

Marina Coast Water District

District Offices  
11 Reservation Road  
Marina, California

Regular Board Meeting  
February 25, 2004  
7:00 p.m.

**Minutes**

1. Call to Order/Roll Call:

President Scholl called the meeting to order at 7:00 p.m. on February 25, 2004.

Board Members Present:

Charles Scholl – President  
Tom Moore  
David Brown – arrived at 7:07 p.m.  
Ken Nishi

Board Members Absent:

One vacant seat.

Staff Members Present:

Mike Armstrong, General Manager  
Lloyd Lowrey, Legal Counsel  
Suresh Prasad, ASO of Finance and Technology  
Rich Youngblood, Water Conservation Specialist  
Pete Koehn, Plan Check Engineer  
Jade Sullivan, Project Engineer  
Paula Carina, Executive Assistant/Board Clerk

Audience:

Jim Brezack, RBF Consulting  
Dave Meza  
Brian Congleton, Congleton Architects  
Marc Lucca  
Simon Whitmey  
Fran Coen, Clarke Pinnacle  
Michael Shaw, Marina Heights  
Ellen Lewis Aldridge, Avery & Associates

2. Oral Communications:

Mr. Armstrong asked the Board to consider adding an item to the agenda to read "Accept Resignation of Director Russo, Authorize Public Notice of Board Vacancy and Set Date to Consider Appointment to Fill Board Vacancy". Mr. Lowrey noted the Board must find the issue arose after the agenda was posted and it was an urgent item.

On motion by Director Moore, seconded by President Scholl; the Board add the item to the agenda as item 5-C. Director Nishi asked why this was urgent. Mr. Lowrey stated the Board needed to decide the urgency of adding this item to the agenda. He then stated there are several pressing items before the Board and the Government Code has a time limit for agencies to appoint members. Mr. Lowrey said he felt this item meets the criteria as an urgent matter. Director Moore asked what the time limit was to appoint. Mr. Lowrey stated the District has sixty days to appoint or it goes to the Board of Supervisors to hold a special election. Director Nishi asked when the sixty-day period begins. In his opinion, the District has fifteen days to notify the County Elections Department and then sixty days to fill the position for a total of seventy-five days.

Director Brown arrived at 7:07 p.m.

Director Moore asked for a legal opinion on when the time frame begins. Mr. Lowrey stated in his opinion, the District has sixty days from the date of resignation or the date the Board learned of the resignation and that the fifteen days runs concurrently to the sixty. With a vote of 3-Ayes, 1-No, 1-Vacant, the motion was passed.

The Board entered into closed session at 7:10 p.m.

3. Closed Session:

- A. Pursuant to Government Code Section 54957.6  
Conference with Labor Negotiator  
Agency Negotiator: William Avery & Associates  
Employee Organizations: Teamsters Local 890 and SEIU Local 817

The Board returned to open session at 7:52 p.m. and recessed until 7:57 p.m.

4. Possible Action on Closed Session Items:

Mr. Lowrey reported the Board met with the labor negotiator and gave direction and will take action in open session.

Agenda Item 4 (continued):

On motion by Director Moore, seconded by Director Brown; the Board authorize \$2,500 for expenditures on the negotiating process and for gaining information on CalPERS. The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	Yes	President Scholl	-	Yes

5. Action Items:

A. Consider Update on Conflict of Interest Code:

Ms. Carina explained the District's Conflict of Interest Code needs to be updated with the new position titles that were derived from the Koff & Associates Study and that the Capital Projects Manager needs to be added to the list of Designated Positions. Director Moore asked if this requires a resolution. Mr. Lowrey stated it did.

On motion by Director Moore; seconded by Director Brown; the Board directed staff to prepare a resolution to make the changes shown on page three of the Board packet. Director Nishi asked when the Board changed the position titles. Mr. Armstrong stated the Board accepted the Koff & Associates study several months ago which named new position titles. Director Nishi said the Board only accepted the report and did not approve it. Mr. Armstrong suggested only adding the Capital Projects Manager position to the Code and not changing the other titles at this time. Director Moore amended his motion to add the Capital Projects Manager position to the Code. Director Nishi stated that position had yet to be approved. Mr. Armstrong amended his suggestion to the original title of Project Engineer. Director Moore amended his motion to add the Project Engineer to the Conflict of Interest Code. Director Brown seconded the amended motion. Director Nishi asked why the position needs to be added to the Code. Mr. Lowrey stated it was because this position makes recommendations and prepares and participates in RFP's and such actions. The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	No	President Scholl	-	Yes

B. Consider Director Assignments, Composition and Meeting Schedules for Committees:

President Scholl stated that due to his resignation, Director Russo's Committee assignments would be absorbed by the remaining Directors.

