

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
October 24, 2007
6:45 p.m.

Minutes

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on October 24, 2007.

2. Roll Call:

Board Members Present:

Howard Gustafson – President
Ken Nishi – Vice President
Bill Lee
Tom Moore – arrived at 6:48 p.m.

Board Members Absent:

David Brown

Staff Members Present:

Jim Heitzman, General Manager
Jeff Cattaneo, District Engineer
Lloyd Lowrey, Legal Counsel
Andy Sterbenz, Schaaf & Wheeler Consultant
Suresh Prasad, Director of Finance
Paula Riso, Executive Assistant/Clerk to the Board

Audience:

Bob Holden, MRWPCA

3. Action Item:

- A. Consider Appointing Jim Heitzman, General Manager, as a District Negotiator Regarding the Monterey Regional Water Pollution Control Agency Negotiations; the Clark Colony Water Company Negotiations; the Seaside County Sanitation District Negotiations; the Armstrong Ranch Negotiations; and the Marina Dunes Negotiations:

Agenda Item 3-A (continued):

Vice President Nishi made a motion to appoint Mr. Heitzman as a District negotiator in the Monterey Regional Water Pollution Control Agency; the Clark Colony Water Company; the Seaside County Sanitation District; the Armstrong Ranch; and the Marina Dunes negotiations. Director Lee seconded the motion. The motion was passed.

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

The Board entered into closed session at 6:47 p.m. Director Moore arrived at 6:48 p.m.

4. 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

B. Pursuant to Government Code Section 54956.8

Conference with Real Property Negotiator (General Manager, Lloyd Lowrey, Bill Dendy)
Property: Water Rights
Negotiating Parties: MCWD and Clark Colony Water Company
Under Negotiation: Price and Terms

C. Pursuant to Government Code Section 54956.8

Conference with Real Property Negotiator (General Manager)
Property: 11 Reservation Road
Negotiating Parties: MCWD and Marina Dunes
Under Negotiation: Price and Terms

D. Pursuant to Government Code Section 54956.8

Conference with Real Property Negotiator (General Manager)
Property: Easements, Rights-of-Way, Pipelines and Appurtenances, and Water Rights
Negotiating Parties: MCWD and Seaside County Sanitation District
Under Negotiation: Price and Terms

- E. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiators (General Manager)
Property: Armstrong Ranch Reserved Area and Easements
Negotiating Parties: MCWD and Armstrong Family
Under Negotiation: Price and Terms

President Gustafson reconvened the meeting to open session at 7:18 p.m.

5. Possible Action on Closed Session Items:

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

6. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

7. Oral Communications:

None.

8. Public Hearing:

- A. Consider First Reading of Ordinance No. 50 to Amend Appendix C by Updating the Water Demand Factor for Theaters and Direct Staff to Schedule a Second Reading on November 14, 2007:

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

Director Moore made a motion to approve the first reading of Ordinance No. 50 and bring it back on November 14, 2007 for a second reading. Director Lee seconded the motion. The motion was passed.

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

9. Consent Calendar:

Director Moore made a motion to approve the consent calendar consisting of item A) Approve the Draft Minutes of the Regular Board Meeting of October 10, 2007. Director Lee 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	-	Absent			

10. Staff Reports:

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

Mr. Jim Heitzman, General Manager, introduced this item. He reviewed several changes proposed to the agreement and also explained that County Counsel and Mr. Curtis Weeks, MCWRA General Manager, have stated that they don't believe there needs to be a permission letter regarding the proposed action as there is a clause in the agreement which states the District will be allowed to take this action.

B. Receive Update on Existing Outstanding Bond and Rate Study Progress Report:

Mr. Heitzman introduced this item and noted that the outstanding bond was pledged by residents of both the City of Marina and Ord Community. There could have been bonds pledged by the City of Marina at a lower rate and the Ord Community at a higher rate, but by joining the two, a more favorable rate was achieved overall.

Mr. Suresh Prasad, Director of Finance, gave a brief presentation of the outstanding bonds and rate study progress report.

