

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
March 14, 2007
6:45 p.m.

Minutes

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on March 14, 2007 after which the Board entered into closed session.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Bill Lee

Staff Members Present:

Marc Lucca, General Manager
Lloyd Lowrey, Legal Counsel
Jeff Cattaneo, District Engineer
Suresh Prasad, Director of Finance
Rich Youngblood, Conservation Coordinator
Jim Dowless, Operations and Maintenance Superintendent
Paula Riso, Executive Assistant/Clerk to the Board

Audience:

Bob Holden, MRWPCA
Sid Williams
Bob Schaffer, Marina Community Partners
Ernie Avila, Avila and Associates

3. Closed Session:

- A. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiators
Property: Pipelines and Related Appurtenances
Negotiating Parties: MCWD and California American Water
Under Negotiation: Price and Terms

- B. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiator
Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights
Negotiating Parties: MCWD and MRWPCA
Under Negotiation: Price and Terms

President Gustafson reconvened the meeting to open session at 7:06 p.m.

4. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

5. Possible Action on Closed Session Items:

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

6. Oral Communications:

Mr. Bob Schaffer, Marina Community Partners, stated there was concern in the development community about the pace of the recycled water negotiations and encouraged the District to complete the negotiations as soon as possible so the project could move forward. He suggested allowing staff to negotiate an agreement to bring to the Board for consideration.

7. Public Hearing:

- A. Consider First Reading of Draft Ordinance No. 45 to Amend Section 2.08.020 and Delete Section 2.08.030 of the District Code and Direct Staff to Schedule a Second Reading on March 28, 2007:

Mr. Marc Lucca, General Manager, introduced this item. Vice President Nishi suggested leaving the response time in Section 2.08.020 B at five calendar days instead of changing it to ten calendar days. Mr. Lucca responded that weekends and holidays make the five calendar day's deadline difficult to meet. Vice President Nishi suggested changing it to five "business" days.

Agenda Item 7-A (continued):

Vice President Nishi requested that the General Manager include the meeting date of the next regularly scheduled Board meeting clearly stated in the response letter to a variance request. Vice President Nishi suggested not deleting Section 2.08.030 E informing customers of the right to civil recourse. Mr. Lloyd Lowrey, Legal Counsel, agreed that the language should not be deleted and suggested adding it to Section 2.08.020 F so it would read, "F. Decisions under this section shall be the final administrative action on the variance request. A written notice of the decision shall be mailed to the address supplied by the applicant. *The applicant may contest decisions under this section in court. The decision of the court in any civil proceedings relating to the underlying violation or alleged violation, or contest to a decision under this section shall prevail over any contrary result in the administrative appeal.*

Vice President Nishi suggested developing a form letter for customers to fill out in variance requests.

Vice President Nishi requested a report on the different entities that have variances and the formats they use. Director Moore commented that with the changes suggested, the Board should hold another first reading of Ordinance No. 45.

President Gustafson requested this item be returned to the March 28, 2007 Board meeting.

8. Consent Calendar:

Director Moore requested to pull item A (Adopt Resolution No. 2007-25 to Authorize the General Manager to Accept Water, Sewer and Recycled Water Easements) from the consent calendar. Vice President Nishi requested to pull items B (Direct the General Manager to Send a Letter to Assemblyman John Laird in Support of AB 715 Regarding the Establishment of New Water Conservation Standards for Toilets and Urinals), and C (Consider Re-Appointment of Sid Williams and Lloyd Eads to Positions on the Water Conservation Commission) from the consent calendar.

Director Brown made a motion to approve the consent calendar consisting of items D (Approve Expenditures for the Month of February 2007), and E (Approve the Draft Minutes of the Regular Board Meeting of February 14, 2007). Director Moore seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

A. Adopt Resolution No. 2007-25 to Authorize the General Manager to Accept Water, Sewer and Recycled Water Easements:

Director Moore suggested setting a dollar limit to the easements the General Manager can accept without Board approval. Vice President Nishi asked the General Manager what his approval limit is before having to bring something before the Board. Mr. Lucca answered that his limit to expend District funds was twenty thousand dollars, but that was for expenditures and accepting an easement would not be an expenditure. Director Moore stated that if the General Manager accepts an easement after long arduous negotiations and the Board discovered something adverse in the easements, it could be difficult to rectify.