Agenda Item 5-B (continued):

President Scholl suggested the following appointments:

Water Conservation	Brown
Joint City/District	Moore, Scholl, Armstrong (alt)
MRWPCA	Scholl, Moore (alt)
MRWPCA Negotiating Team	Moore, Scholl
FORA	Brown, Moore (alt)
LAFCO	Scholl, Armstrong (alt)
Special Districts Association	Moore, Scholl (alt)
JPIA	Moore, Brown (alt)

On motion by Director Moore, seconded by Director Brown; the Board approve the above appointments. With a vote of 4-Ayes, 0-Noes, 1 Vacant, the motion was passed.

President Scholl explained that Director Nishi questioned the composition of the Community Outreach Committee (COC) and at the February 11<sup>th</sup> meeting the Board agreed to discuss the composition of the COC on February 25<sup>th</sup>. Mr. Lowrey clarified all Committees, with the exception of the Budget and Personnel Committee, have at least one member of the public on the Committee. Director Nishi asked what the importance of the Committee was. Director Brown stated it was to keep the public informed on what was happening with the District. President Scholl said the Committee Chair could rely on staff to provide information and services. Discussion followed.

On motion by Director Brown, seconded by Director Moore; the Board add one public member to the Community Outreach Committee and direct staff to advertise committee vacancy. Following discussion, Director Brown amended his motion for staff to be present to provide support. With a vote of 4-Ayes, 0-Noes, 1-Vacant, the motion was passed.

C. Accept Resignation of Director Russo, Authorize Public Notice of Board Vacancy and Set Date to Consider Appointment to Fill Board Vacancy:

Mr. Armstrong explained the options before the Board.

On motion by Director Moore, seconded by Director Brown, the Board accept Director Russo's resignation, notify public of the vacancy in the Monterey Herald, Marina Gazette, and Monterey County Weekly and solicit applications to be considered for appointment at the March 24<sup>th</sup> Board meeting. The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	Yes	President Scholl	-	Yes

6. Review Item:

A. Receive Draft Budget for FY 2004/2005 and Review Approved Schedule:

Mr. Prasad reviewed this item with the Board. Director Moore asked that the line title "Financing Revenue" be revised. Discussion followed.

7. Consent Calendar:

Director Nishi requested to pull items A (Consider Receipt of the Draft Urban Water Conservation Feasibility Study); B (Consider Approval of the Draft Construction and Transfer of Infrastructure Agreement for the RCI Development); C (Consider Adoption of Resolution No. 2004-14 to Approve a Professional Services Agreement with Byron Buck & Associates to Prepare Water Supply Assessments and Updated Urban Water Management Plan); D (Reconsider Board Action to Engage Third Party Review of Oases Contract and Submittals and Terminate Contract with Oases International); and, F (Receive Quarterly Financial Statements for October 1, 2003 – December 31, 2003) from the Consent Calendar.

On motion by Director Brown, seconded by Director Moore; the Board approve Consent Calendar items E (Consider Approval of the January 2004 Expenditures); G (Consider Approval of Minutes of the Regular Board Meeting of January 14, 2004); and, H (Consider Approval of Minutes of the Regular Board Meeting of January 28, 2004). The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	Yes	President Scholl	-	Yes

A. Consider Receipt of the Draft Urban Water Conservation Feasibility Study:

Director Nishi asked how reliable the statistics are in a two-week time period. Mr. Brezack stated it was a statistically valid sample. Discussion followed.

On motion by President Scholl, seconded by Director Brown; the Board table this item until the next meeting on March 10, 2004. With a vote of 3-Ayes, 1-No, 1-Vacant, the motion was passed.

B. Consider Approval of the Draft Construction and Transfer of Infrastructure Agreement for the RCI Development:

On motion by Director Moore, seconded by Director Brown; the Board approve the draft Construction and Transfer of Infrastructure Agreement for the RCI Development. With a vote of 3-Ayes, 1-No, 1-Vacant, the motion was passed.

C. Consider Adoption of Resolution No. 2004-14 to Approve a Professional Services Agreement with Byron Buck & Associates to Prepare Water Supply Assessments and Updated Urban Water Management Plan:

Director Nishi stated he would like to have three separate resolutions on this item.

On motion by Director Moore, seconded by Director Brown; the Board approve Resolution No. 2004-14 to approve a Professional Services Agreement with Byron Buck & Associates to prepare Water Supply Assessments and updated Urban Water Management Plan. The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	No	President Scholl	-	Yes

D. Reconsider Board Action to Engage Third Party Review of Oases Contract and Submittals and Terminate Contract with Oases International:

Director Nishi stated the direction given to the General Manager was not followed through to hire a third party to review the contract and submittals.

