

Marina Coast Water District

Dual Locations
Delta King Hotel, 1000 Front Street,
Sacramento, California
and
District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
May 10, 2011
6:45 p.m.

Minutes

1. Call to Order:

President Lee called the meeting to order at 6:45 p.m. on May 10, 2011.

2. Roll Call:

Board Members Present:

Bill Lee – President
Dan Burns – Vice President
Howard Gustafson
Jan Shriner – via telephone
Kenneth K. Nishi

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Jean Premutati, Management Services Administrator
Kelly Cadiente, Director of Administrative Services
Thomas Barkhurst, Water Quality Chemist
Rich Youngblood, Conservation Coordinator
Brian True, Capital Projects Manager
Joe Correa, Interim Assistant Operations and Maintenance Superintendent
Patrick Breen, Capital Projects Manager
Gary Rogers, Assistant Engineer
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Richard Newhouse, Marina Resident
Andy Sterbenz, Schaaf & Wheeler

Tyler Potter, Denise Duffy & Associates
Tom Moore, Marina Resident

Audience Members via teleconference:

Steve Kasower

Donna Bloom

Gary Crisp

Mr. Lloyd Lowrey, Legal Counsel, asked Director Shriner her current location and clarified where and when the agenda was posted at the teleconference location. He asked that Director Shriner remain in her stateroom for the Closed Session and move to the lobby during Open Session.

The Board entered into closed session at 6:52 p.m.

3. Closed Session:

- A. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)
Ag Land Trust v. Marina Coast Water District and Does 1-100, Monterey County Superior Court Case No. M105019 (First Amended Petition for Writ of Mandate and 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 Section 54956.9
1 - Case
- C. Pursuant to Government Code 54957.6
Conference with Labor Negotiators
Agency designated representatives: William Lee and Dan Burns
Unrepresented Employee: General Manager

The Board ended closed session at 7:13 p.m.

President Lee reconvened the meeting to open session at 7:15 p.m.

4. Possible Action on Closed Session Items:

Mr. Lloyd Lowrey, Legal Counsel, reported the following:

- 3-A – there was a conference with Legal Counsel and no action was taken.
- 3-B – there was a conference with Legal Counsel regarding the claims made by Ausonio Incorporated, copies of the claims are available for public viewing.
- 3-C – the Board tabled this item until the end of the meeting to allow more time for discussion.

5. Pledge of Allegiance:

President Lee led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Tom Moore, Marina resident, commented that a group of interested citizens is trying to raise money to fund the filming of the Marina Coast Water District Board meetings. Tax deductible donations can be made to: More Transparency – P.O. Box 693, Marina, CA 93933. Mr. Moore voiced his concern regarding the conflict of interest allegations against a Monterey County Water Resources Agency Board member and encouraged the District to do their own investigation and take all appropriate actions including reporting the findings to the public.

7. Presentation:

- A. Consider Adoption of Resolution No. 2011-30 in Recognition of Public Member, Mr. Richard Newhouse, for his Dedicated Service to the MCWD as a Member on the Water Conservation Commission:

Director Gustafson made a motion to adopt Resolution No. 2011-30 recognizing Mr. Richard Newhouse's dedicated service to the MCWD as a member on the Water Conservation Commission. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

President Lee read the narration and informed Mr. Newhouse that his copy of the resolution would be delivered to him once all the Directors sign it.

8. Public Hearing:

- A. Receive Public Comment on the Draft 2010 Urban Water Management Plan:

President Lee opened the Public Hearing at 7:20 p.m.

Mr. Gary Rogers, Assistant Engineer, introduced this item noting that written comments will continue to be received until 5:00 p.m. on Monday, May 16, 2011.

No public comments were received during the Public Hearing.

Director Shriner complimented District staff on getting the Urban Water Management Plan done on time, noting that many other agencies are struggling to get theirs done and are looking for help from consultants. Director Shriner stated that she had several questions in the Urban Water Management Plan and asked if it would be better to meet with staff upon her return. President Lee agreed and asked Director Shriner to direct her questions through the General Manager.

Agenda Item 8-A (continued):

President Lee closed the Public Hearing at 7:22 p.m.

9. Consent Calendar:

Director Nishi asked to pull item D from the Consent Calendar.

