

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
January 6, 2014
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on January 6, 2014.

2. Roll Call:

Board Members Present:

Tom Moore – President
Jan Shriner – Vice President
Howard Gustafson
Bill Lee

Board Members Absent:

Peter Le

Staff Members Present:

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

Audience Members:

Kenneth Nishi, Marina Resident
Paula Pelot, Preston Park Tenants Association

3. Public Comment on Closed Session Items:

No comments.

The Board entered into closed session at 6:02 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

Agenda Item 4 (continued):

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 54956.9
Conference with Legal Counsel – Anticipated Litigation
Initiation of Litigation Pursuant to Subdivision (c) of 54956.9
One Potential Case

C. Pursuant to Government Code 54956.9
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The Board ended closed session at 6:57 p.m.

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

5. Possible Action on Closed Session Items:

President Moore stated, and Mr. Roger Masuda confirmed, 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:

Mr. Kenneth Nishi, Marina resident, stated that under President Moore's leadership, the District lost \$3 million they could have collected from Ag Land Trust by not following through on the desal project. He voiced his concern over the District requesting surface water from the Salinas Basin. Mr. Nishi commented that the District lost out on \$20 million from the CalAm lawsuit by not sending the right attorneys to negotiate. He also asked when his questions from previous meetings would be answered. Mr. Nishi claimed that President Moore favored a certain class of citizens and showed them preferential treatment.

Agenda Item 7 (continued):

Ms. Paula Pelot, Preston Park Tenants Association, commented that she didn't feel President Moore showed preferential treatment to any class in particular, because she didn't always get answers to her questions either.

8. Election of Board President and Vice President:

Director Shriner nominated Director Moore for President. Director Moore seconded the nomination.

Mr. Nishi commented that the preferential treatment has been shown at previous meetings. He voiced his concerns over Directors Lee and Gustafson for not giving Marina another option and that the ratepayers cannot afford another year of President Moore's lack of leadership. Mr. Nishi commented that he was glad the election was scheduled when the meeting was being videotaped. He also commented on the budget and how the Board wasn't getting creative in finding alternate sources of revenue and asked if there was a decrease in the expenditures.

The nomination failed.

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

Director Moore made a motion to nominate Director Shriner for Vice President. Director Shriner seconded the nomination. The nomination failed.

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

9. Consent Calendar:

Mr. Nishi requested to pull item 9-A from the Consent Calendar.

Vice President Shriner made a motion to approve the Consent Calendar consisting of the following items:

- B) Receive the Quarterly Financial Statements for July 1, 2013 to September 30, 2013
- C) Approve the Expenditures for the Month of November 2013
- D) Approve the Revised Draft Minutes of the Regular Board Meeting of November 18, 2013
- E) Approve the Draft Minutes of the Regular Board Meeting of December 2, 2013

Agenda Item 9 (continued):

Director Gustafson seconded the motion. The motion was passed.

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

Director Gustafson asked the record to show that he wanted to abstain from the vote on item 9-E as he was absent from that meeting.

A. Receive the Quarterly Financial Statements for April 1, 2013 to June 30, 2013:

Mr. Nishi asked what the percentage of decrease from the expenditures was.

Vice President Shriner made a motion to receive the Quarterly Financial Statements for April 1, 2013 to June 30, 2013. Director Gustafson seconded the motion. The motion was passed.

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

10. Action Items:

A. Receive Report from Staff Regarding the Results of Checking All the Mailing Data Records for the Ord Community; Consider Validating the Number of Proposition 218 Protests Tabulated on October 21, 2013 for the Proposed Increases in District Rates, Fees, and Charges for the Ord Community or Providing Other Direction to Staff:

Mr. Lee requested to defer this item until the next meeting.

Vice President Shriner made a motion to defer this item until the next meeting. Director Gustafson seconded the motion. Ms. Pelot commented that the Proposition 218 proposed rate increase was improperly noticed. She stated that she was still waiting for the remaining information she requested in her Public Records Request to be provided. Ms. Pelot also commented that she was concerned by the errors made during the Proposition 218 process and encouraged the Board to do the process properly. Mr. Nishi stated that he agreed with Ms. Pelot that the process was flawed. The motion was passed.

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

B. Consider Completing the Remainder of the 2013/2014 MCWD Budget Year Under the Continuing Budget Resolution No. 2013-34, adopted June 17, 2013:

Vice President Shriner made a motion to complete the remainder of the 2013/2014 MCWD budget year under the continuing budget Resolution No. 2013-34, adopted June 17, 2013. Director Gustafson seconded the motion. Mr. Nishi asked how the District would make up the missed rate increase if they didn't adopt a new budget until July. The motion was passed.

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

C. Receive Report from Special Legal Counsel on Employee Complaints Against Director Peter Le and the Board's Responsibilities in Reviewing and Acting on Such Complaints:

Following a report from Ms. Jeanine DeBacker, Vice President Shriner made a motion for the following option: 1. Rely upon the recordings of the December 2, 2013 and December 16, 2013 meetings, and the statements of complaint made to Special Legal Counsel; to include the specific comments thought to be in violation and what the improvement would need to be. The motion failed for lack of a second.

