

## Marina Coast Water District

District Offices  
11 Reservation Road  
Marina, California

Regular Board Meeting  
September 12, 2007  
6:45 p.m.

### **Minutes**

1. Call to Order:

President Gustafson called the meeting to order at 6:46 p.m. on September 12, 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:

Jeff Cattaneo, Interim General Manager  
Lloyd Lowrey, Legal Counsel  
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  
Paula Pelot, Preston Park Tenant's Association  
Tim O'Halloran, City of Seaside  
Mike Owen, Marina Resident  
Justina Walsh, Marina Resident  
Ken Leech, Marina Resident  
Chris Leech, Marina Resident  
Eric Tynan, Castroville Water District  
Marc Lucca  
Yvonne Lucca

Jan Shriner, Marina Resident  
David Burnett, Marina Resident  
William Giles, Marina Resident  
Candy Meyers Owen, Marina Resident  
Denise Turley, Marina Resident  
Elizabeth Dillon, Marina Resident  
John Sanders, Marina Resident  
Monique Fargues, Marina Resident  
Bob Schaffer, Marina Community Partners

The Board entered into closed session at 6:47 p.m.

3. Closed Session:

A. 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 7:03 p.m.

4. 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 the meeting.

5. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

President Gustafson requested to move to agenda item 7.

7. Presentations:

A. Consider Adoption of Resolution No. 2007-66 in Recognition and Appreciation of Marc A. Lucca's Service from March 2004 – September 2007 as District Engineer and then General Manager:

Director Moore made a motion to adopt Resolution No. 2007-66 recognizing Marc Lucca for his dedicated service as the District Engineer and General Manager to the Marina Coast Water District. Director Brown seconded the motion. The motion was passed.

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

President Gustafson read the narration into record and presented Mr. Lucca with his certificate and plaque. Mr. Lucca thanked the Board and everyone present and stated that it only works when you have full Board support.

6. Oral Communications:

Mr. John Sanders, Marina resident, voiced his concern over the contract given to Jim Heitzman and the excessive costs borne by Marina ratepayers as a result. He is especially concerned about the methods and secrecy used by the Board in the award in the Heitzman contract. Mr. Sanders stated that it is essential that the Board place this item on the next meeting agenda for full and open disclosure to ratepayers. Anything less would smack of back-room politics with the public always asking why and distrusting this Board, unless it reconsiders this contract.

Ms. Paula Pelot, Preston Park Tenant's Association, stated that although they can't vote or serve on this Board, they do have a voice in the community, and the Board does have a responsibility and is accountable for this. Ms. Pelot stated that currently under the FORA Agreement contract, the Ord Community is paying for 57% of the General Manager's salary while only representing only about 12% of the ratepayers accounts. She commented that although they did not have a voting voice, they did have a voice in the public. Ms. Pelot stated that they want this brought back and thoroughly reconsidered and all documents out in the public. She stated that if the public did not get the chance to review all documents, she would start a recall of the Director's who voted in favor of the contract and would file a grand jury complaint.

Mr. Mike Owen, Marina resident, commented that it would be wise to reconsider this contract. If the contract is not reconsidered, there will be many questions at the next election. Mr. Owen commented that Mr. Lucca was a great example of being promoted from within and his statement about full Board support is important. Currently, this Board is not giving its full support and if it continues over the next three years, Mr. Heitzman may decide he doesn't want to work for the District and just leave with his pension. Mr. Owen stated that he could see a downside if this is perceived by the public to be well thought out and a good decision. He stated that it seemed like the person coming in said, "These are my terms" and the negotiators just said "Okay".

Ms. Jan Shriner, Marina resident, commented that it is not just a City of Marina issue, but a regional issue that includes the former Fort Ord. She commented that when she heard of this hiring, she threw together a public records request at the last meeting and Mr. Lloyd Lowrey, Legal Counsel, got the information together in a short amount of time. Ms. Shriner commented that maybe there was an oversight because several records are missing from the 160 pages of information. Ms. Shriner mentioned that the minutes of July 11, 2007 stated that all the Board members would receive PDF's of all resumes for review. There were resumes from several other applicants, but there was not a resume for Mr. Heitzman. She stated that there was an email dated August 6, 2007 from Mr. Heitzman stating his contract requirements and his local references, but there was nothing on his previous experience, no reference, no background check and no resume. Ms. Shriner commented that while this dialogue was going on August 6<sup>th</sup>, the rest of the Board members were simply sharing resumes that were still coming in.

