

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Regular Board Meeting
March 13, 2012
6:30 p.m.

Draft Minutes

1. Call to Order:

Vice President Gustafson called the meeting to order at 6:30 p.m. on March 13, 2012.

2. Roll Call:

Board Members Present:

Dan Burns – President – arrived at 7:28 p.m.
Howard Gustafson – Vice President
Jan Shriner
Kenneth K. Nishi

Board Members Absent:

Bill Lee – excused (out of state on business)

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
Brian True, Capital Projects Manager
James Derbin, Interim Operations and Maintenance Superintendent
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

George Riley, Monterey Resident
Alberto Villa, Marina Resident
Kuei Villa, Marina Resident
Philip Moore, Toro Area Sewer Coalition
Michael O'Conner, R. J. Ricciardi, Inc.

The Board entered into closed session at 6:30 p.m., after announcement per Government Code Section 54957.7(a) by Mr. Lloyd Lowrey, Legal Counsel.

3. Closed Session:

A. Pursuant to Government Code 54956.9

Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)

1) 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)

2) In the Matter of the Application of California-American Water Company (U 210 W) for a Certificate of Public Convenience and Necessity to Construct and Operate its Coastal Water Project to Resolve the Long-Term Water Supply Deficit in its Monterey District and to Recover All Present and Future Costs in Connection Therewith in Rates, California Public Utilities Commission No. A.04-09-019

B. Pursuant to Government Code Section 54956.9

Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b)
One Case

C. Pursuant to Government Code Section 54959.9

Conference with Legal Counsel – Anticipated Litigation
Potential Initiation of Litigation (c)
One Case

D. Pursuant to Government Code Section 54957

Public Employee Performance Evaluation
Title: General Manager

Vice President Gustafson reconvened the meeting to open session at 7:03 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, no action was taken.

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

3-D – there was discussion, no action was taken.

5. Pledge of Allegiance

Following a moment of silence in remembrance of Mr. Richard Newhouse, Vice President Gustafson led everyone present in the pledge of allegiance.

6. Oral Communications:

No comments were received.

7. Consent Calendar:

Director Nishi requested to pull agenda items 7-D, 7-E, and, 7-F from the Consent Calendar.

Director Shriner made a motion to approve the Consent Calendar consisting of:

- A) Approve the Draft Spring 2012 Water Report Newsletter
- B) Adopt Resolution No. 2012-15 to Revise Sections 3.10 and 11.9 of the Employee Handbook
- C) Approve the Expenditures for the Month of February 2012

Director Nishi seconded the motion. The motion was passed.

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

- D) Approve the Draft Minutes of the Regular Board Meeting of January 10, 2012:

Director Nishi asked for clarification on the corrections submitted for the draft January 10, 2012 minutes. Director Shriner quoted Section 34 “Minutes of Board and Board Committee Meetings” from the Board Procedures Manual.

Director Nishi made a motion to approve the draft minutes of the regular Board meeting of January 10, 2012. Vice President Gustafson seconded the motion. The motion was passed.

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

- E) Approve the Draft Minutes of the Regular Board Meeting of February 14, 2012:

Director Nishi asked if the vote for item 9-F on page 12 of the minutes was correct as he had a different vote in his notes. Ms. Riso acknowledged that the vote was correctly noted in the minutes.

Agenda Item 7-E (continued):

Director Nishi made a motion to approve the draft minutes of the regular Board meeting of February 14, 2012. Director Shriner seconded the motion. The motion was passed.

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

F) Approve the Draft Minutes of the Special Board Meeting of February 24, 2012:

Director Nishi asked if the vote for item 5-E on page 10 of the minutes was correct as he had a different vote in his notes. Ms. Riso answered that she remembered President Burns voting no on that item, but would check the tape to make sure. Vice President Gustafson stated that he remembered President Burns voting no as well.

Vice President Gustafson made a motion to approve the draft minutes of the special Board meeting of February 24, 2012 as provided or with the correction if needed. Director Shriner seconded the motion. The motion was passed.

