

Marina Coast Water District
Agenda Transmittal

Agenda Item: 8-E

Meeting Date: September 13, 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 July 29, 2011

Detailed Description: The Board of Directors is requested to approve the attached draft minutes of July 29, 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 29, 2011.

Staff Recommendation: The Board of Directors approve the draft minutes of the July 29, 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

Marina Library
190 Seaside Circle
Marina, California

Special Board Meeting
July 29, 2011
9:00 a.m.

Draft Minutes

1. Call to Order:

President Lee called the meeting to order at 9:03 a.m. on July 29, 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
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Brent Ives, BHI Management Consulting
Rebecca Robinson, Monterey County Weekly

3. Public Participation:

There were no public comments.

4. Workshop:

A. Board Workshop:

Mr. Brent Ives, BHI Management Consulting, briefly went over the topics that were going to be discussed during the workshop. Mr. Ives gave a presentation with slides that discussed the following items:

What we are doing this morning
Overview of the Manual

Agenda Item 4-A (continued):

Mr. Ives stated that the Board Procedures Manual is a guide, and not a law, for how the District wants to do business. He emphasized that although everyone may not completely agree with the verbiage in the Manual, they must respect the process and understand that the Board as a group has agreed to it and approved it.

Director Shriner commented that Mr. Ives said that the Board should do what is best for the District and asked what Mr. Ives definition of “the District” is. She added that in documents, “the District” may be defined as the General Manager, the Board, or the employees. Director Shriner said that she would like to include the ratepayers in the definition, and asked how Mr. Ives defined “the District”. Mr. Ives answered that all definitions are true. He said that the ratepayers were the owners, the Board represents the owners by virtue of their vote, the General Manager works for the Board and the employees work for the General Manager.

Director Nishi asked what Director Shriner thought “the District” means. Director Shriner answered that she just said what “the District” means. She added that she was not going to respond to irrelevant questions and questions of personality. Director Shriner said that she thinks the nineteen pages of personality problems undermine the process of creating a team and she has asked several questions of those minutes that have not been answered to date. She said she will change the way she participates in the workshop based on the problems she sees with the past recording of the last workshop.

Director Nishi said that the reason the Board was at the workshop was to have a dialogue, have everyone work together, and have a facilitator present to moderate and bring the Board together even when they bump heads and have a difference of opinion. He added that Mr. Ives has a difficult time getting all the different personalities together and finding a common ground to help everyone agree.

Director Shriner started to comment but Director Nishi said he wasn't finished talking. Director Shriner commented that Director Nishi had paused which allows for discussion. Director Shriner said that the four other Board members approved the minutes which were created in opposition of the current Board Procedures Manual and created by staff in opposition to the current Board Procedures Manual. Director Shriner said that there is the distinction that one person is undermining the process and she disagrees. She said that the process has been undermined and that the Board needs to address the problems openly and honestly. Director Shriner added that the recordings are against the Board's own policies.

Director Nishi stated that everyone has to respect each other's space and as long as he has been on the Board, just because someone pauses to get a thought, doesn't give another individual the right to interrupt. Director Nishi commented that he expects the Chair to do the job they are elected by the Board to do.

Agenda Item 4-A (continued):

Director Nishi commented that he and Mr. Ives butted heads at the last meeting, and had a difference of opinion, but he doesn't hold it against Mr. Ives. He stated that this is another day and the common goal is to pull it together and achieve something beneficial to the ratepayers. Director Nishi said that he is old, not a very eloquent speaker, and it sometimes takes him time to get his thoughts together. He apologized for not letting Director Shriner know that when he is finished speaking, he says "Thank you." Director Nishi emphasized that the Board has to move forward.

Director Gustafson commented that a lot of the tension started with the word "questions". He said that nobody could answer the questions because a certain group of people just don't like the answers that were given and they keep saying that their questions haven't been answered.

Vice President Burns commented that with Mr. Ives as the facilitator, he thought the duties of running the meeting were passed from the Chair to Mr. Ives. Mr. Ives said that it is generally true, but sometimes the Chair needs to intervene so they work together.

Mr. Ives clarified that the reason they are meeting is because of what just happened. He said there is mistrust exuding among the Board and they all should be dedicated to the Mission. Mr. Ives said that if they were all dedicated to the Mission, they would treat each other with respect because they were all elected by the people. He added that no matter what, no one is better or worse than the rest. Mr. Ives said that the suspicion, the questions, and the distrust are the root of all the Board's issues. He said that if someone is on the losing end of a 4-1 vote, they need to be able to move to the next item with a clean slate. Mr. Ives said if they can't, they are no longer serving the Mission or the people, they are serving their own hurt feelings or distrust. He returned to his presentation.

13 Sections for review
Proposed reviews
Section 1 – Purpose of the Manual

Vice President Burns commented that he never approved this manual. He suggested reviewing it every two years so everyone is knowledgeable on the manual. Mr. Ives agreed, saying that candidates should see the manual when running for office. He said after they are elected they can ask to review the manual. Director Nishi said he disagreed. He said that when the candidate signs on, they agree to the manual. Director Nishi commented that every new Director gets a copy of the manual among other things. He added that a new Director can approach the Chair at a later time and suggest discussing it at a Board meeting where everyone can make comments on the manual.

Mr. Ives returned to his presentation.

Agenda Item 4-A (continued):

Section 3 – Authority

Mr. Ives suggested adding the following paragraphs to Section 3:

The Board of Directors is the unit of authority within the District. Apart from his/her normal function as a part of this unit, Directors have no individual authority. As individuals, Directors may not commit the District to any policy, act, or expenditure.

Directors do not represent any fractional segment of the community, but are, rather, a part of the body that represents and acts for the community as a whole.

Vice President Burns suggested providing the Board a redlined version of the manual for review and bringing it back at a later date for consideration. He asked the Board what their thoughts were. Director Nishi said that he would like to wait until after the workshop to see what changes Mr. Ives is suggesting. He said that if they are simple changes, he may be agreeable to voting on the changes after the workshop.

