasions, maybe three." It was basically Ken Nishi demanding to know why Peter Le was not at the July 15 closed session.

BILL LEE

At the outset, Bill Lee stated he remembers events but does not recall what happened at each specific meeting. As to July 15 closed session, the Board left the Council room and went to the city offices. The members sat down in closed session. President Moore explained Director Le was not present because something in meeting was going to come up regarding Le. Tom Moore said "What does the Board think about Peter Le being volunteer General Manager until we hire

one.” The Board did not hear from Peter Le; it heard from Moore. “So, to my mind, the question was ‘Is Le willing to step down as elected official?’” Tom Moore said: “I don’t know.”

Howard Gustafson was negotiating with Brian Lee who was already hired as Engineer. Peter Le was brought up: that he may be Interim Manager. Tom Moore brought it up. He said that Peter Le told him to address this issue, “I will volunteer on an interim basis.” Moore told him “don’t come because we are going to talk about you.” Bill Lee said, “Peter Le never talked to me.” Tom Moore said, “He’s not here because he has volunteered to be General Manager.” I asked, “Is he willing to resign?” “Peter is a strict disciplinarian.”

Director Lee said “Gustafson has a problem that this was not on the agenda.” He stated Director Gustafson had “no problem [with conversation in closed session] until a member of the public started asking questions.” When asked who that was, he said “Nishi.” Bill Lee said Nishi asked “Why would he come in here [Council Chamber] and not to a closed session?” Nishi was curious that Le was excluded from the meeting. “Nishi kept pushing, pushing the issue at meetings.” At some point, Gustafson said, “[the] member of the public is right; he was excluded because we talked about things.”

Tom Moore said they would only be appointing him as a temporary General Manager without pay. “He wanted us to think about it.” Bill Lee viewed it as an alternative to Brian Lee as Interim; “We can have Peter Le be a Volunteer General Manager versus hiring. We already had Brian; I was not in a hurry to hire him.” “We left [the closed session] reporting nothing happened.” Howard went back and negotiated with Brian.

I asked Director Lee why he voted “no” on August 5, 2013, for Brian Lee contract terms. He said he was willing to pay more to Mr. Heintzman the prior General Manager because he was a specialist with huge a project and, therefore, willing to pay him \$200,000; that is too much money now as the District is “in maintenance mode.” He went on to say, “Before the closed session, I asked President Moore, ‘I want to know now is he going to resign.’” Director Lee was not definite at which meeting he asked this, but after looking at the agendas, he said it was likely August 5. He said, Tom went outside and then reported that Peter Le would not resign. “Peter says he will not be resigning.”

Director Lee described Director Peter Le as “a savant.” He said that if Peter Le had not been a director he would have considered him as Interim General Manager; he would not consider him if a Director. At one point, Bill Lee told Tom Moore: “I don’t think that is a bad option. We should consider all options.” Bill Lee does not recall when he may have said this. He does not remember when but he said that would be “saving money – lots of money.”

Bill Lee has “never spoken to Peter Le other than at District for anything.” He doesn’t read emails from other directors.

Director Lee remembers Jan Shriner talking at the meeting but does not remember what she said. As to Roger Masuda saying something in the closed session, Bill Lee said, “Don’t remember. He’s a nice guy, a benign dictator.”

When asked if Howard Gustafson said anything at the July 15, 2013, closed session, he responded, "He was his standard, caustic self. He hates Peter Le. He is an adversary of Peter's. All that other stuff [alleged Brown Act violation] is after the fact. It is because of Gustafson's constituent Nishi pushing him."

JAN SHRINER

Jan Shriner was elected to the District Board of Directors in November 2010. Before that, she was "an activist" and used to film meetings of the Board. She and Tom Moore ran as individuals. The Lee, Eads, and Gustafson slate were fined by FPPC. She has tried to be forgiving and civil but it is a difficult situation among board members.

She noted that the former General Manager left based on hostile work environment. "The new General Manager is better."

Director Shriner explained this is the second investigation for an alleged Brown Act violation. She has taken ethics training already. A blog said that there would be a press release. Comments were attributed to her and "the men [Board of Directors] said I should be censored." There has been a lot of scrutiny by the Weekly and Herald.

