

Marina Coast Water District

District Office  
11 Reservation Road  
Marina, California

Regular Board Meeting  
October 11, 2011  
6:45 p.m.

Draft Minutes

1. Call to Order:

Vice President Burns called the meeting to order at 6:45 p.m. on October 11, 2011.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Bill Lee – President (excused – out of state on business)

Staff Members Present:

Lloyd Lowrey, Legal Counsel  
Carl Niizawa, Deputy General Manager/District Engineer  
Kelly Cadiente, Director of Administrative Services  
Thomas Barkhurst, Water Quality Chemist  
Brian True, Capital Projects Manager  
James Derbin, Interim Operations and Maintenance Superintendent  
Patrick Breen, Capital Projects Manager  
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Andy Sterbenz, Schaaf & Wheeler  
Richard Newhouse, Marina Resident  
George Riley, Monterey Resident  
Bob Holden, MRWPCA  
Tom Moore, Marina Resident  
Carmelita Garcia, Mayor of Pacific Grove  
Alberto & Keui Villa, Marina Residents  
Bill & Julie Hood, Carmel Residents  
Daniel Burklund, Royal Oaks Resident  
Aliya Piotrkowski, CalAm Water

The Board entered into closed session at 6:45 p.m., after announcement per Government Code Section 54957.7(a).

3. Closed Session:

- A. 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)
- 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 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.
- D. 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 7:01 p.m.

Vice President Burns reconvened the meeting to open session at 7:02 p.m.

4. Possible Action on Closed Session Items:

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

3-A – the Board of Directors conferred with Legal Counsel, no action was taken.

3-B – the Board of Directors conferred with Legal Counsel, instructions were given and no action was taken.

3-C – the Board of Directors conferred with Legal Counsel, no action was taken.

3-D – the Board of Directors conferred with Legal Counsel, no action was taken.

5. Pledge of Allegiance

Vice President Burns led everyone present in the pledge of allegiance.

6. Oral Communications:

Tom Moore, Marina resident, reminded the public that the rebroadcast of the District Board meetings is brought to them by More Transparency and the efforts of Richard Newhouse. He commented that donations could be made to More Transparency, P.O. Box 693, Marina, CA 93933.

7. Consent Calendar:

Director Shriner requested to pull items C, and D from the Consent Calendar.

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

A) Adopt Resolution No. 2011-75 to Approve an Amendment to the Professional Services Agreement with Ground Zone, LLC, the Industrial Hygienist/Hazardous Materials Specialist for the Well No. 34 Site Improvement Project/Eastern Distribution System Project

B) Adopt Resolution No. 2011-76 to Approve Outsourcing of Information Technology Support Services of the District

E) Approve the Draft Minutes of the Special Joint FORA Board Meeting of September 16, 2011

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

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

C) Approve the Expenditures for the Month of September 2011:

Director Shriner inquired when the last invoice from RMC was received. Mr. Carl Niizawa, Deputy General Manager/District Engineer, answered that the August invoice was recently received and currently being processed. With regards to check number 52645, Director Shriner asked what services Alex Houlanicki provides to the District. Mr. Niizawa answered that Mr. Houlanicki provides public outreach services at the request of the General Manager. Director Shriner inquired on check number 52672 and asked when those charges were incurred. Ms. Kelly Cadiente, Director of Administrative Services, answered that the charges were incurred in May and there was a delay in receiving the invoice. Director Shriner inquired about check numbers 52726 and 52727, both to FORA, and asked for a total estimate of what the District pays to FORA annually. Ms. Cadiente answered she would look into it and noted that these particular charges are paid quarterly.

Director Gustafson made a motion to approve the expenditures for the month of September 2011. Vice President Burns seconded the motion. The motion was passed.