Director Brown made a motion to adopt Resolution No. 2007-25 authorizing the General Manager to accept Water, Sewer and Recycled Water Easements. President Gustafson seconded the motion. The motion was passed.

Director Moore	-	No	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

Vice President Nishi commented that this is why it took four years to get to where the negotiations are with the MRWPCA. Director Moore stated for the record that he was not opposed to the current easement to the Armstrong Ranch, just the reasons he stated earlier. He added that should the negotiations succeed with the MRWPCA in the future, it was in no small part due to the hard work of the prior negotiating team and there probably are good reasons why the developers came before the Board tonight and made their recommendations.

B. Direct the General Manager to Send a Letter to Assemblyman John Laird in Support of AB 715 Regarding the Establishment of New Water Conservation Standards for Toilets and Urinals:

Vice President Nishi asked to have the letter sent from the President of the Board to keep the close relations. Mr. Lucca commented that the President has been signing the thank-you letters.

Director Brown made a motion to direct the Board President to sign a Letter to Assemblyman John Laird in Support of AB 715 Regarding the Establishment of New Water Conservation Standards for Toilets and Urinals. Director Moore seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

C. Consider Re-Appointment of Sid Williams and Lloyd Eads to Positions on the Water Conservation Commission:

Vice President Nishi commented that he appreciates the dedication, the hard work and courtesy Mr. Sid Williams shows to the Board.

Vice President Nishi made a motion to re-appoint Sid Williams and Lloyd Eads to positions on the Water Conservation Commission. Director Moore seconded the motion. The motion was passed.

Director Moore	-	Yes	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

9. Action Items:

A. Consider Adoption of Resolution No. 2007-22 to Approve an Amendment to an Agreement between the District and Sprint/Nextel for Use of the D/E Tank Site:

Mr. Lucca asked that Mr. Ernie Avila, Avila and Associates, briefly go over the agreement with the Board. Vice President Nishi stated that he was still concerned over the number of antennae on the tower and asked if the new tower was going to be the same size as the old tower. Mr. Avila answered that it would be basically the same size depending on the size of the new D/E tank. Vice President Nishi voiced his concern over Sprint/Nextel allowing other companies to use the tower and reaping the benefits. Mr. Avila stated that if a non-affiliate or non-subsiary group wants to use the tower, the District can recover the full equivalent rent.

Discussion, which stated the original agreement still stands and this amendment is required to relocate the tower due to the poor condition of the D/E tanks, followed. Mr. Lowrey pointed out that this amendment is beneficial to the District and that Sprint/Nextel could cause the District a great monetary loss if it chose to dispute moving the tower. He opined that there was value in negotiating the resolution to the dispute with Sprint/Nextel and that the negotiators have done a good job for the District.

Vice President Nishi asked what happens if Sprint/Nextel allows a non-affiliate or non-subsiary to install antennae's on the tower and then at a later date acquires the non-affiliate or non-subsiary. Does the District no longer receive the additional rent from the non-affiliate or non-subsiary antennae? Mr. Avila answered his interpretation was that if the non-affiliate or non-subsiary is acquired by Sprint/Nextel, because it was not an affiliate or subsidiary at the time the amendment was signed, the District would still collect rent from that company. Vice President Nishi stated he was concerned because the original agreement was with Nextel only and then they merged with Sprint and now they are both covered by the agreement.

Agenda Item 9-A (continued):

Mr. Lowrey opined that if a non-parent company, non-affiliate, or non-subsidiary company then became a parent company, affiliate or subsidiary company they would not have to pay the monthly rent, but that is only until Sprint/Nextel recovers the cost of relocating their tower, and then everyone has to pay. Mr. Lowrey gave several examples of what could happen: 1) a sublessee who is a parent company, affiliate or subsidiary company does not pay any rent until all costs have been recovered; 2) someone comes in who is not a parent company, affiliate or subsidiary company of the sublessee and would pay rent to the District even if they become affiliated at a later date. Discussion followed. Mr. Lowrey suggested adding the words “at time of subletting to Section 4(h)b so it would read, “...If the sublessee is not a parent company, affiliate or subsidiary of Lessee at time of subletting, each sublet of the new telecommunications tower...”. Vice President Nishi also wanted to ensure the height of the new tower is no higher than the current one.

