

Marina Coast Water District

District Offices  
11 Reservation Road  
Marina, California

Regular Board Meeting  
September 26, 2007  
6:45 p.m.

**Minutes**

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on September 26, 2007.

2. Roll Call:

Board Members Present:

Howard Gustafson – President  
Ken Nishi – Vice President  
Bill Lee  
Tom Moore – arrived at 6:47  
David Brown

Board Members Absent:

None.

Staff Members Present:

Jim Heitzman, General Manager  
Jeff Cattaneo, District Engineer  
Lloyd Lowrey, Legal Counsel  
Andy Sterbenz, Schaaf & Wheeler Consultant  
Jim Dowless, Operations and Maintenance Superintendent  
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  
Candy Meyers Owen, Marina Resident  
Justina Walsh, Marina Resident  
Colin Gallagher, Marina Resident  
John Sanders, Marina Resident  
Monique Fargues, Marina Resident  
Bob Schaffer, Marina Community Partners

Jan Shriner, Marina Resident  
Mike Owen, Marina Resident  
Charles Scholl, Marina Resident  
Susan Kiefert, MCWD  
Gordon Nakagawa, Marina Resident  
Pete Ericksen, Marina Resident  
Nancy Amadeo, Marina Resident  
Margaret Ann Coppernoll, Marina Resident

The Board entered into closed session at 6:45 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 7:10 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 negotiators.

5. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Mike Owen, Marina resident, stated that he had an article from the Federal Times on Deputy Director of Homeland Security, Michael Jackson. Mr. Jackson is resigning after three years of service for financial reasons as his annual salary is only \$165,200. By resigning, he will also lose his health benefits, life insurance and be unable to get a pension. Mr. Owens thought with all the government employees, this would be worth mentioning.

Mr. Colin Gallagher, Marina resident, asked if he could speak on the general hiring process. President Gustafson commented that Mr. Gallagher had three minutes to speak. Mr. Gallagher asked the Board to look into its hiring procedure of employees and the General Manager and to let the public know, tonight or in the near future, if the hiring procedure was adopted by Resolution or if it was just recommended as a guidance document. If the hiring procedure was adopted by Resolution then it would be formal and would apply to all employees being hired. Mr. Gallagher advised the Board listen to all the public comments very carefully.

Ms. Jan Shriner, Marina resident, commented CSUMB has been hosting some amazing speakers recently and then quoted speaker Dr. Lombardo. Ms. Shriner asked to get the hiring procedure on an agenda in the near future.

Agenda Item 6 (continued):

Ms. Paula Pelot, Preston Park Tenant's Association, stated that due to the current situation, the District and Board should look at formally adopting a Personnel Policy and Practices, Hiring Practices, a Salary Schedule with incremental salary steps, and regular parody studies to find out if the salary schedule is in or out of step with comparable agencies.

Mr. John Sanders, Marina resident, asked if he would be able to make public comment on agenda item 8-A. President Gustafson answered that he would.

7. Consent Calendar:

Director Moore made a motion to approve the consent calendar consisting of items A) Adopt Resolution No. 2007-68 to Approve a Professional Services Agreement with DTN Engineers for SCADA Request for Proposal Electrical/Control Engineering Support Services for the SCADA Design/Build Project; B) Adopt Resolution No. 2007-69 to Approve a Cooperative Agreement between Association of Monterey Bay Area Governments and Marina Coast Water District for the 2007 Regional Ortho-photography Project; C) Adopt Resolution No. 2007-70 to Accept the New 12-inch Recycled Water Main in Abrams Drive; D) Adopt Resolution No. 2007-71 to Update Authorized Signatures for the Local Agency Investment Fund; and, E) Approve the Draft Minutes of the Regular Board Meeting of September 12, 2007. 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			

8. Action Items:

- A. Consider Entering Into Negotiations with Jim Heitzman to Amend, Rescind or Terminate the General Manager Employment Contract between him and the Marina Coast Water District:

Mr. Lloyd Lowery, Legal Counsel, suggested letting staff make comments first before opening the item up for discussion. Mr. Jim Heitzman, General Manager, stated that he appreciated the opportunity to work for the Marina Coast Water District and the Mission and Vision Statements of the District are powerful which he believes he can fit and help accomplish. He added that it takes fiscal responsibility to manage the \$280 million in potential projects and make sure they come in on time and under budget. Mr. Heitzman commented that there are a lot of unique opportunities and the District in the past has exercised their abilities and demonstrated that they can accomplish them i.e. desalination, recycled water to the Ord Community, the expansion of the City of Marina and the former Fort Ord. Mr. Heitzman stated that he is pleased to be a part of the District.