Agenda Item 6 (continued):

Ms. Shriner commented that she understood on August 8<sup>th</sup>, the Board went into a closed session about the contract, and then at about 9:30 p.m. a vote was called for. It was never an action item on the agenda even though the agenda does disclose that anything in closed session may be acted on in open session. Ms. Shriner added that it was never spelled out that the Board was going to be taking a vote at the end of the night. She stated that between the vote of the July 11<sup>th</sup> meeting to review resumes and the lack of resumes received the legal recital of this contract is not holding up.

President Gustafson informed Ms. Shriner that her three minutes of public comment were up. Ms. Shriner stated that she would make photocopies available for anyone interested.

Mr. Steve Zmack, Marina resident, commented that the contract's compensation package is so grossly exaggerated and over the top. He stated that the accolades given to the outgoing general manager shows that you can get the talent in this area for reasonable compensation. Mr. Zmack added that while Mr. Heitzman is qualified for this position, he is not so overly qualified to warrant such a compensation package. He questioned where the money in the budget is going to come from to cover this compensation, and what expectation the Board has for Mr. Heitzman performance over the next three years to warrant the huge compensation package. Mr. Zmack remarked that a general manager who is paid that much, their number one responsibility should be to ensure that there is no rate increase for the stakeholders. He stated he did not see how the budget will cover the new contract without a rate increase. Mr. Zmack asked for more information on the Board's thought process; what the Board is looking for; and what Mr. Heitzman would be evaluated for over the next three years that is worth such a huge compensation package.

Mrs. Candy Meyers-Owen, Marina resident, echoed what has been said so far by the other members of the public. She said that there was no procedure here and something got lost in the translation. Mrs. Meyers-Owen commented that at one point it looked almost certain that there would be an executive search brought in to find someone qualified and then all of a sudden, there was someone selected. She pointed out that there was no due-diligence. Something this important, that affects all the people in the City, should be agreed upon by the entire Board and a three-two vote tells her that there is something wrong. Mrs. Meyers-Owen stated that something this important should be a unified vote because the Board is supposed to know the most about what is going on and who Mr. Heitzman is but looking at the information gathered there was no resume provided. What was the procedure and where is the due-diligence. Mrs. Meyers-Owen stated that she hoped that the Board would reconsider and open this up in a public meeting for reconsideration and more explanation for those who live here and have to live with this decision.

Agenda Item 6 (continued):

Ms. Monique Fargues, Marina resident, voiced her concern over the financial impact of the contract. She stated that it was difficult to understand the promise of lifetime benefits after only three years of employment. What was the financial impact if the employee lives well into his eighties? Ms. Fargues commented that if the Board decides no to renew Mr. Heitzman's contract, it will cost the District more than \$250,000 to show him the door. She remarked that this is not a Wall Street firm and the District does not have deep pockets. Ms. Fargues stated that she hoped the Board would reconsider its decision.

Ms. Dee Sturley, Preston Park resident, commented that they have been asking the District for a discount in water rates for low-income families and after nine years still have received nothing. She stated that this contract conflicts with the *Mission Statement – ...at a reasonable cost*. Ms. Sturley stated that due to financial hardships, she often waits until the last minute to pay her bill and cannot imagine where she will get water in the future if the rates go up.

Mr. William Giles, Marina resident, commented that he came to Marina as an artist to make this a better community. He commented that it takes a lot of water to make anything look nice due to the soil in Marina. Mr. Giles stated that the prices are already exorbitant and this new general manager will be making so much more. He commented that he is speaking from an emotional viewpoint because money and emotions go together and he cannot think how the contract will be paid without taking more from the ratepayers.

Mr. Tim O'Halloran, City of Seaside, commented that he wanted to pull item 9-A off the Consent Calendar.

8. Public Hearing:

- A. Consider First Reading of Draft Ordinance No. 49 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. 49 and immediately adopt the Ordinance on an urgency basis. Director Brown seconded the motion. Mr. Jeff Cattaneo, Interim General Manager, stated that the Section 5 (Effective Date) of the Ordinance needed to be revised to read, “and shall remain in effect for a period of 30 days, or until Ordinance No. 47 takes effect, whichever occurs first, at which time...”. Director Moore amended his motion to include the revision. Director Brown seconded the amended motion. The motion was passed.

Agenda Item 8-A (continued):

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

9. Consent Calendar:

Mr. O'Halloran had earlier requested to pull item A from the consent calendar.

