

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Regular Board Meeting
July 14, 2009
6:30 p.m.

Minutes

1. Call to Order:

President Gustafson called the meeting to order at 6:30 p.m. on July 14, 2009.

2. Roll Call:

Board Members Present:

Howard Gustafson – President
Bill Lee – Vice President – arrived at 6:33 p.m.
Ken Nishi
Tom Moore
Dan Burns

Board Members Absent:

None.

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Jean Premutati, Management Services Administrator
Brian True, Interim District Engineer
Suresh Prasad, Director of Finance
Rich Youngblood, Conservation Coordinator
Barbara Montanti, Customer Service Assistant

Audience Members:

Mitch Winick, Monterey College of Law
Bob Holden, MRWPCA
Jan Shriner, Green Party
Andy Sterbenz, Schaaf & Wheeler
Stuart Bennett, CalPERS
Salvadore Lucido, 223/225 Palm Avenue

The Board entered into closed session at 6:30 p.m.

3. Closed Session:

- A. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiator (General Manager, Legal Counsel)
Property: D/E Reservoir Site
Negotiating Parties: MCWD and City of Seaside
Under Negotiation: Lease Agreement
- B. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiator (General Manager, Legal Counsel)
Property: Lonestar Property
Negotiating Parties: MCWD and CEMEX
Under Negotiation: Price, Terms, and Conditions
- C. Pursuant to Government Code Section 54957.6
Conference with Labor Negotiator
Agency Negotiator: General Manager
Employee Organizations: Teamsters Local 890 and Unrepresented Employees

The Board ended closed session at 6:51 p.m.

President Gustafson reconvened the meeting to open session at 7:00 p.m.

4. Possible Action on Closed Session Items:

President Gustafson stated that direction was given on item 3-A; and direction was given on item 3-C with action to be taken under agenda items 8-D and 8-E.

5. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

6. Oral Communications:

None.

7. Consent Calendar:

Agenda Item 7 (continued):

Director Burns made a motion to approve the Consent Calendar consisting of items; A) Approve Expenditures for the Month of June 2009; B) Approve the Draft Minutes of the Special Board Meeting of May 19, 2009; C) Approve the Draft Minutes of the Regular Board Meeting of June 9, 2009; D) Approve the Draft Minutes of the Special Board Meeting of June 12, 2009; and, E) Approve the Draft Minutes of the Special Board Meeting of July 1, 2009. Director Moore seconded the motion. The motion was passed.

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

8. Action Items:

- A. Consider Adoption of Resolution No. 2009-46 to Approve a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between Marina Coast Water District (MCWD) and Monterey College of Law (MCL) for the MCL Criminal Justice Center in Seaside, CA:

Mr. Brian True, Interim District Engineer, introduced this item.

Director Moore made a motion to adopt Resolution No. 2009-46 to approving a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between MCWD and Monterey College of Law (MCL) for the MCL Criminal Justice Center in Seaside, CA. Director Burns seconded the motion. The motion was passed.

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

Mr. Mitch Winick, Monterey College of Law, complimented staff and consultants for the great job in getting this project completed.

- B. Consider Adoption of Resolution No. 2009-47 to Approve an Audit Contract for FY 2008/2009 through FY 2010/2011:

Mr. Suresh Prasad, Director of Finance, introduced this item and commented that the audit firm staff recommended was R.J. Ricciardi, Inc. Director Burns asked if this was a three-year contract. Mr. Prasad answered it was.

Agenda Item 8-B (continued):

Director Burns made a motion to adopt Resolution No. 2009-47 approving an Audit Contract for FY 2008/2009 through FY 2010/2011. Director Moore seconded the motion. The motion was passed.

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

C. Consider Adoption of Resolution No. 2009-48 to Approve the District Reserve Fund Policy:

Mr. Prasad introduced this item. Director Moore had a clarifying question.

Director Burns made a motion to adopt Resolution No. 2009-48 approving the District Reserve Fund Policy. Director Moore seconded the motion. The motion was passed.

