

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

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

Draft Minutes

1. Call to Order:

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

2. Roll Call:

Board Members Present:

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

Board Members Absent:

None

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Jeanine DeBacker, Special Legal Counsel
Anne Olsen, Special Legal Counsel
Hilda Montoy, Special Legal Counsel
Patricia Quilizapa, Special Legal Counsel
Kelly Cadiente, Director of Administrative Services
Jean Premutati, Management Services Administrator
Paula Riso, Executive Assistant/Clerk to the Board

Audience Members:

Brent Ives, BHI Management Consultants
Bob Neher, Neher & Associates
Kenneth Nishi, Marina Resident
Paula Pelot, Marina Resident
Alan Groves, Seaside Resident
Camilla Groves, Seaside Resident

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:03 p.m. to discuss the following items:

4. Closed Session:

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

1) Ag Land Trust v. Marina Coast Water District, Monterey County Superior Court Case No. M105019; Sixth Appellate District Court of Appeals Case No. H038550

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

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

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

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

The Board ended closed session at 6:59 p.m.

President Moore reconvened the meeting to open session at 7:01 p.m.

5. Possible Action on Closed Session Items:

Mr. Roger Masuda, Legal Counsel, stated that all five Directors were present for closed session the entire time and no reportable actions were taken in closed session. He added that the Board would not return to closed session at the end of the meeting.

6. Pledge of Allegiance:

President Moore asked Ms. Paula Riso, Executive Assistant/Clerk to the Board, to lead everyone present in the pledge of allegiance.

7. Oral Communications:

Mr. Kenneth Nishi, Marina resident, commented that the leadership of President Moore and Vice President Shriner has led the District to the following: 1) not passed the Ord budget for the last two years; 2) Central Marina continues to subsidize the former Fort Ord and requested that the total amount that is subsidized be returned to Marina; 3) projected projects have been postponed and reduced and asked for a list of the postponements and reductions; 4) what was the total cost of the Proposition 218 process for this year and prior years; 5) Counsel Masuda's costs – why do the ratepayers have to pay for travel costs for any additional meetings after the first meeting of the month; 6) the leadership does not follow rules of the Board Procedures Manual or Board Policy because of fear of not getting three votes as reported by item 3 on the agenda; 7) not providing a work environment free of harassment, disrespect and other unprofessional conduct. The leadership has not committed to establish and maintain an environment that encourages an open exchange of ideas and information among Board members, staff and the public. One that is positive, honest, respectful, concise, understandable, responsive and cost effective...no more three votes; 8) leadership by not keeping Board members to refrain from publically censuring or criticizing members of the District staff but shall instead relay any criticism problems relating to staff members or the GM or the GM through private discussions...no more three votes; 9) President Moore has been made aware that the timing does not give the public four minutes as stated on the agenda and it still has not been corrected.

8. Special Legal Counsel Investigation Results and Possible Action:

- A. Receive a Report from Special Legal Counsel Regarding the Investigation on Employee Complaints Against Director Peter Le:

Ms. Jeanine DeBacker, Legal Counsel, introduced Ms. Anne Olsen, Special Counsel to the Board and public.

Ms. Olsen presented her report of the investigation concluding that the staff brought forth valid complaints against Director Le. Director Le gave his rebuttal. Ms. DeBacker finalized the investigation report. The Board directed Ms. DeBacker to bring back censure options to the next meeting.

Ms. Paula Pelot, Marina resident, asked that the Board not discourage Directors from asking questions.

Mr. Nishi commented that it was late in the game to do what the Board was doing. He stated that the leadership group didn't have a workshop to introduce the new Directors on how things work and the Legal Counsel, while present at the meetings, never spoke up to discourage the behavior.

- B. Receive a Report from Special Legal Counsel Regarding the Investigation on the Complaint by Director Gustafson as to an Alleged Attempt in Closed Session to Appoint Director Peter Le as Interim General Manager:

Ms. DeBacker introduced Ms. Hilda Montoy, Special Counsel, to the Board and public.