Director Gustafson made a motion to hire an investigator to determine if there is any additional, relevant evidence of allegedly inappropriate conduct by Dir. Le in his communications with District staff and consultants. Director Lee seconded the motion. Mr. Nishi voiced his concerns that Director Le never got the proper training after he was elected to the Board. The motion was passed.

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

Director Gustafson made a motion to direct Jeanine DeBacker to select a legal investigator. Director Lee seconded the motion. The motion was passed.

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

D. Receive Report from Legal Counsel on a Complaint by Director Gustafson as to an Alleged Attempt in Closed Session to Appoint Director Peter Le as Interim General Manager and the Board's Options Regarding Such Complaint:

Vice President Shriner made a motion for the following option: 1. Find that the closed session held on July 15, 2013, to confer with Labor Negotiator Howard Gustafson regarding salary and benefits for the Interim General Manager, an Unrepresented Employee, pursuant to Government

Agenda Item 10-D (continued):

Code Section 54957.6, was properly noticed and held in accordance with the Brown Act and determine that no further action need be taken. The motion failed for lack of a second.

Director Gustafson made a motion to hire an investigator to investigate his assertion that there was an attempt to make Director Le the interim general manager at the July 15th meeting and waive the Board's attorney-client and deliberative legal privileges to that one incident only. The motion failed for lack of a second.

Mr. Nishi commented that he agrees that Mr. Masuda has a conflict on this item and asked why Director Le wasn't present during the closed session on July 15th. He suggested the District use the Brown Act attorney they always use, Doug White.

Following discussion, Director Gustafson made a motion to have Jeanine DeBacker bring back a proposal from an investigator with expertise in Brown Act issues and for herself to be available for any possible personnel issues that may arise. President Moore seconded the motion. The motion was passed.

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

E. Receive Report from Special Legal Counsel on Brown Act and Board Procedures Manual Requirements and Potential Legal Consequences for Disclosing Publicly Board Discussions Occurring in Closed Session:

Director Gustafson made a motion to postpone this item until the next meeting. Director Lee seconded the motion. The motion was passed.

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

F. Consider Action Regarding the January 11, 2014 Strategic Planning Session and Draft Strategic Plan:

Vice President Shriner asked to add an item regarding the District's historical building in Fort Ord to the agenda; and, following the Strategic Planning session have a "Next Steps" item. President Moore made a motion to allow Director Le to attend the meeting on January 11, 2014 via teleconference. Vice President Shriner seconded the motion. The motion was passed.

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

- G. Consider Adopting Resolution No. 2014-01 to Appoint an Ad Hoc Committee to Discuss the Recycled Water Pipeline with the Monterey Regional Water Pollution Control Agency and Specifying the Scope of the Committee's Duties and Legal Authority:

Vice President Shriner made a motion to postpone this item until the full Board is present. Director Gustafson seconded the motion. Mr. Nishi stated that he had concerns over this item and the next several items regarding Ad Hoc Committees. The motion was passed.

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

- H. Consider Adopting Resolution No. 2014-02 to Appoint an Ad hoc Committee to Discuss the Annexation of the Ord Community and Specifying the Scope of the Committee's Duties and Legal Authority:

- I. Consider a Scope of Topics for the Community Outreach Committee to Discuss with the Community:

Director Gustafson made a motion to postpone items 10-H and 10-I until the next meeting. Director Lee seconded the motion. The motion was passed.

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

- J. Consider Adopting a Policy for Board Review of Invoices:

Director Lee made a motion to continue the meeting until 2:00 a.m. unless finished earlier. Vice President Shriner seconded the motion. With a vote of 3-Ayes, 1-Noes, 1-Absent, the motion was passed.

Following discussion, no action was taken on this item.

- K. Consider Holding, Changing, or Canceling the January 21, 2014 Board Meeting:

Director Gustafson made a motion to cancel the January 21, 2014 Board meeting. Director Lee seconded the motion. The motion was passed.

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

Director Gustafson left the meeting at 10:09 p.m.

11. 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:

Vice President Shriner stated the next meeting was January 9, 2014.

2. Joint City District Committee:

President Moore commented that the next meeting was scheduled for January 22nd.

3. Executive Committee:

No meeting was held.

4. Community Outreach Committee:

Vice President Shriner gave an update.

5. MRWPCA Board Member:

President Moore stated that the next meeting is January 27th.

6. LAFCO Liaison:

No report.

7. FORA:

President Moore stated that the next meeting was January 10th.

8. WWOC:

No report.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison

The next meeting is scheduled for January 21, 2014.

12. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Vice President Shriner made requests.

13. Director's Comments:

Vice President Shriner and President Moore made comments.

The Board returned to closed session at 10:15 p.m.

4. Closed Session:

A. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Existing Litigation
(Subdivision (a) of Section 54956.9)

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The Board ended closed session at 10:56 p.m.

5. Possible Action on Closed Session Items:

Mr. Masuda reported that the Board authorized legal counsel to obtain proposals from Proposition 218 expert attorneys to advise the Board and District staff on Proposition 218 issues. The motion was made by Vice President Shriner, seconded by Director Lee and passed by a vote of 3-Ayes, 0-Noes, 2-Absent.

14. Adjournment:

The meeting was adjourned at 10:57 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Brian C. Lee, Deputy Secretary