Agenda Item 8-A (continued):

Mr. Jeff Cattaneo, District Engineer, commented that although Mr. Heitzman has been here only a week and a half, he is well qualified and will help lead that District in the direction it needs to head and provide opportunities for the District that it hasn't had in the past.

Mr. John Sanders, Marina resident, commented that this agenda item was introduced because of the deep concern voiced by ratepayers during the September 12, 2007 Board meeting. The agenda item as defined is important, beyond this however, is an equally important step the Board must take to avoid further problems in the General Manager recruitment and selection process. Mr. Sanders stated the Board must develop a clear written set of procedures to guide future hiring negotiations. He suggested taking necessary steps to develop an open process by writing clear guidelines for the Board and their successors; and ensure that methods are sound and ethical so that future decisions will bestow ratepayer trust and confidence and fulfill the Mission and Vision established for the District.

Ms. Jan Shriner, Marina resident, read aloud a letter submitted by Ms. Sally Sun who was not able to attend the meeting. Ms. Sun's letter asked where it was written in the hiring policies and procedures that only one candidate shall be interviewed for an important position as the general manager. It asked where it is written that two officials shall make a hiring decision for a position that pays in excess of \$100,000. Ms. Sun's letter asked if Mr. Heitzman found it unusual that only two officials were in contact with him to make the offer and how was his worth justified when the former general manager's salary was almost half this amount. The letter asked if the process was fair and transparent for the citizens of Marina to pay over \$200,000 to someone who was "under the radar" and whose candidacy was a direct raid on a sister agency. Ms. Sun asked that her questions be answered during the meeting.

Ms. Shriner commented that if the Board had participated in Ethics training, it would be clear that this contract is null and void and not a legally binding contract. If this is found to be true in the court system, all payments would be required to be returned and there can be no "breach of contract" or "rescinding of contract" retribution. Ms. Shriner commented that if the Board can reach a majority agreement to rescind this contract to begin an honest hiring process to consider fully other candidates, she urged them to do so. She inquired why Mr. Lowrey stated that email correspondence from Director Nishi to Mr. Heitzman is privileged while Mr. Heitzman's responses to Director Nishi are non-privileged. Ms. Shriner submitted copies of the written correspondence for record.

Mr. Mike Owen, Marina resident, commented that he had not heard any negative comments about Mr. Heitzman's qualifications, expertise, skills or ability and did not think that was the issue here. He stated that ratepayers want to get the best deal for Marina and it didn't look like the Board made too much effort to do so in this instance. Mr. Owen said that when you buy a used car, you never pay the sticker price, but this deal looks as if the Board not only paid the sticker price, they asked how much the dealer wanted on the sticker price so they would know how much to pay.

Agenda Item 8-A (continued):

Ms. Paula Pelot, Preston Park Tenant's Association, commented that when she reviewed the documents received in the public records request, she found several alarming items. The Board did not provide the negotiation team negotiations parameters and allowed the negotiating team to run the recruitment which was seriously flawed. Ms. Pelot commented that the advertisement was severely limited and gave the appearance of there being a pre-selected candidate. Past open recruitments for the general manager position were fairly robust and the Board in this instance was given grossly inadequate time to review the terms of the contract before voting on it. Ms. Pelot stated the job announcement had specific instructions on what information to submit, the format, and to include the requisition number, but in all the emails provided in the public records request, none had the required information on Mr. Heitzman. Therefore, Mr. Heitzman received special treatment and the other applicants received unequal treatment which leaves the District open to a discrimination lawsuit. Ms. Pelot reiterated that the District should have specific personnel policies and guidelines. The negotiating salary appears to be excessive and not in the needs of the District which was never outlined in advance. Ms. Pelot stated the termination clause is a direct contradiction to Mr. Heitzman being an at-will employee; the annual increase is a departure from past contracts which are reflected by the CPI; the lifetime healthcare insurance is excessive especially since there was no pre-employment exam as required for other employment practices; the contributions to multiple retirements is excessive and puts the District at risk with the agencies it has to work with. Ms. Pelot added that if the District is further carved down, it might not be able to respond to its obligations and will draw more heavily on the small pool of ratepayers.

