

Marina Coast Water District

District Offices  
11 Reservation Road  
Marina, California

Regular Board Meeting  
July 11, 2007  
6:45 p.m.

**Minutes**

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on July 11, 2007.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

None.

Staff Members Present:

Marc Lucca, General Manager  
Lloyd Lowrey, Legal Counsel  
Jeff Cattaneo, District Engineer  
Rich Youngblood, Conservation Coordinator  
Andy Sterbenz, Schaaf & Wheeler Consultant  
Brian True, Capital Projects Manager  
Suresh Prasad, Director of Finance  
Paula Riso, Executive Assistant/Clerk to the Board

Audience:

Bob Holden, MRWPCA  
Matt Huerta, South County Housing Corporation  
William Hood  
Dick Goblirsch, Del Rey Oaks  
David Eisen, US Army Corps of Engineers  
Jill Anderson, City of Seaside  
Rob Corely, MPUSD

The Board entered into closed session at 6:45 p.m.

3. Closed Session:

- A. Pursuant to Government Code Section 54957.6  
Conference with Labor Negotiators  
Agency Designated Representatives: Howard Gustafson and Ken Nishi  
Unrepresented Employee: General Manager
- B. Pursuant to Government Code Section 54957  
Public Employee Appointment  
Title: General Manager
- C. Pursuant to Government Code Section 54956.8  
Conference with Real Property Negotiator (General Manager, Directors Gustafson, Brown)  
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 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 and discussion would continue at the end of this regularly scheduled meeting.

6. Oral Communications:

None.

7. Consent Calendar:

Vice President Nishi asked to pull items C and D from the consent calendar.

Director Brown made a motion to approve the consent calendar consisting of items A) Adopt Resolution No. 2007-47 to Amend Resolution No. 2007-24 to Purchase Additional Computer Hardware for Phase I of the Asset Management Program; and, B) Receive the Quarterly Financial Statements for January 1, 2007 to March 31, 2007.

Agenda Item 7 (continued):

Director Moore seconded the motion. The motion was passed.

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

C. Approve Expenditures for the Month of June 2007:

Vice President Nishi questioned check number 43176 and asked if the lightbulb was for the Ord office. He asked that the flood lights be placed on a sensor so that they are not constantly on. Director Nishi questioned the Monterey Peninsula Engineering (MPE) fire hydrant repair on Zanetta Drive and commented that the repair replaced only half of the driveway apron. He asked if MPE had been paid for the repair and who was going to pay for it. Mr. Suresh Prasad, Director of Finance, commented that the District had the name and insurance information of the person responsible for the accident and when MPE sends the invoice, the District would forward an invoice to the insurance company. Director Nishi asked that staff look into the apron repair and make a recommendation. President Gustafson commented that those types of repairs were common and the concrete would change color over the next several years.

D. Approve the Draft Minutes of the Regular Board Meeting of June 27, 2007:

Vice President Nishi questioned Director Moore's absence as excused. He asked Legal Counsel for clarification of what was an excused absence. Mr. Lloyd Lowrey, Legal Counsel, answered that he thought it was out-of state, illness or death but he would have to verify that. Vice President Nishi asked that Mr. Lowrey provide an update.

Director Brown asked if the question is whether an absence is excused or unexcused bears only, in legal terms, on whether to remove a director for three successive absences or absences that are successive for three months in a row. Mr. Lowrey answered that is what the specific statutory language relates to, in his recollection. The Board can have its own procedures to remove someone from office if they fail to totally perform their duties for a period of three months. Director Moore asked if a director's attendance resets once he is present for a meeting. Mr. Lowrey answered that it did.

Mr. Lucca read from the Board Procedures Manual, Section 11 – Committees – Subsection D) Attendance and Vacancies: Any person serving on a standing or special committee must be prepared for and attend all committee meetings, unless excused for good reason. President Gustafson asked to get a report from Legal Counsel at the next meeting regarding an excused absence.

Agenda Item 7-D (continued):

Director Brown made a motion to approve item 7-C (Approve Expenditures for the Month of June 2007). Director Moore seconded the motion. The motion was passed.

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

Director Brown made a motion to approve item 7-D (Approve the Draft Minutes of the Regular Board Meeting of June 27, 2007). Director Moore seconded the motion. The motion was passed.

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

8. Action Items:

A. Consider Adoption of Resolution No. 2007-46 Granting a Variance to District Code Chapter 3.36.030.W. Metering:

Mr. Marc Lucca, General Manager, stated that representatives from South County Housing were present in the audience and had requested to postpone this item so that they could share new information with District staff.

