

Marina Coast Water District

Comfort Suites
12101 Challenger Parkway
Orlando, FL 32826
District Offices
11 Reservation Road
Marina, California

Dual Locations

Regular Board Meeting
September 22, 2009
6:45 p.m.

Minutes

1. Call to Order:

President Gustafson called the meeting to order at 6:45 p.m. on September 22, 2009.

2. Roll Call:

Board Members Present:

Howard Gustafson – President
Bill Lee – Vice President – via telephone
Tom Moore
Ken Nishi
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
Jim Dowless, Operations and Maintenance Superintendent
Rich Youngblood, Conservation Coordinator
Paula Riso, Executive Assistant

Audience Members:

Bob Holden, MRWPCA
Vienna Merritt Moore, Marina Resident
Bruce Delgado, Marina Mayor/Marina Resident
Sue Parris, Consultant
Larry Parsons, The Monterey Herald
Tony Kelsey, MCWD

Tim Wilson, Marina Resident
Katrina Morelli, Marina Resident
Andy Sterbenz, Schaaf & Wheeler
David Brown, Marina Resident
George Riley, Monterey Resident
Barbara Montanti, MCWD

The Board entered into closed session at 6:46 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: Former Fort Ord Well Sites
Negotiating Parties: MCWD, UCMBEST, FORA, U.S. Army
Under Negotiation: Easements and Fee Title Ownership

- C. Pursuant to Government Code Section 54956.8
Conference with Real Property Negotiator (General Manager, Legal Counsel)
Property: Cell Antennae – D/E Reservoir Site
Negotiating Parties: MCWD, Metro PCS
Under Negotiation: Price, Terms, and Conditions

The Board ended closed session at 6:54 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 no action was taken and direction was given.

5. Pledge of Allegiance:

President Gustafson led everyone present in the pledge of allegiance.

6. Oral Communications:

No comments.

7. Presentations:

- A. Consider Adoption of Resolution No. 2009-65 in Recognition of Barbara Montanti, Customer Service Assistant, and Awarding a Plaque and Gift Certificate for 10 Years of Service to Marina Coast Water District:

Director Moore made a motion to adopt Resolution No. 2009-65 recognizing Barbara Montanti, Customer Service Assistant, and awarding her a plaque and gift certificate for 10 years of service to Marina Coast Water District. 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			

President Gustafson read the narration and presented Mrs. Montanti with a plaque and gift certificate. Mr. Jim Heitzman, General Manager, commended Mrs. Montanti on her tenure with the District.

- B. Consider Adoption of Resolution No. 2009-66 in Recognition of Tony Kelsey, Systems Operator II, and Awarding a Plaque and Gift Certificate for 30 Years of Service to Marina Coast Water District:

Director Moore made a motion to adopt Resolution No. 2009-66 recognizing Tony Kelsey, Systems Operator II, and awarding him a plaque and gift certificate for 30 years of service to Marina Coast Water District. 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			

President Gustafson read the narration and presented Mr. Kelsey with a plaque and gift certificate. Mr. Heitzman commended Mr. Kelsey on his tenure with the District.

8. Consent Calendar:

Director Moore requested to pull items C and D from the Consent Calendar. Director Nishi requested to pull item G from the Consent Calendar.

Agenda Item 8 (continued):

Director Nishi made a motion to approve the Consent Calendar consisting of items; A) Appoint Mr. Richard Newhouse to the Water Conservation Commission; B) Adopt Resolution No. 2009-67 to Approve a Professional Services Agreement with Westin Engineering Inc. to provide Asset Management System Maintenance and Support Services for FY 2009/2010; E) Receive the Quarterly Financial Statements for April 1, 2009 to June 30, 2009; F) Approve Expenditures for the Month of August 2009; H) Approve the Draft Minutes of the Regular Board Meeting of August 11, 2009; I) Approve the Draft Minutes of the Special Board Meeting of August 17, 2009; and, J) Approve the Draft Minutes of the Special Board Meeting of September 3, 2009. 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			