Section 5 – Harassment

Mr. Ives suggested the following change to Section 5:

It is the Board's policy to ensure the District's work environment is free from all forms of harassment. ~~based upon sex, race, color, religious creed, mental or physical disability, pregnancy, sexual orientation, veteran status, ancestry, disability, medical condition, age, or marital status. Harassment may be verbal, physical, or visual in nature. Such behavior in the District is expressly forbidden in any form.~~

Director Shriner said that Section 5 is missing another form of harassment - "not following the Board Procedures Manual" - as claimed by the investigative attorney. She said that the attorney said that if a Director does not follow the Board Procedure Manual, or the common interpretation of the manual, they are committing harassment. Director Shriner added that Mr. Ives' suggested change allows for that form of harassment.

Section 7 – Director Duties

I. assisting the General Manager by looking at problems from broader points of view, and providing outside perspective and guidance;

Mr. Ives asked if the General Manager had any concerns over the verbiage of Section 7I. Mr. Heitzman said that he appreciates that some Board members may have expertise, experience, knowledge, or a point of view from the ratepayers, in areas that the staff may not have.

Agenda Item 4-A (continued):

Director Shriner commented that she sees Section 7I as a very important section as the District's role has changed from "Marina centered" to the "Regional Water Plan". Director Nishi commented that he feels the District has been looking at things from a regional point of view since joining the Monterey Regional Water Pollution Control Agency in 1997 and agrees with treating the BPM as a living document and changing/updating it as things occur.

Mr. Ives suggested the following change to Section 7P:

P. assuring that the conduct of the District's business is open and public and that actions and records of the District are taken and held in confidence only as permitted by law (add reference from Brown Act here) and as necessary to safeguard the assets of the District and to protect the rights of the District's employees;

Director Shriner commented that she thinks there should be a measurable objective for when people try to measure what "open" is. She added that the Orange County Grand Jury did a survey of water districts in their county looking for specific openness and targets on websites such as agenda packets, minutes, compensation packages, and the flow chart of the staff. Director Shriner said she didn't know if Monterey County has that kind of measurable openness and asked if it was something the District would want to incorporate.

President Lee commented that he looks at openness as "does the District follow the law?"

Mr. Lloyd Lowrey, Legal Counsel, commented that he would not have a specific reference in item P, but if he did, it would be the Proposition 59 reference.

Vice President Burns commented that although Director Shriner mentioned the Orange County Grand Jury, the District has never heard from the Monterey County Grand Jury that the District wasn't being open and communicating.

Section 9 – Board President

Mr. Ives suggested the following change to Section 9G:

G. serving as public spokesperson of the District, along with General Manager; and,

Director Shriner commented that she had some suggestions to Section 7. Mr. Ives asked that she wait until later and they can go over any other suggested changes in the BPM.

Director Shriner asked how a "public spokesperson" is defined and if the Board President and General Manager are unavailable, who is the next in line?

Agenda Item 4-A (continued):

Mr. Ives said that it would fall to the Vice President and then on to the Deputy General Manager. Vice President Burns commented that there are times when the President or General Manager cannot make a statement, due to conflict of interest or confidentiality laws, and it looks to the public that they are hiding something. Mr. Ives stated that it can be quite challenging to be a spokesperson.

Vice President Burns said that many times no matter how careful someone is, the message they are trying to convey doesn't always come across as what they meant it to; or, the media will take pieces of what is said and fit it into the story they are trying to tell. Director Nishi agreed that it happens and suggested referring people to the President or General Manager with their questions, or the attorney if it is a legal question.

President Lee commented that in the past, the Legal Counsel had pointed the Board in the General Manager's direction when they needed guidance.

Director Shriner clarified that in the President or General Manager's absence, there is a natural flow of who comes next. Mr. Ives stated that in the absence of the President, the Vice President is next in line, and in the absence of the General Manager, the Deputy General Manager or other delegates appointed by the General Manager.

Mr. Heitzman commented that, depending on the circumstance, sometimes a staff member might have more knowledge on an issue and be the most appropriate person to speak. He then explained that a Board member might mistakenly make a comment that could make the District liable for something they might not normally assume. Vice President Burns commented that sometimes it is better to not say anything at all rather than saying the wrong thing.

Mr. Ives suggested adding another item to Section 9:

- I. assist with the orientation of new Board members as they are elected or appointed to the Board of Directors.

Mr. Heitzman commented that he had recently been thinking about, and discussing with Legal Counsel, ways of orienting new Board members and/or new employees. He said one thought is to create a twenty minute documentary discussing important facts about the District and hand a CD to new Board members and/or new employees for them to view. Mr. Heitzman commented that it would be easier to digest than a three foot stack of papers to look through.

Director Shriner commented that she had done a lot of reading on facts versus frames and there are a lot of frames here. She added that JPIA has free training and discounts for Board members who receive training and clarified that it doesn't have to only be new Board members.

Agenda Item 4-A (continued):

Section 11 – Orientations

Mr. Ives suggested the following addition to Section 11:

Each new director, upon assuming his or her duties, will be provided a comprehensive District orientation by the General Manager and Board President. The Board shall strive to develop and maintain a superior level of competence and preparation among its members through a process of continuing training, education and preparation. Directors may schedule to attend, on behalf of the District, such educational programs, conferences, and meetings to the extent funds are allocated in annual Budgets. Attendance will be scheduled through the Clerk of the Board. The General Manager will from time to time provide the Board lists of such conferences or meetings so that the Board may consider individual or collective attendance with local locations preferred over out-of-town.

Section 12 – Board Committees and Commissions

Mr. Ives suggested adding a sentence to Section 12A:

A. Committee and Commission Actions. Committee and Commission actions shall be governed by the provisions of the California Water Code and all other applicable California Codes as well as District policies, rules, and regulations. The Board may adopt rules for the governance of any committee not inconsistent with the provisions of the California Codes. Committees have no legal authority to act for the Board or the District except with prior Board approval, but shall report their findings and recommendations to the Board for action. All committees and commissions of the Board are advisory in nature and are authorized only to provide recommendations to the whole Board. Committees and commissions are evaluated periodically by the Board based on their necessity and value to District business.