Director Brown made a motion to approve the consent calendar consisting of items B) Approve Expenditures for the Month of August 2007; C) Approve the Draft Minutes of the Regular Board Meeting of August 8, 2007; and D) Approve the Draft Minutes of the Regular Board Meeting of August 22, 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			

- A. Adopt Resolution No. 2007-67 to Approve a Professional Services Agreement with RMC Water & Environment (RMC) to Prepare a Basis of Design Report for a Sanitary Sewer Force Main to Serve the Southern Portion of the Ord Community:

Mr. O'Halloran commented that he had a letter dated September 7, 2007 from the Seaside County Sanitation District (SCSD) regarding this agenda item. He gave a copy of the letter to Board and staff then read the letter into the record.

The SCSD letter observed that the former Fort Ord portion of Del Rey Oaks is within the SCSD service area and it is the SCSD's intention to serve the wastewater needs of Del Rey Oaks and the portion of Seaside adjacent to General Jim Moore Blvd. The SCSD Master Plan has evaluated this proposal and identified the force main system as the least desirable option to serve this portion of the former Fort Ord. The letter states that it would be much more cost effective as a gravity system through the SCSD system than the MCWD proposal which would construct a complex force main system over four miles long. The SCSD requested that the Board disapprove this item and direct staff to work cooperatively with the SCSD in a mutually beneficial arrangement.

Mr. Cattaneo clarified that Mr. O'Halloran's statement was incorrect in that the SCSD's Master Plan evaluated the force main running the flows in the opposite direction from what the District is evaluating. The SCSD Master Plan's evaluation would run the flows from the top of the hill down into Canyon Del Rey where they would then join the system at that point. The District is looking at running the flows up the hill and into the MCWD system at the top of the hill.

Agenda Item 9-A (continued):

Mr. Cattaneo stated that District staff has tried to negotiate with SCSD on working through this problem; negotiate an agreement on updating their Master Plan; and an agreement on cost sharing, but neither party were able to come to an agreement on any of those negotiations. SCSD has made their position that they would like to be the service provider and the District is in the position that the contract with FORA obligates the District to seek a solution to the sewer flow issue.

Vice President Nishi asked if Mr. O'Halloran was aware of the issues that Mr. Cattaneo raised. Mr. O'Halloran stated that he was familiar with the SCSD and that the Master Plan did evaluate a scenario where the wastewater was directed up the hill from Del Rey Oaks to the MCWD system.

Vice President Nishi stated that he asked if Mr. O'Halloran was aware of what Mr. Cattaneo said about that the negotiations breaking down and they couldn't come to an agreement on the value so the next step was to run it where we are right now. Mr. O'Halloran agreed that the negotiations did break down in the process and he was not clear on why.

Vice President Nishi asked if the Board would postpone action on this and send a letter to SCSD expressing what Mr. Cattaneo said and what they would like to propose. Vice President Nishi stated that he did not have a problem if anyone wanted to add to his request.

Director Moore commented that he did not know if it was better to approve this tonight but give the General Manager direction to hold the RMC work to give the SCSD time to come back to the negotiating table and make some progress. Mr. Cattaneo answered that it could be done and passing the resolution did not obligate the District to enter into contract with RMC. The contract could be held as long as the District chooses.

Vice President Nishi commented that he understood that, but did not want to send a message to SCSD by approving this item after SCSD asked that it be postponed. Mr. Cattaneo stated that it would not materially affect the schedule to hold this item for one or two more meetings.

Vice President Nishi asked to see a letter sent to SCSD with an incentive to get a solution to this issue. He also asked for the letter to include a date to accommodate what Mr. Cattaneo wants to do at a certain time.

Director Brown commented that Vice President Nishi had a meritorious idea in postponing this item as long as it didn't affect the timing.

Agenda Item 9-A (continued):

Mr. Lowrey stated that from a record standpoint, it would be helpful to have a motion defining the action of sending the letter.

Director Brown made a motion to postpone the matter for three meetings, which would be the second meeting in October, and to write a letter to SCSD expressing the District's concerns. President Gustafson seconded the motion. The motion was passed.

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

Director Moore stated that he had a memo to read into the record. President Gustafson stated that Director Moore's comments could be made under Director's Comments. Director Moore stated that he was reading the memo at this time for a purpose and asked to at least read the last paragraph into record.

"Including president Gustafson's refusal to place the matter on the 12 September 2007 agenda, he has three times voted or acted to silence our voices and prevent an open and public discussion of the contract with Mr. Heitzman, including the possibility of amending, terminating or rescinding it. (We are waiting to see if he will again refuse our demand to place the matter on the agenda for the 26 September 2007 meeting in accordance with Section 20 of the Board Procedures Manual.) Since the Brown Act precludes Board discussion of any item of this nature which is not agendized in advance, President Gustafson's denial of Board member requests to agendize the item effectively amounts to silencing Board members. We therefore are protesting these undemocratic and biased actions by walking out of this meeting at the start of the "Action Items" portion of the agenda."

