

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
January 25, 2006
7:00 p.m.

Minutes

1. Call to Order:

President Brown called the meeting to order at 7:00 p.m. on January 25, 2006.

Board Members Present:

David Brown – President
Howard Gustafson – Vice President
Ken Nishi
Charles Scholl
Tom Moore

Board Members Absent:

None.

Staff Members Present:

Marc Lucca, General Manager
Lloyd Lowrey, Legal Counsel
Andrew Sterbenz, Interim District Engineer
Rich Youngblood, Conservation Coordinator
Joan Warren, Management Services Administrator
Suresh Prasad, Director of Finance
Jim Dowless, Operations & Maintenance Superintendent
Paula Riso, Executive Assistant/Clerk to the Board

Audience:

Doug Yount, City of Marina
Michael Shaw, Cypress Knolls
Bob Schaffer, Marina Community Partners
Dick Goblirsch, Del Rey Oaks
Lyndel Melton, RMC Environment and Water
Stephanie Hughes, RMC Environment and Water
Eric Robinson, Cypress Knolls
Bill Brasher, Marina Heights
Ken Buchert, City of Marina Legal Counsel
Ralph Marcelo, Nicholson & Olson

Jim Heitzman, MRWPCA
Jan Driscoll, Marina Heights
Larry Parsons, Monterey Herald

2. Oral Communications:

Mr. Marc Lucca, General Manager, introduced Mr. Andrew Sterbenz, Interim District Engineer.

President Brown stated that he would like to go into closed session to discuss item 7-D as it may have an effect on other items on the agenda.

The Board entered into closed session at 7:04 p.m.

7. Closed Session:

- D. Pursuant to Government Code Section 54956.9
Conference with Real Property Negotiator
Property: District Desalination Plant
Negotiating Parties: MCWD and Marina Developers
Under Negotiation: Price and Terms

The Board returned to open session at 7:26 p.m.

8. Possible Action on Closed Session Items:

President Brown stated that no action was taken in closed session and direction was given to the negotiating team regarding the desalination issue.

3. Action Items:

- A. Consider Adoption of Resolution No. 2006-06 to Approve the Proposed City of Marina Concept to Ensure that City Developments Use No More Water Than Allocated to the Developments by the City:

Mr. Lucca introduced this item. Mr. Lloyd Lowrey, Legal Counsel, added that the Board would be well advised to have in place some mechanism to enforce that the water allocation is not exceeded as a prerequisite to relying on the City of Marina's water use numbers.

Director Scholl asked if this Resolution was adopted, would it set a precedent for all other land use jurisdictions (LUJ) on the Ord Community. Mr. Lowrey answered that it would set a precedent but the District may not be bound by the action although other LUJ's may view it to have precedential value.

Vice President Gustafson made a motion to adopt Resolution No. 2006-06 approving the proposed City of Marina concept to ensure that City developments use no more water than allocated to them by the City. Director Nishi seconded the motion. Discussion followed.

Agenda Item 3-A (continued):

Director Scholl commented that he didn't believe the concept was in a condition that was ready to be adopted or voted on. He believed that the District's Water Supply Assessment (WSA) numbers were already low and to lower them further could cause problems for the District at a later date.

Director Moore agreed with Director Scholl and Mr. Lowrey that there needed to be more details before approving this concept. He added that there could be a political problem if the concept is not governed over all the jurisdictions, only the new developments. Director Moore stated that although the concept is characterized as a penalty, it is more along the lines of rate making and doesn't think the District should give away a portion of its rate-making responsibilities. Mr. Lowrey stated he doesn't view it as rate-making because it is not a property related fee or charge for service. Director Moore commented that it was a subtle difference that many people may not notice. He also added that there were many details that are unanswered, i.e. who will collect the penalty fee, who will account for the fees collected, and who decides where the tiers will be.

Vice President Gustafson stated that there are agreements that homeowners will be required to sign and adhere to in these developments and they should know what they are getting into when they purchase their homes.