Director Lee asked how much of the bond the District had in the bank. Mr. Prasad answered that the construction fund had approximately \$19.2 million in the bank with about \$7 million pledged for the D/E tank and sewer improvement projects. Mr. Prasad explained that of the \$42 million in bonds, \$8 million was to pay off existing debt; \$3 million must be kept as a debt reserve fund; with the \$19.2 million still in the bank. The remainder of the bond was used for various CIP projects.

Vice President Nishi inquired on the interest yield of the funds in the bank and asked if the District can keep the interest earned on those accounts. Mr. Prasad answered that the District has to pay back the arbitrage amount every five years which is the difference of the amount earned in interest and paid in interest on the bond.

Vice President Nishi commented that when the bond was first discussed, he would have liked to know that Central Marina could have carried itself without joining in this bond. He stated that the Board should have had a choice of the Ord Community going separately and paying a higher interest rate or including Central Marina for a lower rate.

Agenda Item 10-B (continued):

Director Moore stated that as long as the District doesn't spend the funds while there is slow growth, things will be all right. Mr. Heitzman commented that while there is slow growth, staff is being very diligent in assessing project needs to ensure that funds don't get expended unless there is a real need.

Mr. Prasad gave a brief update on the rate study and explained that Municipal Financial Services is doing a peer review of the rate study report.

Vice President Nishi asked if the District segregates the capital funds from the user rates in the books. Mr. Prasad answered that the capital funds are not separate in the audited financial statements but are segregated in the quarterly financial report. Vice President Nishi inquired that capacity charges are capital funds. Mr. Prasad answered affirmatively. Vice President Nishi asked if capital funds are restricted. Mr. Prasad answered that they are maintained separately and are designated accounts.

Vice President Nishi inquired on the capital component charges that were combined with user fees two years ago when capacity charges were initiated, and wanted to know if those are maintained separately. Mr. Prasad answered that they are not maintained separately because when the capacity charges began, the capital component charge was combined with the user fees. Only capacity charges are maintained separately. Vice President Nishi asked where the justification was to combine the capital component charge in the user fee and asked Legal Counsel for advice. Mr. Lowrey commented that the District has to show the charges to each customer equate to the benefits received by each customer with respect both capital capacity charges and rates imposed. Vice President Nishi asked where it was justified to combine the component charges into user fees and asked why the rates were not increased over the last two years. Mr. Lowrey answered that the justification would be in the budget document and back-up for the budget document. Vice President Nishi asked to see the justification information. Mr. Prasad answered that the information would be provided.

11. Informational Items:

A. General Manager's Report:

Mr. Heitzman announced that a letter was received that afternoon from Director Brown announcing his resignation, effective immediately. That letter and a memorandum regarding filling a vacant seat were distributed to the Board. Vice President Nishi questioned the time frame. Mr. Lowrey answered that the Board must take action (to appoint someone) within sixty days of the resignation. Fifteen days before that action is taken, notice of the vacancy must be posted in three conspicuous places and may be advertised in the newspaper, if desired. Mr. Lowrey added that within fifteen days of the date of resignation, the Monterey County Elections

Agenda Item 11-A (continued):

official, Registrar of Voters, needs to be notified of the vacancy. Mr. Lowrey recommended placing an item on the November agenda to consider appointing a Director at the December meeting. Vice President Nishi stated that he would like to consider the appointment at the November meeting thus leaving the December meeting as a fall back in case an appointment is not made at the November meeting. Mr. Lowrey stated that if the Board wants to do that tonight, they would need to take action to add to the agenda, as an urgency item, the Director vacancy and appointment at the November meeting.

Vice President Nishi made a motion to add the Director vacancy and possible appointment to the November 14, 2007 meeting. Director Lee seconded the motion. The motion was passed.

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

B. District Engineer's Report:

Mr. Jeff Cattaneo, District Engineer, updated the Board on the D/E project and the fact that the City of Seaside considers moving the Nextel tower to be a new action, thus requiring a full review of possible locations. The process of having to apply to the City of Seaside for a permit to mobilize the tower then applying for a building permit may take six to eight months to complete. Mr. Cattaneo stated that this delay could cost the District a considerable amount of money because the District would have to issue a delay in construction to the contractor.

Director Moore asked if FORA was aware what the City of Seaside was doing and suggested that staff talk to FORA and bring them up to date on the situation. Another option was to talk to Nextel.

