

Marina Coast Water District

District Offices  
11 Reservation Road  
Marina, California

Regular Board Meeting  
May 9, 2007  
6:45 p.m.

**Minutes**

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on May 9, 2007 after which the Board entered into closed session.

2. Roll Call:

Board Members Present:

Howard Gustafson – President  
Ken Nishi – Vice President  
Bill Lee  
Tom Moore – arrived at approximately 7:00 p.m.

Board Members Absent:

David Brown – excused

Staff Members Present:

Marc Lucca, General Manager  
Lloyd Lowrey, Legal Counsel  
Jeff Cattaneo, District Engineer  
Jim Dowless, Operations and Maintenance Superintendent  
Stephenie Fogel, Administrative Assistant

Audience:

Bob Holden, MRWPCA  
Ben Smith, Marina Plumbing and Heating

3. Closed Session:

- A. Pursuant to Government Code Section 54956.8  
Conference with Real Property Negotiator (General Manager)  
Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights  
Negotiating Parties: MCWD and Seaside County Sanitation District  
Under Negotiation: Price and Terms

President Gustafson reconvened the meeting to open session at 7:10 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. Ben Smith, Marina Plumbing and Heating, stated that a client's FDC connection failed at the UCMBEST Center and an emergency repair was requested. Upon repairing the connection, it was discovered that there was not a double connection backflow device. Mr. Smith stated that Mr. Graham Bice, UCMBEST, was told they did not need a double connection installed at the facility. Mr. Smith added that by not having a double connection installed at the facility, it was a liability to the District. President Gustafson asked staff to assess the situation.

7. Consent Calendar:

Director Moore asked to pull item C from the consent calendar. Mr. Lloyd Lowrey, Legal Counsel, asked to pull item D from the consent calendar.

Director Moore made a motion to approve the consent calendar consisting of items A) Adopt Resolution No. 2007-33 to Approve a Contract Amendment for Additional Environmental Services for the Recycled Water Portion of the Regional Urban Water Augmentation Project and to Amend the FY 2006/2007 Budget; and, B) Approve Expenditures for the Month of April 2007. Director Lee seconded the motion. The motion was passed.

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

C. Approve the Draft Minutes of the Regular Board Meeting of April 25, 2007:

Director Moore stated that on page 20 of the packet, the wording in the first sentence did not make sense and he was not sure if those were the words he used. Mr. Marc Lucca, General Manager, stated that the tape of that meeting would be reviewed to clarify the sentence. Director Nishi stated that on page 24, the fourth paragraph didn't convey what he said. He said "the way the sampling sites are being installed, the valve is on the outside so all I have to do is cut into the line and take water." Mr. Lucca stated that the tape would be reviewed.

Agenda Item 7-C (continued):

President Gustafson asked to bring this item back to the next meeting.

D. Approve the Draft Minutes of the Special Board Workshop of April 28, 2007:

Mr. Lowrey asked that the start time on the minutes be changed from “p.m.” to “a.m.”.

Director Moore made a motion to approve the draft minutes of the special Board workshop of April 28, 2007 with the correction mentioned. Director Lee seconded the motion. The motion was passed.

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

8. Action Items:

A. Consider Second Reading of Ordinance No. 45 to Amend Section 2.08.020 of the District Code:

Mr. Lucca introduced this item. No motion was received from the floor.

B. Review Fort Ord Reuse Authority’s Allocation of Recycled Water for Former Fort Ord:

Mr. Lucca introduced this item and added that the FORA Board will be discussing this item on May 11, 2007. Mr. Lowrey explained that it may not accomplish the purpose for which it was mainly intended: enabling the District to give Water Supply Assessments and Verifications based on the allocation. Without a more definitive determination on that question; future water supplies and the line-loss issue, they may be able to get a Water Supply Assessment but they may not be able to get a positive Water Supply Verification.

Director Lee asked what Legal Counsel would recommend. Mr. Lowrey answered that this item was informational and action would be taken with the next item. Discussion over recycled water rights and allocation followed. Director Moore voiced his concern over the possibility of another jurisdiction that is not ready to accept recycled water holding onto their allocation and preventing the District from selling “allocated” recycled water to a jurisdiction that *is* ready to accept recycled water. Mr. Lowrey answered that the draft resolution going before FORA does address that issue.

C. Consider Adoption of Resolution No. 2007-34 to Concerning the Recycled Water for Former Fort Ord:

Mr. Lucca introduced this item.

Vice President Nishi asked if language could be added stating the District has been a “good neighbor”. Mr. Lowrey stated that he would work on some language to add to the resolution. Director Lee asked if Section G of the Resolution should speak to the fact that if the District is not be ready to accept recycled water, the District still retains the right to that water. Mr. Lowrey answered that the multiple agreements the District has with the Monterey County Water Resources Agency (MCWRA) and the Monterey Regional Water Pollution Control Agency (MRWPCA) give the District rights to an amount of recycled water whenever it is ready for it.

President Gustafson tabled this item until after item 8-D to allow Legal Counsel time to amend the language in Section G of the Resolution.

D. Consider Approving a Conflict of Interest Waiver for Hatch & Parent, a Legal Law Corporation:

Mr. Lucca introduced this item.

Vice President Nishi voiced his concern over Hatch & Parent contracting with Clark Colony Water Colony (CCWC). He stated that Hatch & Parent has worked with the District on negotiations before and is concerned that they know how the District works and will use that to their advantage. Vice President Nishi remarked that the ethical thing for Hatch & Parent to do is to declare that they are engaged by the District and decline working for CCWC. He was also concerned that if it goes to adjudication of the basin, the District will lose all their attorneys.

