

Marina Coast Water District  
Agenda Transmittal

Agenda Item: 8-D

Meeting Date: August 9, 2011

Submitted By: Paula Riso  
Reviewed By: Carl Niizawa

Presented By: Paula Riso

Agenda Title: Approve the Draft Minutes of the Regular Board Meeting of July 12, 2011

Detailed Description: The Board of Directors is requested to approve the attached draft minutes of July 12, 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 July 12, 2011.

Staff Recommendation: The Board of Directors approve the draft minutes of the July 12, 2011 regular Board meeting.

Action Required:     \_\_\_\_\_Resolution     \_\_\_X\_\_\_Motion     \_\_\_\_\_Review

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Board Action

\_\_\_\_\_Resolution No\_\_\_\_\_     Motion By\_\_\_\_\_     Seconded By\_\_\_\_\_

Ayes\_\_\_\_\_     Abstained\_\_\_\_\_

Noes\_\_\_\_\_     Absent\_\_\_\_\_

Reagendized\_\_\_\_\_     Date\_\_\_\_\_     No Action Taken\_\_\_\_\_

Marina Coast Water District

District Office  
11 Reservation Road  
Marina, California

Regular Board Meeting  
July 12, 2011  
6:45 p.m.

**Draft Minutes**

1. Call to Order:

President Lee called the meeting to order at 5:45 p.m. on July 12, 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  
Kelly Cadiente, Director of Administrative Services  
Thomas Barkhurst, Water Quality Chemist  
Paul Lord, Water Conservation Specialist  
Brian True, Capital Projects Manager  
James Derbin, Interim Operations and Maintenance Superintendent  
Patrick Breen, Capital Projects Manager  
Gary Rogers, Associate Engineer  
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Tom Moore, Marina Resident	Brenda Lewis, MPWMD Board Member
Richard Newhouse, Marina Resident	Kuei Villa, Marina Resident
Ed Mitchell, Prunedale Resident	Alberto Villa Corona, Marina Resident
Paula Pelot, Preston/Abrams Tenants Association	
Denise Turley, Preston/Abrams Tenants Association	
Carmelita Garcia, Mayor of Pacific Grove	
Judi Lehman, MPWMD Board Member	
George Riley, Monterey Resident	
Bob Holden, MRWPCA	

The Board entered into closed session at 5:45 p.m., after announcement per Government Code Section 54957.7(a).

3. Closed Session:

- B. Pursuant to Government Code Section 54956.95  
Liability Claims  
Claimant: Ausonio Incorporated  
Agency Claimed Against: Marina Coast Water District
- C. Pursuant to Government Code 54956.9  
Conference with Legal Counsel – Existing Litigation  
(Subdivision (a) of Section 54956.9)  
Ag Land Trust v. Marina Coast Water District and Does 1-100, Monterey County Superior Court Case No. M105019 (First Amended Petition for Writ of Mandate and Complaint for Declaratory Relief)
- C. Pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: District Counsel
- D. Pursuant to Government Code Section 54957  
Public Employee Performance Evaluation  
Title: General Manager
- E. Pursuant to Government Code Section 54957.6  
Conference with Labor Negotiator  
Agency Designated Representatives: William Lee and Dan Burns  
Unrepresented Employee: General Manager
- F. Pursuant to Government Code Section 54956.9  
Conference with Legal Counsel – Anticipated Litigation  
Significant Exposure to Litigation Pursuant to Subdivision (b)  
One Case

A letter dated June 21, 2011, from the Monterey County Board of Supervisors transmitted a “Summary of Preliminary Findings Regarding Director Stephen Collins’ Business Relationship With RMC Water and Environment and Marina Coast Water District.” The Summary, prepared by Remcho, Johansen & Purcell, LLP, states that certain conduct raises questions about the validity of contracts to which Marina Coast Water District is a party. Based on the statements in the Remcho Summary, and based on reports in the Monterey Herald this morning, a point has been reached where, in the opinion of the MCWD Board based on the advice of its legal counsel, there is a significant exposure to litigation against MCWD.

G. Pursuant to Government Code Section 54959.9  
Conference with Legal Counsel – Anticipated Litigation  
Potential Initiation of Litigation (c)  
One Case

The Board ended closed session at 7:06 p.m.

President Lee reconvened the meeting to open session at 7:06 p.m.