Director Moore asked to have Section 4(h)b clarify that mergers and buyouts do not decrease the amount of rent received at any time in the future. Mr. Lowrey suggested adding language to the last sentence at the end of the paragraph for clarification. The sentence shall read, “...consistent with the Agreement, notwithstanding the sublessee may later become a parent company, an affiliate or subsidiary of Lessee.” Mr. Avila stated he would bring the suggested changes back to Sprint/Nextel.

Director Moore made a motion to adopt Resolution No. 2007-22 approving an Amendment to an Agreement between the District and Sprint/Nextel for use of the D/E Tank Site with both additions to Section 4(h)b: 1)“...If the sublessee is not a parent company, affiliate or subsidiary of Lessee at time of subletting, each sublet of the new telecommunications tower...”, and 2) “...consistent with the Agreement, notwithstanding the sublessee may later become a parent company, an affiliate or subsidiary of Lessee.” Director Brown seconded the motion. Vice President Nishi asked for the elevation of the existing antennae. Mr. Lucca answered that he would get that information to the Board. The motion was passed.

Director Moore	-	Yes	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

B. Consider Adoption of Resolution No. 2007-26 to Approve Lease of a High Velocity Cleaning Machine:

Mr. Jim Dowless, Operations and Maintenance Superintendent, introduced this item. He explained that this machine is strictly a jetter, it is not a combination jetter/vacuum unit and the price provided does include tax. Director Moore inquired on the urgency of this purchase. He asked if a two week delay would cause problems. Mr. Dowless answered that the bids were

Agenda Item 9-B (continued):

about thirty days old and could vary. President Gustafson inquired why Director Moore wanted to delay the purchase. Director Moore stated that he would like to look at the analysis of purchase verses lease with this unit.

Mr. Lucca remarked that Mr. Prasad was present and could go over the analysis with the Board if they so desired. Vice President Nishi questioned what would happen at the end of the five year lease. Mr. Prasad answered that at the end of five years, the District would own the vehicle as the lease is a lease to own. Vice President Nishi asked if the District would meet the 2010 emissions standards on the vehicles. Mr. Dowless answered that the compliant date has not been set and the District is holding off on the conversions until a letter requiring the conversion is received. Director Moore had several clarifying questions on the leasing options. Mr. Prasad stated that Ricker uses a leasing company whereas the other two vendors use a banking financial institution which requires a ten million dollar threshold guideline to determine if we are able to get tax-exempt bonds. Director Moore stated that he would still like time to review the analysis.

Vice President Nishi made a motion to adopt Resolution No. 2007-26 approving lease/purchase of a High Velocity Cleaning Machine. Director Brown seconded the motion. The motion was passed.

Director Moore	-	No	Vice President Nishi	-	Yes
Director Lee	-	Absent	President Gustafson	-	Yes
Director Brown	-	Yes			

11. Discuss Possible Agenda Items for the March 28, 2007 Planning Workshop and Provide Direction to Staff:

Vice President Nishi asked for a report on grease in the sewer lines to be brought to the Board at a future meeting.

12. General Manager's Comments:

Mr. Lucca informed the Board that the next CPUC meeting is March 28, 2007. He also informed the Board that a photographer would be present on March 28, 2007 to update the Director's pictures if they so desire. Mr. Lucca commented that the one Strategic Planning meeting was set for April 28, 2007 and additional dates would be brought back at the next meeting for consideration of which the Board needs to select two. Finally, he added that he would be on vacation from March 15 through March 26, 2007.

13. Director's Comments:

There were no comments.

President Gustafson recessed the meeting from 8:20 until 8:25 p.m. after which the Board re-entered into closed session.

3. Closed Session:

- A. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiators
Property: Pipelines and Related Appurtenances
Negotiating Parties: MCWD and California American Water
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Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights
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Under Negotiation: Price and Terms

President Gustafson reconvened the meeting to open session at 9:00 p.m.

5. Possible Action on Closed Session Items:

No action was taken in closed session.

14. Adjournment:

The meeting was adjourned at 9:00 p.m.

APPROVED:

Howard Gustafson, President

Date

ATTEST:

Marc A. Lucca, General Manager