Section 13 – Communications

Mr. Ives suggested discussion on Section 13:

The Board and the individual board members will be committed to establishing and maintaining an environment that encourages the open exchange of ideas and information among Board members, the staff and the public, that is positive, honest, respectful, concise, understandable, responsive, and cost-efficient.

Mr. Ives stated that this section says, “The Board *will* be committed to establishing and maintaining...” and that it is an important piece that says the Board is committed to the Mission.

Agenda Item 4-A (continued):

Director Gustafson said the Board is not ashamed for sticking up for themselves and they are not shy, especially if information that is counterpoint to them isn't true, respectful, courteous, and honest. Mr. Ives agreed that the open exchange of ideas can get dysfunctional. He said that the best teams can trust one another in order to have an honest, open exchange of ideas, and that they can conflict functionally because they understand that everyone is committed to the Mission. Mr. Ives stated that the public, current and future generations, depend on this team working together.

President Lee recessed the meeting from 10:17 – 10:26 a.m.

Mr. Ives returned to discussion on Section 13 – Communications.

Director Shriner suggested inserting “constructive criticism” because the Board does have a lot of defensiveness around criticism. President Lee commented that he feels it is already covered in the Section. Director Gustafson said that he felt the word “responsive” is open-ended and covers everything. Mr. Ives said that the Board needs to be able to move through the process, come out the other end, and moving on to the next item applying everything they have towards it. He said it can't come across as attacking; instead it needs to come across as positive and respectful. Mr. Ives said that instead of coming together in the ring to have an honest evaluation, the Board members retreat to their corners and wait for the bell. He stated that only the Board members can fix it and they need to filter everything through the respect they have for each other. Mr. Ives reminded everyone that no one is better or worse than the other. He said that everyone needs to respect the process of moving through the evaluation, to the vote, and then moving on.

Director Shriner commented that at a recent meeting she remembered discussing the Emergency Water Shortage Contingency Plan at the different levels, and was in the process of suggesting adding a couple more things, like water catchment incentives, to Stage 2 when she was interrupted without the Chair recognizing, and a motion was made and seconded and then they were ready to vote. She said she didn't think that this kind of communication was achieving Board policy. Director Shriner said that she felt disrespected. She said she had the floor and it was disregarded and there was not an open exchange of ideas or any discussion upon her suggestions. Director Gustafson said that sometimes there is repetition, it may be a long issue, and some Board members are ready to move on. Mr. Ives said that most information gathering should come before a motion, although some agencies may do things differently.

President Lee said that he is not perfect and sometimes he makes mistakes and they are pointed out to him. He said that he usually thanks the person for letting him know and he will move forward.

Agenda Item 4-A (continued):

Director Shriner said she would like to discuss the content of respectful and what it looks like from a variety of people. She said that in the case of the Water Shortage Contingency Plan discussion, she was the only one who had questions and then she was rudely interrupted. Director Shriner commented that maybe she had the wrong concept of what respectful is and maybe she doesn't understand what respect would look like from other people. Director Gustafson said Director Shriner needs to not dwell on it and move on. He said that all of them have been on the losing end at one time or another and he just moves on. President Lee commented that everyone has a different idea of what respect is. Director Gustafson said that Director Nishi has probably been interrupted more than anyone, but he lets them know when they do it, and that is how they remember not to interrupt him.

Director Shriner asked if they could all agree that when the Chair recognizes someone to have the floor, that others will not interrupt that person without getting recognition from the Chair. Mr. Ives said that the Chair has a difficult job and the Chair needs to control the meeting, even if it means recessing the meeting. Vice President Burns said that everyone is guilty of interrupting. He added that this is the first year as President for Director Lee and he is doing a reasonably well job trying to control the meeting. President Lee said that even if there is chaos, the meeting doesn't have to be stopped because there can still be forward movement.

Mr. Ives continued with his presentation.

Section 14 – Code of Ethics

Mr. Ives commented that there are a lot of "should/shall's" in the BPM and suggested the following addition to the second paragraph:

The Board of Directors is committed to providing excellence in legislative leadership that result in the provision of the highest quality services to its constituents. The Board and its individual members are expected to maintain the highest ethical standards, to follow District policies and procedures, and to abide by all applicable local, state, and federal laws. Board member conduct should at all times enhance the integrity and goals (Mission) of the District, and the confidence the public has in the District. In order to assist in the governance of the behavior between and among members of the Board, the following rules shall be observed:

Mr. Ives suggested the following change to Section 14D:

D. The primary responsibility of the Board is the formulation and evaluation of policy. ~~Routine matters concerning the~~ All operational aspects of the District are to be delegated to the General Manager.

Director Shriner commented that item D could refer to the Water Shortage Contingency Plan.

Agenda Item 4-A (continued):

Mr. Lowrey commented that the Water Code provides that the General Manager has statutory control of the operation of the District facilities, as does the General Manager's contract. He added that it is not just routine matters, it is all matters.

Mr. Ives continued with his presentation.

Mr. Ives stated that every comment and idea the Board members have should be linked back to the positive outcome of the Mission.