4. Possible Action on Closes Session Items:

Mr. Lloyd Lowrey, Legal Counsel, reported the following:

- 3-A – the Board of Directors conferred with Legal Counsel and no action was taken.
- 3-B – the Board of Directors conferred with Legal Counsel and no action was taken.
- 3-C – the Board of Directors evaluated District Counsel.
- 3-D – the Board of Directors evaluated the General Manager.
- 3-E – the Board of Directors conferred with the negotiators.
- 3-F – the Board of Directors conferred with Legal Counsel and no action was taken.
- 3-G – the Board of Directors conferred with Legal Counsel and no action was taken.

5. Pledge of Allegiance

President Lee led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Tom Moore, Marina resident, commented that More Transparency is a non-profit association that raises money to pay for the filming and re-broadcasting of Marina Coast Water District Board meetings. He said donations can be sent to: More Transparency, P.O. Box 693, Marina, CA 93933.

Mr. Moore commented that he was pleased when the District released a preliminary report on July 1, 2011 by James Markman regarding the conflict of interest allegations. He hopes the final report will be based on sworn testimony. Mr. Moore noted that he looked at the Board agendas for the past several months and did not see any Board action authorizing the Markman investigation and questioned when the authorization was made.

Mr. Moore commented that since January 2011, there have been twelve special board meetings and many were scheduled during the workday hours which makes it difficult for the public to attend.

7. Presentation:

- A. Consider Adoption of Resolution No. 2011-49 in Recognition of Community Member, Mr. Steven Reeves, for his Dedicated Service to the Marina Coast Water District as a Member on the Water Conservation Commission:

Mr. Reeves was not present so President Lee tabled this item until next month.

8. Consent Calendar:

Director Shriner pulled items A and E from the Consent Calendar. President Lee pulled items G and I from the Consent Calendar.

Director Gustafson made a motion approve Consent Calendar consisting of items:

- B. Adopt Resolution No. 2011-51 to Approve a Memorandum of Understanding between Marina Coast Water District and the Monterey Peninsula Unified School District Regarding the In-School Water Conservation Education Program with a Not-to-Exceed Amount of \$18,500
- C. Approve the Expenditures for the Month of June 2011
- D. Approve the Draft Minutes of the Special Board Meeting of May 24, 2011
- F. Approve the Draft Minutes of the Special Joint Board Meeting of June 10, 2011
- H. Approve the Draft Minutes of the Special Board Meeting of June 16, 2011

Vice President Burns seconded the motion. The motion was passed.

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

- A. Adopt Resolution No. 2011-50 to Approve the District Records Retention Policy and Retention Schedules:

Director Shriner questioned the length of time to keep records. Ms. Kelly Cadiente, Director of Administrative Services, noted that the record retention was based on Government Code and Internal Revenue Service requirements and that any records involved in possible litigation or any “open item” of the Board will not be destroyed until two years after the issue is settled and they are no longer required. Director Shriner questioned the wisdom of destroying records at this time when there is a possible investigation going on. Ms. Cadiente answered that this item was approved for staff to begin working with the consultant on the retention policy in 2009 and it was now complete and ready for adoption. Director Shriner suggested tabling the item for the time being.

Agenda Item 8-A (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-50 approving the District Records Retention Policy and Retention Schedules. Director Nishi commented that recently the Palm Avenue connection fees were under discussion and requested that water and sewer connection fees, since the formation of the District, be included in the retention schedule. Director Gustafson amended his motion to include water and sewer connection fees in the retention schedule. Vice President Burns seconded the motion.

Ms. Kuei Villa, Marina resident, commented that with today's technology, documents should be scanned and not destroyed. Director Nishi commented that pertinent documents will be scanned and retained.

Ms. Paula Pelot, Preston/Abrams Tenants Association, commented that it was an extensive schedule and suggested adding an appendix of the reference codes as a separate table.

The motion was passed.

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

E. Approve the Draft Minutes of the Special Board Meeting of June 9, 2011:

Director Shriner noted the number of pages for the minutes and asked if transcription was normally done. She inquired how much time it took staff to prepare and how it served the ratepayers. Director Shriner asked if it would have been more cost effective if the meeting was televised. Mr. Jim Heitzman, General Manager, answered that the minutes were prepared in the normal course of duty. Director Nishi said that it was one way of making the meeting transparent. President Lee added that staff would answer Director Shriner's questions at the next meeting. Director Shriner stated that she sent the questions to staff two days ago and asked if that was not enough time to prepare an answer. Mr. Heitzman commented that the email was directed to the District Counsel. Director Shriner answered that President Lee and Mr. Heitzman were copied. Mr. Heitzman stated that he doesn't respond to emails that he is copied on. He said that the person it was addressed to normally responds.