C. Adopt Resolution No. 2009-68 to Approve Preparation and Submittal of a Financial Assistance Application to the Clean Water State Revolving Fund for the Regional Desalination Project and Authorize a Representative:

Director Moore asked some clarifying questions regarding how this application affects the District. Mr. Heitzman stated that this application was needed to apply for the stimulus funds. Director Moore made a motion to adopt Resolution No. 2009-68 to approve preparation and submittal of a Financial Assistance Application to the Clean Water State Revolving Fund for the Regional Desalination Project and authorize a Representative. 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			

D. Adopt Resolution No. 2009-69 to Approve a Dedicated Source of Revenue for Repayment of the Clean Water State Revolving Fund for the Regional Urban Water Augmentation Project Recycled Water Facilities:

Director Moore questioned dedicating District revenue for this fund. Mr. Heitzman answered that the first step is to get the application accepted, and then when collateral is needed, it will be brought before the Board for approval.

Director Moore made a motion to adopt Resolution No. 2009-69 to approve a dedicated source of revenue for repayment of the Clean Water State Revolving Fund for the Regional Urban Water Augmentation Project Recycled Water Facilities. Director Burns seconded the motion.

Agenda Item 8-D (continued):

The motion was passed.

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

G. Approve the Draft Minutes of the Regular Board Meeting of July 14, 2009:

Director Nishi asked that page 7, third paragraph, last sentence, of the July 14th minutes reflect the exact verbiage Director Moore used.

Director Nishi made a motion to approve the July 14, 2009 minutes with the proposed change. President Gustafson seconded the motion. The motion was passed.

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

9. Action Items:

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

Mr. Brian True, Interim District Engineer, introduced this item. The Board asked some clarifying questions. Director Nishi asked if Legal Counsel agreed with the information provided. Mr. Lloyd Lowrey, Legal Counsel, answered that he did agree. Director Nishi asked if the customer was satisfied. Mr. True answered that the customer was indeed satisfied.

Director Nishi made a motion to adopt Resolution No. 2009-55 to provide a limited variance to 223/225 Palm Avenue. 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			

B. Consider Appointing Two Directors to a Regional Urban Water Augmentation Project Ad-Hoc Committee:

Mr. Heitzman introduced this item.

Agenda Item 9-B (continued):

Director Moore asked how often this group would meet and what other agencies were participating. Mr. Heitzman answered that the other agencies would probably be Monterey County Water Resources Agency and Monterey Regional Water Pollution Control Agency and they would only meet every few weeks or monthly. President Gustafson suggested appointing Director Nishi and Director Burns. Director Moore stated that he would like to volunteer for the position. Director Nishi commented that he and Director Burns have been attending meetings with these agencies and are aware of the issues.

President Gustafson made a motion to appoint Directors Nishi and Burns to the Regional Urban Water Augmentation Project Ad-Hoc Committee. Director Nishi 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. 2009-70 to Censure a Director:

Mr. Lowrey introduced this item. He stated that Ms. Sue Parris investigated and reported on the allegations. Mr. Lowrey commented that the policies in question were adopted by the Board. A censure is a way for the Board to express their displeasure and disapprove the behavior of a Board member.

Mr. Bruce Delgado, Marina Mayor/Marina Resident, commented that he did not support the censure of Director Moore. He voiced his support of Director Moore.

Director Moore gave a brief PowerPoint presentation in his defense which outlined the allegations made against him and how they changed over time. Director Moore handed out a revised Resolution No. 2009-70 for consideration.

Director Moore made a motion to approve the revised Resolution No. 2009-70. The motion died for lack of a second.

Director Burns asked Ms. Parris to clarify the changes in the allegations against Director Moore and to clarify her recommendations in the investigation.

Ms. Parris answered that she could not clarify the changes in the allegations. She did clarify the findings she made in her report and the fact that Director Moore's appearance at a Sierra Club meeting was not an allegation made by anyone, only a concern.