Mr. Lowrey commented that the nature of advice that the Hatch & Parent attorney would be giving is regarding taxation of water rights. He added that in cases of conflict of interest, the District has several attorneys available for back-up.

Mr. Lucca asked what the District’s exposure, if any, if the waiver is not signed. Mr. Lowrey answered that other than the possibility of Hatch & Parent becoming irritated with the District and not wanting to work with the District anymore, he didn’t think there was any exposure.

Director Moore clarified that if the waiver is signed by the District, the District cannot use Hatch & Parent. Mr. Lowrey stated it was only for situations that involved CCWC.

No motion was received from the floor and it failed.

Return to item 8-C.

C. Consider Adoption of Resolution No. 2007-34 to Concerning the Recycled Water for Former Fort Ord:

Mr. Lowrey stated he had a sentence to add to the end of Section G of the Resolution. The suggested language shall read: "The District has worked cooperatively and collaboratively with FORA, MCWRA, and MRWPCA to encourage and facilitate regional use of recycled water."

Vice President Nishi asked for additional language showing the District has been a good neighbor. Mr. Lowrey asked for time to allow him to craft additional language.

9. Staff Reports:

A. Cross Connection Control Program Update:

Mr. Jim Dowless, Operations and Maintenance Superintendent, introduced this item.

Vice President Nishi commented that in April he had asked for this item to be on the agenda for discussion. At that time he asked for documentation on the status of the program; past history, etc and the information provided did not include his requests. Vice President Nishi asked if the 409 devices in Central Marina have been tested on the required annual basis. Mr. Dowless answered that due to software glitches, several had slipped through the cracks. Vice President Nishi stated his concern that the District wasn't living up to its responsibility in making sure the program works and these devices were billed and tested annually. Mr. Dowless answered that in the last year, all the devices in Central Marina, with the exception of those out-of-service, were tested. The Ord Community is not yet on the same level of compliance as Central Marina, but staff is now focused on the Ord Community.

Mr. Lucca asked for clarification of the information Vice President Nishi was asking for.

- 1) a table of all the devices in both Central Marina and Ord Community;
- 2) status of when the devices were last tested;

Director Moore suggested that staff email to the directors an Excel table formatted with the address/location of the device; whether it is active or not; and, when it was last tested.

Vice President Nishi also asked that the Director's be notified when a program is not working as it is designed to.

Mr. Lucca confirmed that the requested information would be provided to the Director's via email.

Return to item 8-C.

C. Consider Adoption of Resolution No. 2007-34 to Concerning the Recycled Water for Former Fort Ord:

Mr. Lowrey provided the suggested language so that Section G of the Resolution shall read: “...and supplied to the service area by the District. The District has worked cooperatively and collaboratively with FORA, MCWRA, and MRWPCA to encourage and facilitate regional use of recycled water by, among other actions, deferring the District’s urban use of recycled water in favor of agricultural use pending increase of urban demand.”

Following discussion, Vice President Nishi made a motion to adopt Resolution No. 2007-34 concerning the recycled water for former Fort Ord with the additional sentence as submitted by Mr. Lowrey. President Gustafson seconded the motion. Director Moore stated for the record that he is voting against this motion because he thinks the District should advise FORA that a better approach to this problem would be to do specific allocations to those two land use jurisdictions that have current needs and leave the remaining quantity, for the moment, unallocated. He believes it would be a better business move to ensure as quickly as possible the District gets customers onto this system and not delay another customer who is ready to go but there is no allocation available. The motion was passed.

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

B. Discuss Modifying Board Policy permitting Board Members to Direct or Request Information from District Counsel:

Vice President Nishi stated he had requested this item to be brought back for further discussion. He doesn’t think there is anything wrong with Board members requesting information from Legal Counsel. Vice President Nishi questioned where the word “Direct” came from as no one is “directing” Legal Counsel to do anything. Mr. Lucca answered that when a consultant is requested to do something, it is the same as directing them to do it.

10. Discuss Possible Agenda Items for the May 23, 2007 Planning Workshop and Provide Direction to Staff:

No items were provided.

11. General Manager's Comments:

There were no comments.

12. Director's Comments:

Director Moore commented that he was glad the Board had a reasonably pleasant Strategic Planning Session on Saturday, May 5<sup>th</sup> and was looking forward to the next one.

Vice President Nishi asked for an update on the FOG program highlighting those businesses not in compliance. Mr. Lucca answered that the FOG program update would be better for a June agenda as the thirty-day letter would just be expiring the end of May and that would allow staff to see exactly what movement was being made towards complying.

Director Nishi asked to bring back agenda item 8-A (Consider Second Reading of Ordinance No. 45 to Amend Section 2.08.020 of the District Code). President Gustafson directed staff to bring back item 8-A on the next agenda.

President Gustafson recessed the meeting from 8:20 – 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 Negotiator (General Manager, Directors Gustafson, Nishi)  
Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights  
Negotiating Parties: MCWD and Monterey Regional Water Pollution Control Agency  
Under Negotiation: Price and Terms

President Gustafson reconvened the meeting to open session at 9:50 p.m.

5. Possible Action on Closed Session Items:

President Gustafson stated that direction was given to the negotiators and no action was taken in closed session.

13. Adjournment:

The meeting was adjourned at 9:50 p.m.

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APPROVED:

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Howard Gustafson, President

Date

ATTEST:

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Marc A. Lucca, General Manager