After clarification on which item Director Nishi pulled, Director Gustafson made a motion to approve Consent Calendar consisting of items:

- A) Approve the Draft Summer 2011 Newsletter
- B) Receive the Quarterly Financial Statements for January 1, 2011 to March 31, 2011
- C) Approve the Expenditures for the Month of April 2011
- E) Approve the Draft Minutes of the Special Board Meeting of March 29, 2011
- F) Approve the Draft Minutes of the Special Board Meeting of April 4, 2011
- G) Approve the Draft Minutes of the Special Board Meeting of April 8, 2011
- H) Approve the Draft Minutes of the Regular Board Meeting of April 12, 2011

Director Nishi seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

F. Approve the Draft Minutes of the Special Board Meeting of February 22, 2011:

Director Nishi asked if the revised minutes reflected what was on the tape. Mr. Carl Niizawa, Deputy General Manager/District Engineer, affirmed they did.

Director Nishi made a motion to approve the draft minutes of the special Board meeting of February 22, 2011. Director Gustafson seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

10. Action Items:

- A. Consider Second Reading of Ordinance No. 54 Approving New District Rates, Fees & Charges for Marina Water and Wastewater:

Ms. Kelly Cadiente, Director of Administration Services, introduced this item noting that this is the second reading of Ordinance No. 54. The first reading of Ordinance No. 54 was held on April 12, 2011.

Director Nishi inquired if a motion was needed for this item. Mr. Lowrey answered that no motion was needed unless the Board wanted to make a motion to approve the form of the Ordinance. The Public Hearing for Ordinance No. 54 is set for June 14, 2011.

President Lee suggested moving on to the next item.

- B. Consider Adoption of Resolution No. 2011-31 to Adopt the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Watkins Gate Well and Pipeline/Eastern Distribution System Project:

Mr. Rogers introduced this item.

Director Nishi made a motion to adopt Resolution No. 2011-31 to adopt the Initial Study/Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program for the Watkins Gate Well and Pipeline/Eastern Distribution System Project. Director Gustafson seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

- C. Consider Adoption of Resolution No. 2011-32 to Approve an Amendment to the Professional Services Agreement with Luhdorff & Scalmanini Consulting Engineers for the Eastern Distribution System Watkins Gate Well Installation for a Not-to-Exceed Amount of \$36,500:

Mr. Patrick Breen, Capital Projects Manager, introduced this item.

Vice President Burns commented that it looks like this engineering firm and Schaaf & Wheeler are doing some of the same work on the Watkins Gate Well. Mr. Carl Niizawa, Deputy General Manager/District Engineer, answered that both engineering firms were working on the same project. Luhdorff & Scalmanini was designing the well and Schaaf & Wheeler was doing the facilities.

Agenda Item 10-C (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-32 to Approve an Amendment to the Professional Services Agreement with Luhdorff & Scalmanini Consulting Engineers for the Eastern Distribution System Watkins Gate Well Installation for a Not-to-Exceed Amount of \$36,500. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

- D. Consider Adoption of Resolution No. 2011-33 to Approve an Amendment to the Professional Services Agreement with Schaaf & Wheeler Consulting Civil Engineers for Engineering Services Related to the Eastern Distribution Project Watkins Gate Well & Pipeline Installation for a Not-to-Exceed Amount of \$167,100:

Mr. Breen introduced this item.

Director Gustafson made a motion to adopt Resolution No. 2011-33 to Approve an Amendment to the Professional Services Agreement with Schaaf & Wheeler Consulting Civil Engineers for Engineering Services Related to the Eastern Distribution Project Watkins Gate Well & Pipeline Installation for a Not-to-Exceed Amount of \$167,100. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

- E. Consider Adoption of Resolution No. 2011-34 to Authorize the General Manager and/or Deputy General Manager/District Engineer to Sign a Memorandum of Understanding and License Agreement with UCP-East Garrison, LLC for Temporary Access to the Watkins Gate Well and Pipeline Project Site:

Mr. Rogers introduced this item.

Director Shriner asked if there was a financial agreement with the land owner of the property where the test well would be placed. Mr. Rogers stated that, at this time, there was no financial agreement with the land owner regarding the test well.