Director Shriner asked to table this item until staff could prepare answers to her questions.

Director Nishi made a motion to approve the draft minutes of the special Board meeting of June 9, 2011.

Ms. Pelot commented that some of the minutes are quite detailed and stated that minutes should show the action taken and should not go into the minutia.

Agenda Item 8-E (continued):

Director Gustafson seconded the motion. The motion was passed.

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

G. Approve the Draft Minutes of the Regular Board Meeting of June 14, 2011:

President Lee commented that there was a typo on page 120, "Debin" should be "Derbin".

I. Approve the Draft Minutes of the Special Board meeting of July 1, 2011:

President Lee commented that page 142 has the word "outweighs" is repeated.

Vice President Burns made a motion to approve the draft minutes of June 14, 2011 and the draft minutes of July 1, 2011 with the corrections. Director Gustafson seconded the motion. The motion was passed.

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

Ms. Carmelita Garcia, Mayor of Pacific Grove, asked if public could pull an item from the Consent Calendar. President Lee asked which item she wanted pulled. Mayor Garcia asked to pull item 8-C. President Lee commented that it was already approved.

Director Nishi made a motion to reconsider item 8-C. President Lee seconded the motion. The motion was passed.

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

C. Approve the Expenditures for the Month of June 2011:

Mayor Garcia inquired on check numbers 52145 and 52177 and asked what time frame each check covered and why it took so long to pay the invoice for check 52177.

Mr. Lowrey commented that after reading the Board Procedures Manual, an item cannot be reconsidered at the same meeting it was approved. He said that it could be reconsidered at the succeeding meeting following the vote.

Agenda Item 8-C (continued):

Mr. Lowrey added that the Board of Directors could vote to suspend the rules for this item.

President Lee made a motion to suspend the rules for this item. Director Shriner seconded the motion.

Ms. Villa commented that discussion and openness is restricted with all the rules. She asked what happens if the rules are not followed. President Lee commented that as President he needs to follow the rules and he did not notice the public wanting to comment on an earlier item.

The motion to suspend the rules for this item was passed.

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

Vice President Burns commented that he voted no because he believed staff should look up the answers and provide them at a later time.

Ms. Cadiente commented that check number 52145 dated May 16, 2011 covered January through March 2001, and check number 52177 was for April 2011 and while there was a typo in the invoice date, the rest of the invoice was correct so it was paid. She stated that the District doesn't change invoices they receive.

Vice President Burns made a motion to approve the expenditures for the month of June 2011. President Lee seconded the motion. The motion was passed.

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

9. Action Items:

A. Consider Receiving the Conceptual Financial Plan from Financial Consultant Piper Jaffray:

Mr. Heitzman introduced this item. Ms. Cadiente stated that the Board is asked to receive and accept the Conceptual Financial Plan noting that it is still in the conceptual form.

Director Shriner commented that Piper Jaffray stated that the District needs to clean up the litigation in order to get the best possibility for financing. She asked what the District was doing in working toward clearing the litigation.



Agenda Item 9-A (continued):

Mr. Heitzman commented that ongoing litigation can be problematic for bonding and the District is working through the process.

Director Shriner asked several clarifying questions on the Financing Rating & Credit Enhancement portion of the Conceptual Plan.

Director Gustafson made a motion to receive the Conceptual Financial Plan. Vice President Burns seconded the motion. The motion was passed.

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

B. Consider Adoption of Resolution No. 2011-52 to Approve the Reorganization of the Finance Department and the Related Classifications and Job Descriptions:

Ms. Cadiente introduced this item.

Director Shriner voiced her appreciation of the restructure and staff's hard work.

Ms. Pelot commented that a fiscal impact was not specified and suggested that the Accountant I/II report to the Director of Finance.

Mr. Moore commented that the accounting technician should not report to two bosses.

Director Shriner asked if staff would answer the questions from the public regarding financial impact and hierarchy. Ms. Cadiente commented that the District is proposing to leave the Director of Finance position vacant. She added that by leaving the position vacant, there are no anticipated financial impacts or hierarchy issues.

Director Gustafson made a motion to adopt Resolution No. 2011-52 to approve the reorganization of the Finance Department and the related classifications and job descriptions. Vice President Burns seconded the motion. The motion was passed.