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

D. Consider Adoption of Resolution No. 2009-49 to Approve the Memorandum of Understanding between the Marina Coast Water District Employees Association and the Marina Coast Water District:

Ms. Jean Premutati, Management Services Administrator, introduced this item. She stated that there were a few minor changes to the document. The changes are:

- 1) Article 10.5 – Shift Differential, the end of the first sentence should read, “...rate of pay for all hours worked during the assigned shift.” The second sentence should also read the same, “...rate of pay for all hours worked during the assigned shift.”
- 2) Article 12 – Holidays, the last paragraph should read, “Association members who are statutorily non-exempt...”
- 3) Article 15.6 – Voluntary Furlough, item 5 should read, “may take up to forty (40) hours of ~~unpaid leave~~ of voluntary furlough without pay at any one time...”

Director Moore made a motion to adopt Resolution No. 2009-49 approving the Memorandum of Understanding between the Marina Coast Water District Employees Association and the Marina Coast Water District with the aforementioned changes. Vice President Lee seconded the motion. The motion was passed.

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

- E. Consider Adoption of Resolution No. 2009-50 to Approve the Memorandum of Understanding between the Teamsters Local 890 and the Marina Coast Water District:

Ms. Premutati introduced this item and mentioned that the table of contents is missing Article 15.7 – Voluntary Furlough Without Pay.

Director Burns made a motion to adopt Resolution No. 2009-50 approving the Memorandum of Understanding between the Teamsters Local 890 and the Marina Coast Water District. Vice President Lee seconded the motion. The motion was passed.

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

- F. Consider Adoption of Resolution No. 2009-51 to Approve a Resolution of Intention to Approve an Amendment to the Contract between the Board of Administration California Public Employees' Retirement System and the Board of Directors Marina Coast Water District:

Ms. Premutati introduced this item and Mr. Stuart Bennett, California Public Employees Retirement System. Director Moore asked a question regarding any increases that may be upcoming over the next few years. Mr. Bennett answered that unless the economy has a drastic turn-around, there will be increases in employer paid contributions.

Director Burns made a motion to adopt Resolution No. 2009-51 approving a Resolution of Intention to Approve an Amendment to the Contract between the Board of Administration California Public Employees' Retirement System (CalPERS) and the Board of Directors Marina Coast Water District. Director Moore seconded the motion. The motion was passed.

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

- G. Consider Adoption of Resolution No. 2009-52 to Approve the Paying and Reporting of Employer-Paid Member Contributions of CalPERS for the Marina Coast Water District Employees Association; and Resolution No. 2009-53 to Approve the Paying and Reporting of Employer-Paid Member Contribution of CalPERS for the Management and Confidential Unit, Teamsters Local 890:

Ms. Premutati introduced this item.

Agenda Item 8-G (continued):

Director Moore made a motion to adopt Resolution No. 2009-52 approving the Paying and Reporting of Employer-Paid Member Contributions of CalPERS for the Marina Coast Water District Employees Association and Resolution No. 2009-53 to Approve Paying and Reporting of Employer-Paid Member Contributions of CalPERS for the Management and Confidential Unit, Teamsters Local 890. Vice President Lee seconded the motion. The motion was passed.

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

H. Consider Adoption of Resolution No. 2009-54 to Approve a Professional Services Agreement with The EDCCO Group for SCADA Design Integration for the Recycled Water Component of the Regional Urban Water Augmentation Project:

Mr. True introduced this item.

Director Burns made a motion to adopt Resolution No. 2009-54 approving a Professional Services Agreement with The EDCCO Group for SCADA Design Integration for the Recycled Water Component of the Regional Urban Water Augmentation Project. Director Moore seconded the motion. The motion was passed.

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

I. Consider Adoption of Resolution No. 2009-55 to Provide a Variance Regarding 223/225 Palm Avenue:

Director Nishi asked to hold this item until later in the meeting as the applicant was delayed in getting to the meeting.