Director Lee asked if Mr. Heitzman could talk with the City of Seaside and get things worked out. Mr. Heitzman answered that the idea of talking to FORA had merit.

Vice President Nishi asked if anyone could be held liable for allowing Nextel to put their tower on property that didn't belong to the District. Mr. Lowrey answered that there was no liability as the District has exclusive easements to the property.

Director Lee commented that FORA gave the property to the City of Seaside when it should have given it to MCWD because of the District's infrastructure on the site. Mr. Lowrey agreed adding that the contract with FORA and the Army stated that the property was supposed to have been given to the District. Vice President Nishi suggested that the District approach FOR A and request the site to be given to the District. Mr. Lowrey stated that was one remedy.

Agenda Item 11-B (continued):

The Board directed Mr. Heitzman to talk with FORA regarding the site.

C. Counsel's Report:

Mr. Lowrey stated that he was going to defer his report to item 12.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Lee commented that the Commission was moving forward and saving lots of water.

Mr. Heitzman requested to go back to item 11-B.

President Gustafson asked staff to talk with the City of Seaside and when there is something to report, bring it back to the Board.

2. Joint City-District Committee:

Vice President Nishi stated the Committee discussed the Lake Court issue.

3. MRWPCA Board Member:

Vice President Nishi stated the meeting was next Monday evening.

4. LAFCO Liaison:

Vice President Nishi suggested that each Board member attend a LAFCO meeting to see how they are run. The MOU requesting the local cities be included earlier in the process was discussed.

5. JPIA Liaison:

Director Moore stated the next meeting was after the Thanksgiving holiday.

6. Monterey Bay Regional Water Authority:

President Gustafson announced the next meeting was Friday at 4:00 pm.

7. FORA:

Vice President Nishi stated that the meeting was cancelled.

8. Executive Committee:

President Gustafson stated that no meeting was held.

9. Community Outreach:

President Gustafson commented that a video was shot at the District and was presented on channels 24 and 25. Staff also gave a presentation at the last City of Marina's Council meeting.

10. Ord Community Ad Hoc Committee:

Director Moore commented that the next meeting was tomorrow, October 25th with the topic being Joint Powers Authorities.

11. Special Districts Association Liaison:

President Gustafson stated he had no comments.

E. Director's Comments:

Director Moore commented that when the Board set up the committee of citizens for the hiring procedures, a deadline for appointments was not set.

Vice President Nishi asked to put Special District Association of Monterey County on the next agenda to ask them to put the Brown Act in their by-laws.

President Gustafson commented that he will miss Director Brown since he is moving out of the District.

Director Moore asked to have a resolution and plaque for Director Brown at the next meeting.

12: Correspondence:

Mr. Lowrey stated that attached to the Board packet, and additionally, was correspondence received from Ms. Paula Pelot and others relating to an alleged violation of the Brown Act. The correspondence was asking the Board to set aside the new General Manager's contract, to reconsider it and take various other actions. Mr. Lowrey stated that he had reviewed the letter and had an independent review by another member of his firm who is not directly involved in this.

Agenda Item 12 (continued):

Mr. Lowrey stated that based on the letter, the information the letter refers to, and the minutes of the meeting, his opinion is that there was not a Brown Act violation. Therefore, Mr. Lowrey is not in the position to give the opinions the letter requests of Counsel. Mr. Lowrey opined that everything was done by the book and the information which has been released in the Public Information Act did not disclose any violation of the Brown Act.

Mr. Lowrey commented that there are some technical issues with the letter. Since the action was taken in open session, any Brown Act violation claims need to be made within thirty days rather than ninety days.

Mr. Lowrey stated that the Board had the ability to accept this as a valid claim under the Brown Act and reconsider the contract. He added that he wouldn't advise the Board to do that, but they did have the authority to do so if they wanted to. Mr. Lowrey commented that he did not see a need to set a special meeting to consider this item. He stated that the District is required to respond to this item within thirty days of the time it is received. Mr. Lowrey stated that since the next scheduled meeting is within that thirty day time frame, he advised the Board to add an item to the November 14th agenda to respond to the letter. The Board concurred.

13. Adjournment:

The meeting was adjourned at 8:10 p.m.

APPROVED:

Howard Gustafson, President

Date

ATTEST:

Jim Heitzman, General Manager