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

C. Consider Adoption of Resolution No. 2011-53 to Approve the Selection of a Law Firm to Provide Legal Services and Represent the District in Personnel and Employment Law Matters:

Ms. Jean Premutati, Management Services Administrator, introduced this item stating that staff had no recommendation and the decision is entirely up to the Board.

Vice President Burns made a motion to select Hoge, Fenton, Jones and Appel to provide legal services and represent the District in personnel and employment law matters. Director Nishi seconded the motion.

Director Shriner commented that Hoge, Fenton, Jones and Appel are not local and there may be travel expenses, so she suggested looking at a local firm. Ms. Premutati stated that Hoge, Fenton, Jones and Appel discount their travel fees. Director Shriner asked what criteria the Board is considering when selecting Hoge, Fenton, Jones and Appel. Director Gustafson commented that he is looking for someone outside the local bar association. Director Nishi commented that he also was looking for someone outside the local bar association. He added that he didn't want the cheapest or most local attorney representation, he wanted the best representation. Director Nishi stated that he was pleased with the work Hoge, Fenton, Jones and Appel recently completed for the District. Vice President Burns agreed with Director Nishi.

Mr. Lowrey commented that the Board is looking at special counsel and they are not anticipated to attend every meeting of the Board and modern technology will allow the work to be done without excessive travel.

Ms. Villa asked how much money was being allotted for special counsel and how was the bidding process done. Mr. Heitzman answered that special counsel would be time and materials and there is no cost until they are used. Mr. Lowrey commented that there is no bidding process for service providers. He said a Request for Proposals was sent out and service providers submitted their information.

Ms. Pelot commented that it would be helpful to have the information included with the packet for a comparison factor.

Mr. Ed Mitchell, Prunedale resident, stated that he supports the comments made and that the staff report is unclear. He recommended establishing criteria in advance when sending Request for Proposals, Request for Qualifications, or Request for Information.

Director Shriner commented that the Board received the information in an envelope marked confidential and was not sure if the details could be discussed or not.

Agenda Item 9-A (continued):

Mr. Lowrey answered that proposals were received from service providers and prior to the Board's decision, it would be inappropriate for the service providers to see what the others are proposing. He added that now that the Board is discussing the item, the proposals are no longer confidential and are public records available for the public to review.

Vice President Burns commented that the Request for Proposal was included in a previous Board packet and was very detailed on what the District was looking for. Mr. Heitzman added that the packets are available on the website.

The motion was passed.

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

D. Consider Adoption of Resolution No. 2011-54 to Approve the Design and Construction of the Proposed Watkins Gate Well:

Mr. Gary Rogers, Associate Engineer, introduced this item.

Vice President Burns asked if the Board should be approving any projects on the Ord Community until the rates are approved with the Fort Ord Reuse Authority. Mr. Rogers noted that the project was being funded through the Prop. 50 grant. Mr. Carl Niizawa, Deputy General Manager/District Engineer, commented that delay of this project could jeopardize the grant funding. Mr. Heitzman answered that it was a capital project and was not affected by the rate increase.

Director Gustafson made a motion to adopt Resolution No. 2011-54 to approve the design and construction of the proposed Watkins Gate Well. Director Shriner seconded the motion. The motion was passed.

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

Mr. Heitzman recused himself from the room at 8:28 p.m.

- E. Consider Adoption of Resolution No. 2011-55 to Review a Request by the General Manager under Government Code Sections 995-996.6 and 825-825.6 and Authorize the District to Engage Legal Counsel for the General Manager:

Mr. Lowrey handed out copies of an engagement letter with Steven Churchwell with DLA Piper, LLC.

Mr. Mitchell asked if the information should have been available 72 hours prior to the meeting when the notice was given. Mr. Lowrey answered that appropriate notice was made 72 hours prior to meeting and the engagement letter was not available at the time. He added that the information was being given to the Board at the same time as it is being made available to the public. Mr. Lowrey opined that it was adequate.

Mr. Lowrey commented that this item is on the agenda per his request. He stated that the Government Code provides that if a public official or employee requires representation, under certain circumstances, the government agency may provide defense and indemnity. Mr. Lowrey said that the District Board released a report on July 1<sup>st</sup> that stated that there was no evidence that any person at Marina Coast Water District had been involved in any conduct that would be actionable. He stated that the General Manager had made a request in accordance with Government Code provisions 825-825.6 and 995-996.6. Mr. Lowrey added that the Board is required to respond to that request within a reasonable time.