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

8. Action Items:

A. Consider Adoption of Resolution No. 2012-16 to Approve the District Technology Plan Appendix for Fiscal Years 2011-2012 and 2012-2013:

Ms. Kelly Cadiente, Director of Administrative Services, introduced this item. Director Shriner asked if the Technology Plan would be spending \$50,000 in this fiscal year. Ms. Cadiente answered affirmatively.

Director Nishi made a motion to approve the District Technology Plan Appendix for fiscal years 2011-2012 and 2012-2013. Director Shriner seconded the motion. The motion was passed.

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

B. Consider Accepting the Comprehensive Annual Financial Report and the Independent Auditor's Report for the Fiscal Year Ended June 30, 2011:

Ms. Cadiente introduced this item. Director Nishi commended Ms. Cadiente on a job well done. Vice President Gustafson commented that the Comprehensive Annual Financial Report (CAFR) shows openness and transparency in government finance.

Director Shriner asked for clarification on the "doubtful accounts" and, referring to the pie-chart on page 6, asked if the District has ever had a study done on how the District's breakout compared with other agencies of a similar size. Ms. Cadiente explained what constituted "doubtful accounts" and said she didn't think the District ever compared their breakout with other agencies. Director Shriner questioned "Deficit Fund Balances" and the New Water fund. Ms. Cadiente answered that that the New Water fund was for the development of Recycled Water Projects and it would be paid when the development is complete and revenues are generated. Director Shriner questioned what the Promissory Note to Sandhills for Nominee was for. Ms. Cadiente answered that it was for the Armstrong property. Director Shriner asked why the costs to the District administration had doubled while the water production and number of people remained the same. Ms. Cadiente answered that the administration costs included interest expenses from the two bonds issues.

Director Nishi asked for staff to bring to a future agenda, an item regarding how the District could collect the fees the three developers were supposed to pay for the District's pilot desalination plant. He suggested a possible lien and added that the City of Marina was looking to sub-divide the property and asked staff to look into how fees would be split.

Director Nishi made a motion to accept the Comprehensive Annual Financial Report and the Independent Auditor's Report for the fiscal year ended June 30, 2011. Director Shriner seconded the motion. The motion was passed.

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

President Burns arrived at 7:28 p.m.

C. Receive Draft Budget for FY 2012-2013 and Schedule a Budget Workshop:

Ms. Cadiente introduced this item. Director Nishi suggested the Executive Assistant send the Directors some possible dates for the Budget Workshop.

President Burns made a motion for the Executive Assistant to send out possible dates for the Board Workshop. Director Nishi seconded the motion. Director Shriner asked if she should notify staff of some budget questions prior to the workshop so staff could be prepared.

Agenda Item 8-C (continued):

Mr. Heitzman informed Director Shriner that she could call or meet with staff to go over her budget questions.

The motion was passed.

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

9. Staff Reports:

A. Receive a Staff Report Regarding the MCWD Ord Office Landscaping Project:

Mr. Carl Niizawa, Deputy General Manager/District Engineer, gave a brief update of the landscaping project. The Board asked several clarifying questions. Director Nishi voiced his concern that the project has been ongoing for several years and he pointed out that the District needs to maintain the culture of following its own rules as it requires other customers to follow them. Mr. Heitzman informed Director Nishi that staff was paying closer attention to the standards. Director Nishi commented that the District implemented water conservation but it conflicted with the City of Marina's irrigation plans, and he has asked that the District address these issues. Mr. Heitzman answered that the District is looking at those issues to ensure that they are not in conflict with the authority of the land use jurisdictions. Director Nishi asked what the total cost was for the completion of the project. Mr. True answered that it was about \$22,200 with \$17,000 in the FY 2012/2013 budget. Director Nishi stated that he was asked by the Deputy General Manager/District Engineer to help staff with the landscape plan and wanted to make sure that the General Manager and Legal Counsel were aware of the fact. Mr. Heitzman answered that the District enjoys when a Director can get involved with District work and participate fully with staff. Mr. Heitzman added that Mr. True just recently took over this project and the District now has a student intern helping with the project.