Ms. Nancy Amadeo, Marina resident, commented that her concerns echoed those already voiced this evening although she does not have concerns over Mr. Heitzman's qualifications. She is concerned about the process. Ms. Amadeo stated her concerns involved how the application process was initiated; what was requested in the application; the screening process, the interview process; how was it that there was only one candidate when there were multiple applicants for the job. Ms. Amadeo commented that she would like those questions answered at this meeting.

Ms. Monique Fargues, Marina resident, urged the Board to reconsider the contract. She voiced her concern over the lifetime health benefit for Mr. Heitzman if he stays with MCWD for three years. How will that benefit affect the other employees? Will the District need to provide the same benefit to other employees? Ms. Fargues asked how Mr. Heitzman was hired without having a resume available. She again urged the Board to reconsider the contract with Mr. Heitzman.

Ms. Margaret Ann Coppernoll, Marina resident, commented that she agreed with all the statements previously made by fellow citizens. She commented that the salary was excessive and a burden to ratepayers and does not understand what the qualifications and additional duties are that justify the excessive increase in salary. Mr. Heitzman has not been on the job long enough to earn that substantial increase. Ms. Coppernoll inquired if there were any additional duties that have been allocated to this position that justify this huge expense.

Agenda Item 8-A (continued):

Ms. Coppernoll asked if the salary was commensurate with others in the area and stated that even Generals in the Army did not earn that much of a salary even while putting their lives on the line. Ms. Coppernoll voiced her admiration for the members of the Board. She stated that they have done a stupendous job for the District and worked long hours for no compensation whatsoever. Other agency Board members receive \$400 - \$500 monthly for their time and if the District Board wants to spend extra funds, they should look at designating some of those funds for themselves.

Ms. Susan Kiefert, MCWD employee and Marina resident, voiced her concern over the public attacks on the District and Mr. Heitzman. She then voiced her support for Mr. Heitzman and commented that he will be wonderful for the District.

Mr. Charles Scholl, Marina resident, commented that he knows Mr. Heitzman and has always found him to be pleasant and professional. Mr. Scholl stated that he agreed with the comments made by the public and finds the hiring process arbitrary and capricious. He urged the Board to consider the impact this contract will have in negotiations for many years to come.

Director Moore stated that he and Director Brown had asked for this item to be placed on the agenda. He stated that he agreed with the comments and that this wasn't about Mr. Heitzman as a person or not being qualified for the position. Director Moore commented that this was about a flawed Board hiring process; the magnitude of the compensation package; and the implications it may have within the District and adjoining agencies and land use jurisdictions. He voiced his concern over the impact this may have over Union negotiations which the Board is scheduled to begin next year.

Director Moore made a motion to enter into negotiations with Mr. Heitzman. Director Brown seconded the motion. Director Brown reiterated that this was not against Mr. Heitzman and agreed that he was imminently qualified for the position. He added that contrary to earlier opinion, this is a completely binding contract.

Director Moore asked Legal Counsel if the Board collectively approved it, could they reveal anything that was discussed in closed session since all of the discussion regarding Mr. Heitzman's contract occurred in closed session. Mr. Lowrey answered that the Board could vote to disclose information from closed session, but he would advise against doing it. He added that in the hiring process, the final action was taken in open session at which all members of the Board and anyone else who wanted to, could make comments about the process and the contract itself. Mr. Lowrey stated that in his opinion, the process followed and was taken from the Brown Act in regards to the agenda and procedure. A negotiating team was appointed in open session which would have allowed argument if the directions were not appropriate. Mr. Lowrey stated that the fact-of-the-matter was that the General Manager's position was different from other positions in the District.

Agenda Item 8-A (continued):

Mr. Lowrey stated that the General Manager position is a statutory position and the Board is required to engage a General Manager. Director Moore asked if discussions in closed session regarding the contract could be discussed in open session since the contract was now a public document. Mr. Lowrey commented that open session, following negotiations and deliberations on an appointment, is to give individuals the opportunity to make comments and raise whatever point that individual wishes to make concerning the action that is contemplated to be taken.

Vice President Nishi commented that he expected Board members to make their comments in open session following a closed session discussion if they have any issues. He also asked why Director Brown seconded the motion if he was aware that the contract is binding. Director Brown answered that the nature of the motion was not to rescind the contract but to ask Mr. Heitzman to enter into negotiations with the Board regarding the contract.

President Gustafson called for the question. The motion failed.

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

B. Receive Update on Fats, Oil and Grease Program; and Approve Follow-Up to those Businesses Not in Compliance:

Mr. Heitzman introduced this item.