Mr. Lowrey stated that in the transmittal he recommended that the Board respond to the General Manager's request by approving the engagement of designated counsel. He said that designated counsel may be engaged if there is no conflict between the interests of the employee and if approved by the Board. Mr. Lowrey said there are three different kinds of potential matters that are involved, 1) civil matters, 2) administrative matters, and 3) criminal matters. He said that the General Manager requested that the Board provide representation in connection with all three matters since no one knows what will happen. Mr. Lowrey said that the contract is structured so that if the Board approves it, they are engaging counsel to represent the General Manager in connection with the investigations. He added that if anything changes, and a lawsuit is filed, it would be brought back to the Board for further approval since this engagement is limited to investigations as noted in the first paragraph of the Engagement Letter. Mr. Lowrey commented that Mr. Churchwell is highly recommended and has discounted his normal rate to \$495 and his associate's rate to \$300.

Mr. Lowrey stated that his purpose in recommending this engagement is to allow the Board and District to get ahead of the curve in this issue. He added that if, as a result of possible inaccurate statements, as demonstrated by the Markman report, a lawsuit is filed or an investigation proceeds farther than it should, the District could have costs far in excess of those that they might have with someone who is experienced and expert in this field and can resolve and answer issues at the outset.

Agenda Item 9-E (continued):

Mr Lowrey apologized for not getting the information out sooner, but had just received it earlier that afternoon. He did ask that the Resolution be amended to have item 2 under the “NOW, THEREFORE, BE IT RESOLVED, as follows:” include a sentence authorizing the Board President to sign the contract with DLA Piper.

Ms. Villa asked if a decision had to be made this evening and asked if it could wait until everyone had a chance to look at it closer. She also voiced her concern over the arbitration clause.

Mr. Moore commented that he would support engaging counsel for investigations of civil and administrative matters and not criminal. He said that a public entity is not required to provide defense for criminal actions and proceedings but must do so if the defense would be in the best interest of the public entity. Mr. Moore voiced his concerns over the fact that the counsel would cover the General Manager in an individual capacity as well as that of his General Manger position.

Mr. Mitchell urged the Board not to approve the Resolution engaging counsel. He instead urged the Board to place the General Manager on administrative leave until they receive the final report from their investigator, the County’s independent investigator, and the District Attorney and FPPC. Mr. Mitchell voiced his concerns over certain findings in the Markman Report and urged the Board to not take action on this item.

Ms. Pelot voiced her concerns over the proposed action suggesting that it could be considered a gift of public funds. She added that to indemnify the General Manager doesn’t leave the Board the option of termination as per his contract.

Mr. Lowrey commented that eventually there could be a criminal investigation, although not for the General Manager. He opined that it is in the best interest of the District to have the General Manager represented by the correct counsel in connection with those investigations, which is what he said the Resolution is limited to. Mr. Lowrey stated that there is no information, and no evidence has been presented to indicate that the General Manager would have a criminal complaint lodged against him. Mr. Lowrey stated that the arbitration clause is extremely common and is a standard provision in attorney engagement agreements. He added that the Resolution is drafted so that the representation would not continue if he were to advise, and the Board was to find, there is a conflict. Mr. Lowrey opined that all activities of the General Manager in connection with this matter, as described in both the Markman and Remcho reports, were taken in the course and scope of his duties, in good faith, and in the best interest of the District. Mr. Lowrey recommended that the Board support their employee, as they are required to do, for civil matters and are authorized to do for other matters, by providing a defense and representation in this matter.

Agenda Item 9-E (continued):

Mr. Lowrey stated that the Resolution does not provide for indemnification, but for defense and defense representation during the investigation. He reiterated that there is only the investigation at this point as no lawsuit has been filed or complaint made against the General Manager. Mr. Lowrey stated that this was not a gift of public funds because it was being done in accordance with the Government Code. He added that the findings need to be made that it was done in the course and scope of the General Manager's duties as well as making the other findings that are in the Resolution. Mr. Lowrey stated that he is firmly committed to the opinion, and he advised and recommended, that this is an appropriate action to be taken by the Board, in the public interest, to support their employee. He added that it is important for the Board to demonstrate their support of the District employees when they act in the interests of the District and its ratepayers, and again recommended the Board adopt the Resolution and engage Mr. Churchwell of DLA Piper.