Director Shriner commented that this is a good example of the District learning how to read their own standards and be more compassionate with others that may not have complied with the standards as the District expected. She then read from a past transmittal regarding installation of backwater valves and how the installation of such valves was subjective and that the end result was that there was a non-uniform application of the District standards. Mr. Heitzman answered that not only were the old Army buildings not up to the District's standard, they were scheduled to be demolished. He said that when it wasn't demolished, the decision was made that it was more prudent for the District to fix the backwater valve than to risk another overflow incident. Director Shriner said that the end result was that there was a non-uniform application of the District standards and that the standards are subjective and should leave room for subjectivity.

Agenda Item 9-A (continued):

Director Nishi stated that he disagreed with subjectivity and that as a Board they should insist that the District standards are adhered to. Mr. Heitzman stated that staff is making sure that the District standards are up to speed and easy to follow. Director Nishi said that if the District doesn't have the expertise on staff to provide help on reviewing landscape plans, he hopes the inspections on the plans cease.

- B. Receive a Staff Report on the Water Conservation Commissions' Outreach to the Army and California State University, Monterey Bay Regarding Vacant Commissioner Positions:

Mr. Niizawa gave an update on the vacant positions held by the US Army (Army) and California State University Monterey Bay (CSUMB). He explained that CSUMB has not responded to the most recent contact and the Army has responded saying that they don't feel the need to staff this position at this time.

Director Nishi asked that the next meeting have an agenda item to eliminate both positions, but continue to send the information to both entities. He said that at build-out of the Ord Community, the entities will realize the importance of conservation.

- C. Update on the Marina Teen Center:

Mr. Niizawa gave a brief update on the Marina Teen Center. President Burns commented that at one time there was discussion that the District would do the work and would, in turn, receive a discount on property the District was interested in. Mr. Niizawa answered that the City of Marina has agreed to pay for the work. Mr. Heitzman added that the City decided to pay for the work rather than discount the property.

Director Nishi asked for a report on the cost to the District to reach this point of trying to accommodate the City to solve this problem.

In regards to the backflow device, Director Nishi said the District decided to install the device to save the District money in case of future incidents. He said it did not set a precedent because it was for the District's benefit.

Director Shriner said that it did set a precedent for repairs and the non-uniform compliance to standards. She added that in this case, there is no landscaping at the Teen Center, only concrete. Director Shriner suggested waiting until landscape is put in before requiring a meter to be installed. Mr. Heitzman said that the District has to treat each customer the same. Director Shriner commented that no one said anything about fire sprinklers or high risk, only a sidewalk that surrounds the Teen Center.

Agenda Item 9-C (continued):

Mr. Heitzman started to comment and Director Shriner noted that Vice President Gustafson had not given the General Manager the floor at that time and asked how they could hear the General Manager while she was talking. Mr. Heitzman apologized to Director Shriner.

Director Shriner commented that the Teen Center has a sidewalk surrounding the building and it might not seem that they match the District's expectation of the standards, but she said it appears to her that the District has had some very subjective non-compliance from other people in the District. She suggested the District have empathy with the people they do business with especially those in the Community that serve the public, such as the Teen Center.

President Burns commented that you can't have it both ways. He said that Director Shriner suggested the District have empathy, while earlier she said the District should go by their standards. Director Shriner said that she felt you could have it both ways. Vice President Gustafson said that the standard needs to be the same for everyone. President Burns commented that with the Teen Center, the District gave the City the standard, and they chose to not use the standard. Director Shriner asked if they actually did a willful violation of the standard. President Burns answered affirmatively.