Mr. Lowrey stated the City of Marina anticipates a further level of detail once they understand the Board's reaction to the proposal before them.

President Brown asked if the Board adopts this resolution, does that bind the District to use the City of Marina's numbers in future WSA's. Mr. Lowrey answered that the direction in the resolution is to return in six months with a completed Program for the Board's review and action; and, if the Program is successful, use the City's allocations when completing future WSA's. Mr. Lowrey stated that he has reservations over the second provision. He clarified that the District is required by SB221 and SB610 to do an independent analysis, which it has, and unless there is a concept with a mechanism that the Board is confident is enforceable and will be enforced, he advised against the Board to begin using the City's numbers until they have more confidence than they currently can have based on the concept provided.

Vice President Gustafson stated that if the District would use the City's numbers, the City would guarantee that the allocations would not exceed the numbers. If the numbers were exceeded, the customers responsible would be penalized according to whichever mechanism was decided. Vice President Gustafson concluded that was how the City would enforce the allocation as was discussed at length during the Joint City District meeting on January 19, 2006.

Agenda Item 3-A (continued):

Director Nishi commented that the Board needs to understand that they, the Board, make the rules. The City can do whatever they want but the District is the one who says they will only give so much water for each development. Director Nishi stated that there needs to be a certain level of water use that when reached, triggers a warning to the City to begin cutting back on, or monitoring building permit issuance. Mr. Lowrey stated that the District looks at allocation from a global view for all jurisdictions and FORA looks at the individual allocations. The District provides reports of water usage for all jurisdictions to FORA and they are the ones responsible for looking at the overall usage for each jurisdiction. Director Nishi commented that the District doesn't have any responsibility if FORA is responsible for looking at water usage. Mr. Lowrey answered that the District only has the responsibility to accurately assess what the water usage is going to be. Mr. Lowrey stated that, in his opinion, unless there is an enforceable mechanism to ensure that the water use is less than what the District's independent assessment otherwise would conclude, the District has a legal obligation to use the results of their independent assessment.

President Brown asked Mr. Doug Yount, City of Marina, if the letter received from the City of Marina's attorney, Mr. Rob Wellington, which specified that the City does have the power to refuse additional building permits until the situation of overuse is corrected, is subject to a certain development or all developers. He also asked Mr. Yount to explain why the City believes that restricting building permits is or is not a workable solution. Mr. Yount answered that the City has the authority to restrict building permits if it wants or needs to.

Director Moore commented that he felt FORA should be involved in this discussion and was concerned that entering into a unilateral agreement with one jurisdiction could lead to other jurisdictions requesting agreements, which might have different criteria. He would rather see a trilateral agreement with one policy for everyone to follow. Director Moore also voiced his concern over putting infrastructure in the ground before it is needed.

Director Scholl commented that it is possible to come up with a workable plan, but this one is just not ready for approval.

Vice President Gustafson commented that it was just approving the concept and there was time for FORA to join at a later date.

Mr. Lowrey stated that his concern is over step two of the Resolution which uses the City of Marina's numbers.

Mr. Yount commented that the item before the Board is concept only and a pilot project with the details not settled as of yet. He added that the Resolution needs to have both steps and the Board needs to recognize the City of Marina's numbers as good numbers. Mr. Yount stated that FORA has no authority for sub-allocations, only jurisdictional allocations.

Agenda Item 3-A (continued):

Mr. Yount added that the District has the responsibility to provide the full allocation that FORA requests on a contractual basis. He encouraged the Board to approve this item in its entirety.

Mr. Michael Shaw, Cypress Knolls, commented that the City and the Developers don't want to restrict building permits. They both agreed to the allocations provided by the City of Marina and want to meet those allocations. Mr. Shaw said that the District asked the City to provide a concept to ensure water usage stays within the allocation. The District is not being asked to adopt the concept but to work with the City over the next six months to refine and enhance the concept.

