

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Regular Board Meeting
July 10, 2012
6:00 p.m.

Draft Minutes

1. Call to Order:

President Burns called the meeting to order at 6:00 p.m. on July 10, 2012.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

None

Staff Members Present:

Jim Heitzman, General Manager
Christine Kemp, 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, Operations and Maintenance Superintendent
Patrick Breen, Project Manager
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Hebard Olsen
Mike Tate, Marina Resident
Allison Imamura, Denise Duffy & Associates
Jack Blanton, CEMEX
Pete Talbot, HDR Engineering
Tom Moore, Marina Resident
Augie Dent
Kenneth Turgen

Larry Johnson, HDR Engineering
Erica Parker

President Burns stated that there were two related items to be added to the agenda and there is a need to take immediate action on the two items, which need for action came to the attention of the District subsequent to the agenda being posted.

Agenda Items to be added:

- 1) Add to Closed Session Agenda – Item C
Pursuant to Government Code section 54959.9(c).
Confer with Legal Counsel – Anticipated Litigation
Potential Litigation – Additional Case
Based on existing facts and circumstances Board is deciding whether to initiate litigation.
- 2) Add item to Close Session – Item D
Pursuant to Government Code section 54957(b).
Public Employee Employment
Title: Special Counsel
Board holding closed session to consider employment of special counsel.

Ms. Christine Kemp, Legal Counsel, stated that there needs to be a 2/3 vote of members of the Board present, or if less that 2/3 Board present, a unanimous vote of those present to add these items to the agenda and they would be added to the closed session section of the agenda.

Vice President Gustafson made a motion to add the two items to the agenda. Director Lee seconded the motion. The motion was passed.

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

Ms. Kemp announced that the Board was going to convene into closed session for items A-F as set forth on the agenda pursuant to Government Code 54956.9, 54957 and 54957.6.

The Board entered into closed session at 6:03 p.m.

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

3) In the Matter of the Application of California-American Water Company (U210W) for Approval of the Monterey Peninsula Water Supply Project and Authorization to Recover All Present and Future Costs in Rates, California Public Utilities Commission No. A.12-04-019

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

Added to Closed Session Agenda – Item C
Pursuant to Government Code section 54959.9(c).
Confer with Legal Counsel – Anticipated Litigation
Potential Litigation – Additional Case
Based on existing facts and circumstances Board is deciding whether to initiate litigation.

D. Pursuant to Government Code Section 54957
Public Employee Employment
Title: In-House Counsel

Added- item to Close Session – Item D
Pursuant to Government Code section 54957(b).
Public Employee Employment
Title: Special Counsel
Board holding closed session to consider employment of special counsel.

E. Pursuant to Government Code 54957.6
Conference with Labor Negotiator
Agency Negotiator (General Manager)
Employee Organization: Marina Coast Water District Employees Association

- F. Pursuant to Government Code 54957.6
Conference with Labor Negotiator
Agency Negotiator (General Manager)
Employee Organization: Teamsters Local 890

The Board ended closed session at 6:44 p.m.

President Burns reconvened the meeting to open session at 7:00 p.m.

4. Possible Action on Closed Session Items:

Ms. Kemp reported the following:

- 3-A1-3 – 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-C1-2 – the Board of Directors conferred with Legal Counsel, no action was taken.
- 3-D 1 – Direction was given to make an offer, 2- Direction was given to seek special counsel.
- 3-E – the Board conferred with the Labor Negotiator, no action was taken.
- 3-F – the Board conferred with the Labor Negotiator, no action was taken.

5. Pledge of Allegiance

President Burns led everyone present in the pledge of allegiance.

6. Oral Communications:

Mr. Tom Moore, Marina resident, commented that the filming of these meetings was paid in part by More Transparency and in part by volunteer hours. He said that they had received a donation in memory of Mr. Newhouse and anyone interested in making a donation could do so at More Transparency, PO Box 693, Marina, CA, 93933.

7. Consent Calendar:

Director Shriner requested to pull agenda items 7-A and 7-D from the Consent Calendar.

Vice President Gustafson made a motion to approve the Consent Calendar consisting of:

- B) Approve the Expenditures for the Month of June 2012
- C) Approve the Draft Minutes of the Regular Board Meeting of May 8, 2012

Director Lee seconded the motion. The motion was passed.