Director Nishi gave an example of someone trying to build a Teen Center and explained that to build it, they would need to have a landscape and irrigation plan before it could be occupied and they wouldn't be allowed to put it off for any reasons. He clarified that there were planting strips around the City's Teen Center and anyone else would need to comply with the requirements if it belonged to them. Director Nishi said that it is the Board's responsibility to ensure that the District doesn't arbitrarily and capriciously make decisions. Director Shriner said that the District paid for the repairs for the Marina Community Partners but not for the Teen Center. Director Nishi said that the point is that the District didn't have to put the backwater device in, but if it wasn't put in and another incident happened from jetting the lines, the District would be liable for a lot more money. Director Shriner clarified that the District does the repairs if there is a risk of increased cost to the District, but not if the cost is to the customer. Director Nishi answered that if the District did not put the backwater device in to the District's standards, it would be a big failure.

Vice President Gustafson said that it would be good to handle this with the District's standards. Director Shriner stated that they all agreed it would be good to try to hold the District's standards if they are made clear to the people ahead of time. Vice President Gustafson commented that the District has many different standards that must be complied with.

Director Shriner said that she thinks the Board disagrees on the fact that some customers are being treated differently than others.

Agenda Item 9-C (continued):

President Burns asked for clarification on the Marina Community Partners building if there were both a sewer clean-out and backwater valve installed. Director Nishi answered affirmatively saying that the backwater valve was placed on the lateral. President Burns said that the District's insurance almost didn't pay the \$40,000 claim at the Marina Community Partners building and it was a lot less expensive putting in a backwater valve than paying a claim. He added that those buildings were all due for demolition which was why they weren't brought up to standards to begin with. Director Nishi added that there had already been two incidents at that building and this should prevent a third from happening.

Director Shriner commented that several other customers didn't meet District standards and said that there was confusion about what Mr. Heitzman was mentioning earlier and that President Burns should look into it. President Burns stated that he didn't need to look into anything.

10. Informational Items:

A. General Manager's Report:

Mr. Heitzman congratulated the accounting staff on an outstanding job in getting the CAFR and Budget completed. He reported that MCWD is one of the first water districts to get involved in graywater. Mr. Heitzman reminded the Board that MCWD was the first water district to have a Water Conservation Coordinator and the first to have an in-school water conservation program. Mr. Heitzman stated that MCWD was the first to pass and adhere to a sustainability policy; was the first to pass a retention policy and is very transparent.

B. Counsel's Report:

Mr. Lowrey stated that there have been recent questions about the charges imposed on ratepayers and constituents within the District by MRWPCA and if they are in line with Prop. 218 which requires proportionality of services to the rates that are being charged. He said that President Burns sent a letter to the MRWPCA General Manager asking for a study session on that question. Mr. Lowrey suggested the Board place the item on an agenda to allow review of that issue so that they can understand the questions involved. Vice President Gustafson stated that he would like it to be on an agenda all by itself to allow for more discussion and asked Ms. Riso to send out some possible dates.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Shriner commented that there was a lot of good discussion during the long two-hour meeting and that the meetings will be kept on a monthly basis instead of moving to quarterly.

2. Joint City-District Committee:

Vice President Gustafson stated that the meeting was boiler-plate. Director Nishi asked if Councilmember Brown was present. Vice President answered that Councilmember Brown was absent. Director Shriner stated that a quorum was present with Councilmember Ford in attendance.

3. Budget and Personnel Committee:

Vice President Gustafson commented that the minutes were in the packet.

4. Executive Committee:

Vice President Gustafson commented that the minutes were in the packet.

5. Community Outreach:

Vice President Gustafson stated that the Board just approved the newsletter that would be going out soon.

6. MRWPCA Board Member:

Director Nishi stated that the meeting was boiler-plate and there was the issue of the Prop. 218. as Mr. Lowrey just mentioned.

7. FORA

Vice President Gustafson stated that there were no water issues at the meeting.

8. LAFCO Liaison:

Director Nishi commented that the February meeting was canceled.

9. JPIA Liaison:

Director Shriner commented that there were letters received stating that the HBA was melding into the ACWA/JPIA. She said that staff attended a safety meeting regarding asbestos pipelines.

10. Special Districts Association Liaison

Vice President Gustafson commented that the next meeting was April 17th.

11. CalDesal:

Mr. Heitzman commented that CalDesal recently had a very successful day in Sacramento and they are becoming quite a force in the desalination industry.