Director Shriner gave an example of someone having an issue of where she parks during meetings and asked if that would be countering item E – Directors should commit themselves to emphasizing the positive. Mr. Ives questioned how much time should be spent on such issues, unless there are designated or handicap spots. Director Shriner said that she thinks it is odd and asked how a parking area ties to the Mission and how it emphasizes the positive. Director Nishi stated that he was the one guilty of what Director Shriner was talking about. He said it refers back to item A - The dignity, style, values and opinions of each director shall be respected. Director Nishi commented that as a Board of Director of the District, they have to set the standard. He said that they can't expect the employees to park in the employee parking if the Board has the mentality that they are a Director and they can take the best spots. Director Nishi said that as a Director, they should accommodate the ratepayer they work for and set the example for the employees. He said that it bothers him tremendously when a Director takes the best spot for themselves. Director Nishi added that they should be accommodating for the elderly or people with difficulty walking and allow them the ability to park in those spaces. He said that he thinks it is a high priority that Directors set the bar. Mr. Ives commented that the Board has the ability to set parking spaces for customers and where the Board will park. Director Nishi said that he is not selective on who he criticizes on this issue. He said if a Director is parking in the customer parking during business hours it is not appropriate because there are customers coming up to pay their bills. Director Shriner asked what the business hours were. Director Nishi said that there have been times when meetings started before the office was closed for business. Director Shriner commented that there are visitor spaces and that the District has invested in signage for the parking lot. She said the parking lot is maybe 100 feet and it would be interesting to see Director parking signs.

Mr. Ives continued with his presentation.

In discussing item M - Directors should develop a working relationship with the General Manager wherein current issues, concerns and District projects can be discussed comfortably and openly, Director Shriner said that in regards to the harassment issue, in one set of minutes, a Director commented that the harassment claim was made in December 2010. She said that the investigative attorney said that it came up in January 2011. Director Shriner stated that she felt she made every effort, but she was only sworn in on December 14, 2010.

Agenda Item 4-A (continued):

Director Shriner stated that if there was already a complaint about her in December as a Board member, she didn't have a chance to recover from that. She said that she has tried to reassure staff that they are doing a good job and she isn't going to take away their job, and yet, this thing happened. Director Shriner asked what responsibility does the General Manager have in helping create a comfortable and open working relationship. Mr. Ives said that it was a reasonable question. Director Nishi commented that he didn't know why they continued to go over this thing. He said that they hired an outside attorney, they came to a conclusion, and they are still back to square one. Mr. Lowrey stated that maybe one of the reasons Director Shriner asked that question, is that because the District used to have a Resolution (98-1) and the District lumped everything together including the duties of the General Manager. He said that some of Resolution 98-1 has been incorporated into the BPM and some of it hasn't. Mr. Lowrey suggested that there should be an appendix to the BPM with Resolution 98-1 so people can refer to it and it doesn't get lost. He added that the question of what the General Manager should do is dealt with in the General Manager's contract which recapitulates what the statutory language is and what Resolution 98-1 states. Director Nishi said that it doesn't answer Director Shriner's question about there already being a hostile work environment when she took office in December. He added that there is documentation that she was doing it and the General Manager was trying to solve the problem, and just as now, they are back to step one where she is saying it is the General Manager. Director Nishi said that it is over and they need to just move on.

Director Nishi commented that they said they wouldn't talk about personality. He said he had been sitting there from the beginning of the workshop, and when he paused he was rudely interrupted, and had been under attack ever since. Director Nishi reiterated that they needed to work together as a team and move on.

Director Gustafson commented that the idea of questions and transparency had come up in the newspapers. He said that the idea of questions always comes up, but whenever he asked people "What questions?" they couldn't tell him. Director Gustafson stated that the questions had been answered but they just don't like the answers they get so to them the questions never got answered.

Director Shriner commented that she had sent a question via email with regards to the General Manager's intentions because she was confused about how they were interacting. She said that in response the General Manager sent her an attachment of the General Manager's 1997 job description and it includes the ability to deal tactfully, convincingly, and effectively with District personnel, government officials, representatives of specific interest groups and the general public. With regard to item M, Director Shriner commented that she feels she fulfilled, as much as possible, to developing the working relationship with the General Manager, and in response she has found the General Manager somewhat lacking in that area of his job description.

Agenda Item 4-A (continued):

Mr. Ives commented that all the Directors have a working relationship with the General Manager and it is probably different for each of them. He added that there is no guarantee that things can always be discussed comfortably and openly. Mr. Ives said that if they don't trust or like one another etc., it is not unheard of for working relationships to not work very well. He added that if there was only one boss, it may be that they fire him, but as a collective boss, each Board member only has a 20% vote and collectively this Board believes Mr. Heitzman is worth keeping. Mr. Ives said that they should both try to work on the relationship although there are some hurdles to get over.

Mr. Ives continued with his presentation.

Section 15 – Directors and Staff...

Section 16 – Interference with the Administrative of the District

Mr. Ives suggested the following change to Section 16:

The Board and its members shall deal with the administrative services of the District only through the General Manager, ~~except for the purpose of inquiry~~, and neither the Board nor any individual director shall give orders or instructions to any subordinate of the General Manager. ~~The General Manager shall take orders and instructions from the Board only when sitting in a duly convened meeting of the Board and no individual director member shall give orders or instructions to the General Manager.~~

Simple Information Requests. - Individual Board members may make simple information requests of staff, through the General Manager. A simple Information request is one that would take the General Manager, District Staff or Counsel less than two hours to complete in the view of the General Manager.

Substantial Information Requests. - A Substantial Information Request is one that would take the General Manager, District Staff or Counsel more than two hours to complete in the view of the General Manager. Individual Board members may place an item on any future agenda to request a Substantial Information Request or to add an item on a future agenda. The request shall be made as a motion under the Director Comments section of the agenda. A majority affirmative vote is necessary to approve the action.

Director Nishi commented that he would like to add "consultants" to the information requests so that it reads, "Individual Board members may make simple information requests of staff *and consultants*, through the General Manager." He added that he would like to remove the time limit and leave it at the General Manager's discretion to recommend putting the request on the agenda especially if it is requiring District Counsel's time which can get quite expensive.

Director Shriner commented that the reason she made a Public Records Request on May 8th was because as part of the Public Records Request, you either get the records or get an estimate of how much time it will take to get the records together.

Agenda Item 4-A (continued):

Director Shriner commented that she has been asking for some documents since February with no estimate of how much longer it would be to receive the documents. She stated that she would like to add to Section 16 – Simple Information Requests the following:

Simple Information Requests. - Individual Board members may make simple information requests of staff, through the General Manager, waiting the answer up to 5 business days before attempting other resources.