President Brown commented that he doesn't think the Board ought to be dismissive of Mr. Lowrey's advice. He added that a reliable concept could be established allowing future WSA's to use the City's numbers but cautioned the District getting ahead of it.

Director Moore commented that if the Board passed the Resolution as is, the City and Developers could lose their motivation to come up with a solution.

Director Nishi asked if Mr. Lowrey looked at this item before. Mr. Lowrey stated that he had seen the draft before it went to the Joint City/District Committee (JCD) for discussion. At the JCD, the determination was made to accept the concept and bring it back to the Board to see which direction it wanted to go, but the addition of relying on the concept rather than the adoption of the Ordinance is where Mr. Lowrey is concerned.

Vice President Gustafson made a motion to amend his original motion to have the District, the City of Marina, and FORA, if they desire, continue this dialogue; and, remove the second provision of the Resolution. Director Nishi asked what exactly Mr. Lowrey was concerned with in the Resolution. Mr. Lowrey answered that it was the second provision to use the City's numbers before an Ordinance is adopted. President Brown seconded the amended motion.

Director Scholl stated that there doesn't need to be a Resolution to have staff and the City work together to come up with a concept. Director Moore commented that passing this Resolution may potentially lock out other possible solutions. President Brown commented that the concept proposed by the City may be difficult to administer.

Mr. Yount stated that the City of Marina would not be supportive of the amended motion and that they provided what the District had requested. He added that he was affronted by the comment that the City and Developers would become unmotivated if the Resolution is passed. Mr. Yount encouraged the Board to adopt the Resolution as written.

Agenda Item 3-A (continued):

The amended motion failed.

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|-----------------|---|----|--------------------------|---|-----|
| Director Moore | - | No | Vice President Gustafson | - | Yes |
| Director Scholl | - | No | President Brown | - | Yes |
| Director Nishi | - | No | | | |

Director Nishi made a motion to approve Resolution No. 2006-06 approving the proposed City of Marina concept to ensure that City developments use no more water than allocated to them by the City, as written. Vice President Gustafson seconded the motion.

Director Scholl called for the question. President Brown stated that as it was a new motion, he would like to take brief comments.

Director Scholl commented that the current water consumption within the City of Marina is used when a WSA is completed. The current water consumption already has conservation measures and tiered rates in place and Director Scholl doesn't see where tiered rates by the City would make any difference.

Director Nishi commented that if adopted, the Resolution could be revised following discussions between the District and the City. Discussion followed.

The motion failed.

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|-----------------|---|-----|--------------------------|---|-----|
| Director Moore | - | No | Vice President Gustafson | - | Yes |
| Director Scholl | - | No | President Brown | - | No |
| Director Nishi | - | Yes | | | |

President Brown recessed the meeting from 8:35 until 8:48 p.m.

- B. Consider Adoption of Resolution No. 2006-07 to Approve a Professional Services Agreement with RMC Water and Environment for Phase IIA of the Water Augmentation Project:

Mr. Andrew Sterbenz, Interim District Engineer, introduced this item. Director Moore asked if it would cost the District more to split the Water Augmentation Project (WAP) into two sections. Mr. Sterbenz stated it would not.

Director Moore made a motion to adopt Resolution No. 2006-07 to approve a Professional Services Agreement with RMC Water and Environment for Phase IIA of the Water Augmentation Project. Director Scholl seconded the motion.

Agenda Item 3-B (continued):

Mr. Yount asked if it would delay the recycled water portion of the WAP. Mr. Sterbenz answered it would not prohibit Phase IIB from beginning within the next several months, but would defer the decision to a later date. The motion was passed.