Agenda Item 10-E (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-34 to Authorize the General Manager and/or Deputy General Manager/District Engineer to Sign a Memorandum of Understanding and License Agreement with UCP-East Garrison, LLC for Temporary Access to the Watkins Gate Well and Pipeline Project Site. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

F. Consider Revisiting the Director Appointment as Ex-Officio Member to the Fort Ord Reuse Authority Board of Directors:

President Lee stated that he was appointing Director Nishi to be the Ex-Officio member to the Fort Ord Reuse Authority Board of Directors and himself as alternate to that position.

Director Gustafson made a motion to appoint Director Nishi as the Ex-Officio member to the Fort Ord Reuse Authority Board of Directors and President Lee as alternate. Vice President Burns seconded the motion. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

11. Staff Report:

A. 1st Quarter 2011 Ord Community Water Consumption and Sewer Flow Report:

Mr. Richard Youngblood, Conservation Coordinator, introduced this item.

Director Nishi questioned the total metered consumption for Seaside on the Ord Community on page 200. Mr. Youngblood answered that it was due to the addition of a golf course. Director Nishi questioned the totals metered consumption for CSUMB on the same page. Mr. Youngblood answered that it was due to the addition of metered units where last year they were unmetered. Director Nishi questioned why the metered consumption didn't go up as much as the unmetered consumption went down. The unmetered consumption went from 350 down to 0 acre feet, but the metered consumption only increased by 128 acre feet. Director Nishi wanted to know why there was a discrepancy and asked staff to provide the answer at a later time. Director Nishi commented that on page 218, Seaside Highlands is still at 125% of their allocation and suggested encouraging stronger water conservation measures in that area.

B. Information on Water Conservation Commission Membership:

Mr. Youngblood introduced this item giving a brief background of the Water Conservation Commission.

Vice President Burns suggested re-evaluating the Committee before spending another \$350 to advertise to fill the vacancy. He suggested having the Committee re-evaluate how many members they think should be on the Committee and how vacancies should be handled.

Director Nishi agreed with Vice President Burns on having the Committee re-evaluate the membership and also suggested asking them for feedback on what can make their experience better.

Director Nishi voiced his concern over Section 1C on page 222 of the Board packet. He noted that there is a conflict where it says the Commission recommends applications to the Board of Directors. The Commission shouldn't make a recommendation, only the Board does. Director Nishi also commented that when the District participates at local events with the Water Conservation booth, he would like it to be manned by members of the Water Conservation Commission. On page 223, Section D1, Director Nishi commented that instead of staff producing the agenda, the Commission should determine what items they want on the agenda with input from staff. He suggested the Chair and Vice Chair meet with staff several weeks prior to the meeting to produce an agenda, and then staff can complete the agenda and send it to Commission members a week before the meeting. Director Nishi noted that Section D3a states Commission members must be prepared for and attend all committee meetings, unless excused for good reason. The Board of Directors has a strict attendance policy that follows the State's guidelines which only allows "sickness" or "out-of-state" as excuses for missing a meeting. Director Nishi suggested the Commission consider following the same strict attendance policy.

President Lee asked the Board members if they concurred with the recommendation that the Water Conservation Commission re-evaluate their membership provide the Board with a recommendation. Director Shriner suggested looking into other media for advertising vacancies and asked if there were legal guidelines to follow. She also suggested the option of each Board member selecting a public member to appoint to the Commission, as other Boards occasionally do. Director Shriner asked if there was some way of setting up an application interview process to review if the applicants have any water conservation background. Director Nishi commented that it is the Board's policy, not the Commission's.

Mr. Lowrey commented that it is within the discretion of the Board to set policy and procedures for the selection of its committees.

President Lee informed Mr. Youngblood to take this information to the Water Conservation Commission and bring their recommendations back to the Board at a later meeting.

12. Workshop:

A. Review Board Procedures Manual:

This item was postponed until next month.

