

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
May 19, 2014
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on May 19, 2014.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

Peter Le

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Jeanine DeBacker, Special Legal Counsel
Patty Quilizapa, Special Legal Counsel
Kelly Cadiente, Director of Administrative Services
Jean Premutati, Management Services Administrator
Paula Riso, Executive Assistant

Audience Members:

Michael Fechter, Monterey Resident	Hans-Ulrich Siebeneick, Seaside Highlands Resident
Dr. Tia Sukin, Monterey Resident	Mike Owen, Marina Resident
Kenneth Nishi, Marina Resident	Andy Leif, University Villages
Karen Judkins, Monterey Resident	Daryl Choates, Seaside Highlands Resident
Tong Wallman, Seaside Highlands Resident	
Rick Riedl, City of Seaside	
Betsy Wilson, Mid Peninsula Housing Corporation	
Yong Yi, Marina Resident	
Paula Pelot, Preston and Abram Park Tenants Association	
Camille Groves, Seaside Highlands Resident	
Alan Groves, Seaside Highlands Resident	
Karin Sobichevsky, Seaside Highlands Resident	
Denise Turley, Preston Park Resident	

3. Public Comment on Closed Session Items:

Mr. Michael Fechter, Monterey Resident, commented that his son just moved in the low-income University Village Apartments and received his first water bill which was quite high even though he registered no water usage. Mr. Fechter asked what options there were for his son who was receiving a very limited Social Security Disability income.

President Moore stated that the Board would enter into closed session to discuss the following items as time permits:

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 Nos. H038550 and H039559

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 – & A.13-05-017 Settlement Agreement

3) California-American Water Company vs Marina Coast Water District; Monterey County Water Resources Agency; and Does 1 through 10, San Francisco Superior Court Case No. CGC-13-528312 (Complaint for Declaratory Relief)

- B. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b) of 54956.9
Two Potential Cases

- C. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: Interim General Manager

The Board entered closed session at 6:05 p.m. The Board ended closed session at 6:28 p.m.

President Moore reconvened the meeting to open session at 6:30 p.m.

5. Possible Action on Closed Session Items:

President Moore reported that the Board discussed items 4-B, and 4-C during closed session. Mr. Roger Masuda, Legal Counsel, stated that no reportable actions were taken in closed session.

6. Pledge of Allegiance:

President Moore asked Ms. Paula Riso, Executive Assistant, to lead everyone present in the pledge of allegiance.

President Moore reminded everyone that all protests to the Proposition 218 process needed to be received by 7:00 p.m.

7. Oral Communications:

Mr. Kenneth Nishi, Marina resident, stated that he had several comments to make. 1) why does the Board President not hold all people to the same standards and allow only four minutes for public comments? On May 5th, one speaker was allowed to speak for six minutes and another was allowed to speak for 20 minutes, while he was only allowed to speak for four minutes. 2) why does the District allow Committees of the Board with two members continue to meet when one member stepped down thus leaving only one Committee member? 3) President Tom Moore was previously censured for mocking minorities, but at the May 5th Board meeting, President Moore made a comment that maybe Vice President Shriner was bi-polar and his insensitive comments of minorities and people with disabilities continues.

8. Election of Board Vice President:

Noting that there was not a full Board present, Vice President Shriner made a motion to table this until the next meeting. Director Gustafson seconded the motion. Director Lee questioned why the agenda showed who requested an item. He stated that this item is required to be continuously agendized until it is resolved. Consensus of the Board was to remove the name of the requester from the agenda going forward. The motion was passed.

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

9. Consent Calendar:

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

- A) Receive the Quarterly Financial Statements for January 1, 2014 to March 31, 2014
- B) Receive and File the Check Register for the Month of April 2014
- C) Approve the Draft Minutes of the Regular Board Meeting of May 5, 2014

Agenda Item 9 (continued):

Director Gustafson seconded the motion and noted that he needed to abstain from the vote on item 9-C. President Moore noted that item 9-C could be pulled from the Consent Calendar and voted on separately. Vice President Shriner amended her motion to approve the Consent Calendar consisting of the following items:

- A) Receive the Quarterly Financial Statements for January 1, 2014 to March 31, 2014
- B) Receive and File the Check Register for the Month of April 2014.

Director Gustafson seconded the amended motion. The motion was passed.

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

C. Approve the Draft Minutes of the Regular Board Meeting of May 5, 2014:

Vice President Shriner made a motion to approve the draft minutes of the regular Board meeting of May 5, 2014. President Moore seconded the motion. The motion failed.

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

President Moore moved to item 13 – Informational Items on the advice of legal counsel and noted that action items would be discussed after the Public Hearing.

Mr. Nishi noted that on May 5th President Moore moved and action item up on the agenda and there were no issues noted from legal counsel. He questioned why legal counsel is saying that at this meeting, action items should be discussed after 7:00 p.m. Mr. Masuda answered that the agenda specifically states that action items would be discussed after 7:00 p.m. and it was not yet that time. He added that informational items were for information only and no action would be taken on them which is why he suggested moving the informational items forward on the agenda rather than the action items.

