

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
August 22, 2007
6:45 p.m.

Minutes

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on August 22, 2007.

2. Roll Call:

Board Members Present:

Howard Gustafson – President
Ken Nishi – Vice President
Bill Lee
Tom Moore – arrived at 6:46 p.m.
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	Jan Shriner, Marina Resident
Bill Brasher, Marina Community Partners	Tom DeAmaral
Tom Gaffney, Bartle Wells Associates	
Paula Pelot, Preston Park Tenant's Association	
Dewey Baird, US Army	
Karen Fisbeck, US Army	
Jill Anderson, City of Seaside	
Mike Owen, Marina Resident	

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

3. Closed Session:

A. Pursuant to Government Code Section 54956.9 (c)
Deciding Whether to Initiate Litigation

B. 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 7:00 p.m.

4. Possible Action on Closed Session Items:

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

5. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Bill Brasher, Marina Community Partners, read into record a letter written by Mr. Dave Fuller recognizing Mr. Marc Lucca, General Manager, for his dedication and hard work while serving the District. Mr. Brasher stated that he, Mr. Fuller and Mr. Bill Jennings wished Mr. Lucca happiness and good health for the future.

Mr. Mike Owen, Marina resident, commented on the difference in contracts between the outgoing and incoming general managers. He stated that he had reviewed the GS Schedule for Military Generals and they made less than the incoming general manager. Also, the Vice-President of the United States makes just over \$200,000. Mr. Owen commented that as a member of the public it is hard to understand the salary and asked for an explanation to justify expenses paid. He asked how the Board would hold the lid on the employees requesting pay raises and such when they have this as an example.

Ms. Paula Pelot, Preston Park Tenant's Association, stated that before she commented on the excessive contract and obese compensation package, she wanted to clarify that she had no problem with the choice of general manager, Mr. Jim Heitzman, she had a problem with the fact that she was unable to locate any advertising on the general manager position or starting salary.

Agenda Item 6 (continued):

Ms. Pelot compared the starting salary for the new general manager's contract at \$205,000 with the starting salary of the current general manager, in May 2006, at \$129,000. She stated that it is due to the public: 1) what the general manager selection process is and why the District considers this position has changed so dramatically to warrant this type of package; and 2) paying into two retirement systems. Ms. Pelot commented that the extravagant COLA far exceeds the CPI and commented on the special annuity. She stated she had never seen a contract that rolls over unless a six month notice is given. Ms. Pelot commented that she did not know why a portion of this board composed a contract such as this and stated the public has a right to an explanation. She added that she intended to kick up as much dust on this as she can.

Ms. Jan Shriner, Marina resident, commented that she is sorry to see Mr. Lucca leave the District and had never heard any complaints about him in the several years she lived here. She voiced her concerns over the new general manager's contract and the fact it cannot be terminated over poor performance. Ms. Shriner commented that it looks as though he could only be terminated by a felony conviction or mental incompetence and if the contract was not continued, the Marina Coast Water District customers would still be responsible for paying the medical benefits for this individual. Ms. Shriner stated she wanted to make a public records request and requested information on the hiring process and if the hiring procedure includes: a resume or CV review; a background check; medical evaluation; interviews; and similar evaluation of competitors for the same position. She stated she would also like to know more about the contract negotiations, the description of procedures and any documentation that the designated procedures were followed. Ms. Shriner requested copies of any minutes and correspondence demonstrating the clarity and fairness of reaching this contract with Mr. Heitzman. She submitted the written request to Mr. Lucca.

Mr. Lloyd Lowrey, Legal Counsel, commented that all public record requests must be in writing and that the District has ten (10) days to respond in writing to that request.

7. Presentations:

A. Consider Adoption of Resolution No. 2007-60 Recognizing Dewey Baird for his Dedicated Service as a Commissioner to the Marina Coast Water District's Water Conservation Commission:

Vice President Nishi made a motion to adopt Resolution No. 2007-60 recognizing Dewey Baird for his dedicated service as a Commissioner to the Marina Coast Water District's Water Conservation. 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			

President Gustafson read the narration into record and presented Mr. Baird with his certificate. Mr. Baird thanked the Board and stated it was an honor working with everyone.

- B. Consider Adoption of Resolution No. 2007-55 in Recognition of Tom DeAmaral, System Operator I, and Award a Plaque and Gift Certificate for 10-Years of Service to the Marina Coast Water District:

Director Moore made a motion to adopt Resolution No. 2007-55 recognizing Tom DeAmaral for 10-years of service to MCWD and awarding him a plaque and gift certificate. Director Lee seconded the motion. The motion was passed.