On motion by Director Moore, seconded by Director Brown; the Board reconsidered Board action to engage third party review of Oases contract and submittals and terminate contract with Oases International. The motion was passed with one vacant seat.

Director Moore	-	Yes	Director Brown	-	Yes
Director Nishi	-	No	President Scholl	-	Yes

F. Receive Quarterly Financial Statements for October 1, 2003 – December 31, 2003:

Director Nishi asked if staff was working on breaking out the CSUMB costs. Mr. Prasad stated it will be addressed in the next quarterly report.

On motion by Director Moore, seconded by Director Brown; the Board receive Quarterly Financial Statements for October 1, 2003 – December 31, 2003. With a vote of 4-Ayes, 0-Noes, 1-Vacant, the motion was passed.

8. General Managers Report:

Mr. Armstrong stated that there were recent developments by the California Supreme Court regarding Prop. 218. He then asked Legal Counsel to give a brief update. Mr. Lowrey provided the Board information coming from a recent decision (Richardson v. Shasta CSD). The decision held that a Prop. 218 process is not required for connection fees and capacity charges.

Agenda Item 8 (continued):

However, in dicta the Supreme Court held that a Prop. 218 process is required to increase rates for existing customers' water and sewer services. Discussion followed.

Mr. Armstrong also updated the Board on the poor condition of the sewer line that runs under Hwy. 1. The sewer line condition will need to be addressed in the near future and may be quite costly. Mr. Armstrong stated staff is working on this and will bring it before the Board within the next several months.

B. Counsel's Report:

None.

C. Committee and Board Liaison Reports

President Scholl announced the MRWPCA elected Mr. David Pendergrass as Chair and Ms. Del La Rosa as Vice-Chair.

D. Director's Comments:

Deferred until the next meeting.

9. Planning Workshop:

A. Corporation Yard Master Plan Phase II Workshop with Congleton Architects:

Mr. Sullivan introduced this item. Mr. Congleton reviewed the options for Phase I building design. He then reviewed the options for Phase II layout and construction. Director Brown stated he preferred option "C" for Phase I and option "K" for Phase II. Director Nishi stated he preferred option "E" for Phase I and option "J" for Phase II with the architecture to match the current buildings. Director Moore stated he preferred option "C" for Phase I and is undecided between options "H" and "K".

At 10:00 p.m. President Scholl asked if any Board members wanted to make a motion to adjourn. Hearing no motion, the meeting resumed.

President Scholl stated he preferred option "C" for Phase I and suggested Mr. Congleton look into the cost of insulated prefab bonded metal walls for option "C", and option "K" for Phase II. Discussion followed. Mr. Congleton said he would be ready to bring the Master Plan back to the Board in April 2004.

10. District Correspondence:

No comments.

The Board entered into closed session at 10:30 p.m.

11. Closed Session:

- A. Pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: General Manager

The Board returned to open session at 10:40 p.m. No action was taken in closed session. Verbatim transcript follows:

President Scholl: "You had one last thing that you wanted to get out of...your, your issue is um, item, the, Director Nishi, was, ah, the Executive Committee's minutes? You wanted to bring some issue up about that?"

Director Nishi: "Right. My understanding was that the Committee was formed and would not address any issues that were going to be on the agenda, and, and at the first meeting I see that what was proposed is opposite of what's occurring. I'm, I'm you know, I, I don't know what's, what is occurring."

President Scholl: "No, I, okay. No, no, um, that's not true. What was done was to identify information and resources that the Board would, may need to acquire, to address different retirement plan scenarios."

Director Nishi: "And on your January 14<sup>th</sup> Committee assignments, it says current projects, or pending actions before the Board, will specifically not be discussed at these meetings."

President Scholl: "And it wasn't, Ken."

Director Nishi: "What was discussed?"

President Scholl: "Aahhh..."

Director Nishi: "Was not a current pending action before the Board?"

President Scholl: "It was to, we identified what information we could get together so in the meantime so that the Board could go and move forward on the item."



Director Nishi: "Okay, Charlie, you keep this up, we are going to see this in the Grand Jury. This is..."

President Scholl: "Oh, I, I, your quite..."

Director Nishi: "Hey, I'm telling you that this, everything is so arbitrary, it doesn't even make sense."

President Scholl: "And capricious, too."

Director Nishi: "That's right."

President Scholl: "Alright, no other items before this evening, I, uh, the meeting is adjourned."

12. Adjournment:

The meeting was adjourned at 10:44 p.m.

APPROVED:

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Charles H. Scholl, President

Date

ATTEST:

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Michael D. Armstrong, General Manager