13. Informational Items:

A. General Manager's Report:

- 1. Correspondence Received by Board or General Manager: None.

Mr. Lee noted that Special Counsel DeBacker's answers to Brown Act questions were included in the packet.

B. Counsel's Report:

Mr. Masuda followed up on Ms. DeBacker's report and advised that if Board members attend the same meeting as public members, or at a conference, don't sit together.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Vice President Shriner noted the next meeting was June 5th at 5:30 p.m.

2. Joint City District Committee:

President Moore noted that the next meeting was May 28th at 5:00 p.m.

3. Executive Committee:

No meeting was held.

4. Community Outreach Committee:

Vice President Shriner commented that the Committee would like to make recommendations in July or August after the Budget is completed.

5. MRWPCA Board Member:

President Moore noted the next meeting was May 22nd.

6. LAFCO Liaison:

Vice President Shriner stated that the meeting was canceled and gave a brief update of the Municipal Services Review.

7. FORA:

President Moore noted that they met on May 16th.

8. WWOC:

Mr. Lee stated that the next meeting was May 21st.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison

Director Gustafson noted that there was a Small Business discussion. President Moore stated that the next meeting is scheduled for July.

President Moore reminded everyone that all protests to the Proposition 218 process needed to be received by 7:00 p.m.

President Moore recessed the meeting from 6:53 until 7:00 p.m.

10. Public Hearing:

A. Receive Public Comment on Proposed Increases in District Rates, Fees, and Charges for the Central Marina and Ord Community Service Areas:

President Moore opened the Public Hearing at 7:00 p.m.

Ms. Paula Pelot, Preston and Abram Parks Tenants Association, noted that she submitted a letter of protest to the Board and that the rate increases were unwarranted and unsubstantiated for the next five years. She read aloud her letter that explained her reasons for the protest and concerns over the rate increase.

Mr. Rick Reidl, City of Seaside, commented that the City of Seaside did vote in opposition of the rate increase and as an additional note, never received any notices that were sent out regarding the Proposition 218 process.

Mr. Darryl Choates, Seaside Highlands resident, commented that he turned in a protest and didn't support the rate increase. He asked for clarification on the how the District comingled the issues together.

Dr. Tia Sukin, Monterey resident, commented that she represented her disabled son who lived in Marina and protested the rate increase and asked that the District develop pricing for seniors, people with disabilities, and low income families.

Ms. Denise Turley, Preston Park resident, voiced her concerns over the process of the rates and asked that the Board cease the defrauding of Constitutional rights.

Ms. Betsy Wilson, MidPen Housing Corporation, commented that they filed their protest letters for their two parcels and added that with regards to the individual metering of apartments, the charges for meters need to be fair and proportional. She suggested the District look into smaller meters for apartments.

Mr. Andy Leif, University Villages, commented that the meter sizing and fixed rates need to be looked at.

Agenda Item 10-A (continued):

Mr. Fechter commented that his son lived in the University Village Apartments, and many of the residents are unaware of the charges that they will have to pay.

President Moore closed the Public Hearing at 7:16 p.m.

11. Staff Report:

A. General Manager's Verbal Report on the Result of Proposition 218 Protests to the Proposed Increases in District Rates, Fees, and Charges for the Central Marina and Ord Community Service Areas:

Mr. Lee commented that the staff had tallied the numbers and there are 5,951 total parcels in the Central Marina and Ord Communities, and of those, there are 4,554 available to file a valid protest. Mr. Lee stated that as of 7:00 p.m., 281 parcels have filed a valid protest. He added that the total protests required for a successful protest is 2,277. Mr. Lee concluded that a successful protest did not occur.

Vice President Shriner asked how many protests were received from Central Marina and how many were received from the Ord Community. Mr. Lee answered that 250 protests were from the Ord Community and 31 were from Central Marina.

Ms. Patty Quilizapa, Special Legal Counsel, explained the Proposition 218 process and gave clarification on how the law is interpreted regarding parcels and who gets to file a protest. Discussion followed.

12. Action Items:

A. Consider Adoption of Resolution No. 2014-19 Declaring the Results of the Proposition 218 Protest Count for the Proposed Increases in District Rates, Fees, and Charges for the Central Marina and Ord Community Service Areas:

Mr. Lee commented that staff recommended adoption of Resolution No. 2014-19 with the following additions: the last WHEREAS to read, "...the District received a total of 281 valid protests from record owners..."; Finding number 2 should read, "the District received a total of 281 timely-filed protests; and,"; Finding number 3 should read, "of the 281 total timely-filed protests received, 269 protests were submitted by record owners...".

Following discussion, the Resolution was amended as follows:

1. the last WHEREAS to read, " at the May 19, 2014 hearing, the General Manager of the District reported to the Board that the District received a total of 269 valid protests from record owners...";
2. Section 1 Finding number 1 should read, "there are 4,554 parcels within the District..."