Director Shriner stated that when she asked for a copy of the updated version of the General Manager's contract, she waited 34 days to receive it. She said that there were questions about the June 9th meeting that are still outstanding and she doesn't have an estimate of when they will be answered. Director Shriner asked how they can write this section in a way so that if a person is trying to make informed decisions while taking responsibility in their role as a Board member, they are not stonewalled and unable to perform their duties as a Board member. Mr. Ives commented that, as a Board, they have the ability to make the BPM as prescriptive as they want or loosen them up and hope they hold together. President Lee commented that anything the individual Directors want can be brought to the Board and the Board as a whole can direct the General Manager who will then drop everything to respond. Mr. Ives said that it could pull away some of the unilateral ability to get information. President Lee commented that he meant if a Board member felt that they were getting passed over because staff had alleged more important things to do, bringing it to the Board's attention and getting them to direct staff to get it done, could be more effective.

Vice President Burns asked if there were time limits to Public Records Requests. Director Nishi answered that there were. Vice President Burns suggested using the same time limits for simple information requests and if it is simple information it is free, but if the request is for paper, they would have to pay. Mr. Ives commented that he didn't think that was the way it should work for the General Manager.

Director Nishi voiced his concern that there is an accusation made and asked the General Manager if he had failed to respond to Director Shriner in a timely manner. Mr. Heitzman stated that he didn't believe so. Director Nishi stated that there has been an accusation and there have been dates given, and he suggested that President and Vice President meet in an Executive Committee to look into it and have the General Manager get the information and any documentation he may have. He asked that the Executive Committee make an audit of the facts and come back to the Board. Director Nishi voiced his concern over the accusations and the fact that nothing is followed up to see what is occurring. He recommended that Director Shriner get the dates to the General Manager and the General Manager gets his documentation, then the Executive Committee reports back to the Board with the findings.

Agenda Item 4-A (continued):

Vice President Burns commented that people can't request documents that don't exist. He gave an example of the Desal Plant and the request for change orders. Vice President Burns said that there were no documents for change orders, yet there was the insistence that staff provide the documents for change orders. Mr. Ives commented that as Director Nishi pointed out, the Executive Committee could go through the items one-by-one and mark down if they exist or don't exist and report back to the Board for them all to look at it. Director Nishi stated that this should have been addressed long ago to avoid the continued repetition of the allegations. Mr. Ives said this was a good example of being respectful to their fellow Board members.

Director Shriner commented that she has seen contracts and when it says "the District", or "Marina Coast Water District", or "MCWD", it is hard to be clear in the documents who all that means. She stated that the Project Management Contract says that MCWD will receive the five documents she was requesting, including change orders, and she wanted to know if it included the Board. Director Shriner said that at the first meeting when she brought it up, the initial response she received was five men yelling at once. She stated that Vice President Burns had the presence of mind to say that it needed to be discussed at an open Board meeting because it was clear there was misunderstanding of what she was trying to say. Director Shriner said that she sent an email to reassure the General Manager and Board President that she was only asking for things that were in the contract and she just wanted to know if they were coming before the Board. She said that it was on a meeting agenda, was discussed as a Board, and she simply asked if, as the things were produced, they could have a copy. Director Shriner commented that she was already aware that the permit matrix existed from attending a Community Involvement Forum where it was shown. She added that as a Board, they had not seen it. Director Shriner stated that she was simply asking if it was coming before the Board but with all the fighting, the facts were lost. Mr. Ives asked if Director Shriner was still not settled with that. Director Shriner answered that there have been other documents that she has asked for and the pattern is similar. Mr. Ives commented that maybe the process of taking it to the Executive Committee will settle the issue.

President Lee commented that there might be a slight confusion in that sometimes when a question is asked, and the General Manager answers it, they move on. He said that maybe it hadn't been answered to the degree that the individual who asked the question had wanted although it may have been understood to the others because they may have a background to help them understand, where the questioning individual didn't.

Mr. Lowrey commented that this whole discussion points up the need for everyone to be attentive to all parts of the BPM, because it is easy, in the course of public discussion, to slip into dealing with personalities rather than process. He noted that they have seen examples around the table within the last several minutes, in which they are talking about each other or making specific references to the General Manager rather than the process.

Agenda Item 4-A (continued):

Mr. Lowrey commented that one of the procedures discussed earlier was that the Board members wouldn't be criticizing staff in public and cautioned that everyone needed to be vigilant on their behavior at this meeting and other public venues to make sure they are talking about the processes they are concerned about rather than on personalities.

Director Gustafson gave an example of an issue with the pilot desal plant intake vault on the beach where Director Nishi had questions, wasn't happy with the answers given, and the rest of the Board voted for it while Director Nishi voted against it. Director Gustafson said that even though Director Nishi was unhappy with the outcome, he has not continued to make an issue of it.

Mr. Ives clarified that at the last meeting, Director Shriner said that she had a deal with detail and that was the way she was wired. He stated that if that personality trait gets in the way of the process, it is incumbent for all of them to work through that, including Director Shriner.

Director Shriner responded to the accusations that her questions are getting answered but not to her satisfaction, so she gave an example of the June 9th Special Board Workshop. She stated that she has four questions that have been outstanding since July 10th and they included: reasonable cost on how the District is using staff time; undermining the teamwork workshop; is the transcription of nineteen pages, which goes against BPM and probably cost a lot of money, precedented. Director Shriner stated that she has never received an answer either by email or verbal. She asked if nineteen pages have ever been precedented; how much did this cost in staff time; how does it serve the ratepayers; would a video tape have been more cost effective at \$60 per hour. Director Shriner stated that not one of these questions has been answered and it is now nineteen days. She said that this is speaking to the District Mission and not a single answer has been received...not even partway. Director Shriner stated that these are questions about responsibility and role and are not being answered. She added that this is about the frame under which they are all operating under, their responsibilities, and how they are working together as a team.

