

Marina Coast Water District
Agenda Transmittal

Agenda Item: 8-H

Meeting Date: July 12, 2011

Submitted By: Paula Riso
Reviewed By: Carl Niizawa

Presented By: Paula Riso

Agenda Title: Approve the Draft Minutes of the Special Board Meeting of June 16, 2011

Detailed Description: The Board of Directors is requested to approve the attached draft minutes of June 16, 2011.

Environmental Review Compliance: None required.

Prior Committee or Board Action: None.

Board Goals/Objectives: *Strategic Plan, Mission Statement – Providing high quality water, wastewater and recycled water services to the District’s expanding communities through management, conservation and development of future resources at reasonable costs.*

Financial Impact: ___Yes ___X___No

Funding Source/Recap: None.

Material Included for Information/Consideration: Draft minutes of June 16, 2011.

Staff Recommendation: The Board of Directors approve the draft minutes of the June 16, 2011 special Board meeting.

Action Required: ___Resolution ___X___Motion ___Review

Board Action

___Resolution No___ Motion By___ Seconded By___

Ayes___ Abstained___

Noes___ Absent___

Reagendized___ Date___ No Action Taken___

Marina Coast Water District

District Offices
11 Reservation Road
Marina, California

Special Board Meeting
June 16, 2011
5:30 p.m.

Draft Minutes

1. Call to Order:

President Lee called the meeting to order at 5:30 p.m. on June 16, 2011.

2. Roll Call:

Board Members Present:

Bill Lee – President
Dan Burns – Vice President
Howard Gustafson
Jan Shriner
Kenneth K. Nishi

Staff Members Present:

Jim Heitzman, General Manager
Lloyd Lowrey, Legal Counsel
Carl Niizawa, Deputy General Manager/District Engineer
Jean Premutati, Management Services Administrator
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Tim Wilson, Monterey Resident
Darby Moss Worth, Carmel Valley Resident
George Riley, Monterey Resident
Larry Faust, Carmel Valley Resident
Ed Mitchell, Prunedale Resident
Maddi Bell, MRWPCA
David Lamicella, Marina Resident
Gloria McKee, Marina Resident
Greg Furey, Marina Resident
Brad Hagemann, Del Rey Oaks
Sylvia Shih, Seaside Resident
Frank Lambert, Marina Resident
Paula Pelot, Marina Resident
Richard Newhouse, Marina Resident
Luana Conley, Marina Resident
Jeanine DeBacker, Hoge, Fenton, Jones & Appel
David Brown, Marina Resident
Grace Silva-Santella, Marina Resident
Ken Kroopf, Attorney

3. Pledge of Allegiance:

President Lee led everyone present in the pledge of allegiance.

4. Public Comments:

There were no comments.

5. Report:

D. Receive and Discuss a Report from Independent Investigator, Jeanine DeBacker of Hoge, Fenton, Jones & Appel:

Jeanine DeBacker, Hoge, Fenton, Jones & Appel, read aloud from the report she handed out just prior to the meeting. The report reads:

Introduction:

During the May 10, 2011 meeting of the Board of Directors of the Marina Coast Water District, District General Manager Jim Heitzman made a statement to the Board during open session that Director Jan Shriner:

"seems to be intent on harassing and cause a hostile environment for staff, including the General Manager. And is soliciting legal opinion via email, etc. So I think there needs to be something done. If every ratepayer was spending \$20,000 of the District's money in pursuit of firing the General Manager and having the General Manager leave, I think that we'd be broke in one month. So I would like the Board to take into consideration that I have requested on a number of occasions that somebody speak with Director Shriner about hostile environment. Other members of staff have complained also about that issue, so I just want to put the Board on notice that I don't intend to continuously [be] harassed by Director Shriner."

I was formally retained by the District through Jean Premutati, Management Services Administrator, to investigate Mr. Heitzman's complaint of harassment and hostile work environment. I am an employment lawyer at the law firm of Hoge, Fenton, Jones & Appel, Inc. in San Jose.

Agenda Item 5 (continued):

Investigation:

From May 25, 2011 to June 9, 2011, I conducted an investigation of Mr. Heitzman's complaints. I interviewed each board member in person. I also spoke in person and on the telephone in an informal manner with Paula Riso, Executive Assistant to the GM/Board, and Jean Premutati in order to obtain documents and public information regarding dates. I spoke with Lloyd Lowrey, District Counsel, also regarding dates and for further insight into the chronology of events. I reviewed excerpts from audio recordings from the May 10, 2011 and May 24, 2011 board meetings. I reviewed meeting minutes for all meetings since January 2011 through May 24, 2011. I reviewed emails from January 2011 through June 10, 2011 from Jim Heitzman and Jan Shriner. I also reviewed a letter from Ken Kroopf, Director Shriner's attorney. And I reviewed the Board Procedures Manual Adopted March 9, 2009.

Findings:

My investigation did not reveal evidence that there had been any discrimination or harassment or creation of a hostile work environment based on sex, gender, or any other protected class. Specifically I did not find evidence that there was any violation of Section 5 of the Board Procedures Manual, which sets forth the District's Harassment Free Work Environment policy.

However, I found that Mr. Heitzman made his complaints of harassment in good faith and it was reasonable for him to complain of the conduct. I also found that he began making such complaints verbally and in email messages as early as January 19, 2011. I found that Mr. Heitzman sought to resolve the matter quickly and privately.

I found that Director Shriner's conduct was intended to assail and distress Mr. Heitzman. Director Shriner perceives this conduct as a necessary function of her position. Each of the four other directors -- and Mr. Heitzman -- acknowledged that it is important for the individual directors to take a critical stance and question and query District policy. They each also pointed out to me that the District has adopted written procedures to allow for such queries while providing for transparency in government proceedings, the orderly dissemination of information, and the cost-effective operation of the District.