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

President Gustafson read the narration and presented Mr. DeAmaral with his plaque and gift certificate.

8. Public Hearing:

- A. Consider First Reading of Draft Ordinance No. 48 to Add An Expiration Term to Capacity Charges Paid by District Customers:

Mr. Suresh Prasad, Director of Finance, introduced this item.

Director Moore made a motion to accept the first reading of Ordinance No. 48 and immediately adopt the Ordinance on an urgency basis as an interim authorization for a 30-day period. Director Lee seconded the motion. The motion was passed.

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

9. Consent Calendar:

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

Director Moore made a motion to approve the consent calendar consisting of items A) Adopt Resolution No. 2007-61 to Approve a Professional Services Agreement with Sunset Coast Nursery to Provide Nursery and Re-Vegetation Services to the Mitigation and Monitoring Program for the 18" Water Line Project; and C) Consider Adoption of Resolution No. 2007-63 to Adopt the National Incident Management System. Director Brown seconded the motion. The motion was passed.

Agenda Item 9 (continued):

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

- B. Adopt Resolution No. 2007-62 to Amend the Schaaf & Wheeler Professional Services Agreement for General Engineering Services for the Design Phase of the 2nd Avenue Extension and Lightfighter Fireflow Projects within the Ord Community:

Vice President Nishi questioned the need to move forward with this item at this time as the building permits are not being pulled for the Ord Community as projected. He asked who would pay for this. Mr. Jeff Cattaneo, District Engineer, answered that the need was because the fireflows for existing customers and the new construction is deficient in some areas. Mr. Cattaneo stated that the funding was in the Capital Budget and would be paid for from capacity charges. Vice President Nishi stated his concern was that there was no one paying the capacity charges at this time and infrastructure was being put in the ground prematurely. He asked if this could be placed on hold for six months to a year. Mr. Cattaneo stated that once the design was complete, the construction could be postponed until it was beneficial to the District. Vice President Nishi asked how long it would take to do the design. Mr. Cattaneo answered that it would take about four to six months. Vice President Nishi asked why it couldn't wait since it could be done fairly quickly. Mr. Lucca answered that that he suggests that the District stay at a high rate of readiness. The four to six month time frame was contingent upon a design team being available to begin immediately. Mr. Lucca stated that it was good to have the design completed and be ready to take action when the District decides it is time to begin construction. He pointed out several projects for which the District has completed design are waiting for the right time to implement construction.

Director Lee commented that it was less expensive to do the design today than wait until later.

Director Moore asked how deficient the fireflows are in the Ord Community. Mr. Cattaneo answered that the hydraulic model would verify if the flows run on the initial model were still valid. Director Moore stated that although he was concerned over putting infrastructure in the ground too soon, he was concerned that if there was a significant fireflow issue for current residents, the District might be remiss in not proceeding in a timely manner. Mr. Cattaneo stated it was fireflow for existing development and including the southern portion of University Villages which is still under development.

Vice President Nishi stated he was under the impression it was deficient for new construction and not for existing customers. He stated he was concerned that the fireflow has been deficient for existing customers and the District has allowed insufficient fireflows on the Ord Community. Vice President Nishi asked to get a report on the number of existing units that are in a deficient fireflow situation.

Agenda Item 9-B (continued):

Mr. Lucca answered that the information was in the Master Plan and would be brought back to the Board as a staff report. President Gustafson asked that it be brought back as an informational item for the Board to read. Vice President Nishi asked that this item be postponed until the information is received. President Gustafson stated that he was confident the engineering department could provide the information as requested and there was no need to delay the design.

Director Brown made a motion to adopt Resolution No. 2007-62 amending the Schaaf & Wheeler Professional Services Agreement for General Engineering Services for the Design Phase of the 2nd Avenue Extension and Lightfighter Fireflow Projects within the Ord Community. 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			

D. Clarify Appointment of Jeff Cattaneo as Interim General Manager:

Vice President Nishi stated that this item needed to be pulled to clarify the appointment.

Director Moore made a motion to clarify the appointment of Jeff Cattaneo as Interim General Manager. Mr. Lucca stated that the clarification was that Mr. Cattaneo was appointed to begin as Interim General Manager on September 8, 2007, but the District needs to have him in-place effective immediately upon the close of the current General Manager's term which is September 7, 2007 at 5:00 pm PST. Director Brown seconded the motion. The motion was passed.