Vice President Burns commented that some of the questions had been answered at the July Board meeting. He added that they have come full circle again because Director Shriner started off the meeting asking about the nineteen pages, and it always goes full circle back to her and only what she wants. Vice President Burns commented that Director Shriner doesn't like any of the answers she received. In regards to the videotaping at \$60 an hour, Vice President Burns remarked that it may be cheaper but Director Shriner cannot guarantee that even 100 people will watch the show and those with Direct TV don't even get the channel. Vice President Burns commented that in regards to the other issue of nineteen pages of documentation, if Director Shriner doesn't want people to read what she said, she shouldn't say it. He then asked where it states it is against the BPM.

Agenda Item 4-A (continued):

Director Shriner asked Vice President Burns if the answers were given, then tell her what they were. She asked when it was preceded. She said the TV is available at ampmedia.org any day and any time. Director Shriner commented that as to the minutes, page 14, Section 35 of the BPM says "The minutes of meetings of the Board and of board committees shall be action minutes that will accurately reflect actions of the Board and the committees and the vote taken on such actions, and shall not be verbatim minutes of all matters discussed and comments made at Board or committee meetings." She said that unless they want to specify "workshop" and change the BPM, the nineteen pages was not preceded, and was not a reasonable cost to the ratepayers, nor has she received an answer. Vice President Burns replied that Mr. Heitzman responded about Ms. Riso doing the work on the recap of the meetings. He added that it couldn't be verbatim because it would be very difficult to do. Vice President Burns asked if nineteen pages was unprecedented and said that he didn't know, but he is sure there have been more than that many pages at other workshops with other agencies.

Mr. Ives stated that the approach at the question and the process for the answer is the issue. He asked why everyone couldn't work through that. Mr. Ives asked if the question comes with a hook; does it make staff defensive in the answer; is it because they are just not hearing each other; could it have been an innocent question; or, is there always something buried in the question. He stated that this is the reality of the dynamic. Mr. Ives said, okay, so this is unprecedented, maybe this is the first workshop where they ever discussed these things and looking back in retrospect said let's document this as much as we can. He said that he didn't know if that was the answer, but it could be. Mr. Ives said that the process of asking questions and getting answers is broken somewhere and that is where they struggle.

Vice President Burns commented that he struggles with it because it was brought up at the last meeting about the nineteen pages, the first comment that morning was about the nineteen pages, they moved on and it came back about the nineteen pages again. He said that if someone doesn't want something they said documented then they shouldn't say it because it is going to be documented by a person who has to make judgments and assumptions in the process to get it there. Vice President Burns rhetorically asked if nineteen pages was too many, and answered it could have been, or maybe it wasn't enough and should have been thirty pages. He added that they have spent three hours on this now.

Mr. Ives said that maybe a video would have been nice, but it wasn't there and maybe they were trying to document everything as best they can. He added that there doesn't have to always be some insidious reason for things. Mr. Ives said that there is not always a reason to distrust on both sides of the equation.

Mr. Ives continued with his presentation.

Agenda Item 4-A (continued):

Mr. Ives suggested deleting Section 17 if it is incorporated into Section 16.

Mr. Ives said that Section 17 referred to using District Counsel's time and if it is included in Section 16, there is no need for 17. He noted that it could always be added back if the Board wants to describe specific time for attorneys other than consultants.

Director Shriner commented that until she heard from the General Manager that she had been spending so much time with the District Counsel, she had no warning from District Counsel. She said that it is not specific about how much time during her four-year term she can have with the District Counsel. Mr. Ives answered that if they want to get particular with times, the BPM needs to be prescriptive.

Director Shriner said that in May, she asked to see the District Counsel invoices of which she is being accused of running up. She said that they are public records and if Marina Coast Water District is paying a law firm, the invoices the law firm submits are public record. Director Shriner asked how long she is supposed to wait after having asked for these things as a Director, before she returns to the law of a Public Records Act. Mr. Ives answered that it needs to be dealt with, but it won't happen within the next fifteen minutes. Director Nishi asked what Director Shriner's question was regarding. Mr. Ives answered that it was regarding invoices. Mr. Heitzman asked when the request was made. Director Shriner answered that she asked the question as soon as the accusation was made, on May 22nd. She said that she would be asking again as she sent an email last evening.

Mr. Ives stated that the concern is for the clarity and intention of the question is well known and out in front of everyone so that they know it is attached to something positive. He added that there is an inherent distrust in the questions that Director Shriner asks. Director Shriner stated that it was related to an accusation about her and she has the right to defend herself. Mr. Ives answered that it needs to be proven differently and the questions need to be attached to something positive. He added that staff needs to get Director Shriner the answers, and everything should be documented if needed to be, and then everyone needs to move on.

Mr. Ives continued with his presentation.

Section 27 – Closed Session

Mr. Ives reminded everyone that the violation of this section "could" put them and the District in difficult liability circumstances.

Mr. Ives concluded his presentation and asked if any Board members had anything else they wanted to discuss.

Agenda Item 4-A (continued):

Director Shriner said that she had a question on page 3, Section 7R of the BPM. She said that Section 7R is about Director's "reporting and avoiding conflicts of interest". She asked if it was limited to Marina Coast Water District or is it other agencies that they are aware of. Mr. Ives answered that they are responsible as a Director with Marina Coast Water District for their own potential conflict of interest. He clarified that other agencies have other their own set of ethics and contextually they could be slightly different. Director Gustafson commented that if a legal procedure has to be done, a person must be presumed to be innocent until proven guilty once an investigation has commenced.

Director Shriner asked if the word "individual" should be added so it reads, "reporting and avoiding individual conflicts of interest". Mr. Ives said that it is what it is meant to mean.

Director Shriner inquired on Section 7S - providing training for Directors in exercising oversight and supervision of management, the roles and responsibilities of Directors, how to understand budgets, how to monitor budget compliance, and how to work together as a team in problem solving. She said that they are getting the teamwork right now, but she said that she has been told that she had more training than any other Director right now. Director Shriner commented that the other Directors have been here a lot of years and yet she has more training than them. She asked if they should remove this item or start following it. Director Gustafson answered that the District belongs to ACWA and there is a lot of opportunity for training there. Director Nishi voiced his concern that Director Shriner was making another accusation that she had more training than any other Director.