President Gustafson reiterated that these comments should be made under Director's Comments. Director Brown answered that the comments were made because he and Director Moore were walking out of the meeting to protest being silenced at previous meetings. President Gustafson commented that they had not been silenced. Director Brown answered that when President Gustafson refused to place an agenda item at the request of two Board members, he was indeed silencing them. President Gustafson commented that the item will be placed on the next agenda and no one was silenced as the requirements were not met on the last request.

Director Moore and Director Brown left the meeting at 7:43 p.m.

10. Action Item:

- A. Consider Approval of Resolution No. 2007-59 to Approve Participation in the Monterey Bay Regional Water Authority:

Vice President Nishi commented that this item was going to be brought back to the Board after all the entities approved the MOU and monies have been paid. Mr. Lucca commented that he had requested information to that nature and had not received it as of September 7<sup>th</sup>. Mr. Lucca added that the next meeting would be at the end of September or beginning of October. Vice President Nishi stated that this item should be tabled until after the next meeting of the MBRWA to see what agencies would be participating. President Gustafson and Director Lee agreed. The item is tabled until October, after the next MBRWA meeting.

11. Information Items:

- A. Receive a Report on Fire Flow Improvement Projects in 2<sup>nd</sup> Ave. and Lightfighter Drive:

Vice President Nishi requested a written report listing customers in a deficient fireflow situation. Vice President Nishi cautioned against putting too much infrastructure into the ground before it is needed. Mr. Cattaneo stated that staff is looking at projects very carefully to see what needs to be done immediately and what can be held off until later.

- B. Receive a Report on District's Employee Healthcare Benefits:

Vice President Nishi stated that Director Moore had requested this item and suggested bringing it back at the September 26<sup>th</sup> meeting. President Gustafson answered that this item was for information only and did not recommend bringing it back.

12. Discuss Possible Agenda Items for the September 26, 2007 Planning Workshop and Provide Direction to Staff:

Vice President Nishi suggested an introduction of the new General Manager and dialogue with General Manager, staff and Board. President Gustafson agreed.

13. General Manager's Comments:

Mr. Cattaneo commented that negotiations are continuing with the MRWPCA and seem to be making progress.

Regarding SCSD, Mr. Cattaneo commented that he had spoken with FORA who said they had not been informed of SCSD's desire to be the service provider to the portion of Del Rey Oaks on the former Fort Ord.

Agenda Item 13 (continued):

Mr. Cattaneo stated that District staff was preparing an update on the Regional Urban Water Augmentation Project (RUWAP) for the FORA Administrative Committee meeting on September 19, 2007.

Mr. Cattaneo stated that staff was preparing the agenda for the September 26, 2007 Board meeting for Mr. Heitzman to review upon his arrival next week.

14. Legal Counsel Comments:

Mr. Lloyd Lowrey, Legal Counsel, commented that at the last meeting he was asked to research if the Special District's Association (SDA) was governed by the Brown Act. He stated that he had done so along with help from Director Moore who requested an opinion from the California Special District's Association (CSDA) legal counsel. The opinion received from CSDA's legal counsel was that the Brown Act did not apply to the SDA. Mr. Lowrey stated that he tended to agree although it was paradoxical that an organization, consisting entirely of public agencies subject to the Brown Act and discussing only public business, would be organized and operated so as not to be itself subject to the Brown Act which he contributes to the way it is set up. Mr. Lowrey commented that as member representatives the President could request that the bylaws be amended to make the SDA body subject to the Brown Act.

President Gustafson stated that this issue would not be brought up any more.

15. Director's Comments:

Vice President Nishi asked if there were any other examples like this where there are people belonging to a group which has to comply with the Brown Act and meeting as another group not having to comply with the Brown Act. Mr. Lowrey answered that he did have experience with this. President Gustafson commented that discussion was taking place on this item and he was not going to bring this up anymore especially at the SDA. Vice President Nishi stated that the issue of amending the bylaws to make the SDA subject to the Brown Act should be brought up. President Gustafson disagreed.

President Gustafson recessed the meeting from 8:04 until 8:07 p.m.

The Board reentered into Closed Session at 8:07 p.m.

3. Closed Session:

A. 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 8:11 p.m.

5. Possible Action on Closed Session Items:

President Gustafson stated that there was discussion and no action was taken.

14. Adjournment:

The meeting was adjourned at approximately 8:11 p.m.

APPROVED:

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Howard Gustafson, President

Date

ATTEST:

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Jim Heitzman, General Manager