13. Informational Items:

A. General Manager's Report:

Mr. Jim Heitzman, General Manager, commented that the Coastal Commission Permit Application was available for review on the table in front of him. It is also available for public to review during office hours. Mr. Heitzman stated that during his tenure here, Director Shriner has cost the District over \$20,000 in legal fees and they continue to climb. He says he is not sure exactly, but she seems to be intent on harassing and cause a hostile environment for staff, including the General Manager, and is soliciting continuous legal opinion via email, etc. Mr. Heitzman said that something needs to be done. He commented that if every ratepayer was spending \$20,000 of the District's money in pursuit of firing the General Manager and having the General Manager leave, he thinks the District would be broke in one month. Mr. Heitzman asked the Board to take into consideration that he has requested on a number of occasions that somebody speak with Director Shriner about hostile environment. He stated that other members of staff have complained also about that issue, so he wants to put the Board on notice that he doesn't intend to continuously be harassed by Director Shriner.

B. District Engineer's Report:

No report.

C. Counsel's Report:

Mr. Lowrey commented that Director Nishi, at the last meeting, requested a written opinion on the General Manager's attendance during Closed Session discussion of the General Manager's contract. He noted that the information was provided in the Board packet.

Mr. Lowrey handed out an opinion letter that is different than the oral opinion he gave last meeting when he recused himself from the discussion on the Toro Coalition and Alco Utility Services. After further research, Mr. Lowrey stated that in his opinion he doesn't have a conflict of interest in that matter.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

President Lee commented that the Commission was continuing to do good work.

2. Joint City-District Committee:

President Lee commented that the meeting was later in the month.

3. Budget and Personnel Committee:

No meeting was held.

4. MRWPCA Board Member:

Vice President Burns stated they held a Strategic Planning Workshop and the hot topics were replenishment and recycled water to the Peninsula. He stated that most of the goals revolved around those two topics and may require frequent meetings with MCWD, MCWRA and CalAm.

5. Special Districts Association Liaison:

President Lee commented that they met on April 19th and listened to a guest speaker.

6. LAFCO Liaison:

Director Nishi commented that the big issue was the Sphere of Influence and how Cities start annexation without the input from LAFCO. He commented that LAFCO is looking to streamline the process to give input before funds are spent on Environmental Impact Report's. Director Nishi commented that two senior members were trying to convince the newer members to streamline the process. Mr. Carl Niizawa, Deputy General Manager/District Engineer, added that South County Cities are opposed to pre-meeting with LAFCO staff before annexation.

7. JPIA Liaison:

Director Shriner commented that she was attending the ACWA Spring Conference in Sacramento and went on a tour of the new ACWA/JPIA facility. She commented that every time people found out who she was with, they mentioned sexual harassment training. Director Shriner commented that there was a training session the next day and that she would try to attend. She stated that she didn't know what the previous history with the District has been, but she would look into attending the session. Director Shriner commented that she was really enjoying the conference.

8. FORA:

President Lee commented that the meeting was last Friday and was boiler-plate.

9. CalDesal:

Vice President Burns stated there was a meeting held during the ACWA Spring Conference and that he was unable to attend. He commented that CalDesal and others went to the State Water Resources Control Board and testified regarding what they were planning to do in the future with developing discharge regulations/limitations for intake and discharge and brine waste. Vice President Burns noted that CalDesal wants to take an active role in helping to develop those goals.

10. Executive Committee:

No meeting was held.

11. Community Outreach:

Director Gustafson commented that the Water Report was approved earlier on this agenda and would be sent out to the public soon.

12. Regional Desalination Reports:

Mr. Heitzman commented that the new website, regionalwaterproject.org, is up and running. He stated that there was a meeting next Monday, May 16th.

E. Director's Comments:

Director Nishi stated that in light of the General Manager's comments, he suggests holding a special Board meeting as soon as possible. He added that he doesn't want to sit on a Board that is creating a hostile environment for employees.

Vice President Burns suggested having the Management Services Administrator get someone to investigate the allegations, report the findings to the Board, and then the Board can take action.

Vice President Burns commented on the article in the newspaper that mentioned the District paid some invoices that included work by Steve Collins. He asked staff to follow-up at the next meeting with information on the accuracy of the newspaper's claim, and if the District did pay, was it corrected.

Vice President Burns noted that holding the meeting via teleconference was difficult and the Board should discuss on a future agenda whether to continue allowing teleconferencing, or, if a Director is out of town, they should miss the meeting.

Agenda Item 13-E (continued):

Director Gustafson stated that he was concerned with Tom Moore's claim for more transparency. He noted that the word "transparency" was overused. Director Gustafson stated that this agency was one of the best water districts in the whole region, and the water was one of the least expensive. He noted that the District only deals with water. Director Gustafson added that the Steve Collins issue is a RMC matter.