President Lee noted that they were getting off-track and stated that the Executive Committee would look into it and report back to the Board. Director Nishi asked that the Executive Committee look into it because everything Director Shriner hears is gospel to her. Vice President Burns clarified that the Board had received required training on workplace violence, ethics and others. He added that when he joined the Board, he and President Lee attended a Directors Training course, and the only thing he knows Director Shriner has attended is the JPIA conference.

Director Shriner questioned item 9A4 - determining questions of order and enforcing rules of the Board. She stated that she would like to have more in the BPM for instances of when someone is going on-and-on without a break, especially about personality and issues not related to the Mission. Director Shriner would like to see some kind of a warning system where it is declared that the person is off topic or out of order, and a recess is taken to discuss with the offender to control their emotions or leave the meeting, because they are not contributing. Mr. Ives stated that it was discussed earlier in the workshop where the Chair will take more control of the meeting.

Agenda Item 4-A (continued):

Director Shriner commented that Section 11 advises that “Attendance will be scheduled through the Clerk of the Board.” and stated that she had an email reprimanding her that she could only go through the General Manager to schedule training. Director Shriner offered to either strike the sentence or change it to “Attendance will be scheduled through the General Manager.” Director Nishi said that the sentence is ambiguous. Mr. Lowrey explained that “Clerk” is probably the wrong word and it should be “Secretary” as the General Manager is the Secretary to the Board.

Director Shriner questioned Section 14 – Code of Ethics – “L. The work of the District is a team effort. All individuals should work together in a collaborative process, assisting each other in the conduct of the District’s affairs.” She asked if they should keep this item in the BPM or if they should highlight the fact that they don’t always seem to be “assisting”. Mr. Ives said that a lot of the discussion throughout the workshop has been aimed at that issue and it is up to the Board members and how they react to each other.

Director Shriner reiterated that she still had concerns on Section 14 R – Directors shall report and avoid conflicts of interest; and, S – Training shall be provided for Directors in exercising oversight and supervision of management, the roles and responsibilities of Directors, how to understand budgets, how to monitor budget compliance, and how to work together as a team in problem solving.

Director Shriner commented that she had questions on Section 22 – Special Meetings. “An emergency or special meeting may be called at any time by the President of the Board, or by a majority of the members of the Board, by following the notice and agenda requirements set forth by California Government Code sections 54956 or 54956.5. No other business shall be considered at such meetings by the Board other than the item(s) requiring the special meeting.” She questioned how “a majority of members of the Board” can call a special meeting without it being a Brown Act violation. Mr. Lowrey said that a majority of members of the Board can call a special meeting while presiding at an agenda meeting.

Vice President Burns asked to return to Director Shriner’s questions about conflict of interest. He stated that if a Director knows that another Director may have a conflict of interest, they should report it to the Board President or General Manager. Mr. Lowrey commented that if a Board member notices something is missed at a Board meeting, that Board member needs to call the President’s attention to it. He also noted that if someone notices a Brown Act violation or a possible conflict of interest with another Board member during a meeting, they should bring it to his or the President’s attention. Mr. Ives noted that it shouldn’t be in an accusatory tone, but rather in a supportive manner.

Director Shriner said that she had a question on Section 34 - Abstention/Conflict of Interest.

Agenda Item 4-A (continued):

Director Shriner questioned if the following phrase was correct in Section 34. “A director shall abstain from voting when he/she has a disabling conflict of interest. In the presence of a declared disabling conflict of interest, the affected director shall enter the declaration in the Board minutes, shall not participate in discussing that agenda item, shall absent himself/herself from the Board seat, and shall not cast a vote on that matter. *If the board member is not personally involved in the matter before the Board, that director shall leave the room.* The minutes shall record a director’s absence for any circumstance where a board member is not seated at the dais at the time of a vote.” Mr. Lowrey answered that if a Director has a conflict and has removed themselves from the dais, they may remain in the room if they are personally involved, for example, if the Director needs a water meter for a business they own, they may remain as a member of the public. He added that if they removed themselves from the dais because they live next door to a project or development that might affect the value of their house, then they must leave the room. Mr. Ives asked if the answer given cleared up Director Shriner’s question. Director Shriner said that she still thought the language could use a little more wordsmithing.

Director Shriner said that she wanted to discuss Section 35 – Minutes of Board and Board Committee Meetings. In regards to verbatim minutes, she asked to clarify the issue so that the Board members are not surprised with which method is the method of the day.

Vice President Burns suggested adding an item to define remote meetings and what the requirements are if a Board member is out of town for a meeting. He also questioned parameters and asked what the violations and processes are if the rules are not followed. Mr. Lowrey stated that the courts have defined what can and cannot be done. He said that it goes back to the concept that the Board members sit in a trustee capacity and are elected by their constituents. Mr. Lowrey said that if Board members do something to each other, they are really doing it to the constituents that elected them. He said that limits the ability of what the Board can do, such as taking away the ability to vote on certain things, unless there is a violation under the recent Nevada case which said that a Board or Council member could be precluded from voting if they had a conflict of interest. Mr. Lowrey said the rules regarding conflict of interest, in which Board members are supposed to not vote, are legitimate and not unconstitutional. He added that the Board can censure each other without taking away the authority of a Director but procedurally certain things can be done. Mr. Lowrey stated that the courts are developing the rules of a trustee in the context of defining what a trustee can and can’t do. He said that it might be a good idea to add a section explaining what authority the Board has under the law, or just to give guidance.

Director Shriner stated that there was the investigation on the hostile work environment which was based on violating some of these policies and depending on how they are interpreted, any Board member may have already violated. She asked if they really wanted to generate expensive investigations as a District.