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

A. Receive Compensation and Classification Study Update and Accept List of Recommended Comparator Agencies:

Director Shriner questioned what factor was used and how the District was compared to the other agencies. Ms. Jean Premutati, Management Services Administrator, commented that the consultant looked at organizational type and structure and not necessarily the size of the district. She added that they also look at similarity of population, scope of services provided, labor market, and compensation philosophy. Director Shriner asked if there was any way to find places that are more like Marina, such as median household income or total revenue of the water district.

Director Shriner made a motion to scale back the comparator list to agencies with a median household income of \$60,000 or less. The motion died for lack of a second.

Vice President Gustafson made a motion to receive Compensation and Classification Study update and accept list of recommended comparator agencies. Director Lee seconded the motion. The motion was passed.

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

D. Approve the Draft Minutes of the Regular Board Meeting of June 12, 2012:

Director Shriner questioned page 8, item B of the minutes and stated that she recalled discussing why Item B had to be tabled, but she did not understand that there was time limit for discussion on the budget. She asked if any staff or board member notified FORA that there was ninety days to respond after receiving the proposed budget.

Director Nishi commented that this item was to approve the minutes and did not see the relevance of the question. Director Shriner asked if the discussion between Director Nishi and Mr. Lowrey as noted in the minutes actually happened and if Mr. Lowrey produced a document showing the agreement it corresponds to. Ms. Riso answered that the discussion did happen and Mr. Lowrey did not produce any documents. Ms. Kemp added that in the minutes, Mr. Lowrey referenced Section 7.21 of the FORA Agreement.

Vice President Gustafson made a motion to approve the draft minutes of the regular board meeting of June 12, 2012. Director Lee seconded the motion. The motion was passed.

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

8. Action Items:

President Burns noted that there was a request to move agenda items 8-E to the beginning of the Action Items.

Director Nishi made a motion to move agenda item 8-E to the beginning of the Action Items. Vice President Gustafson seconded the motion. There was consensus from the Board to move the item up in the agenda.

E. Consider Variance Request Regarding Metering for the Conversion from Motel Units to Apartment Units at 420 Reservation Road:

Mr. Carl Niizawa, Deputy General Manager/District Engineer, introduced this item.

Mr. Kenneth Turgen, Wald, Ruhnke & Dost Architects, commented that this project was different from the previous variance request because it is an existing building and there are already 38 units that are being master metered. He added that they were asking for the variance because turning the 18 motel units into 9 low-income housing units would require re-plumbing and cause an undue hardship by increasing the project cost by 40%. Mr. Turgen explained that the conversion will save about 1.5 acre feet of water per year by eliminating the swimming pool and nine bathrooms.

Vice President Gustafson clarified that the variance was to keep using master meters for the proposed renovation of the 18 motel units into 9 units instead of individually metering them. Mr. Turgen answered that the District's code requires individual meters when hotel units are converted to multi-family housing. He stated that he could understand the requirement when it comes to new buildings or renovating the entire property, but maintains that this project is for just a small portion of the property and the rest of the property is already master metered. Mr. Turgen noted that the property owner was willing to put entitlements on the property that would disallow any kind of condo conversions in the future and, he added the owner was willing to go into an exclusive agreement regarding the payment of the water use.

Director Shriner noted that the main conservation of water was getting rid of the swimming pool. Mr. Turgen clarified that the pool was a small factor, but removing the nine bathrooms from the property was the major reason for water savings. Director Shriner asked if this was a for-profit project. Mr. Turgen answered that it was.

Director Nishi asked if the living areas would stay the same. Mr. Turgen answered that they were not changing any of the square footage. He said that instead of eighteen studio apartments, they were making nine single bedroom units. Director Nishi commented that the plumbing code numbers used by Mr. Turgen skewed the results and the water savings was not as much as Mr. Turgen stated.

Agenda Item 8-E (continued):

Director Nishi said that it was not a deal-breaker to him to require individual meters for this conversion. Mr. Turgen commented that maybe the District's code should be looked at because it is not as black and white as it could be. Director Nishi asked why they were using a 40-gallon water heater instead of a 30-gallon for the one-bedroom apartments. Mr. Turgen answered that they don't make 30-gallon direct-vent water heaters and they don't want to vent through the roof.

Director Nishi made a motion to support the staff recommendation and deny the variance. Director Lee seconded the motion. The motion to deny the variance was passed.

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

Director Nishi asked to have an agenda item in the near future to review the Ordinance and address this issue.