I found that Director Shriner does not adhere to the Board Procedures Manual which is intended to govern the operations of the Board. Specifically, her conduct is inconsistent with the Board's procedures, including, but not limited to, the procedures articulated in Sections 7, 13, 14, 15 and Section 16.

Agenda Item 5 (continued):

Recommendations:

As no harassment, discrimination or hostile work environment based on a protected class was found during my investigation, I offer no recommendations as to those areas.

My recommendation, then, is not based on procedures driven by California and federal employment law. Instead, I suggest that the Board be reminded of the Board Procedures Manual through training, including specific training to new Board members as to guidelines for a functional, transparent, and cost-effective operation of the Board, and that the Board members hold each other accountable.

Mr. David Brown, Marina resident, commented that the agenda was posted slightly more than the 24 hour notice requirement for special meetings. He added that the report was not received until five minutes before the start of the meeting. Mr. Brown opined that the substance of the report was not specific. He said the report was inadequate because it did not specify “when” or “how” rules were not followed.

Ms. Silvia Shih, Seaside resident, commented that she has known Director Shriner for years and voiced her support of Director Shriner’s actions.

Mr. Ed Mitchell, Prunedale resident, commented that he has known Director Shriner for years and he supported the comments mentioned by the previous speakers. Mr. Mitchell stated that the findings did not indicate anything wrong with what Director Shriner had been asking for. He said that the newspaper has been full of articles about the Regional Desalination Project and that Director Shriner was diligent in looking into these issues. Mr. Mitchell stated that Director Shriner was appropriate in seeking information and encouraged her to keep it up.

Ms. Darby Moss Worth, Carmel Valley resident, commented that she has known Director Shriner for many years and voiced her admiration for her. Ms. Moss Worth suggested the Board of Directors look into “conflict resolution”.

Mr. Tim Wilson, Monterey resident, commented that he has also known Director Shriner for many years. He commented that Director Shriner looks for the “back story” in things. Mr. Wilson asked if the Board of Directors was going to be responsible and open to the residents of Marina.

Ms. Luana Conley, Marina resident, commented that this was an inappropriate meeting and a waste of funds. She said that this is a personnel matter and should not be a public meeting. Ms. Conley noted that Director Shriner is the only female Board member and voiced her support. She also commented that the Board of Directors continues to refuse to pay someone to film the meetings and they often schedule meetings on days that conflict with other important meetings.

Agenda Item 5 (continued):

Ms. Grace Silva-Santella, Marina resident, commented that Director Shriner is more than a ratepayer, she is a Board member and deserves more of the General Manager's time than a regular ratepayer. Ms. Silva-Santella said that the report states Director Shriner's "...conduct is inconsistent with the Board's procedures, including, but not limited to, the procedures articulated in Sections 7, 13, 14, 15 and Section 16", and she asked that those sections of the Board Procedures Manual be read into record.

Mr. Frank Lambert, Marina resident, commented that he has known Director Shriner for years and that she gives 100% and nothing less. He stated that the public has a right to know how money is being spent or not spent and where it is going. Mr. Lambert said that this is what Director Shriner has asked and he doesn't think it is harassment, it is a matter of transparency. He commented that the Board owed Director Shriner an apology for having this meeting.

Mr. Ken Kroopf, Attorney for Director Shriner, commented that he was extremely disappointed that the Board members would try to stifle First Amendment rights. He stated that this should have been handled internally and done in closed session.

Mr. George Riley, Monterey Resident, stated that he has supported the Board for a long time over the Regional Desal Project. Mr. Riley commented that more parties are guilty and referred to past meeting conduct. He added that he was not impressed with how things are handled.

Vice President Burns commented that when someone says that they are being harassed, the Board cannot ignore it and do nothing. He stated that the best thing to do was to get an independent company or firm to provide a report so the Board can deal with the issues. Vice President Burns said that the Board did not file a claim against each other for harassment; the claim was by the General Manager regarding Director Shriner and the Board followed up on that. He said he also thought it should be handled in closed session and that he received an answer to that earlier that day.

Director Nishi made a motion to accept the report given by Ms. DeBacker. Mr. Lowrey commented that the Board is not required to make a motion, only to receive the report. Director Nishi stated that in the past, the Board has made motions to receive reports and they vote on whether to receive it or not. He asked if things are changing now. Mr. Lowrey said that it is not on the agenda for action, but if the Board wants to formally receive the report, they may vote to receive it as the agenda language does say to "receive" a report.

Ms. Pelot raised a Point of Order that the item is not agendized as an action item.

Director Nishi asked if Mr. Lowrey is recommending the Board not take action. Mr. Lowrey stated that it is not agendized as an action item, just to receive the report which the Board is in the process of doing.

Agenda Item 5 (continued):

Director Nishi withdrew his motion.

Director Shriner commented that she spoke with President Lee soon after May 13th and asked if he had received a copy of a letter, dated May 13th, that was addressed to her and that he was copied on. President Lee answered that he couldn't recall as that was a month ago. Director Shriner commented that the letter, sent by Ms. Jean Premutati also copied Ms. DeBacker and asked if she ever received a copy of the letter. Ms. DeBacker said that she couldn't recall but assumed she did. Director Shriner asked if the Board decided on May 24th to hire Ms. DeBacker, why she was copied on the letter of May 13th. President Lee said he didn't know why.

6. Director's Comments:

The meeting was adjourned without taking comments from the Directors.

7. Adjournment:

The meeting was adjourned at 6:00 p.m.

APPROVED:

William Y. Lee, President

ATTEST:

Jim Heitzman, General Manager