Director Shriner asked if the District's insurance would pay for the General Manager's attorney. She asked if the attorney/client privilege between Mr. Churchwell and the General Manager would be available to the Board so they could be kept abreast of the investigation. Director Shriner asked for clarification on the word "commission" in the contract.

Director Shriner noted that she hired her own attorney for an investigation, paid the fees herself, and is a volunteer Board member. She asked if there is a clause for volunteer Board members who are carrying out business of the District and if they can have their fees compensated or if it is an individual decision.

Mr. Lowrey answered Director Shriner's questions and commented that the District's insurance was contacted but they were unable to say if there would be coverage since it is still in the investigation stage and no complaint has been filed. He said that the attorney/client privilege would be between the General Manager and Mr. Churchwell. Mr. Lowrey said that "commission" means "something that is done". In regards to Director Shriner's question regarding compensation, he stated that the law has been interpreted to include Board members as officials of the District.

Director Gustafson commented that from early on, the press has not supported the District. He stated that he supports the General Manager 150% and has confidence in him and the District.

Vice President Burns asked if the District is premature in setting up a lawyer now or should they wait until there is an allegation against the General Manager. He also commented that he fully supports providing the General Manager someone to help him through this process, but he is concerned over the cost. Vice President Burns asked if there could be a cap to the amount authorized and once that amount is reached, it would come back to the Board for consideration.

Agenda Item 9-E (continued):

Mr. Lowrey commented that this was the right time to engage counsel for the General Manager as there will be ongoing investigation. He added that a cap can be set and brought back to the Board when it is reached.

Vice President Burns commented that the District Attorney said there was no investigation directed at the General Manager. Mr. Lowrey opined that the General Manager could still be involved in investigation that is mentioned in the Remcho Report even though it is not directed at him. He reiterated that the General Manager needs to have representation and that it is in the best interest of the District that he have representation in those matters.

Director Nishi made a motion to adopt Resolution No. 2011-55 to review a request by the General Manager under Government Code Sections 995-996.6 and 825-825.6 and authorize the District to engage Legal Counsel for the General Manager. Director Gustafson seconded the motion. Mr. Lowrey noted that it was with the addition that the Board President has the authorization to sign the contract with DLA Piper. Vice President Burns asked if the motion was without a cap. Director Nishi answered affirmatively. He added that the Board has an obligation as Directors towards the employees and in his opinion, it wasn't going to be of a significant cost. Director Shriner asked if there could consider amending the motion to include a cap of \$10,000 to be revisited when it reached that cap. Director Nishi said that he didn't think an employee's name should have a cap, and if this investigation starts to go south, the Board will have to revisit it at that time. Director Shriner commented that it speaks to the reasonable cost in the Mission Statement. The motion was passed.

Director Gustafson	-	Yes	Vice President Burns	-	Abstained
Director Shriner	-	Yes	President Lee	-	Yes
Director Nishi	-	Yes			

Vice President Burns commented that although he supports the General Manager fully, he could not support this request without a cap. Director Shriner said that she was voting in the affirmative so that this could be revisited at some point.

F. Consider Providing Direction to the Board President on Nomination to the California Special Districts Association Region 3C Seat:

Mr. Niizawa introduced this item.

Director Nishi made a motion to direct the Board President to nominate Kathryn Slater-Carter to the California Special Districts Association Region 3C Seat. Director Gustafson seconded the motion. The motion was passed.

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

G. Consider Revising the Director Appointment to the Budget and Personnel Committee:

President Lee stated that he wanted to change the appointment to the Budget and Personnel Committee. He said that he was removing Director Gustafson from the Committee and adding himself to the Committee.

Director Gustafson made a motion to revise the Director appointment to the Budget and Personnel Committee. Vice President Burns seconded the motion. The motion was passed.

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

Director Nishi asked if there needed to be an agenda item for the Board President to make changes to the Committees. Mr Lowrey answered that if they were Board appointed Committees there needed to be an agenda item, but if it was an Ad-Hoc Committee there didn't.

10. Staff Report:

A. Annexation of the Ord Community into the Marina Coast Water District:

Mr. Niizawa introduced this item and commented that Denise Duffy and Associates was doing the environmental work for the annexation. He added that District staff talked with LAFCO staff and they recommended that the District consider annexation of all the developed portions of the Ord Community and any additional areas that were planned for development with the next five to ten years. Mr. Niizawa stated that LAFCO said it would be appropriate for the District to expand its Sphere of Influence to the physical boundaries of the developable areas of the Ord Community. He commented that Denise Duffy and Associates has provided District staff an Administrative Draft/Initial Study of the annexation and review should be completed within the next month.