- A. Consider Adoption of Resolution Nos. 2012-38 (Ord Community Compensation Plan), and 2012-39 (Capital Elements of Ord Community Plan), to Adopt the Ord Community Portion of the Budget for FY 2012-2013:

Director Shriner referred to page 68 of the budget regarding the 2010 Series Bond and asked if the \$6.4 million total was the line-of-credit. Ms. Kelly Cadiente, Director of Administrative Services, answered that the line-of-credit was listed two lines lower as the IOP CD Secured Line of Credit. Director Shriner questioned what the 2012 Series Bond was for. Ms. Cadiente answered that the 2010 Series Bond refinanced a Promissory Note. Director Shriner questioned the footnote on page 67 where it referred to a loan of \$7.6 million from the Ord Water to the Regional Project and asked when the loan would be paid back. Ms. Cadiente answered that there wasn't an exact timeline for payback. Director Shriner commented on the risk of getting the loan repaid and Ms. Cadiente explained that the Settlement Agreement and Water Purchase Agreement ensure repayment of initial capital costs to the District. Director Shriner commented that she was uncomfortable with the risk of this loan. She asked what the difference was between the \$7.6 million loan and the CIP item for \$5.7 million. Ms. Cadiente answered that the \$7.6 million was already spent as it included costs incurred from the beginning of the Project. She added that the \$5.7 million CIP was proposed for this year however, the District would need to obtain financing to pay for it. There was discussion on the new funding source to be obtained and Ms. Cadiente stated that there was a discrepancy between page 18 where it shows \$8.9 million and page 9 where it shows \$6 million in new funding sources to be obtained and she would look into it.

Director Shriner made a motion to table this item until the Board knows what the extra \$3 million in new funding to be obtained is slated for. Motion failed for lack of a second.

Agenda Item 8-A (continued):

Director Nishi commented that FORA had this item on their agenda for Friday and suggested that the Board give FORA the opportunity to adopt the budget first.

Director Nishi made a motion to table this item until after FORA has a chance to vote on it. Vice President Gustafson seconded the motion.

Mr. Moore commented that page 65 proposes an expenditure of \$650,000 but it is on the line between Property/Easements Acquisitions and Other Project Costs. He asked what the costs were for and if they included any legal expenses. Mr. Moore questioned the \$5.7 million in new funding sources to be obtained and asked if the District was spending any new money on Regional Desal until that money comes in and will District reserves be used in the interim. Director Nishi answered that the Board wouldn't know until they find out what FORA does on Friday. Director Shriner asked for a clarification on page 65 as requested by Mr. Moore. President Burns suggested Director Shriner ask staff off-line as this item was going to be coming back to the Board at a later date.

Vice President Gustafson called for the question.

The motion was passed.

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

B. Consider Adoption of Resolution No. 2012-46 to Approve the District Procurement Policy:

Ms. Cadiente introduced this item. Director Shriner asked if the District was in compliance with the policy. Ms. Cadiente answered that the District was in compliance and has always used this type of procurement but it was never formalized in a policy.

Vice President Gustafson made a motion to adopt Resolution No. 2012-46 approving the District Procurement Policy. Director Lee seconded the motion. The motion was passed.

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

C. Consider Adoption of Resolution No. 2012-47 to Approve FY 2012-2013 Blanket Purchase Orders over \$25,000:

Mr. Cadiente introduced this item. Director Shriner voiced her appreciation of the summary table. Director Nishi stated that he appreciated the good work and asked if it conflicted with the General Manager's authority. Ms. Cadiente answered that it did not conflict with the General Manager's authority.

Vice President Gustafson made a motion to adopt Resolution No. 2012-47 approving FY 2012-2013 blanket Purchase Orders over \$25,000. Director Lee seconded the motion. The motion was passed.

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

D. Consider Adoption of Resolution No. 2012-48 to Approve a 3-Year Contract for Annual Audit Services to the District:

Ms. Cadiente introduced this item explaining that the Budget and Personnel Committee recommended the Board approve Charles Fedak & Company for the audit contract. Director Shriner asked how the determination was made. President Burns said they made the determination on experience, number of people, how many hours would be spent and cost. Vice President Gustafson added that they have worked on CAFR's before and their quality of excellence is well established.

Director Nishi thanked the work of the Budget and Personnel Committee but his experience is that it is a state requirement and he has confidence in the District's financial staff. He added that he doesn't want to pay \$75,000 for something that he can get for \$36,000.