President Gustafson agreed to postpone this item until later in the meeting.

J. Consider Censure of a Director:

Mr. Lloyd Lowrey, Legal Counsel, introduced this item. He recommended, in accordance with a recent decision in the California courts, to give Director Moore due process to receive information at this meeting and take no action until the following meeting to allow Director Moore adequate time to respond.

Agenda Item 8-J (continued):

Director Burns asked why this time the censure is being handled differently than last time. Mr. Lowrey answered that last time it involved an employee and was discussed in closed session. This time, it does not involve an employee and a Board member is an elected official, not an employee.

Director Moore asked Mr. Lowrey to state for the record that he prepared the agenda transmittal and draft resolution. Mr. Lowrey answered affirmatively. Director Moore asked if Mr. Lowrey could swear that the information regarding this item in the Board packet is true, the whole truth and nothing but the truth. Mr. Lowrey answered no, that it was not his function. His function was to investigate, obtain facts and to try to verify the facts to the best of his ability. It was not his job to attest to the veracity of the facts, and he did not have enough first hand knowledge that he would consider appropriate to be able to attest to. Mr. Lowrey stated he tried diligently to obtain the facts set forth here and to send them forth as clearly as possible. Director Moore asked if Mr. Lowrey spoke directly to him during the process of obtaining the facts. Mr. Lowrey answered that he did not. Director Moore stated that now there was a series of derogatory allegations that are now part of a permanent public record. If they are not Mr. Lowrey's allegations, then whose allegations are they? Mr. Lowrey commented that at a previous meeting, Director Nishi had asked to have this item on the agenda. Director Moore stated that at the June 9, 2009 meeting, when Director Nishi asked to have a censure item placed on the agenda, Director Moore asked what the topic of the censure would be and no one answered his question. Director Moore voiced his disappointment in having these allegations made public without anyone talking directly to him.

Director Moore stated that he would be responding to the allegations and some of them are quite ambiguous. First, the Special Districts Association position Director Moore allegedly took over and secondly there is no evidence other than references to the Board Procedures Manual and three different Board meetings. Director Moore commented that in order to prepare a response, he needs to know what specific evidence is involved. Director Moore stated that the burden of proof must lay with those making the allegations. Director Moore stated that several weeks ago the Department of the Navy ordered him to attend a meeting of Navy officials on the East Coast during the week of August 10th. Since his service in the defense of the United States must take priority over his service on this Board, he must ask that the Board postpone consideration of this item until the September 8th Board meeting.

President Gustafson stated that when he came on the Board there was not much being done. As a resident of Marina, he noticed that there seemed to be officials who used the organization to control development and used water as a hostage.

Director Nishi answered that they weren't talking about water and they were talking about the censure.

Agenda Item 8-J (continued):

President Gustafson commented that when the Board met in discussions on the Recycled Water Project they met as a team; and when the Board wanted representation for the Special Districts Association, they as a Board decided that they wanted Director Ken Nishi to represent us.

Director Nishi asked what was being done tonight. Mr. Lowrey answered that they are receiving the transmittal and draft resolution. It may be discussed and no action will be taken at this time. Director Nishi asked if the Board was being asked to receive this information and making a motion to take action at a different meeting. Mr. Lowrey answered affirmatively and stated that Director Moore asked for additional information and if anyone wanted to provide additional information they may do so at this time.

President Gustafson commented that the Board did not want Director Moore to represent them at the Special Districts Association (SDA) and the Board approved another Director to do so. Contrary to the Board's wishes, Director Moore continued to attend and got promoted within the organization. On the LAFCO representation, the Board approved Director Nishi to run for election and Director Moore went out on his own contrary to the Board's wishes. It doesn't look good and it seems the District lost respect with the SDA. President Gustafson stated he wants the Board to work together as a team.

Director Burns commented that it is only fair to have all the facts before making a decision and it is fair to grant Director Moore an extension.

Vice President Lee commented that he hadn't heard if this item was going to be continued.

