

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
September 16, 2013
6:30 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:30 p.m. on September 3, 2013.

2. Roll Call:

Board Members Present:

Tom Moore – President
Jan Shriner – Vice President
Bill Lee
Peter Le

Board Members Absent:

Howard Gustafson

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Kelly Cadiente, Director of Administrative Services
Jean Premutati, Management Services Administrator
Brian True, Capital Projects Manager
Paula Riso, Executive Assistant/Board Clerk

Audience Members:

Paula Pelot, Preston Park Tenants Association
Ken Nishi, Marina Resident
Coley Delaney, Pun and McGeady
Hans-Ulrich Siebeneick, Ord Resident

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:32 p.m.

4. 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, Monterey County Superior Court Case No. M105019; Sixth Appellate District Court of Appeals Case No. H038550

2) 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

3) California-American Water Company vs 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)

The Board ended closed session at 7:00 p.m.

President Moore reconvened the meeting to open session at 7:03 p.m.

5. Possible Action on Closed Session Items:

President Moore stated that no reportable actions were taken in closed session.

6. Pledge of Allegiance:

President Moore asked Director Lee to lead everyone present in the pledge of allegiance.

7. Oral Communications:

Ms. Paula Pelot, Preston Park Tenants Association, noted that the Marina Democratic Club would be hosting a panel discussion on Measures M and K on Saturday, September 28th at the Marina Public Library beginning at 7:00 p.m.

Mr. Kenneth Nishi, Marina resident, voiced his concerns that at the July 15, 2013 Board meeting, Director Lee asked that an item be put on an agenda to discuss what to do when an item is discussed in closed session that is not on the agenda. Mr. Nishi asked what was discussed and what legal counsel did about it. Mr. Nishi also noted that the minutes of July 15th show that Director Le was present at roll call but did not actually arrive until 7:02 p.m.

Mr. Brian Lee, Interim General Manager, noted that an emergency item came up this morning when it was noticed that the Central Marina Prop. 218 Rate Increase notices had an incorrect effective date and asked if the Board would consider adding an item to the agenda to discuss it.

Agenda Item 7 (continued):

Mr. Roger Masuda, Legal Counsel, noted that with one Board member absent, all four of the members present had to vote in the affirmative to add the item to the agenda.

Vice President Shriner made a motion to add an emergency item to the agenda to correct the error on the Prop. 218 notice for Marina Water. Director Le seconded the motion.

Ms. Pelot commented that the entire notice needed to be considered because the Marina and Ord Community were both contained in one notice and not segregated into two separate notices. She also commented that the notice was not dated.

Mr. Nishi commented that he had not received answers to the questions he asked earlier.

President Moore asked if they could get into more specific detail regarding the notice if they agendaize the emergency item as Mr. Lee requested. Mr. Masuda answered that the Board could discuss the item in more detail if it was agendaized and could also discuss certain details under agenda item 8-A.

With a vote of 4-Ayes, 0-Noes, 1-Absent (Gustafson), the motion to add item 9-F to the agenda to correct the error on the Prop. 218 notice for Marina Water was passed.

In response to Mr. Nishi's questions, Mr. Masuda commented that the July 15th approved minutes could be corrected at a future meeting. He also added that the Board has behaved appropriately in closed sessions.

8. Consent Calendar:

Director Le requested to pull items 8-A, 8-B, and 8-D from the Consent Calendar. Ms. Pelot requested to pull items 8-A and 8-C from the Consent Calendar.

A. Set Public Hearing for Capacity Charges for Central Marina and the Ord Community and Authorize Publication of the Public Hearing Notices

Ms. Pelot commented that the notice had errors, omissions and misstatements and some clarifications are necessary because they are not clear from the notice itself in the agenda packet.

Director Le requested to run the publications on a Saturday and a Monday and to add Ms. Cadiante's name and contact information to the notice. Vice President Shriner asked that a generic email inbox be created for people to send their protests and questions. She also asked if the Board could separate the Capacity Charge Public Hearing notice from the other Public Hearing notices and vote on them separately. Mr. Masuda answered that they could vote on the items separately since the addition of 9-F will be specifically for the Marina Water notices.