Ms. Montoy presented her report of the investigation concluding that the Board of Directors did not exceed the scope of permissible discussion at the closed session on July 15, 2013.

Mr. Nishi commented that on the July 15, 2013 agenda, the closed session title didn't allow any discussion other than that of the negotiator and the Interim General Manager's position. He disputed the fact that there was no Brown Act violation.

- C. Receive a Report from Special Legal Counsel on Brown Act and Board Procedures Manual Requirements and Potential Legal Consequences for Disclosing Publicly Board Discussions Occurring in Closed Session:

Ms. DeBacker gave a brief presentation on the Brown Act and Board Procedures Manual requirements and potential legal consequences for disclosing publicly Board discussions occurring in closed session. The Board directed Ms. DeBacker to return with suggestions on training possibilities for the Brown Act including cost and recommendations.

- D. Receive a Report from Special Legal Counsel Regarding the Proposition 218 Process:

Ms. Patricia Quilizapa, Special Counsel, gave a report on the Proposition 218 process and concluded that Proposition 218 requires the District to hold a single protest procedure for its entire service area, specifically for the entire area where a rate is being proposed, whether new or proposed.

Ms. Pelot presented written comments to Ms. Riso. She then presented her case for holding two separate rate increase protest processes.

Mr. Alan Groves, Ord Community, questioned if these were two separate increases that should be held separately.

Director Gustafson left the meeting at 9:21 p.m.

Ms. Quilizapa responded to the questions and comments of the Board and public. President Moore asked Ms. Riso to send Ms. Quilizapa a copy of the meeting video so that she could respond to the questions posed.

9. Presentation:

- A. Receive a Presentation from Brent Ives, BHI Consulting, on the District's Draft Five-Year Strategic Plan and Consider Accepting the Five-Year Strategic Plan for Marina Coast Water District:

Mr. Brent Ives, BHI Consulting, gave a brief presentation on the Strategic Plan.

President Moore made a motion to accept the Five-Year Strategic Plan for Marina Coast Water District with modifications to the typos and formatting. Vice President Shriner seconded the motion.

Director Lee commented that they should wait until all Board members were present.

President Moore withdrew his motion. Vice President Shriner withdrew her second.

10. Consent Calendar:

Director Le pulled items 10-B and 10-C from the Consent Calendar.

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

- A) Adopt Resolution No. 2014-09 to Approve a Change in Vendors for the Life and Accidental Death and Dismemberment Insurance and Short-Term/Long Term Disability Benefits for District Employees
- D) Approve the Draft Minutes of the Regular Board Meeting of February 18, 2014

President Moore seconded the motion. The motion was passed.

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

- B. Adopt Resolution No. 2014-10 to Extend a Certificate of Deposit Secured Non-Revolving Line of Credit from Rabobank, N.A. for \$3,276,000:

Director Le made a motion to Adopt Resolution No. 2014-10 to Extend a Certificate of Deposit Secured Non-Revolving Line of Credit from Rabobank, N.A. for \$3,276,000 until December 1, 2014. Director Lee seconded the motion. The motion was passed.

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

C. Approve the Draft Minutes of the Regular Board Meeting of February 3, 2014:

Director Le requested tabling this item to allow staff to make suggested changes and review the audio.

Director Le made a motion to table the draft minutes of the regular Board meeting of February 2, 2014. Director Shriner seconded the motion. The motion was passed.

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

President Moore made a motion to continue the meeting past 10:00 p.m. only to complete item 11-A with the other agenda items deferred until the next meeting. Director Lee seconded the motion. The motion was passed.

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

11. Action Item:

A. Meet with Neher & Associates and Provide Direction Regarding Recruitment of a General Manager:

Mr. Bob Neher, Neher & Associates gave a briefing on the recruitment process.

Director Le nominated President Moore and Vice President Shriner as the direct Board contact for Mr. Neher. Director Shriner seconded the motion. The motion was passed.

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

14. Adjournment:

The meeting was adjourned at 10:22 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Brian C. Lee, Deputy Secretary