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

10. Action Items:

- A. Receive Presentation of the Bartle Wells Associates 5-Year Rate Study Financial Plan; and Provide Comments and Direction to Staff Regarding Engaging the Fort Ord Reuse Authority on Selected Rates and Capacity Charge Options and Timeline for Implementation:

Vice President Nishi asked to postpone this item until September to allow input from the new general manager. He stated he had concerns over this study. Director Moore commented that this item could be discussed now to clarify any questions for the benefit of the Directors.

Agenda Item 10-A (continued):

Vice President Nishi made a motion to postpone this item until September 26, 2007. Director Brown seconded the motion. The motion was passed.

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

B. Consider Adoption of Resolution No. 2007-64 to Authorize Construction of the Recycled Water Main on California State University, Monterey Bay:

Mr. Andrew Sterbenz, Schaaf & Wheeler Consultant, introduced this item.

Director Moore asked the cost of installation for this particular type of pipe. Mr. Sterbenz answered that it was usually about \$130 - \$160 per linear foot. The cost for this project was closer to \$200 per linear foot because the trench needed to be deeper and wider which added to the cost of excavation and asphalt.

Vice President Nishi asked if there was a different route to use to avoid the complicated situation. Mr. Sterbenz answered that with all the utilities recently installed by CSUMB, there was no utility corridor left for a wet utility.

Director Moore made a motion to adopt Resolution No. 2007-64 authorizing construction of the recycled water main on California State University, Monterey Bay. Director Brown seconded the motion. The motion was passed.

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

C. Consider Adoption of Resolution No. 2007-65 to Amend the FY 2007/2008 Capital Improvements Program Budget:

Mr. Sterbenz introduced this item stating there was an administrative error that failed to carry the remaining unused CIP budget from 2006/2007 into 2007/2008. He clarified that the Lightfighter B-Zone pipeline extension was project 0128 not 0129. Vice President Nishi voiced his concern over putting infrastructure in the ground before having any customers to pay for it and not prioritizing the projects. He asked if any of the projects could be postponed. Mr. Sterbenz advised against it.

Agenda Item 10-C (continued):

Director Brown made a motion to adopt Resolution No. 2007-65 to amend the FY 2007/2008 Capital Improvements Program Budget. Director Lee seconded the motion. The motion was passed.

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

D. Reconsider District's Appointment to its Ord Community Ad Hoc Committee:

Mr. Lucca introduced this item. President Gustafson commented that upon hearing of late arrivals to the meetings, he wanted to make Director Lee the primary liaison and Director Moore the alternate to the OCAC. Vice President Nishi asked if this was a President or Board appointment. Mr. Lowrey answered that it was a Board appointment.

Director Brown asked what Director Moore's thoughts were. Director Moore answered that he had only arrived several minutes late to one meeting and the meeting had not even been called to order yet. He did confirm that Director Lee did substitute for him at one meeting when he was out of town. Director Brown stated that he felt it was punitive and not appropriate.

Vice President Nishi made a motion to make Director Lee the primary liaison and Director Moore the alternate to the OCAC. President Gustafson seconded the motion. The motion failed.

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

E. Consider District's Continued Participation in the Special District's Association of Monterey County:

Mr. Lucca stated he had done some research on the SDA and the role the District has played. He stated that there is no financial responsibility to the District. The previous General Manager, Mike Armstrong, was a founding member of the SDA, which did involve some staff time and in-kind services. Mr. Lucca added that the SDA gives the District a voice in LAFCO matters and that could be beneficial with upcoming events such as possible annexation of the Ord Community and the Marina Station project.

President Gustafson stated that his concern is that there was no quorum at the last meeting and yet business was discussed and recommendations made. He added that the by-laws always seem to fluctuate when questions are asked.

Agenda Item 10-E (continued):

Director Moore assured President Gustafson that there were no changes in the by-laws since they were last revised several years ago, although there is a sub-committee reviewing the by-laws to make revision recommendations to the Association. Director Moore stated that no action was taken and no business conducted once it was noted that there was not a quorum present.

Director Brown commented that he did not see it as a Brown Act issue with discussing business when there was not a quorum especially since there was no action was taken. He added that this Board will be dealing with LAFCO in the coming years especially if the District is forced to expand its boundaries. Director Brown stated that is not wise to withdraw from the SDA with its connection to LAFCO.