Agenda Item 8-A (continued):

Ms. Pelot voiced her concerns and noted that she believed it should be one protest per parcel and that could include tenants or owners with one canceling out the other. She reiterated that the entire notice needed to be resent because the Marina and Ord Community were both contained in one notice and not segregated into two separate notices. Ms. Pelot asked that the Board do this process correctly or she would go after past rate increases as invalid. She asked what the process was for safeguarding the protests, tabulation to ensure transparency and accountability. Ms. Pelot commented that she forwarded a copy of the Carpinteria Valley Water District Resolution and suggested the Board consider adopting this resolution before moving forward with this process.

Mr. Lee explained the mailing list process and how the District was trying to send out as many notices as possible without duplication. President Moore suggested sending the notices via carrier route sort mailing.

Director Le stated that he felt there was adequate noticing with the publications and that carrier route sort mailing was too costly. He suggested adding public hearing information in the special message section on the District billing.

There was discussion on how to safeguard and count the protests with a neutral member present.

Vice President Shriner made a motion to direct staff to create a plan for getting a neutral party to help with the safeguarding and recording of the protests. President Moore seconded the motion. Mr. Masuda noted that this wasn't an agenda item, but could be brought back to the next meeting for consideration. Vice President Shriner withdrew her motion.

President Moore made a motion to send the revised notice through carrier route sort mailing. Vice President Shriner seconded the motion. Ms. Pelot voiced her concerns. The motion failed.

Director Lee	-	No	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	No
Director Le	-	No			

Mr. Masuda clarified that the Prop. 218 notice on page 4 would be brought back and the Capacity Charge notice on page 5 of the packet would be published with the recommended changes by the Board, and one of the publications would be on a Saturday.

Director Le made a motion to approve the Capacity Charge notice on page 5 of the packet and that it would be published with the recommended changes by the Board, and one of the publications would be on a Saturday. Director Lee seconded the motion. Ms. Pelot reiterated that in her opinion it was all one notice. Mr. Masuda clarified that the Capacity Charge notice was a non-Prop. 218 notice and was not required to be sent to all customers, adding that it would be published twice before the public hearing.

Agenda Item 8-A (continued):

Mr. Hans-Ulrich Siebeneick, Ord Resident, voiced his concerns with the notice and that there was no publication date on the notice.

The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

B. Approve the Expenditures for the Month of August 2013

Director Le voiced his concern over the length of time it took to pay some invoices. He also asked staff to provide him a total approved amount for The EDCCO Group.

Vice President Shriner made a motion to approve the expenditures for the month of August 2013. Director Le seconded the motion. Mr. Siebeneick asked how the District separates the costs if there is only one checking account. Ms. Cadiente explained how the District's revolving fund is funded by each cost center. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

C. Approve the Draft Minutes of the Adjourned Regular Board Meeting of August 26, 2013

Ms. Pelot suggested several corrections to the draft minutes.

Director Le made a motion to table approval of the August 26th Board meeting until staff could review and revise the minutes. Vice President Shriner seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

D. Approve the Draft Minutes of the Regular Board Meeting of September 3, 2013

President Moore made a motion to approve the draft minutes of September 3, 2013 with a revision to Section 10-C5 on page 4 of the minutes, so that it states he was unable to attend the MRWPCA meeting due to a continued MCWD Board meeting.

Agenda Item 8-D (continued):

Director Le asked staff to review the recording to see if staff promised to bring an item to the next Board meeting rather than the October meeting as stated on page 5, item 11-A of the minutes.

President Moore withdrew his previous motion and made a new motion to table the draft minutes of September 3rd until staff could make the suggested changes. Vice President Shriner seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

9. Action Items:

A. Kick-off Meeting between the Board of Directors and the District's Independent Audit Firm, Pun & McGeady, LLP on the FY 2012-2013 Annual Audit:

Mr. Coley Delaney, Pun & McGeady, gave a brief background of the audit work they provide to the District. The Board asked several clarifying questions and made suggestions on what they would like the auditors to look into. Director Le asked that the auditors look at the total expenditures on the Regional Desal Project and how much was spent from each cost center. He also asked that the auditors look at the total expenditures on Recycled Project and how much was spent from each cost center.