Mr. Lowrey commented that there had been a request to reschedule and if the Board desires further investigation and more detailed memoranda, they can direct staff and him to do that.

Director Burns made a motion to reschedule this item and for staff to further investigate and provide more detail at that meeting. Vice President Lee seconded the motion. Director Nishi stated that he could agree to that if Director Moore brings a copy of his orders in. Director Moore answered that he would bring in his orders. The motion was passed.

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

9. Staff Reports:

- A. Receive 2nd Quarter 2009 Ord Community Quarterly Water Consumption and Sewer Flows Report:

Agenda Item 9-A (continued):

Mr. Rich Youngblood, Conservation Coordinator, introduced this item.

Director Nishi questioned the water percentage used on page 292 under Army Facilities & Businesses – Ord.

Mr. Prasad commented that the percentage is reflected in water allocation and there is no specific allocation for this list. Mr. Youngblood stated there is not an allocation for Army facilities by themselves. This retention by the Army is for the entire Army community. Director Nishi asked why there is a water percentage at the bottom then. Mr. Prasad answered that it is a form report. Mr. Andy Sterbenz, Schaaf & Wheeler, suggested creating sub-categories like those in the Marina section. Mr. Prasad answered that he uses Crystal Reports to create this report and will try to adjust it accordingly. Director Nishi questioned the CSUMB allocations and asked that they be included in the breakdown. He also asked that the Abrams Park and Marina – Ord show allocations. Mr. Prasad will adjust the report to include those numbers.

President Gustafson returned to the postponed item 8-I.

- I. Consider Adoption of Resolution No. 2009-55 to Provide a Variance Regarding 223/225 Palm Avenue:

Mr. True introduced this item.

Director Nishi questioned how many EDU's are proposed for this project. Mr. True answered that there are six (6) EDU's for water, six (6) EDU's for sewer and one (1) EDU for the laundry unit for a total of seven (7) EDU's. Director Nishi asked how many EDU credits Mr. Lucido has. Mr. True answered that he has three (3) EDU credits. Mr. True stated that the plan review is still being processed and the final numbers will be decided when the plan review is complete. Director Nishi questioned why this isn't waiting until the plan review is complete so the Board can have the final numbers.

Director Moore asked how much was paid in capacity charges. Mr. Salvatore Lucido commented that he paid approximately \$34,000 in capacity charges and was under the impression that it would carry him through the completion of the project. He was not aware that there was a one-year window on the permit and needed to complete the project before that time. Mr. Lucido stated that now he owes an additional \$14,000. He is asking the Board to consider a payment plan or decreasing the fee of what is owed. Mr. Lucido commented that he did not receive all the information that he needed to know to complete the job in time.

Director Moore asked what the \$34,000 included. Mr. True answered that it included connection costs, permit applications, plan check fees, etc. Director Nishi asked if Mr. Lucido paid for everything at the time he got the permits. Mr. True answered that Mr. Lucido had paid for

Agenda Item 8-I (continued):

everything that was known at the time. Director Nishi asked why there was a delay in payment until the fees were increased. Mr. True answered that the plans were not complete and the process was never completed. Mr. Lucido stated that he was under the impression that everything was okay.

Director Moore stated that he agreed with Director Nishi and wanted to wait until the plan check process is complete then asked staff to put together a payment plan. President Gustafson agreed that it would be best to work with final numbers.

Vice President Lee asked if the water was connected and if the apartments were being held up because there was no connection. Mr. Lucido answered that everything was being held up at this point but his engineers are just about complete with the revisions and the plans should be heading back to the District within the next few days. Vice President Lee asked if other connections from the street to the property have been completed. Mr. Lucido answered that electrical and gas lines have been put in. The only things not in the ground are the water and sewer lines.

Mr. True commented that Attachment B shows the revised forms the District will be using in the Engineering Department.

Mr. Lowery commented that it would be appropriate to continue this at sometime in the future so the applicant is not left hanging.