Vice President Nishi agreed that SDA is important to the different Special Districts and we as a Special District will have issues coming up before LAFCO. He added that he had a concern that action did take place at the last SDA meeting when there was no quorum as was stated in the minutes of July 25, 2007. Vice President Nishi asked if a sub-committee was selected to draft a letter asking that the Special District have more involvement in the proposed LAFCO budget process that currently involves the Cities. Director Moore answered that the President of the SDA has the authority to appoint a sub-committee. He added that discussing the agenda for the October meeting was just a discussion regarding the agenda and thus is not conducting business. Vice President Nishi asked legal counsel if the District's President could appoint a sub-committee to draft a letter without a quorum. Mr. Lowrey answered that the President has the authority to appoint a sub-committee to draft a letter and if less than a quorum discussed the letter, it was not a violation of the Brown Act. He added that it would be a violation if less than a quorum authorized sending out the letter because they would be taking an action.

Director Moore clarified that the SDA of Monterey County is a non-profit organization and the Brown Act does not apply. However, the Brown Act does apply to the elected members of the Association whereas a quorum from one member agency cannot attend and discuss agency business without proper notification.

Vice President Nishi questioned if the SDA needs to supply an agenda and notice the meeting. Mr. Lowrey answered that he had not studied that aspect. Vice President Nishi asked for a report regarding the Brown Act and if it applies to the SDA.

President Gustafson requested to postpone this item until legal counsel can report back if the SDA is governed by the Brown Act.

11. Staff Reports:

- A. Receive Update on the Marina Sewer Improvements Project and the El Rancho Mobile Home Park:

Mr. Cattaneo introduced this item. He stated that the project should be substantially complete by the end of August. Mr. Cattaneo also stated that there was a small sewer spill within the Mobile Home Park that occurred during bypass-pumping while construction was being done.

- B. 2007/2008 Strategic Plan – Board Housekeeping Items:

Mr. Lucca introduced this item. President Gustafson requested the Brown Act be discussed at the October 24, 2007 meeting.

12. Informational Items:

- A. General Manager's Report:

Mr. Lucca noted that this was his last Board meeting as the District's General Manager. He stated that he would assist Mr. Cattaneo with the next board packet. Mr. Lucca thanked the Board and staff who supported him over the past several years.

Director Brown requested that the next meeting agenda have an item to recognize Mr. Lucca for his service to the MCWD.

- B. Counsel's Report:

Mr. Lowrey stated he had nothing to report.

- C. Committee and Board Liaison Reports:

- 1. Water Conservation Commission:

Director Lee asked Mr. Rich Youngblood, Water Conservation Coordinator, what was discussed at the last WCC meeting. Mr. Youngblood answered that there was a water-wise demonstration garden, the landscape incentives program was discussed, and rainfall totals for the year were presented. Vice President Nishi stated that at the Monterey Regional Ratepayers Advocate meeting there was a handout on water conservation and there was no conservation information provided on the District. He advised contacting Mr. Steve Kasower and providing him with that information.

- 2. Joint City-District Committee:

Mr. Lucca stated there was discussion on backflow prevention devices.

3. MRWPCA Board Member:

Vice President Nishi commented the meeting was next week.

4. LAFCO Liaison:

Vice President Nishi commented that there was no August meeting.

5. JPIA Liaison:

Director Moore stated there was nothing to report.

6. Monterey Bay Regional Water Authority:

President Gustafson stated that they had not met since the last Board meeting.

7. FORA:

Vice President Nishi stated that the meeting was boiler plate.

8. Executive Committee:

President Gustafson commented that the Committee did not meet.

9. Community Outreach:

Mr. Lucca commented that the next meeting was pending the outcome of the agreement with MRWPCA.

10. Ord Community Ad Hoc Committee:

Director Moore stated that they met and discussed annexation issues and the next meeting will discuss Joint Powers Association options. Vice President Nishi asked to receive the minutes in a more timely fashion so that direction could be given to the liaison.

11. Special Districts Association (SDA) Liaison:

Director Moore stated that there was nothing to report.