Agenda Item 9-C (continued):

Mr. David Brown, Marina resident, commented that Director Moore was only exercising his 1st Amendment Rights. He added that this was a slim basis for censure and the Board really needs to work together “given the high stakes regional issues the Board is dealing with”, as stated in the newspaper by a Board member.

Mr. Lowery asked to answer the question by Director Burns about why there were changes in the allegations. He answered that the changes came about in the resolution and the findings are; 1) that Director Moore failed to behave in a manner consistent with the vote of the majority of the Board members by continuing to serve on the Special Districts Association; and, 2) by failing to support the Board’s vote as to who should run for election to the LAFCO seat. Mr. Lowery also agreed with Mr. Delgado’s comment and asked that the resolution be modified in the last WHEREAS to read, “...the fact that the Board, on May 28, 2008, nominated Director Nishi...” and remove the word elected.

Director Moore read a letter from Don Champion, President of the Special Districts Association of Monterey County, into the record.

President Gustafson commented that Mr. Champion would be better serving the SDA by supporting the MCWD decision. President Gustafson stated that he was asked not to attend any SDA meetings and he didn’t try to. He would like to see more team effort and continuity between the Board members.

Director Moore stated that in his defense of running for the LAFCO seat, the Board was made aware that he was running for the LAFCO seat on November 18, 2008 and did not say anything until the censure was brought up in July 2009. In any case, although the MCWD Board nominated Director Nishi to run for the LAFCO seat, the only way to run for the LAFCO seat is through self-nomination and both Director Nishi and Director Moore had to fill out self-nomination forms to run. Director Moore stated that if the Board wanted that say he should have understood the intent to nominate Director Nishi to the LAFCO seat, they could perhaps say that, and they could perhaps censure him for failing to support Director Nishi’s election campaign, but he did not hear any evidence that other Board members went out and campaigned for Director Nishi nor did they discuss campaign strategy for supporting Director Nishi. Director Moore added that the reason the LAFCO process is a self-nomination process, is so when Boards are politically squabbling amongst themselves, does not prevent anyone from the forty-three Independent Special Districts from having an opportunity to elect and vote for the best candidate. Director Moore stated that if this Board follows through with this censure, they will set a precedent to other Boards about allowing members to run for elections. He commented that by censuring him, they would be anti-democratic.

As to continuing to serve on the SDA, Director Moore stated that there is nothing wrong with that and the SDA states that anyone can attend the meetings.

Agenda Item 9-C (continued):

Director Moore added that the Board Procedures Manual calls for “Directors to make reasonable and diligent inquiry of competent, qualified and reliable advisors and other sources to obtain sufficient information for informed timely decisions and judgments.” After attending approximately twenty-five SDA meetings he has received lots of advice from competent, qualified and reliable advisors and other sources by attending those meetings. Director Moore stated that to censure him for this would be to censure him for complying with the Board Procedures Manual. Director Moore stated that if he were to be censured for attending SDA meetings, Director Nishi should also be censured for attending the October 2008 SDA meeting to campaign for his election without getting prior approval from the Board. Director Moore continued that he has a right to peacefully assemble and a right to free speech and if he is censured for this, it is an attempt to abridge his rights to Article 1, by some sort of political coercion. He stated that he is not going to bow down for that and if the Board does vote to censure him, they are violating their sworn oath to uphold the Constitution of the United States of America. Director Moore concluded he is trying to do his duty by attending these meetings and by being the representative for the LAFCO meetings.

President Gustafson stated that he was only concerned with Director Moore’s past policy of SDA representation.

Director Nishi made a motion to adopt Resolution No. 2009-70 with the following corrections: 1) sixth WHEREAS, correct spelling of Manual; 2) last WHEREAS change elected to nominated; and, 3) Finding number 1, remove the words, continuing to serve on the Special District Association and. President Gustafson seconded the motion.

Mr. Delgado commented that he hopes the Board doesn’t approve this motion tonight. In Director Moore’s twenty minute defense of his record of attending 21 of 25 meetings, and the intelligence and articulation that he covered through the Constitution and the Board Procedures Manual shows what an incredible asset Director Moore is for this District and this City. Mr. Delgado added that it would be a very dim light to censure him a respectable individual who has done such a well job. Even while being censured, Director Moore had maintained the best respect for the Board and the public and in doing so, he is serving the Board well to garner public trust in his service.