Director Nishi made a motion to allow the applicant to cut into the street so he can get his occupancy, and staff come back with documentation that shows the District used due diligence to cover themselves. Mr. Lowrey clarified that the District will allow connection to the system, and at the next regularly scheduled meeting, staff will bring back the amount of fee and terms of payment.

Mr. Jim Heitzman, General Manager, asked that staff meet with the applicant and bring back an agreement to the next meeting. Discussion followed.

Mr. Lowrey asked if the motion was that staff meet with the applicant and bring back an agreement to the next meeting or schedule a special meeting if necessary. Director Nishi amended his motion to have staff bring back an agreement to the next meeting or schedule a special meeting if necessary. Vice President Lee seconded the motion. The motion was passed.

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

B. Receive a Report on the Customer Parking Areas at the Reservation Road Office:

Mr. Heitzman gave a brief report on the designated customer parking areas. Director Moore suggested that a time limit be placed on the customer parking signs. Mr. Heitzman answered that it could be done. Director Nishi stated that he did not want to spend any more funds on parking signs. Discussion followed.

10. Informational Items:

A. General Manager's Report:

Mr. Heitzman commented that there was a cost hearing at the PUC that lasted two days on the Coastal Water Project. The result was that the Regional Water Plan is a more cost efficient project and even if the rates were increased by 50%, it would still be more cost efficient than the Coastal Water Project.

Public Participation meetings were held in Monterey and Seaside. Approximately 95% were in favor of the Regional Water Plan being publicly owned. MCWRA, MRWPCA, MCWD, and CalAm are working together to understand each others projects and where the projects can benefit the other.

Director Moore asked if the hybrid project had any support. Mr. Heitzman answered that the hybrid project was ridiculed by a number of people and they don't want to hear about it. The hybrid project may not have been engineered sufficiently.

Director Nishi stated that Mr. Heitzman made positive comments at the Public Participation meeting regarding CalAm.

B. District Engineer's Report:

Mr. True stated he had nothing to report.

C. Counsel's Report:

Mr. Lowery observed that the Administration Law Judge who is presiding over the PUC process is a person who has a great depth of experience and favors collaborative approaches rather than litigation. The District's decision early on to participate in a collaborative approach was a wise decision. At this stage of the game, there isn't a project yet and all parties are participating in the process.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

No comments.

2. Joint City-District Committee:

No comments.

3. MRWPCA Board Member:

Director Nishi reported that the regular meeting was boilerplate. The Budget went through and capacity charges. Director Nishi said he voiced his concern that the packet listed names alphabetically and the newspaper did not.

4. LAFCO Liaison:

No comments.

5. JPIA Liaison:

No comments.

6. FORA:

Vice President Nishi stated the yearly legislative session presentations were made at the meeting and the budget was approved.

7. Executive Committee:

No comments.

8. Community Outreach:

Vice President Lee stated Mr. Paul Lord has been keeping customers informed on the available rebates. Also, a customer suggested considering a rebate for hot water recirculating pumps. President Gustafson commented that it helps to place the hot water heater in the correct spot for maximum efficiency. Director Burns said he thought the District was considering rebates on tankless water heaters at one time.

9. Ord Community Ad Hoc Committee:

No comments.

10. Special Districts Association Liaison:

No comments.

E. Director's Comments:

Director Burns commented on the censure issue. He stated that if Board members are going to be held accountable for their actions at all times, he doesn't want to wait to address the issues. As the issues arise, the issues should be placed on the table and discussed.

Director Nishi commented that hopefully the Board can work together to get things solved and it is better if they all worked as a team. If they work together they can get things done. Director Nishi agreed that the District should look into rebates for tankless water heaters.

Director Moore asked if the next meeting would return to the 6:45 p.m. time frame. President Gustafson answered it would.

President Gustafson reiterated what Director Nishi said about working together.

11. Adjournment:

The meeting was adjourned at 8:25 p.m.

APPROVED:

Howard Gustafson, President

ATTEST:

Jim Heitzman, General Manager