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|-----------------|---|-----|--------------------------|---|-----|
| Director Moore | - | Yes | Vice President Gustafson | - | Yes |
| Director Scholl | - | Yes | President Brown | - | Yes |
| Director Nishi | - | Yes | | | |

- C. Consider Adoption of Resolution No. 2006-08 to Approve a Professional Services Agreement for Completion of the Environmental Documentation for the Recycled Water Portion of the Regional Urban Water Augmentation Project and to Amend the FY 2005/2006 Budget:

Mr. Sterbenz introduced this item.

Director Scholl made a motion to adopt Resolution No. 2006-08 to approve a Professional Services Agreement for completion of the environmental documentation for the recycled water portion of the Regional Urban Water Augmentation Project and to amend the FY 2005/2006 budget. Vice President Gustafson seconded the motion. The motion was passed.

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|-----------------|---|-----|--------------------------|---|-----|
| Director Moore | - | Yes | Vice President Gustafson | - | Yes |
| Director Scholl | - | Yes | President Brown | - | Yes |
| Director Nishi | - | Yes | | | |

- D. Receive Presentation on Recycled Water Portion of the Hybrid Alternative and Consider Providing Direction to Staff Regarding Project Activities:

Mr. Sterbenz introduced this item and Mr. Lyndel Melton, RMC Water and Environment. Mr. Melton gave a presentation on the recycled water infrastructure regarding project management and an alternatives analysis.

Director Moore asked if this should be discussed in closed session since it concerned ownership and property rights. Mr. Lowrey stated it can be discussed in open session unless it concerns water rights and he is not sure if this constitutes water rights. Director Moore questioned if ownership was a topic for closed session. Mr. Lowrey answered that "ownership" is not real property so it could not be discussed in closed session.

Director Nishi made a motion to postpone this item until the next meeting to allow Mr. Lowrey to determine if it does constitute water rights and then discuss in closed session. President Brown seconded the motion.

Agenda Item 3-D (continued):

Director Moore stated that he agreed some discussion should be in closed session but there should be some discussion in open session to give direction to the consultant.

Director Scholl commented that the cost of the pipeline is going to be paid for by FORA. Mr. Lucca stated that \$36 million has been set aside by FORA to fund the recycled water project. Director Scholl stated that the District should be focusing on water rights; hard fast rules and making sure the customers get the water they want and when they need it.

Mr. Yount asked if this presentation has been made to FORA yet. Mr. Lucca answered that a presentation won't be made to FORA until a more complete project management and alternatives analysis is done.

Mr. Melton commented that he would be giving a presentation to the MRWPCA Recycled Water and Storage Committee the next day to allow dialogue to begin.

The motion to postpone this item to the next meeting was passed.

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|-----------------|---|-----------|--------------------------|---|-----|
| Director Moore | - | No | Vice President Gustafson | - | Yes |
| Director Scholl | - | Abstained | President Brown | - | Yes |
| Director Nishi | - | Yes | | | |

4. Consent Calendar:

Director Nishi requested to pull items A, C, E, and L from the consent calendar.

Vice President Gustafson made a motion to approve the consent calendar consisting of items: B) Consider Adoption of Resolution No. 2006-09 to Authorize the Purchase of Two Ford Trucks; D) Consider Adoption of Resolution No. 2006-11 to Approve a New Position for an Operations Engineer; Approve the Operations Engineer Job Description and Salary Range; Amend the FY 2005-2006 Budget; and, Direct the General Manager to Recruit and Fill the Position; F) Review Procedures for Water Conservation Commission; G) Consider Accepting the Marina Coast Water District Strategic Plan for 2006; H) Consider Approving Expenditures for the Month of December 2005; I) Consider Approval of the Draft Minutes of the Regular Board Meeting of November 9, 2005; J) Consider Approval of the Draft Minutes of the Special Board Meeting of November 23, 2005; and, K) Consider Approval of the Draft Minutes of the Special Board Workshop of December 6, 2005. The motion was passed.