Director Shriner asked to clarify the Regional Desal Report and asked if the Board of Supervisors met last Monday or next Monday. President Lee answered that nobody knew when the Board of Supervisors would meet. President Lee stated that the Regional Desal Advisory Committee would meet next Monday and was not open to the public because it was a staff meeting.

Director Shriner asked if the hostile work environment had anything to do with the Public Records Request she recently submitted. President Lee answered that it didn't have anything to do with that.

President Lee cautioned Director Shriner that she was straying from the topic. This was for Directors to comment. Director Shriner stated that she thought she could ask questions under "Director's Comments". Mr. Lowery answered that she could ask questions, but "Director's Comments" is not for dialogue to take place. The questions can be answered in an appropriate place at a later date.

Director Nishi commented that he doesn't believe what the Monterey Herald prints and that they are biased. He stated that everybody in this country is innocent until proven guilty. Director Nishi commented that the Monterey County Water Resources Agency is investigating the Steve Collins issue. He voiced his concern that Tom Moore, after many years on the Board, knows that this is not a place to stir-it-up, and stated that he feels Tom stirs-it-up. Director Nishi added that is why the meeting is being taped, because it is a coordinated effort to get the message out and it is an attack on the Marina Coast Water District and the integrity of the Board.

President Lee recessed the meeting from 8:11 p.m. until 8:13 p.m. The Board of Directors went back into closed session at 8:13 p.m. to discuss agenda item 3-C.

The Board of Directors ended closed session and entered back into open session at 8:18 p.m.

4. Possible Action on Closed Session Items:

- C. Pursuant to Government Code 54957.6
 - Conference with Labor Negotiators
 - Agency designated representatives: William Lee and Dan Burns
 - Unrepresented Employee: General Manager

Agenda Item 13-E (continued):

President Lee asked Mr. Heitzman to look over the contract and see if it is agreeable to him. Mr. Heitzman asked if the negotiators should meet with him in his office to look it over together. Mr. Lowrey answered that if there are things the negotiators need to discuss with the General Manager, it should be done in confidence and if the negotiators need to report back to the Board, it should be done in closed session.

President Lee recessed the meeting at 8:21 p.m. to allow the General Manager time to review the contract.

The Board of Directors re-entered closed session at 8:26 p.m. to discuss agenda item 3-A.

The Board of Directors ended closed session and entered back into open session at 8:27 p.m.

4. Possible Action on Closed Session Items:

- D. Pursuant to Government Code 54957.6
Conference with Labor Negotiators
Agency designated representatives: William Lee and Dan Burns
Unrepresented Employee: General Manager

Mr. Lowrey stated that the Board met and conferred with negotiators with no action taken in closed session. The Board will now take action in open session.

Director Nishi made a motion to approve the General Manager's employment contract as amended on the handout. President Lee asked if this was an action item. Mr. Lowrey answered that it was.

Director Gustafson made a motion to approve Resolution No. 2011-35 approving an amendment and restatement to the General Manager's contract. Director Nishi asked if the Board can approve Resolution No. 2011-35 even though it was not listed on the agenda. Mr. Lowrey answered that the Board may take action by resolution although it doesn't have to. He added that the resolution is available to the public and that the Board policy normally provides that these types of action take place by resolution. Director Nishi stated that he thought the Board would take action on the contract this evening and then on the resolution at the next meeting. Mr. Lowrey answered that the Board does not have to take action by resolution, but may do so if they want to. President Lee seconded the motion. The motion was passed.

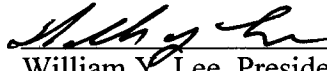
Director Gustafson	-	Yes	Vice President Burns	-	Yes
Director Shriner	-	Abstain	President Lee	-	Yes
Director Nishi	-	Yes			

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14. Adjournment:

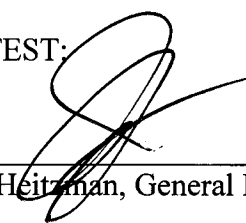
The meeting was adjourned at 8:33 p.m.

APPROVED:



William Y. Lee, President

ATTEST:



Jim Heitzman, General Manager