B. Consider Adoption of Resolution No. 2007-48 to Approve a Memorandum of Understanding with Cypress Marina Heights for Use of Army Groundwater Cleanup Water for Construction Purposes:

Mr. Lucca introduced this item. Director Lee commented that two good things are occurring with this agreement; 1) "recycled" water was being used for construction, instead of potable water; and, 2) the District is not losing any revenue.

Mr. Lucca stated there was a handout of the revised MOU with changes to sections E, G and additional language under Agreement, Section 1.

Director Moore made a motion to adopt Resolution No. 2007-48 approving a Memorandum of Understanding with Cypress Marina Heights for use of Army groundwater cleanup water for construction purposes with the revisions in the handout. Director Brown seconded the motion.

Agenda Item 8-B (continued):

Mr. David Eisen, US Army Corps of Engineers, commented that the Army is looking forward to this as a good use of treated water. This water has been approved by all the regulatory agencies for construction water. Mr. Eisen voiced concern over the language in Agreement, Section 1. Mr. Lowrey suggested revising the sentence to read, “ MARINA HEIGHTS may receive excess US Army treated water through the Project’s recycled water delivery system...”

Director Moore amended his motion to include Mr. Lowrey’s suggested revision. Director Brown amended his second as well.

Vice President Nishi commented that the way this agreement is written, why would anyone want to use an alternate source of water if they would have to pay for it anyway. He commented that if people are going to get creative and not use potable water, the District shouldn’t charge them. Vice President Nishi added that with conservation, less water is being used which means less revenue is received, and the District offers rebates to encourage conservation. He stated he couldn’t support this action.

Director Moore stated he is not sure the analogy towards the conservation program applies as this is construction water and the conservation program is geared towards established users. He added that the District needs to be careful about the revenue sources, as the District has borrowed 43 million towards capital improvements in the redevelopment of the former Fort Ord.

President Gustafson commented that Marina Heights has done a lot and is very involved in the community. He asked how much revenue is involved in the construction water. Mr. Lucca answered that it was approximately \$3,400 monthly for the next twelve to eighteen months.

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

C. Receive Update on Seaside County Sanitation District Board Actions Regarding Sewer Service to Del Rey Oaks and Direct Staff to Engage in Discussions:

Mr. Lucca introduced this item. Vice President Nishi suggested getting a negotiating team and postponing this until after August 14<sup>th</sup> and then discuss in closed session. Mr. Lowrey stated it could be discussed in closed session if it involved pending or threatened litigation; or there were any involvement of real estate rights. He added that he could call SCSD’s attorney and find out what exception they are proposing to use for the closed session item. President Gustafson asked Mr. Lowrey to contact SCSD’s attorney for that information. President Gustafson directed that this item be postponed and appointed Vice President Nishi and himself as the District’s negotiators.

D. Consider Adoption of Resolution No. 2007-49 to Approve a Professional Services Agreement with a Recruiting Firm:

Mr. Lucca suggested deferring this item until after the closed session discussion. President Gustafson concurred.

E. Consider Adoption of Resolution No. 2007-50 Amending Expense Reimbursement Policy Pertaining to Board Member Compensation:

Mr. Lucca introduced this item. Vice President Nishi stated he had asked for this to be on the agenda to allow discussion regarding directors getting compensated for expenses when not participating in their official capacity.

Director Moore commented that the proposed language would require directors to get pre-authorization from the other Board members before attending any training or meeting. Discussion followed.

Vice President Nishi stated that he was agreeable to the current language in the policy and did not feel the need to change the language. He would like to see the policy enforced on a consistent basis. More discussion followed.

No action was taken on this item.

F. Receive Update of the Bartle Wells Associates Rate Study Progress Report and Consider Setting Date for First Reading of Ordinance No. XX to Add Expiration Term to Capacity Charges paid by District Customers:

Mr. Prasad introduced this item. Vice President Nishi commented that he had asked for this item to be on the agenda. He inquired if funds for the Armstrong Ranch reservoir were covered in the rate study. Mr. Lucca answered that the reservoir was not in the District's current CIP and is therefore not in the capital projects for the current rate structure, but that did not preclude including it at a later date. Vice President Nishi commented that the Board had requested moving forward with the reservoir. Mr. Lucca answered that any possible rate change would not take effect until July 1, 2008, and if the reservoir feasibility study is completed and the Board decides they want to move forward with it, there is still time to add it to the rate study.

Vice President Nishi asked if any other agency has implemented capacity charges with these conditions. Mr. Lowrey answered that Sunny Slope County Water District (SSCWD) enacted provisions on capacity charges a few months ago for the same reasons the District is looking to enact the provisions. The proposed conditions were modeled after the SSCWD's provisions. Vice President Nishi asked if it was legal to charge someone a fee and if the fee was lowered in the future, not give them a refund. Mr. Lowrey stated that in his opinion, it was legal.