Agenda Item 12-A (continued):

3. Section 1 Finding number 2 should read, “the District received a total of 1,033 timely-filed protests; and,”;
4. Section 1 Finding number 3 should read, “of the 1,033 total timely-filed protests received, 269 protests were submitted by record owners...”.

Mr. Choates questioned why the District used “lots of records” to determine the protest. Ms. Quilizapa explained the rules for Prop 218, gave a definition of a parcel subject to the proposed rate, and how the District was determining which parcels are subject to the rates.

Vice President Shriner made a motion that there has been no valid protest and the Board adopt the amended Resolution No. 2014-19 declaring the results of the Proposition 218 Protest count for the proposed increases in District rates, fees, and charges for the Central Marina and Ord Community service areas. Director Gustafson seconded the motion.

Ms. Pelot commented that the City of Seaside and the County of Monterey did not receive their notices and the District may have botched the mailing list. She added that by passing this it denies customers of their Constitutional Rights.

Mr. Choates commented that he didn’t think the County received their notice because he received the County’s notice at his place of business as well as his own notice at his residence.

Mr. Reidl noted the Carollo Rate Study referenced 3,370 active accounts for Central Marina and 3,523 active accounts for the Ord Community and asked if the people with active accounts are the same ones able to file a protest.

Mr. Mike Owen, Marina resident, offered a small consolation that if the increase needs to go above what the Prop 218 process allowed, there would need to be another vote.

Mr. Hans-Ulrich Siebeneick, Seaside Highlands resident, noted that the number of protests needed for a successful protest was much different than that of October 2013.

Mr. Fechter commented that his son never received any notification of the rate increase and asked if residents were allowed to install a well for water.

Ms. Turley commented that a protest form was not provided in the notice and asked for that issue to be clarified.

Mr. Lee answered the questions from the public members.

Agenda Item 12-A (continued):

Director Lee called for the question.

The motion was passed.

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

- B. Consider Second Reading and Adoption of Ordinance No. 56 Approving New District Rates, Fees, and Charges for the Central Marina Water and Wastewater Service Area, excluding Capacity Charges:

Director Gustafson made a motion to waive the reading of the entire Ordinance No. 56, an Ordinance amending Sections 6.08.030, 6.08.060, 6.08.080, 6.08.100 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 adopt Ordinance No. 56. Vice President Shriner seconded the motion. The motion was passed.

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

- C. Consider Adoption of Resolution No. 2014-20 to Approve New District Rates, Fees, and Charges for the Ord Community Water and Wastewater Service Area, excluding Capacity Charges:

Director Gustafson made a motion to adopt Resolution No. 2014-20 to approve new District rates, fees, and charges for the Ord Community water and wastewater service area, excluding capacity charges. Vice President Shriner seconded the motion.

Ms. Pelot commented that the rate study did not adequately support or document the costs for this increase. She voiced her concerns over the costs included in the rate study and that adopting this Resolution was unconstitutional because a majority of the Ord Community is unable to vote for the Board.

Ms. Turley asked if the Board had looked at other ways to help seniors, disabled or low income families. Mr. Lee answered that District staff has been and will continue to look into options.

The motion was passed.

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

D. Consider Adoption of Resolution No. 2014-21 to Approve a Professional Services Agreement with Monterey Bay Technologies to Provide Information Technology Support Services to the District for FY 2014-2015:

Director Lee commented that he would like to see about hiring an employee to perform in-house IT. Mr. Lee stated that this contract had a fifteen day cancelation clause in it and if the Board approved it staff could bring back an item in July regarding the cost to fill an IT position and if the Board chooses, they can consider canceling the contract at that time. Vice President Shriner asked that the staff report include the number of hours the District used Monterey Bay Technologies over the last two years.

President Moore made a motion to adopt Resolution No. 2014-21 to approve a Professional Services Agreement with Monterey Bay Technologies to provide Information Technology Support Services to the District for FY 2014-2015. Director Gustafson seconded the motion. The motion was passed.

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

E. Discuss Potential Revisions to Section 42, Payment of Bills, of the Board Procedures Manual and Provide Direction to Staff:

President Moore made a motion to adopt Section 42 with language added to the last paragraph referencing the Procedures for Invoice Processing. Director Gustafson seconded the motion. Following discussion, President Moore amended his motion to bring this item, along with the Procedures for Invoice Processing, back to the next meeting for approval. Director Gustafson seconded the amended motion. The motion to postpone was passed.

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

14. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Director Lee asked for discussion on the 3,000 Acre Foot Desal project.

15. Director's Comments:

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

The Board returned to Closed Session at 8:37 p.m.

4. Closed Session:

- A. Pursuant to Government Code 54956.9
Conference with Legal Counsel – Anticipated Litigation
Significant Exposure to Litigation Pursuant to Subdivision (b) of 54956.9
Two Potential Cases

The Board ended Closed Session at 8:49 p.m.

Mr. Masuda stated that no reportable actions were taken in closed session.

16. Adjournment:

The meeting was adjourned at 8:49 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Brian C. Lee, Deputy Secretary