12. Regional Desalination Reports:

Mr. Heitzman commented that the project has been idle for a while.

11. Director's Comments:

Director Nishi commented that he noticed the fire hydrant retrofit was complete and suggested that the District put an article in the newsletter explaining the benefit of the retrofit. He also suggested the District notify nearby customers of the retrofit because it may result in fire insurance savings on their properties.

Director Nishi stated that he read there was concern over the cost of the multiple mailings the District has going out and asked if some mailings could go in with the bills to help with the cost.

Director Nishi stated that on February 14, 2012, Mr. Tom Moore made a public comment asking if the Regional Desal Project had met its demise and asked if it was the opinion of MCWD; and Mr. Moore asked how much money the District lost in the process. Director Nishi stated that no one said that it has been halted and until the PUC makes their decision, it is premature to make that statement. Director Nishi said that if everyone wants to find alternatives that are more costly than the Regional Desal Project, then they can do that. He said that for 34 years, the Peninsula has spent money and chased the pot-of-gold under the rainbow and if they want to, they can continue doing that.

Director Nishi stated that at the last meeting Director Shriner claimed that she hadn't received information she had requested in November. He said that the email included in the correspondence shows that she apologized to staff because she did receive the information and just didn't scroll down to read the complete email. Director Nishi said that Director Shriner needs to make an apology to the General Manager for the dressing down that was made in front of public at an open meeting.

Director Nishi stated the he spoke with the editor of the Marina Gazette and was told that if there are vacancies on the Commission, the District can write an article and there would be no cost to run it. He added that if the District were to advertise the vacancies, there would be a cost for the advertisement but it would be a lower cost than any other newspaper.

Director Shriner thanked staff for their hard work and thanked Mr. Heitzman for explaining how hard staff worked. She added that there seems to be a mixed message going on with some of the things showing up in the newspaper by different Board members.

Agenda Item 11 (continued):

Director Shriner stated that there was a request from the Salinas Valley Water Coalition that the District reprint the article written by Mr. Lowrey. She said that they have spent a lot of time as a Board discussing who has the authority to give information to the media and the name that keeps coming up is that of the General Manager and yet others continue to act upon their own desires with the media.

Director Shriner thanked Director Nishi for referring to her as “she” for the first time and not “it” as he had done over the past year. She said that she found it to be disrespectful but had not called him on it.

Director Shriner apologized for asking questions during the public meeting but she had no intention of dressing down someone in a public meeting. She felt it was an over-characterization and she had no intention of dressing the General Manager down in a public meeting. Director Shriner said she simply didn’t see the information at the bottom of the email that only had one subject in the subject line but included several subjects in the email. She said that she apologized in an email that she had not scrolled down all the way to see that there was another subject at the bottom of the page.

Vice President Gustafson thanked staff for their hard work on the CAFR and is looking forward to receiving the award again.

President Burns commented that as far as the Opinion Editorial pieces going out, they could go out from anyone on the Regional Desal Project team as they all contribute and edit those editorials until they are ready for distribution. He added that Mr. Heitzman was selected by the Board to be the main contact for the media, but there will be times that articles will go out under someone else’s name. President Burns said that many people contribute to the articles and look them over to make sure they are correct and there will be more going out to defend the District’s position in the Regional Desal Project.

Ms. Kuei Villa, Marina resident, asked when the public can speak. Vice President Gustafson answered that the public is allowed to speak on items as they are being discussed, but public is not allowed to speak under Director’s Comments. Ms. Villa said that there were some issues she was concerned about. Vice President Gustafson stated that Ms. Villa could contact the General Manager or she could call him as his number is in the phone book.

12. Correspondence:

Mr. Heitzman noted that there was a thank you note from Ms. Gail Youngblood to Mr. Paul Lord for his help with the recent Fort Ord Open House.

Regular Board Meeting
March 13, 2012
Page 13 of 13

13. Adjournment:

The meeting was adjourned at 8:17 p.m.

APPROVED:

Dan Burns, President

ATTEST:

Jim Heitzman, General Manager