Ms. Pelot asked what the timeline was once the Administrative Draft/Initial Study report was completed.

Mr. George Riley, Monterey resident, commented that he was working on a campaign in the Ord Community and it was very difficult to understand why the people living in the Marina Coast Water District's area were voting for someone on the Monterey Peninsula Water Management District which doesn't have any water responsibility in the area. He urged the District to get the situation cleaned up as soon as possible.

Ms. Brenda Lewis, Monterey Peninsula Water Management District, commented that she is still fielding questions from people in the Ord Community who have questions about their water.



Agenda Item 10-A (continued):

Ms. Lewis urged the District to consider including the Ord Community so they could have representation. She asked if the Ord Community included Seaside Highlands.

Vice President Burns asked when the District is going to go to FORA with this information. Mr. Heitzman answered that staff is still in the process of working with LAFCO staff and the District will also need to meet with the different jurisdictions.

Director Shriner asked to answer the public's questions.

Mr. Heitzman answered that Seaside Highlands is in the District's service area. He also said the timeline is undetermined because the District has not yet made a formal application to LAFCO.

Director Shriner asked that contact information be given to Ms. Lewis. She also asked if the LAFCO report will have pros and cons on the annexation. Director Shriner suggested the District look into working with the City of Marina on environmental work as they are planning an annexation as well.

Mr. Heitzman commented that staff could look into it, but usually each entity has to do their own work, although they can sometimes include work from another entity. Mr. Heitzman commented that over the years the pros and cons have been provided in workshops at Board meetings.

President Lee asked if there was somewhere someone can make their complaints. Mr. Heitzman answered that they can go on the website and make their complaints to the General Manager.

Director Gustafson commented that his number was in the phone book and anyone can call him with their issues. He added that the 1961 Agreement with the City of Marina requires that the residents must vote on whether to annex.

#### 11. Informational Items:

##### A. General Manager's Report:

No report.

##### B. District Engineer's Report:

No report.

##### C. Counsel's Report:

No report.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Burns commented that they had a recommendation for the school teacher that was approved in the consent calendar.

2. Joint City-District Committee:

President Lee commented that they haven't met yet.

3. MRWPCA Board Member:

Vice President Burns commented that the meeting was boiler-plate.

4. LAFCO Liaison:

Director Nishi commented that the meeting was boiler-plate.

5. FORA:

Director Gustafson commented that everyone was at the FORA meeting. President Lee stated that he was not.

6. Special Districts Association Liaison:

Director Gustafson commented that the meeting was scheduled for the next week.

7. JPIA Liaison:

Director Shriner commented that ACWA has a conference coming up September 23-23, 2011 in San Diego.

8. CalDesal:

Mr. Heitzman commented that CalDesal met in Sacramento with the State Water Resources Control Board to discuss brine discharges.

9. Executive Committee:

No meeting was held.

10. Community Outreach:

Director Gustafson commented that the General Manager participated in a television program where he interviewed three individuals.

11. Regional Desalination Reports:

Mr. Heitzman commented that the report was handed out before the meeting and noted that the report was on the Regional Desalination website along with conceptual drawings of what the plant might look like. He added that if anyone had questions to contact him. Mr. Heitzman noted that the Coastal Commission Application was available for public viewing.

E. Director's Comments:

Director Nishi congratulated staff for doing a professional job changing the wharf hydrants to regular hydrants and suggested putting it in the newsletter. He added that he would like to see the final costs for the change out. Director Nishi commented that it is the responsibility of the Directors to set an example and not park in the visitor or customer parking spaces.

Director Shriner thanked the members of the public and media for attending the meeting and for their attention to the water in this region as it is a very important matter. She thanked staff and said they have done a great job putting together the agenda packet and giving the Board important information to help make their decisions. Director Shriner commented that the District is becoming pivotal and of primary importance to the regional water and economic stability of the region. She commented that all the Directors should be making sure the project and water service is environmentally sound and economically feasible in every way they can and thanked everyone for their hard work.

12. Adjournment:

The meeting was adjourned at 9:28 p.m.

APPROVED:

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William Y. Lee, President

ATTEST:

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Jim Heitzman, General Manager