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

D) Approve the Draft Minutes of the Regular Board Meeting of September 13, 2011:

Director Shriner noted that page 37 of the packet states that no action was taken in closed session. She said that since she missed part of the closed session, she wanted to know how she could find out what was discussed before she was present. Director Shriner asked if an Ad Hoc Committee was created in closed session, would it have to be reported out in open session. Mr. Lowrey answered that the President makes the appointments to Ad Hoc Committees and it wouldn't be a Board action. Director Shriner asked how she could find out what happened in closed session before she got there. Mr. Lowrey said that he believed a Board member could ask another Board member who was present what happened, but he would check and let the Board know.

Director Gustafson made a motion to approve the draft minutes of the regular Board meeting of September 13, 2011. Vice President Burns seconded the motion. The motion was passed.

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

8. Action Items:

A. Consider Adoption of Resolution No. 2011-77 to Direct Staff to Initiate the Formation of a Regional Desalination Project Operations and Maintenance Committee:

Mr. Niizawa introduced this item and explained that at its special Board meeting on September 30, 2011, the Board discussed the matter of the formation of an Operations and Maintenance Committee for the Regional Desalination Facility and it was favorably received. He said that staff was asking for direction from the Board to develop the concept and bring it back to the Board for later approval.

Mr. Bill Hood, Carmel resident, commented that he was in favor of the idea, but he would like to see more information on how the committee would be constituted and what role it would have.

Mr. Moore echoed Mr. Hood's comments and added that there is no indication on what kind of direction has been provided by the Board with respect to this committee. He asked that the Board discuss this item to allow the public to know what direction the Board wants staff to take.

Ms. Carmelita Garcia, Mayor of Pacific Grove, also echoed Mr. Hood's comments and said she was unable to find any information on the formation of this committee. She said that the staff report was very vague and asked if construction has already begun which would warrant the necessity for this type of committee.

Mr. George Riley, Citizens for Public Water, commented that it seems to him that the issue of transparency is kind of key to having a public participation committee of some sorts, but it seems to him there ought to be and there should be some guidelines given on what direction and what is it the committee is intended to accomplish. He said that one of the major criticisms of the Regional Desalination Project has been the Monterey Peninsula has been left out of the management decision making structure. Mr. Riley He asked if this committee is was oriented towards participation by Monterey Peninsula rate payers...or not. He asked, and if it is designed to reach for public agency representation or the public in general. Mr. Riley asked if it was designed to have some kind of the oversight responsibility to is only for operations and maintenance. He echoed the Mayor's comments about there is no operating system in place or not even on the drawing board yet. Mr. Riley said the rush to do this seems a little strange to him and the whole governing structure is held up in secret operations for a long time now with non-disclosure agreements and so on. He said that the reach towards the public, without the public having any sense of where this is going, is a very complicated but also strange proposal at this point in time. and noted that since there hasn't even been construction, this may be premature. Mr. Riley said that he would just hope that if they do move in this direction, they would give guidance or at least some expectation of what the public might expect. He said if they don't have guidance at this point, he would say delay it until they get a better report so at least the public can have some idea of what it is we are talking about. Mr. Riley said they are looking at a proposal that is kind of thrown to the public without any sense of what it is for, what it is

~~designed to do, what it wants to accomplish, and what is the public role in this anyway. He said that so far, the public has been cut out, meetings have been canceled, staged meetings have been held, public questions that have been asked and not been answered. Mr. Riley asked if this was designed to accommodate those kinds of questions or interactions. He asked what it was designed to do and echoed that question. He asked that the Board provide more information on the direction they want this to go so everyone has a clearer sense of what this entire thing is about.~~

Director Shriner commented that she agreed that the information on this item was vague and noted that two people read statements at the special Board meeting on September 30<sup>th</sup> but the written statements were not available. She commented that the method of developing this committee so far has not been transparent. Director Shriner suggested tabling this item and give the Board and staff more time to think about how to go about this in the most transparent manner. She stated that if the committee is an oversight committee, the term “oversight” should be in the resolution and added that without more detailed information, she cannot make an informed decision on this.

Director Nishi commented that the intent was to have the General Manager go out to the jurisdictions and ask what they want. He said that the District wants to form an Operations and Maintenance Committee.