Director Nishi made a motion to adopt Resolution No. 2012-48 approving a 3-year contract with Pun & McGeady, not-to-exceed \$12,150 per year, for annual audit services to the District. Director Lee seconded the motion. The motion was passed.

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

F. Consider Adoption of Resolution No. 2012-49 to Approve a Professional Services Agreement with Denise Duffy and Associates for Environmental Scoping Services for the Regional Urban Water Augmentation Program Water Supply Alternatives:

Mr. Heitzman introduced this item explaining that Denise Duffy and Associates will look at the environmental work that has been done, analyze and do any addendums that may be needed.

Agenda Item 8-F (continued):

Mr. Moore asked if there were any targeted sites that the District wants them to look at in particular. Mr. Heitzman answered that there were two sites, the old wastewater treatment site and a site on the Armstrong Ranch property.

Director Shriner asked if it was to review the documents and decisions on a Programmatic EIR done in 2005 with FORA. Mr. Heitzman answered that was one of the documents they would look at.

President Burns asked what the District just hired RMC to do. Mr. Heitzman answered it was for program management and engineering services. He added that Denise Duffy is a specialist in environmental issues.

Vice President Gustafson made a motion to adopt Resolution No. 2012-49 approving a Professional Services Agreement with Denise Duffy and Associates for Environmental Scoping Services for the Regional Urban Water Augmentation Program Water Supply Alternatives. Director Lee seconded the motion. The motion was passed.

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

G. Consider Providing Direction to the Board President on Nomination to the LAFCO Independent Special District Alternate Seat:

Mr. Heitzman introduced this item and noted that a candidate was present and wanting to address the Board.

Mr. Warren Poitras, Monterey County Regional Fire District, addressed the Board and provided a brief background and his local experience.

Director Nishi made a motion to recommend Leslie Hill to the LAFCO Independent Special District Alternate Seat. Director Lee seconded the motion. The motion was passed.

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

9. Informational Items:

A. General Manager's Report:

No report.

B. Counsel's Report:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Ms. Riso stated that they did not hold a July meeting.

2. Joint City-District Committee:

Vice President Gustafson commented that the meeting was boiler-plate and some additional items were asked to be added to the agenda.

3. Budget and Personnel Committee:

President Burns commented that the minutes were in the packet.

4. Executive Committee:

President Burns commented that the minutes were in the packet.

5. Community Outreach:

Vice President Gustafson said that staff was working on a newsletter.

6. MRWPCA Board Member:

Director Nishi noted that the June 25th meeting was boiler-plate. He added that at the July 9th special meeting he was kicked out of closed session.

7. FORA

Vice President Gustafson commented that the meeting was scheduled for Friday.

8. LAFCO Liaison:

Director Nishi said there was one issue and he would report it at the next meeting.

9. JPIA Liaison:

Director Shriner commented that there was nothing new.

10. Special Districts Association Liaison

Vice President Gustafson commented that the meeting was the following week.

11. CalDesal:

President Burns stated that they were discussing brine disposal and open ocean intake.

12. Regional Desalination Reports:

No report.

11. Director's Comments:

Director Shriner thanked staff for trying to answer her questions and being responsive throughout the time period between last meeting and this one.

Vice President Gustafson thanked staff and noted that he was sorry the Tate's couldn't have been helped earlier tonight on the variance and looked forward to revisiting the ordinance.

Director Nishi stated that he would like an update on the status of scanning the District's historical information.

Director Nishi commented that the sign for renting the Imjin Office space is not very effective and asked for a report on who is soliciting the office space because the District is losing \$6,000 a month in rent.

Director Nishi noted that the Joint City District Committee was discussing the Teen Center and asked that there be closure on that issue. He voiced his concern that the Planning Commission is allowing the Teen Center to be occupied without a landscape irrigation plan. Director Nishi said that something needs to be done so there isn't a conflict with the City on their-own projects.

| Director Nishi asked when the District was going to go to the ~~DRV-DRB~~ with the landscape plan.

Director Nishi asked why the magazines weren't date stamped as all incoming mail should be date stamped.

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Director Lee thanked staff for their work.

President Burns said he was disappointed that the Board didn't take the recommendation of Budget and Personnel on the audit services contract as they put a lot of work into reviewing the proposals.

12. Adjournment:

The meeting was adjourned at 8:22 p.m.

APPROVED:

Dan Burns, President

ATTEST:

Jim Heitzman, General Manager