Director Le asked when Mr. Delaney could provide the Board how much additional cost of what it would take to look into the expenditures on the Regional Desal Project and Recycled Project.

President Moore appointed Director Le and Vice President Shriner to an Ad Hoc Committee to meet with the auditors and bring back a recommendation to the Board.

Ms. Pelot suggested that the auditors take this opportunity to look into the cost allocation to each cost center, specifically administration costs.

Director Le asked to discuss agenda item 9-C before discussing item 9-B.

C. Consider Adoption of Resolution No. 2013-56 to Authorize the General Manger to Take All Action Necessary to Formally Apply to the Monterey County Water Resources Agency for Surface Water from the Salinas River:

Mr. Lee introduced this item. Director Le suggested the District request 2,400 acre feet of surface water from the Salinas River. President Moore suggested requesting 5,000 acre feet of surface water from the Salinas River. Discussion followed.

Agenda Item 8-D (continued):

Director Le made a motion to adopt Resolution No. 2013-56 to authorize the General Manager to formally apply to the Monterey County Water Resources Agency for 2,400 acre feet of surface water from the Salinas River with the following amendments:

1. Submit the application to the Monterey County Water Resources Agency by September 23, 2013
2. Update the Board of the status of the application at each Board meeting
3. Obtain Board approval before retaining legal, environmental or other consultant services as part of this application
4. Send a copy of the application to the Monterey County Board of Supervisors

Director Lee seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	No
Director Le	-	Yes			

- B. Consider Adoption of Resolution No. 2013-54 to Approve a Planning Agreement to Amend and Extend an Agreement for Exercise of Exclusive Right to Negotiate for Purchase of Pre-1914 Water Right with Clark Colony Water Company:

Mr. Lee introduced this item. Director Le voiced his concern over the costs involved, including the CEQA cost. Discussion followed.

Ms. Pelot objected to the cost coming from the Ord Community Water Reserves and noted that the date of September 31, 2014 was incorrect as there are only 30 days in September.

Director Le made a motion to table this item until staff has more information to provide to the Board with regards to the cost of what it will take to perform the study and the CEQA document. Director Lee seconded the motion. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	No
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

President Moore recessed the meeting from 9:24 to 9:30 p.m.

- D. Consider First Reading of Ordinance No. 56 to Adopt New District Rates, Fees and Charges for Marina Water and Wastewater for the Central Marina Service Area

Mr. Lee introduced this item noting the title or the entire Ordinance needs to be read into the record.

Agenda Item 9-D (continued):

Director Le made a motion to introduce Ordinance No. 56 and waive the reading of the entire ordinance. Vice President Shriner seconded the motion.

Ms. Pelot questioned the language in the Ordinance and suggested that there be language that says the increase was not mandatory. She added that she was concerned over the five year length of time for the rate increases and suggested less years.

President Moore read the title of the Ordinance into the record, "AN ORDINANCE AMENDING SECTIONS 6.08.030, 6.08.060, 6.08.080, 6.08.090, 6.08.100, 6.12.020, 6.12.040, AND 6.12.050 OF THE DISTRICT CODE CHANGING RATES, FEES AND CHARGES FOR WATER AND SEWER SERVICES FOR THE CENTRAL MARINA SERVICE AREA" and to waive reading the entire Ordinance.

Director Lee	-	Yes	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

E. Consider Adoption of Resolution No. 2013-57 to Amend Section 16 of the Board Policy Manual and Add a New Section 44 to the Board Procedures Manual:

Mr. Lee introduced this item.

Director Le stated that he would like to have the Board direct all the attorneys and have them report to the Board at each regular meeting and seek authorization from the Board before taking any actions. He added that he would like to allow individual Directors to contact legal counsel and legal counsel would inform the Board at the next meeting what the cost would be to perform the tasks requested by Directors. President Moore noted that it could be quite costly if each Director were to contact legal counsel and request things that perhaps the other Board members didn't feel were necessary. He suggested that the CSDA sample policy could be slightly revised to cover the Board's needs. Discussion followed.

Vice President Shriner made a motion to continue the meeting past 10:00 p.m. Director Le seconded the motion. The motion was passed.