Director Shriner said she wanted to mention all the foregoing because this "isn't the first strange allegation." She said there is "not any evidence of wrongdoing."

With respect to the July 15, 2013 Closed Session, Items A2 and 3 were updates. She does not recall if the Board actually discussed Item A4. The meeting was held in a small conference room. "I did not see Peter Le at all, unusual." As they took seats, Tom Moore said that Peter Le would not be joining because he had expressed an interest as a volunteer and that he wanted to avoid impropriety so he would not be present at all in closed session.

Director Moore said "Peter Le made his interest known and he is not here." He opened up why Peter was not joining the meeting. "It was a matter of fact discussion." She recalls "thinking it was odd" – "surprised because he was doing well as a Board member." She says she may have said something like "For free? As a volunteer?" Moore said, "That's right." She said, "Wow." Bill Lee said "Will never happen. That's ridiculous."

Director Shriner does not remember Howard saying anything. She said that "Howard says things that are off so [she] may have blanked him out."

She thought Jeanine DeBacker may have said something but when reminded that minutes did not reflect her presence, said "it may have been Roger" who said "He wants no appearance of impropriety; that is why he could not be present." She explained that it was "more of an announcement" by Tom Moore than a discussion. Howard Gustafson then presented a compensation package regarding Brian Lee. Bill Lee was concerned about the high level of compensation.

I asked Director Shriner, "Did anyone say 'we should not be talking about this?'" Ms. Shriner said, "No."

Director Shriner had not talked about Peter Le wanting to be Interim General Manager before the July 15 meeting; and she had no emails about that before the meeting. She explained Marina is a small town and she had heard nothing.

At the August 5, 2013, meeting, Howard did not show up and she recalls being disappointed because Howard was the negotiator. She was not sure at which meeting, it was noted that if a Board member wants to be General Manager, he cannot be on the Board. She said she thought "that cannot happen because then there were no more three votes." She has never had an email or phone call regarding Peter Le as Interim General Manager. She believes that at that meeting Bill Lee said "I would support Peter." Jeanine DeBacker went to talk to Peter Le to explain the situation. There was a request of the Board; "the Board needed to be sure and he must step down from the Board. Peter Le was outside." She believes that if someone is recused from closed session, the person should announce that.

This November terms expire for Jan Shriner, Howard Gustafson, and Bill Lee. Howard mentioned that this would be a tough campaign season and that "Blood on the sidewalk is nothing." She noted that Police found blood on the sidewalk in front of her house; closed street for half a day. She said "people are full of intimidation."

Director Shriner did not promote hiring Peter Le. She never met with Peter Le about it. Ken Nishi started asking questions about what was going on and why was Peter Le in Chambers when the rest of the Board was in closed session? Tom Moore asked Agency Counsel "was there anything inappropriate at closed session?" Roger said, "No." She said that in late summer to fall there were "reoccurring, subtle accusations until Howard showed up at the City Council meeting; then Howard's email that it be on an agenda." At that point, she thought Howard would be investigated regarding closed session disclosures.

Director Shriner summarized that she never wanted to hire Peter Le. At the July 15 meeting, "no vote was attempted;" Tom Moore only "announced that he [Peter Le] was not there because he was interested as a volunteer;" Tom Moore was not advocating for Peter Le; Bill Lee said "That will never happen;" and "Howard was fairly quiet at that meeting." Then the Board went on to contract terms with Brian Lee.

At the second meeting Bill Lee was in favor of Peter Le. At some point Bill Lee said "I would supply my vote." The offer to serve as Interim General Manager was retracted by Peter Le.

Director Shriner does not recall taking notes at July 15 closed session. She followed up after the interview by email. She did not remember any documents regarding Peter Le.

One thing troubling to Director Shriner is the way the issue was announced. She is not sure what the goal is and if the goal is to improve the situation or if it is political. Her hope is for District to "work with the law to minimize negative impacts to the District for political gain." She is "concerned about wild allegations" and believes "memories have merged on the events."