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|-----------------|---|-----|--------------------------|---|-----|
| Director Moore | - | Yes | Vice President Gustafson | - | Yes |
| Director Scholl | - | Yes | President Brown | - | Yes |
| Director Nishi | - | Yes | | | |

- A. Consider Adoption of Resolution No. 2006-05 to Approve the Draft Water Supply Assessment and Written Verification of Supply for the Proposed Marina Station Project at Armstrong Ranch:

Director Moore made a motion to adopt Resolution No. 2006-05 to approve the draft Water Supply Assessment and Written Verification of Supply for the proposed Marina Station Project at Armstrong Ranch. Director Scholl seconded the motion.

Director Nishi stated that Mr. Jack Armstrong requested to postpone this item until the February 8, 2006 meeting. Mr. Lucca stated that he had received an email earlier in the day from Mr. Ludman, CreekBridge Homes, to postpone this item until February.

Director Moore withdrew his motion. Director Scholl withdrew his second.

President Brown postponed this item until the next meeting.

- C. Review Draft Board Transmittal to Consider Adoption of Resolution No. 2006-10 to Approve Changing the Current Project Manager Job Title to Project Engineer; Approve a Second Project Engineer Position; Amend the FY 2005-2006 Budget; and, Direct the General Manager to Recruit and Fill the Position:

Director Moore made a motion to adopt Resolution No. 2006-10 to approve changing the current Project Manager job title to Project Engineer; approve a second Project Engineer Position; amend the FY 2005-2006 budget; and, direct the General Manager to recruit and fill the position.

Director Nishi stated the District should use consultants and pass the cost to the developer. Director Moore commented that it would be less expensive to hire someone for this position than to use a consultant. Mr. Lucca stated that at the last meeting Director Moore requested that this be a term position of up to 5 years. He stated that he had previously agreed to a term of 1 to 4 years, but upon further reflection, realized that it would be difficult to hire an engineer for such a limited term. Mr. Lucca requested to have a term of 5 years be set for the position.

Director Moore amended his motion to fill the position for a period of 3 to 5 years. Director Scholl seconded the amendment. The motion was passed.

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|-----------------|---|-----|--------------------------|---|-----|
| Director Moore | - | Yes | Vice President Gustafson | - | Yes |
| Director Scholl | - | Yes | President Brown | - | Yes |
| Director Nishi | - | No | | | |

E. Consider Accepting the FY 2004/2005 Audit Report:

Director Moore made a motion to accept the FY 2004/2005 audit report. Director Scholl seconded the motion.

Director Nishi commented that page 71 stated the District raised its rates by 5% but that the Ord Community rates increased by more than 5%. Mr. Suresh Prasad, Director of Finance, stated that the Marina rated increased by 5% but the Ord Community rates did not increase. The capital component charge which was a separate cost was rolled into the rates with a net zero change in the rate structure. Director Nishi voiced his concern that an audit is for the security of the Board and it should have input and commented that he was surprised that there was not a management letter and would like to see one next year. Mr. Prasad stated that the auditors did not find any findings in the audit so there were no recommendations in a management letter. Mr. Ralph Marcello commented that a management letter was not automatic and was only given if there were findings.

Mr. Prasad pointed out a few minor corrections made to the audit report.

The motion was passed.

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|-----------------|---|-----|--------------------------|---|-----------|
| Director Moore | - | Yes | Vice President Gustafson | - | Yes |
| Director Scholl | - | Yes | President Brown | - | Abstained |
| Director Nishi | - | No | | | |

L. Consider Approval of the Draft Minutes of the Special Board Meeting of December 21, 2005:

Director Nishi stated he pulled the item so that he could abstain from the vote.

Director Moore made a motion to approve the minutes of the special Board meeting of December 21, 2005. President Brown seconded the motion. The motion was passed.

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|-----------------|---|-----------|--------------------------|---|-----------|
| Director Moore | - | Yes | Vice President Gustafson | - | Abstained |
| Director Scholl | - | Yes | President Brown | - | Yes |
| Director Nishi | - | Abstained | | | |

5. Informational Items:

A. General Manager's Report:

Mr. Lucca commented that he had sent information on AB 1234 to each board member and a hard copy was also provided. He explained that training was required by the end of 2006.