Agenda Item 8-F (continued):

Vice President Nishi stated that he would like to see wherever capacity charges with expiration terms were used other than SSCWD.

Mr. Lucca explained that the Board is requested to hold a first reading and adopt the Ordinance on an urgency authorization for a 30-day period at the July 25, 2007 Board meeting. This would allow for another 30-day urgency authorization at the following meeting, and so on for a total of a 90-day authorization period. In parallel during that period, Mr. Lucca explained, this would allow the standard 60-day review period of an Ordinance change without allowing the District to be exposed in any adverse way.

Vice President Nishi commented that he would still like to know if the capacity charges would include a portion for the reservoir. President Gustafson asked Mr. Lucca to explain how the reservoir could be moved into the rate study.

Mr. Lucca explained that at the first meeting in August, the results of the rate study will be shared with the Board which includes rate options from which the Board will select from. This will allow the Board to select if they want revenue to come from rates, surcharges, or capacity charges. Mr. Lucca stated that as the Board reviews the rate study and the associated CIP, they will not see the reservoir project, but that does not mean that it cannot be added to the CIP when and if the Board desires.

Director Moore made a motion to hold a first reading and adopt the Ordinance on an urgency authorization for a 30-day period at the July 25, 2007 Board meeting. Director Brown seconded the motion. The motion was passed.

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

9. Staff Reports:

A. Receive Report on Seasonal Storage at Armstrong Ranch:

Mr. Jeff Cattaneo, District Engineer, introduced this item. President Gustafson asked how soon staff could bring the feasibility study to the Board for consideration. Mr. Cattaneo answered that it could be brought to the next meeting.

President Gustafson asked that this item be brought to the July 25, 2007 meeting for consideration.

B. Receive Staff Report on Aquifer Storage and Recovery Test Well Facility Assistance:

Mr. Lucca introduced this item. He explained that the water the District lends to the MPWMD will be available to the District when and if needed at a future date at the sole cost of MPWMD.

Director Moore voiced his approval of offering assistance to MPWMD for their test well project. Director Brown agreed as well. Director Lee voiced his approval in being a good neighbor. Vice President Nishi stated that he would like County Counsel to give a legal opinion on the validity of the statement that the District can assist with this project and what the parameters are of the transfer.

Mr. Lowrey commented that there is a provision in the Monterey County Resources Act that empowers the Monterey County Water Resources Agency (MCWRA) to prevent, by legal action, the export of water from the Salinas River Basin, which statutorily includes the former Fort Ord, for use outside of the Basin. Since the test well project is located on the former Fort Ord, the terms of the statute would not be an interbasin or prohibited transfer. Mr. Lowrey stated that Vice President Nishi's request for a legal opinion from County Counsel is a good idea.

President Gustafson asked that this be brought back as a staff report in case the Board needed to take any action or provide direction.

10. Informational Items:

A. Staff Accomplishments for FY 2006/2007:

President Gustafson stated this item was just informational and no additional comments were made.

B. Monterey Bay Regional Water Authority Review of Water Supply Project Alternatives:

President Gustafson stated this item was just informational and no additional comments were made.

11. Discuss Possible Agenda Items for the July 25, 2007 Planning Workshop and Provide Direction to Staff:

Mr. Lucca stated that Board Housekeeping will be on the agenda to be discussed at a future meeting.

12. General Manager's Comments:

Mr. Lucca stated he had no comments.



13. Director's Comments:

Director Nishi commented that he had asked for the Marina Heights breakdown of the El Rancho costs to be provided three months ago and had yet to receive the requested information. President Gustafson asked that the information be provided in writing to Vice President Nishi. Mr. Lucca answered that all the Directors would receive the requested information.

Director Moore commented that in FY 2006/2007 the MRWPCA spent nearly one million dollars on consultants for the Urban Regional Recycled Water Project and he would like to see details of what the consultants were doing. President Gustafson asked that staff provide the information to the Directors.

President Gustafson recessed the meeting from 8:28 until 8:33 p.m.

The Board reentered into Closed Session at 8:33 p.m.

3. Closed Session:

A. Pursuant to Government Code Section 54957.6

Conference with Labor Negotiators

Agency Designated Representatives: Howard Gustafson and Ken Nishi

Unrepresented Employee: General Manager

B. Pursuant to Government Code Section 54957

Public Employee Appointment

Title: General Manager

C. Pursuant to Government Code Section 54956.8

Conference with Real Property Negotiator (General Manager, Directors Gustafson, Brown)

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 approximately 9:00 p.m.

5. Possible Action on Closed Session Items:

President Gustafson stated that direction was given to staff and the negotiating team to proceed with negotiation with MRWPCA and no action was taken in closed session.

President Gustafson returned to agenda item 8-D which earlier in the meeting was postponed until after closed session.

