

Marina Coast Water District

District Office
11 Reservation Road
Marina, California

Special Board Meeting
October 26, 2012
9:30 a.m.

Draft Minutes

1. Call to Order:

President Burns called the meeting to order at 9:30 a.m. on October 26, 2012.

2. Roll Call:

Board Members Present:

Dan Burns – President
Howard Gustafson – Vice President
Bill Lee

Board Members Absent:

Jan Shriner
Kenneth K. Nishi

Staff Members Present:

Jim Heitzman, General Manager
Roger Masuda, Legal Counsel
Andy Sterbenz, District Engineer
Brian True, Capital Projects Manager
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Mark Fogelman
Ron Chesshire
Eric Peterson
Scott Hilk
Andy Leif

President Burns announced that the Board was going to convene into closed session for items 3-A1, 2, 3 and 4; 3-B; 3-C1 and 2; and 3-D Pursuant to Government Code Section 54956.9; and items 3-E and 3-F Pursuant to Government Code Section 54957.6 as set forth on the agenda.

The Board entered into closed session at 9:31 a.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

4) California-American Water Company v. Marina Coast Water District; Monterey County Water Resources Agency; and Does 1 through 10, Monterey County Superior Court Case No. M120053 (Complaint for Declaratory Relief)

B. Pursuant to Government Code Section 54956.9 (c)

Conference with Legal Counsel – Anticipated Litigation
Potential Initiation of Litigation
One Case – MCWD Claims against Monterey County and MCWRA

C. Pursuant to Government Code Section 54956.9(b)(1) and 54956.9(b)(3)(C)

Conference with Legal Counsel – Anticipated Litigation
Potential Litigation
Two Cases

1) Claims of MCWRA and Monterey County against MCWD

2) Claims of California–American Water Company against MCWD

D. Pursuant to Government Code Section 54956.9 (c)

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

- 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 11:08 a.m.

President Burns reconvened the meeting to open session at 11:09 a.m.

4. Possible Action on Closed Session Items:

Mr. Roger Masuda, Legal Counsel, reported that no action was taken in closed session.

- 3-A1-4 – the Board conferred with legal counsel, direction was given, no action was taken.
- 3-B – the Board conferred with legal counsel, direction was given, no action was taken.
- 3-C1 – the Board conferred with legal counsel, direction was given, no action was taken.
- 3-C2 – the Board determined to deny California–American Water Company claim against MCWD by the following vote: Ayes – Directors Burns, Gustafson, and Lee; Absent – Directors Nishi and Shriner.
- 3-D – will be considered in open session under item 4-D.
- 3-E – the Board conferred with the labor negotiator, direction was given, no action was taken.
- 3-F – the Board conferred with the labor negotiator, direction was given, no action was taken.

D. Consider Adoption of Resolution No. 2012-67 to Authorize the General Manager to Engage Special Litigation Counsel:

Director Lee made a motion to authorize the General Manager to engage special litigation counsel. Vice President Gustafson seconded the motion.

A draft resolution was handed out for review. Mr. Masuda stated that in reference to the Ag Land Trust and CPUC claims, Mark Fogelman’s firm, Friedman and Springwater, will continue to represent the District. He said that for purposes of the new claim, item 3-A4, California American Water Company vs. MCWD (Complaint for Declaratory Relief), James Markman of Richards, Watson & Gershon, will be the lead retained as special litigation counsel on that matter. Mr. Masuda stated that staff is requesting the Board authorize the General Manager to engage Richards, Watson & Gershon as special litigation counsel for the matter of California American Water Company vs. MCWD (Complaint for Declaratory Relief); and to continue to work with Friedman and Springwater as the lead on the other litigation matters.

Agenda Item 4-D (continued):

The motion was passed.

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

5. Pledge of Allegiance

President Burns led everyone present in the pledge of allegiance.

6. Oral Communications:

Eric Peterson, public member, commented that holding a special meeting on Friday morning is not a good idea. He said it should be held at a regular meeting time on a different day and meetings such as this only add to speculation.

7. Action Items:

A. Approve the Draft Fall 2012 Water Report Newsletter:

Mr. Jim Heitzman, General Manager, introduced this item and said that Director Shriner submitted some questions/comments regarding items on the agenda and noted that a copy of the questions was handed given to the Board. He stated that one of Director Shriner's questions asked that the newsletter include notice of an opportunity to serve on the Water Conservation Commission as part of the community outreach.

Vice President Gustafson made a motion to approve the draft Fall 2012 Water Report newsletter with the additions requested by Director Shriner. Director Lee seconded the motion. With a vote of 3-Ayes, 0-Noes, 2-Absent (Nishi, Shriner) the motion was passed.

B. Consider Adoption of Resolution No. 2012-68 to Approve a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between Marina Coast Water District and University Village Associates for the University Village Apartment Project within the Dunes on Monterey Bay Development:

Mr. Andy Sterbenz, District Engineer, introduced this item.

Mr. Ron Chesshire, Monterey/Santa Cruz Building Construction Trades Council, commented that he was made aware of some language in Section 29, and 29.1 of the agreement and they have since reviewed it. Mr. Chesshire stated that they didn't see a problem with the language and encouraged the District to approve the agreement.

Agenda Item 7-B (continued):

Vice President Gustafson made a motion to adopt Resolution No. 2012-68 to approve a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between Marina Coast Water District and University Village Associates for the University Village Apartment Project within the Dunes on Monterey Bay Development. Director Lee seconded the motion. The motion was passed.

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

C. Consider Adoption of Resolution No. 2012-69 to Approve a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between Marina Coast Water District and Marina Community Partners for the Dunes Phase 1B Retail Project:

Mr. Heitzman noted that several of the questions made by Director Shriner referred to this item. Mr. Sterbenz introduced this item and explained that the developer added some additional language to the standard agreement clarifying some terms and giving them additional options to a construction bond.

Mr. Chesshire commented that, as with the previous item, they didn't see a problem with the language in Section 29, and 29.1, and encouraged the District to move forward.

Director Lee made a motion to adopt Resolution No. 2012-69 to approve a Construction and Transfer of Water, Sewer, and Recycled Water Infrastructure Agreement between Marina Coast Water District and Marina Community Partners for the Dunes Phase 1B Retail Project. Vice President Gustafson seconded the motion. The motion was passed.

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

D. Consider Adoption of Resolution No. 2012-70 to Approve a Legal Services Agreement with Griffith & Masuda, a Professional Law Corporation

Mr. Heitzman introduced this item explaining that at the last Board meeting, the Board of Director's requested staff to obtain a contract with Griffith and Masuda and bring it back for approval.

Vice President Gustafson made a motion to adopt Resolution No. 2012-70 to approve a Legal Services Agreement with Griffith & Masuda, a Professional Law Corporation. Director Lee seconded the motion.

Agenda Item 7-D (continued):

The motion was passed.

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

8. Director's Comments:

Director Lee thanked staff and public for attending up to the meeting.

9. Adjournment:

The meeting was adjourned at 11:21 a.m.

APPROVED:

Dan Burns, President

ATTEST:

Jim Heitzman, General Manager