Director Moore made a motion to visit the non-compliant business and send the non-compliant letter. 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			

9. Information Items:

A. General Manager's Report:

Mr. Heitzman informed the Board that there was a Special District Conference on October 2<sup>nd</sup> through 4<sup>th</sup> in Monterey.

B. Counsel's Report:

Mr. Lowrey stated he had nothing to report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Lee stated the WCC did not meet since the last meeting.

2. Joint City-District Committee:

President Gustafson commented that the committee met and discussed a Special Assessment District for Lake Court residents.

3. MRWPCA Board Member:

Vice President Nishi commented the meeting was boiler plate and that the MRWPCA was advertising for a new Assistant General Manager (AGM). He stated that under Director's comments he expressed his concern that they were asking the Board to give comments on the job description and job search. Vice President Nishi added that the Board hires the General Manager and the General Manager should be reviewing the job description and how to advertise for the job.

Director Moore asked when Vice President Nishi was going to inform the MCWD Board that he was removed from the Budget and Personnel Committee at the MRWPCA. Vice President Nishi stated that in the morning he received an email stating that the AGM had resigned and was going to work for MCWD. Then later that morning, he received another email with a letter from the Chairman of the Board that they were reducing the size of the committee and MCWD was therefore removed.

4. LAFCO Liaison:

Vice President Nishi commented that the main issue was the sphere-of-influence and keeping LAFCO in the loop. There was discussion regarding the sphere-of-influence in the Salinas Valley with Soledad and Greenfield and their growth plans.

Director Moore commented that there was also discussion on the Special Districts Association (SDA) requesting a seat at the table when counties and cities negotiate over sphere-of-influence changes and annexations. Director Lee questioned if the Brown Act doesn't apply to the SDA, how can they sit on the Board of an Agency that the Brown Act does apply to. Mr. Lowrey answered that it was an anomaly.



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.

7. FORA:

Vice President Nishi stated that there was a special meeting to amend the contract on Eucalyptus and General Jim Moore Blvd. There was also a reception to welcome the new UCSC Chancellor.

8. Executive Committee:

President Gustafson commented that the Committee did not meet.

9. Community Outreach:

President Gustafson commented that the Committee did not meet.

10. Ord Community Ad Hoc Committee:

Director Moore stated that the meeting was to be rescheduled. The next meeting would be discussing a Joint Powers Agency.

11. Special Districts Association (SDA) Liaison:

President Gustafson stated that he had nothing to report. Director Moore invited everyone to attend the CSDA conference October 2, 3, and 4, 2007.

D. Director's Comments:

Director Brown commented that he looked forward to working with the new General Manager, Jim Heitzman, and putting the feud behind everyone and moving forward.

Director Moore commented that following the last OCAC meeting he had a conversation with Mayor Mettee-McCutcheon and she mentioned that Directors Gustafson and Nishi have met with Mr. Tony Altfeld, Marina City Manager, to discuss City/District business. Director Moore advised that it could be considered a violation of the Brown Act as Directors Gustafson and Nishi and Mr. Altfeld are all primary or alternate members on the Joint City/District Committee.

Agenda Item 9-D (continued):

Director Moore stated that Mayor Mettee-McCutchon voiced her concern over the meetings being held without MCWD Board approval and suggested that it be discussed at the next Joint City/District Committee meeting. Director Moore suggested that Directors Gustafson and Nishi provide some information to the rest of the Board on what was discussed at those meetings. Vice President Nishi stated that they just got together to discuss different issues.

President Gustafson commented that they were just a lot of arguments, disagreements and politics as usual.

Vice President Nishi commented that it is good that there is a healthy Board who will have disagreements and then be able to move on and do what they were hired to do.

10. Planning Workshop:

Mr. Heitzman introduced himself and said that he had worked for the MRWPCA for the last three and a half years. He added that he loves this area and is happy to be working here.

Ms. Fargues asked what Mr. Heitzman did before moving to the Monterey Peninsula. Mr. Heitzman answered that he has worked in wastewater since the late 1970's. He has a Bachelors Degree and Masters Degree. Mr. Lowrey commented that Mr. Heitzman is recognized nationally and has made presentations at national and statewide conferences.

14. Adjournment:

The meeting was adjourned at approximately 8:04 p.m.

APPROVED:

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Howard Gustafson, President

Date

ATTEST:

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Jim Heitzman, General Manager