Agenda Item 4-A (continued):

Director Nishi commented that he would like to make a change to Section 9 – Duties of the President so that it reads, “This District shall have a President who shall be elected by the Board from among the five (5) elected directors. The President shall be elected annually in the month of December. ~~It is the Board's policy to rotate the office of President among the Board members~~ and No Director shall serve more than three (3) consecutive years as president. The President's responsibilities include:” Director Shriner asked if that meant they wouldn't rotate the President every year. Director Gustafson said it is up to the Board if they want to or not. Director Nishi commented that he was the one who initiated the policy, but now in seeing the evolution, it might be in the best interest of the District, especially when times are difficult, to keep certain people in as a Chair. He added that it is more efficient in the long run instead of changing the Chair in mid-stream. Director Shriner suggested timing it with election years. Director Nishi answered that if the Chair is doing a good job, they can keep them in that position for no more than three terms. Mr. Ives clarified that every December the Board will make that decision. Director Nishi said that it gives the opportunity to put a new Chair in, but they don't have to if they don't want to. He asked if it would be wise to change the Chair in the middle of this crucial desal project.

Director Nishi asked if there was going to be another workshop. Mr. Ives answered affirmatively. Director Nishi stated that he would like to see discussion of an Organizational Chart as an item. Mr. Ives agreed and asked if the Board would like a redlined version of the BPM for discussion at another workshop or in the regular meeting format. Director Nishi agreed to the redlined version at a regular meeting with the Executive Committee reviewing it first.

Mr. Ives commented that at the next workshop, they would be discussing strategy and how it starts to fall out in terms of long term study, but the workshop will begin with the org chart.

Vice President Burns stated that he thinks the District needs to develop their central goals first such as Desal and RUWAP. Mr. Ives said that he will work with the Board Chair and get the agenda right. Director Shriner asked if they were going to update the 2007 Strategic Plan. Mr. Ives answered that they would.

President Lee asked to have a copy of the PowerPoint presentation sent to all Directors.

5. Possible Action Item:

A. Consider Adoption of Resolution No. 56 to Amend the Board Procedures Manual:

President Lee stated that they were going to table this item until a future meeting. No action was taken.

Mr. Lowrey stated that the Board was going to go into Closed Session after announcement per Government Code Section 54957.7(a).

The Board of Directors entered into closed session at 12:16 p.m.

6. Closed Session:

- A. 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 news media, 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.

The Board of Directors returned to open session at 1:22 p.m.

7. Possible Action on Closed Session Item:

Mr. Lowrey handed out a letter received by the District from the Monterey County Water Resources Agency dated July 13, 2011.

Mr. Lowrey stated that the Board met and conferred with and received advice from legal counsel concerning anticipated litigation, and no action was taken.

Mr. Lowrey advised that now, in open session following the closed session, the Board will consider whether to approve a limited waiver of the attorney-client privilege for investigations being conducted by the Monterey County District Attorney and the Fair Political Practices Commission concerning matters mentioned in the Remcho Summary and in a "Preliminary Report on Conflicts of Interest in the Processing and Approval of the Regional Desalination Project Contracts, and the Impact of Any Conflict on the Validity of the Contracts," prepared by attorneys James L. Markman and B. Tilden Kim of the law firm of Richards, Watson, Gershon and previously made public by the MCWD Board.

A. Consider Limited Waiver of Attorney-Client Privilege for Investigations:

Director Gustafson made the following motion:

MOTION TO APPROVE LIMITED WAIVER OF ATTORNEY-CLIENT PRIVILEGE

1. The Board finds that the Board has reviewed a letter from the Office of the District Attorney of Monterey County requesting the cooperation of Marina Coast Water District in the investigation of matters mentioned in the "Preliminary Report on Conflicts of Interest in the Processing and Approval of the Regional Desalination Project Contracts, and the Impact of Any Conflict on the Validity of the Contracts," prepared by attorneys James L. Markman and B. Tilden Kim of the law firm of Richards, Watson, Gershon.

2. The Board finds that the public interest in approving a limited waiver of the attorney-client privilege to cooperate as requested by the Monterey County District Attorney in coordinated investigations by the Monterey County District Attorney and the California Fair Political Practices Commission justifies approval of a limited waiver of the attorney-client privilege to affirm the District's cooperation with the coordinated investigations.

3. Based on the foregoing findings, the Board approves a limited waiver of the attorney-client privilege as follows:

a. The Board approves a limited waiver of attorney-client privilege that will apply only to communications made before January 1, 2011. No privileged communications concerning the DA's investigation or an investigation by the Fair Political Practices Commission will be included in the waiver.

b. There will be no waiver by MCWD or any attorney representing and advising MCWD of the attorney's work product privilege, save and except a limited waiver of interview notes, written summaries of interviews, and recordings of interviews conducted by Mr. Markman and Mr. Kim to prepare the preliminary report referenced above.

c. The interviews of Mark Fogelman, Lloyd Lowrey, Don Evans, Jim Heitzman and Kelly Cadiente will relate only to the matters discussed in the Markman report and not to any other matters except with a further express waiver of any applicable attorney client privilege by the Board of Directors of MCWD.

d. Any further waivers of the attorney-client privilege in connection with the request of the District Attorney's Office may be approved by concurrence of the President and Vice President of the Board based on the advice of District Counsel.

After discussion, Director Gustafson amended his motion to omit 3d and make it a separate motion. Vice President Burns seconded the motion for 1-3c. Director Gustafson called for the question. The motion was passed.

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

Agenda Item 7-A (continued):

Director Gustafson made a motion to add Section d. Any further waivers of the attorney-client privilege in connection with the request of the District Attorney's Office may be approved by concurrence of the President and Vice President of the Board based on the advice of District Counsel. The motion died for a lack of a second.

8. Directors Comments:

Director Shriner commented that she received information from Mr. Roland Chandler inquiring on an update on the lease of the District's Desal plant and asked that it be provided to the Directors.

9. Adjournment:

The meeting was adjourned at 1:32 p.m.

APPROVED:

William Y. Lee, President

ATTEST:

Jim Heitzman, General Manager