Agenda Item 8-A (continued):

Director Nishi commented that this is the first step and over time, things will evolve and maybe a JPA will be formed. He said that at this point, the District is looking for a vehicle to promote transparency and participation and encouraged everyone to help get the project moving forward to benefit the Peninsula.

Director Gustafson commented that this action is to initiate talk so when the water purchase comes around everyone will be ready. He clarified that the project was not put together in closed session; it was created through three years of REPOG meetings.

Director Shriner made a motion to adopt Resolution No. 2011-77 to direct staff to initiate the formation of a Regional Desalination Project Operations and Maintenance Committee with the following qualifications:

- 1) the purpose is for oversight of operations and maintenance;
- 2) 15 members or less on the committee with residents of the Peninsula as a priority;
- 3) meetings would be public;
- 4) there will be full disclosure;
- 5) District staff would work no more than 40 hours initially before bringing it back to the Board;
- 6) District legal counsel would work no more than 40 hours before bringing it back to the Board.

The motion died for lack of a second.

Director Nishi questioned Mr. Riley about his comments on the Community Forum meeting which was canceled.

Director Shriner called a Point of Order. Vice President Burns asked if the Board was going to answer questions from the public or not. Director Nishi commented that he feels an obligation to set the record straight when someone makes a false accusation. Director Shriner disagreed.

Mr. Lowrey advised that under Oral Communications, Directors should not respond to the public comments made. He said that under Director's Comments, Directors should not hold intramural discussion. Mr. Lowrey said that when considering an item, Directors should be allowed to debate an item of business and he would be reluctant to restrict a Director unless they were completely off topic of the item listed on the agenda. Mr. Lowrey stated that in this case, the question of the public participation is part of what is on the agenda, and Directors should be able to discuss that. Vice President Burns voiced his concern of Directors challenging people in the audience. Mr. Lowrey recommended that to the extent that Directors find it possible, any discussion of personalities, individuals, or any ad hominem comments be curtailed and only the issues be addressed.

Agenda Item 8-A (continued):

Director Gustafson made a motion to adopt Resolution No. 2011-77 to direct staff to initiate the formation of a Regional Desalination Project Operations and Maintenance Committee. Director Nishi seconded the motion.

Director Shriner made a substitute motion to adopt Resolution No. 2011-77 to direct staff to initiate the formation of a Regional Desalination Project Operations and Maintenance Committee with the following qualifications:

- 1) the purpose of the committee be for oversight;
- 2) the Monterey Peninsula residents be given a priority;
- 3) meetings would be public;
- 4) there will be full disclosure;
- 5) District staff would work no more than 40 hours initially before bringing it back to the Board;
- 6) District legal counsel would work no more than 40 hours before bringing it back to the Board.

The motion failed for lack of a second.

Director Gustafson called for the question.

The motion to adopt Resolution No. 2011-77 to direct staff to initiate the formation of a Regional Desalination Project Operations and Maintenance Committee was passed.

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

- B. Consider Adoption of Resolution No. 2011-78 to Approve the Construction Contract with Don Chapin Company, Inc. for the Construction of the Well No. 34 Site Improvement Project:

Mr. Patrick Breen, Capital Projects Manager, introduced this item.

Director Gustafson made a motion to adopt Resolution No. 2011-78 to approve the Construction Contract with Don Chapin Company, Inc. for the construction of the Well No. 34 Site Improvement Project. Director Nishi seconded the motion. The motion was passed

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



C. Consideration for Directing Staff to Draft a Request for Proposals for District Legal Services:

Mr. Lowrey recused himself at 7:31 p.m. and left the room.

Mr. Niizawa introduced this item.

Director Shriner asked why no action was taken on the June 14<sup>th</sup> discussion. Mr. Niizawa answered that there was discussion of some Board members going to Noland, Hammerly, Etienne & Hoss. He said that a motion was made and withdrawn at that meeting and no action was taken. Vice President Burns stated that he and Director Gustafson were supposed to go over to the office and talk with them. He said that after a legal evaluation was done in closed session, he didn't think there was a need to do that and he never made arrangements for the visit.