The motion was passed.

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

10. Staff Report:

A. Receive Update on the Hot Water Recirculation System Rebate Program:

Mr. Rich Youngblood, Water Conservation Coordinator, introduced this item. Director Burns commented on gray water usage and asked if staff was keeping up on the latest information. Mr. Youngblood answered they were. Director Nishi suggested offering \$250 for a Hot Water Recirculation System Rebate. He urged finding a solution to getting the funds out there and saving water. Director Burns asked when a report on the landscape incentives would be ready. Mr. Youngblood answered that it was going to the Water Conservation Commission next week then would be brought to the Board. Director Nishi suggested lobbying to the Cities and County to install drip irrigation.

11. Informational Items:

A. General Manager's Report:

Mr. Heitzman stated he had nothing to report.

B. District Engineer's Report:

Mr. True stated he had nothing to report.

C. Counsel's Report:

Mr. Lowery stated he had nothing to report.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

No report.

2. Joint City-District Committee:

No report.

3. MRWPCA Board Member:

Director Nishi reported that the meeting was boilerplate.

4. LAFCO Liaison:

Director Nishi stated the meeting was next Monday.

5. JPIA Liaison:

No report.

6. FORA:

Vice President Nishi stated they discussed Imjin Park in Closed Session.

7. Executive Committee:

No report.

8. Community Outreach:

President Gustafson commented that the newsletter and having the meetings televised was reaching the public.

9. Ord Community Ad Hoc Committee:

Mr. Heitzman stated that it could be discussed at a special workshop on October 20th and skip the October 13th Board meeting. Director Moore stated he would be in France from the 15th to the 25th. The Board agreed to hold the workshop on October 27th at 5:30 pm to coincide with the Board meeting and move the November meeting to the 17th.

10. Special Districts Association Liaison:

President Gustafson commented the next meeting is October 20th.

C. Director's Comments:

Director Burns commented that he would like to deal with issues straight up when there is something of concern. The President and Vice President should talk to the individual right away before it comes to censure. Director Burns would like to see the Board work on it.

Director Moore commented that he was disappointed with the outcome. He assured his supporters that he will continue to do a professional job in this office and also before the LAFCO Commission as well as any other assignments he may get from Marina Coast Water District. Director Moore commented that it was inappropriate under agenda item 10-A for Director Nishi to excoriate him in an off-topic comment, and President Gustafson tolerated it and did nothing to stop him. He would appreciate the President to prevent those things from occurring.

Director Nishi commented that the Board needs to learn to work together as a team and although he keeps saying it, they are not doing it. Director Nishi stated that with this censure, the Board is just requesting that Director Moore refrain from engaging in similar conduct in the future.

Agenda Item 11-C (continued):

Director Nishi said that Director Moore made a comment to the paper that his racist remark was just in humor. Director Nishi added that Director Moore's comment tells him that he just doesn't get it that we can't ridicule nationalities.

Director Moore asked for a point of order.

Director Nishi stated that this is "Director's Comments".

Director Moore stated that it was just rehashing derogatory statements.

Director Nishi commented that if Director Moore would get in line this wouldn't have to happen and if he would have learned from it the first time, this wouldn't have happened.

Director Moore asked Director Nishi to show some respect and refer to him as Director Moore and not "Tom".

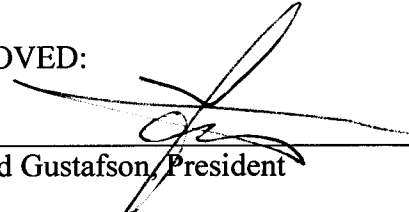
12. Correspondence:

No comments.

13. Adjournment:


The meeting was adjourned at 8:33 p.m.

APPROVED:



Howard Gustafson, President

ATTEST:



Jim Heitzman, General Manager