Agenda Item 5-A (continued):

Mr. Lucca stated that a draft budget schedule would be shared with the WWOC on February 1, 2006. He also added that the MRWPCA would begin sending sewer bills within the next month to the customers on the Ord Community.

B. Counsel's Report:

No comments.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

No comments.

2. Joint City-District Committee:

President Brown stated the Committee discussed the City of Marina proposed concept.

3. MRWPCA Board Member:

Director Nishi commented the meeting would be next Monday.

4. LAFCO Liaison:

Director Nishi commented that there was a protest hearing at the last meeting. He also commented that the SDA had sent a letter regarding splitting the Carmel Fire Protection District and was concerned that the Board did not give input to the District's liaison.

5. JPIA Liaison:

No comments.

6. Special Districts Association (SDA) Liaison:

Director Moore distributed a copy of the letter sent by the SDA to LAFCO. He added that there was not time to discuss this with the Board as the issue was brought up at the meeting and a consensus of the members was that reevaluating the detachment proposal of the Carmel Fire Protection District was a waste of LAFCO's staff time and money.

7. FORA:

Director Nishi apologized for missing the last meeting as he did not realize that there was a special Thursday meeting. President Brown commented that he should have looked at the calendar. Director Scholl commented that he gave Director Nishi the packet at the last meeting and he should have noticed what day it was scheduled for.

8. Executive Committee:

President Brown commented that he and Vice President Gustafson had met recently for lunch.

9. Community Outreach:

Director Scholl commented that there had been a lot of publicity in the newspaper over the last few days.

D. Director's Comments:

Director Nishi commented that he would like to have an agenda item regarding the District paying for Director's education. He added that he would like to compliment the President on how well run the last two meetings were. Director Nishi added that the Board is headed in the right direction.

President Brown also commented that he was pleased that the tone of the meetings has been civil and intended to continue in that direction.

6. Planning Workshop:

A. District LAFCO Annexation Process:

Mr. Lucca asked to continue this item to the next meeting.

Noting that it was nearing the 10:00 p.m. timeframe, President Brown asked Mr. Lucca about how much time was required for the closed session items. Mr. Lucca answered they would only need several minutes each.

President Brown made a motion to proceed until 10:10 p.m. Vice President Gustafson seconded the motion. With a vote of 4-Ayes, 1-No, 0-Absent, the motion was passed.

The Board entered into closed session at 9:57 p.m.

7. Closed Session:

- A. Pursuant to Government Code Section 54956.9
Conference with Real Property Negotiators
Property: Communications Site Lease
Negotiating Parties: MCWD and Nextel
Under Negotiation: Price and Terms
- B. Pursuant to Government Code Section 54956.9
Conference with Real Property Negotiators
Property: Bayer Tank Lot
Negotiating Parties: MCWD and Damian and Trevor Fink
Under Negotiation: Price and Terms
- C. Pursuant to Government Code Section 54956.9
Conference with Real Property Negotiators
Property: City of Marina Corporation Yard
Negotiating Parties: MCWD and City of Marina
Under Negotiation: Price and Terms
- D. Pursuant to Government Code Section 54956.9
Conference with Real Property Negotiators
Property: District Desalination Plant
Negotiating Parties: MCWD and Marina Developers
Under Negotiation: Price and Terms
- E. Pursuant to Government Code Section 54956.9
Conference with Legal Counsel – Anticipated Litigation
Initiation of Litigation Pursuant to Subdivision (c) of Section 54956.9
1 - Case

The Board returned to open session at 10:10 p.m.

8. Possible Action on Closed Session Items:

President Brown stated that no action was taken in closed session.

9. Adjournment:

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

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APPROVED:

David W. Brown, President Date

ATTEST:

Marc A. Lucca, General Manager