D. Director's Comments:

Director Brown stated that as the record shows, he voted against the appointment of Mr. Jim Heitzman at the last meeting. The reason being that there was discussion in closed session, but there was no discussion in open session. The reason he voted "no" has nothing to do with Mr. Heitzman or his qualifications. The basis for his "no" vote was echoed by the comments of the public in that he completely agrees the salary, which is half again what was paid the current general manager, the three pension plans where the District pays both the District and employee portions; and the automatically renewing contract which can only be terminated on sixty or ninety day notice and if terminated, paying one years salary and \$37,500. He added that in 2008, when Mr. Heitzman gets his eight percent salary increase, he would be making more than the governor of California. Director Brown stated that it would be interesting what would be explained to the voters in two months hence. He commented that it was unfortunate that the new general manager would start working under a cloud.

Director Moore stated that Director Brown preempted him in requesting an agenda item recognizing Mr. Lucca and the next meeting. He then read the following comments into record:

On Friday, August 17th, 2007, before the Board packet for tonight's meeting was finalized, I sent an email message to President Gustafson and copied Marc Lucca. The message read, "Please put on the agenda for our Board meeting on August 22, 2007 the reconsideration of the employment contract between the Marina Coast Water District and Jim Heitzman." My reason for doing so was to ask the President to agendize the reconsideration of this outrageously generous contract.

President Gustafson responded via Marc Lucca, who wrote to me that, "I talked with Howard today about your email.... He told me that the item requested could only be placed on the agenda for reconsideration by a Board member who voted yes as per Robert's Rules of Order.... For that reason he did not authorize it being placed on the agenda for 8/22."

Nowhere does our Board Procedures Manual give the Board President the power to prohibit the placement of an item on the agenda. Indeed, Section 9.A.(7) states only that the Board President will "review the agenda in conjunction with the Secretary of the Board."

Furthermore, Section 38 of our Board Procedures Manual states that "At the meeting succeeding that on which a final vote on any question has been taken, said vote may be reconsidered on the motion of a member of the Board who voted on the prevailing side." My email message did NOT make a motion of reconsideration. It asked only for the item to be placed on the agenda. Similarly, Robert's Rules of Order do NOT prohibit the placement of such an item on our agenda at the request of a member who voted against approval of the original motion.

Agenda Item 12-D (continued):

For these reasons President Gustafson has committed a significant parliamentary error that has prevented timely consideration of this issue. The cure for this error is to agree to the scheduling motion I'm about to make:

I move that we schedule a special board meeting at 7 pm on Wednesday, September 5, 2007 for the purpose of considering the possible termination, amendment or rescinding of the contract with Mr. Heitzman before it goes into effect on September 10, 2007. Hopefully we will be able to dispense with this item in thirty minutes or less.

Director Brown seconded the motion. Vice President Nishi asked legal counsel if the Board could reconsider that item on the scheduling motion. Mr. Lowrey answered that the way the Board policy is set up, reconsideration of a vote can only occur at the meeting following the meeting in which the vote was taken. It can only occur on the motion of someone who voted affirmatively. Mr. Lowrey stated that it wouldn't be in order to reconsider the prior vote taken. He added that wasn't what he understands the request to be. Mr. Lowrey stated he understands that there is a new action requested which would be to terminate the agreement that was authorized last time. That is a new action not a reconsideration. Director Moore clarified that his motion was to terminate, amend or rescind.

When asked for his vote, Director Lee asked that the motion be re-read as to exactly what it is being requested. President Gustafson answered that it was to schedule a meeting to terminate the contract with Mr. Heitzman. Or amend, added Vice President Nishi. Director Lee asked to hear more discussion from the Board members.

Director Brown stated that when he voted for the contract Director Lee commented, "Let's hire this guy and if he doesn't perform well, we can just get rid of him." Director Brown stated that there is no provision in the contract to fire the general manager for poor performance. He added that the proposed meeting would be to discuss amending the contract.

Vice President Nishi asked how the contract could be terminated. Mr. Lowrey asked to review a copy of the contract. Director Lee asked who prepared the contract. Mr. Lowrey answered that his office did at the direction of the general manager selection Committee.

President Gustafson commented that it was negotiated in good faith and that Mr. Heitzman is well worth it.

Mr. Lowrey stated that the termination clause is as follows:

Agenda Item 12-D (continued):

1. “Expiration of Term. After three years, the contract shall automatically renew for an additional three years unless terminated by one party providing the other party written notice of termination at least six months prior to the end of the term. If the District opts not to renew, the General Manager shall receive twelve months’ base compensation and \$12,500 per year of service, up to ten years. If the General Manager opts not to renew, General Manager shall be entitled to \$12,500 per year of service up to ten years.
2. Termination due to death, disability or inability to perform. In that event, the General Manager or his beneficiaries shall be entitled to three months compensation from the date of termination as well as continuation of health card benefits as listed in 2.1.3.
3. Termination for Cause. Cause for termination under this paragraph includes commission of a felony or other serious violation of a law, stated or federal regulation or District rules; misappropriation of District property; gross neglect of duties or gross negligence which substantially impacts the District’s ability to serve its customers.”