Director Nishi made a motion to direct staff to draft a Request for Proposals for District Legal Services. Director Gustafson seconded the motion. The motion failed.

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

Mr. Lowrey returned to the meeting at 7:34 p.m.

9. Staff Report:

A. Receive Information on the District's Investment Policy:

Ms. Cadiente introduced this item stating that the District's Investment Policy will be brought to the Budget and Personnel Committee for review and then to the Board for discussion. Director Shriner clarified that the last approved policy is 2002/2003. Ms. Cadiente stated that this Policy will be updated annually.

10. Informational Items:

A. General Manager's Report:

No report.

B. District Engineer's Report:

Mr. Niizawa commented that staff has initiated review of the Ord office landscaping to make sure it is compliant with District standards. He added that staff received input from the Ad Hoc Committee regarding an outreach firm and with the new information, staff will again seek outreach firms.

C. Counsel's Report:

Mr. Lowrey commented that at a recent meeting Director Shriner mentioned and asked advice on an Attorney General's opinion. Mr. Lowrey handed out copies of the Attorney General opinion in question. Mr. Lowrey commented that the opinion was regarding holding meetings outside the jurisdictional boundary of the District, and according to the Attorney General's opinion, as long as the District's principal office is outside the boundary, meetings may be held there.

Mr. Lowrey noted that the courts have been looking at Prop. 218 recently and stated that it is very important any Prop. 218 proposals are based on thorough engineering and financial analysis. He said that the analysis needs to show the benefits to be received by the people to be assessed are proportional to the assessment that is going to be imposed. Mr. Lowrey advised that there is an important need to connect the dots so that the benefit is proportional to the assessment.

D. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Burns stated that they looked at the Water Wise newsletter and discussed upcoming meetings where BMP's and refining the roles of the Committee will be discussed.

2. Joint City-District Committee:

Director Gustafson commented that there was no meeting because there was no quorum as only one member showed up from the City. Director Nishi commented that President Lee was unavailable due to work and he was unavailable as he was out-of-town in mediation.

3. Budget and Personnel Committee:

No meeting was held as there was no quorum.

4. Executive Committee:

No meeting was held as there was no quorum.

5. Community Outreach:

Director Gustafson commented that the District put an ad in the NAACP brochure. He added that an RFP will go out for an outreach firm.

6. MRWPCA Board Member:

Director Nishi commented that the meeting was boiler-plate.

7. FORA

Director Nishi said everyone was there.

8. LAFCO Liaison:

Director Nishi stated that a public member, Vince DiMaggio, resigned and the LAFCO Board appointed Sherwood Darington to the primary public position and someone else to the alternate public position. He commented that the meeting was boiler-plate

9. JPIA Liaison:

Director Shriner commented that ACWA visited the District offices.

10. Special Districts Association Liaison

Director Gustafson commented that the meeting was next Tuesday.

11. CalDesal:

Vice President Burns commented that they were still working with the SWRCB.

12. Regional Desalination Reports:

Vice President Burns commented that the report was in the packet.

11. Director's Comments:

Director Shriner commented that there was a California Special Districts Association conference going on in Monterey. She added that she was concerned about the closed session item regarding contract negotiations with the General Manager and how it fits with the District's Mission and Vision statements. Director Shriner said that until she understands how ongoing contract negotiations fit with the District's Mission and Vision statements, she will decline participating in the negotiations as should everyone else. She pointed out the negotiations have been ongoing from the time she was elected to the Board and a contract was signed November 2010, an amendment approved in May 2011, and there are still negotiations going on.

Director Gustafson said he appreciated the General Manager's service and professionalism and where he has put the District. He added that he will continue ongoing discussions with the General Manager to make sure he is happy with the District.

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Agenda Item 11 (continued):

Director Nishi commented that the Vice President took the bridge of the ship and kept it on course.

12. Adjournment:

The meeting was adjourned at 7:47 p.m.

APPROVED:

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Dan Burns, Vice President

ATTEST:

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Jim Heitzman, General Manager