Director Lee	-	No	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

Director Le made a motion to revise Section 16 to have all legal counsel report directly to the Board and receive direction from the Board and to obtain authorization from the Board before any expenditure is incurred. President Moore asked if Director Le's motion would include taking the language from the CSDA sample policy and bring it back to the next meeting for consideration.

Agenda Item 9-E (continued):

Director Le agreed to use the CSDA sample policy and have all legal and special counsel report directly to the Board and bring this item back to the next meeting. Vice President Shriner seconded the motion. Ms. Pelot commented on Section B3 of Section 44. President Moore clarified that Section 44 was not being considered in this motion. The motion was passed.

Director Lee	-	No	Vice President Shriner	-	Yes
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

F. Consider Setting Public Hearing for Central Marina and Authorize Publication of the Public Hearing Notice:

Mr. Lee explained that the notice for Central Marina had an incorrect date to begin rate increases and staff has proposed a new schedule for the Prop. 218 Public Hearing so the District could still meet the January 1, 2014 timeline.

Ms. Pelot commented that she dissented with the process and suggested that both Central Marina and Ord Community be re-noticed and set for a November 18th Public Hearing.

Director Le requested that the Public Hearing be first on the agenda and set for 7:00 p.m.

There was discussion on possible dates for Public Hearings. Mr. Masuda opined that the information in the Ord Community notice was correct and the Public Hearing set for October 21st meets Prop. 218 requirements. He added that the Ord Community and Central Marina could be considered by the Board separately.

Director Le made a motion to make changes to the heading on the public notice to read "Proposed Water and Wastewater Rate Changes for Central Marina Service Area" and authorize staff to send out the notices. Director Lee seconded the motion. Ms. Pelot stated that she disagreed with the District's legal counsel opinion and that holding the Public Hearing on November 18th for Central Marina gives them an unfair advantage. The motion was passed.

Director Lee	-	Yes	Vice President Shriner	-	No
Director Gustafson	-	Absent	President Moore	-	Yes
Director Le	-	Yes			

10. Informational Items:

A. General Manager's Report:

Mr. Lee reported that Director Lee and District staff met with Campbell Applied Physics and had a very positive discussion and plan to bring something back to the Board in the near future.

B. Counsel's Report:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner commented that they had an excellent first meeting with the new Commissioners.

2. Joint City District Committee:

President Moore commented that the next meeting was scheduled for September 25th.

3. Executive Committee:

No meeting was held.

4. Community Outreach:

Director Le said that he was still scheduled to meet with CSUMB on October 15th. Vice President Shriner added that there would be a joint meeting with the Water Conservation Commission in October.

5. MRWPCA Board Member:

President Moore stated that he was unable to attend the last meeting due to the adjourned District Board meeting but the next meeting was scheduled for September 30th.

6. LAFCO Liaison:

Director Le reported that the next meeting was scheduled for September 23rd.

7. FORA:

President Moore stated that they met on September 13th and gave a brief update on what occurred at the meeting.

8. WWOC:

Mr. Lee stated that the draft Ord Community budget was presented on September 4th.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison

The next meeting is October 15th.

11. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Director Le commented that he would email his request to President Moore and Mr. Lee.

Vice President Shriner stated that she had questions regarding the audit but that would be discussed in the Ad Hoc Committee and would email any other requests to President Moore and Mr. Lee.

12. Director's Comments:

Director Le, Vice President Shriner, and President Moore made comments.

The Board returned to closed session at 10:30 p.m.

4. 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, Monterey County Superior Court Case No. M105019; Sixth Appellate District Court of Appeals Case No. H038550

2) 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

3) California-American Water Company vs 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 54956.8
Conference with Real Property Negotiator (General Manager, District Counsel)
Property: Water Rights
Negotiating Parties: Clark Colony Water Company and MCWD
Under Negotiations: Price and Terms

The Board ended closed session at 11:05 p.m.

5. Possible Action on Closed Session Items:

President Moore stated that no reportable actions were taken in closed session.

13. Adjournment:

The meeting was adjourned at 11:05 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Brian C. Lee, Deputy Secretary