Vice President Nishi commented that it was the same as the current General Manager’s contract. Mr. Lowrey stated that this contract allows more ability to terminate for cause than the current General Manager’s contract. He added that “gross negligence which substantially impacts the District’s ability to serve its customers.” was not in Mr. Lucca’s contract.

Vice President Nishi commented that Mr. Heitzman should be given a chance to perform and next year at this time, if he is not performing, Vice President Nishi would be the first to say something. He added that if the Board wants the District to be the premier Special District in the Central Coast, they are going to have to get key people to motivate and show the rest of the employees the path. Vice President Nishi agreed that it is a lot of money, but the District is positioning to move forward. He reminded the Board of the difficulty in hiring the District Engineers because the salaries were too low and that the District Engineer’s salary should be raised up even more if this is to be the premier District.

Director Moore asked legal counsel if Mr. Lucca’s contract contains a provision to terminate with only sixty-days notice and not for cause. Mr. Lowrey answered affirmatively. Director Moore stated that clause is not in Mr. Heitzman’s contract. Mr. Lowrey again answered affirmatively. Director Moore stated that his motion is simply to have this kind of dialogue in open session and that a special meeting on September 5th would allow this kind of discussion to take place.

Vice President Nishi stated if that was Director Moore’s intent, he could not support the motion.

Agenda Item 12-D (continued):

Director Brown asked if aside from termination due to commission of a felony or misappropriation of District funds, gross neglect was subject to arbitration. Mr. Lowrey answered that it was. Director Brown clarified that if the District decides to terminate for gross negligence and it goes to an arbitrator, if the arbitrator says no you can't, the District can't terminate. Mr. Lowrey answered affirmatively.

President Gustafson commented that the District is definitely going to attract serious professionals. The consultants are already very much interested in us and there is a different attitude towards the District. President Gustafson stated that Mr. Heitzman is going to change this District and going to move the District into the 21st century.

Director Lee asked how the District could terminate Mr. Heitzman. President Gustafson answered that it would go to the Board. Mr. Lowrey added that it would also go to binding arbitration.

Mr. Lowrey stated that if the Board wanted to have a more complete discussion on the contract they needed to vote on the motion. Director Lee asked again what the motion was. Mr. Lowrey answered that it was to hold an open meeting on September 5th to discuss the contract, whether to terminate, amend or rescind it.

Director Lee commented that he does not feel satisfied that he has enough knowledge based on the discussion they have had to make an informed decision. Vice President Nishi asked what information Director Lee needed. Director Lee answered that he was not clear on how this individual gets terminated. Vice President Nishi commented that this was the same contract as the current General Manager with the exception of the numbers. Director Lee stated that was not what he was hearing from legal counsel. Vice President Nishi asked the process to terminate the current General Manager. Mr. Lowrey answered that it would go before the Board then could go to arbitration. President Gustafson commented that every manager is entitled to arbitration. Mr. Lowrey stated that if a comparison of the new General Manager's contract, the current General Manager's contract and managerial contracts was being requested, he could not provide that analysis this evening.

Director Moore stated that his motion for the special meeting would allow this kind of discussion on the contract and if Director Lee were to vote in favor of the special meeting, it would not commit him to any kind of vote, either way, on September 5th. Vice President Nishi commented that another question would be asked and then this would be dragged out.

Agenda Item 12-D (continued):

The motion failed. After voting affirmatively, Director Lee changed his vote to “no”.

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

President Gustafson recessed the meeting from 8:45 until 8:50 p.m.

The Board reentered into Closed Session at 8:50 p.m.

3. Closed Session:

A. Pursuant to Government Code Section 54956.9 (c)
Deciding Whether to Initiate Litigation

B. 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 9:30 p.m.

5. Possible Action on Closed Session Items:

President Gustafson stated that direction was given to staff and no action was taken.

14. Adjournment:

The meeting was adjourned at 9:30 p.m.

APPROVED:

Howard Gustafson, President

Date

ATTEST:

Jeff Cattaneo, Interim General Manager