

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
November 17, 2014
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on November 17, 2014.

2. Roll Call:

Board Members Present:

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

Board Members Absent:

None

Staff Members Present:

Brian Lee, Interim General Manager
Roger Masuda, Legal Counsel
Jeanine DeBacker, Special Counsel
Kelly Cadiente, Director of Administrative Services
Jean Premutati, Management Services Administrator
Patrick Breen, Capital Projects Manager
James Derbin, Operations and Maintenance Superintendent
Paula Riso, Executive Assistant

Audience Members:

Ken Pun, Pun & McGeady Accounting
Andy Sterbenz, Schaaf & Wheeler Engineering
Margaret Davis, Marina Resident, Friends of the War Horse
Melvin Mason, Jr., Marina Resident
Gary Stowe, Stowe Contracting
Debbie Stowe, Stowe Contracting
John Luddig, Pacific Monarch
Paula Pelot, Marina Resident

3. Public Comment on Closed Session Items:

No comments.

President Moore stated that the Board would enter into closed session to discuss the following items as time permits and may go into closed session at the end of the meeting to discuss any remaining items:

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)

4) California-American Water Company v. Lonestar California, Inc., CEMEX, Inc., et al., Monterey County Superior Court Case Nos. M129290 and M129303.

5) Appeal by California-American Water Co. of City of Marina decision denying permit for construction, operation, and decommissioning of slant test well, up to 4 monitoring well clusters, and related infrastructure at CEMEX sand mining plant, Lapis Road, Marina, Monterey County (California Coastal Commission Appeal No. A-3-MRA-14-0050).

6) Application of California-American Water Co. for permit to construct, operate, and decommission test slant well at CEMEX sand mining facility on Monterey Bay shoreline, Marina, Monterey County (California Coastal Commission Application No. 9-14-1735), this pertains to that portion of the proposed slant test well project below the mean-tide line for which the Coastal Commission has original jurisdiction.

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 54956.9
Conference with Legal Counsel – Anticipated Litigation
Initiation of Litigation Pursuant to Subdivision (c) of 54956.9
One Potential Case
- D. Pursuant to Government Code 54957
Public Employee Appointment
Title: General Manager
- E. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: Legal Counsel
- F. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: Interim General Manager
- G. Pursuant to Government Code 54956.8
Conference with Real Property Negotiator
Property: Recycled Water Pipeline, Recycled Water
Negotiating parties: Tom Moore and Peter Le
Under Negotiation: Price and Terms
- H. Pursuant to Government Code 54956.8
Conference with Real Property Negotiator
Property: Armstrong Ranch
Negotiating parties: Tom Moore and Peter Le
Under Negotiation: Price and Terms
- I. Pursuant to Government Code 54956.8
Conference with Real Property Negotiator
Property: Sewer Infrastructure
Negotiating parties: Tom Moore and Peter Le
Under Negotiation: Price and Terms

The Board entered closed session at 6:01 p.m. The Board ended closed session at 6:58 p.m.

President Moore reconvened the meeting to open session at 7:02 p.m.

5. Possible Action on Closed Session Items:

President Moore reported that the Board discussed items 4-A1, 4-A2, 4-A3, 4-A4, 4-A5, 4-A6, 4-B, 4-C, 4-H, and 4-I during closed session. Mr. Roger Masuda, Legal Counsel, stated that no reportable actions were taken during closed session.

6. Pledge of Allegiance:

Vice President Lee led everyone present in the pledge of allegiance.

7. Oral Communications:

No comments.

8. Consent Calendar:

Director Le pulled items A and B from the Consent Calendar.

A. Receive and File the Check Register for the Month of October 2014:

Following clarification on several checks, Director Shriner made a motion to receive and file the check register for the month of October 2014. Director Gustafson seconded the motion. The motion was passed.

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

B. Approve the Draft Minutes of the Regular Board Meeting of November 3, 2014

There was a correction to the second paragraph of item D on page 5 of the minutes so it would read, "This item will be continued to the next meeting."

Director Shriner made a motion to approve the draft minutes of the regular Board meeting of November 3, 2014 as amended. President Moore seconded the motion. The motion was passed.

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

9. Action Items:

A. Discussion and Possible Action to Consider First Reading of Ordinance No. 58 Amending Section 6.08.080 of the District Code:

Mr. Brian Lee, Interim General Manager, introduced this item. The Board asked clarifying questions and discussed various solutions.

Agenda Item 9-A (continued):

Mr. Gary Stowe, Stowe Contracting, commented that the Ordinance didn't do anything more than define the supply pipe. He suggested using the size of the supply line into the building to define what size the fire service was. Mr. Stowe also agreed that a retroactive credit for the overcharge would be appreciated.

Mr. John Luddig, Pacific Monarch, commented that he wanted to see a reduction in the charges on his bill.

Following discussion, Director Le made a motion to consider the first reading of Ordinance No. 58 amending Section 6.08.080 of the District Code to read as follows, "For purposes of Section 6.08.080 and the Ord Service Area Monthly Fire Service Fees, the term "Meter Size" means the size of the backflow prevention check valve installed on the private fire service lateral and does not mean the size of the detector by-pass meter. If the customer or property owner can show the District, to the satisfaction of the District Engineer, that the pipe after the check valve is of a different size than the check valve, then the District can adjust the monthly fire service fee in accordance with the pipe size." Vice President Lee seconded the motion.

Mr. Masuda noted that the Board had to waive the reading of the entire Ordinance No. 58 before the motion on the first reading could be voted on.

Director Le made a motion to waive the entire reading of Ordinance No. 58 amending Section 6.08.080 of the District Code as amended. Vice President Lee seconded the motion. The motion to waive the reading of Ordinance No. 58 was passed.

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

The motion to consider the first reading of the amended Ordinance No. 58 amending Section 6.08.080 of the District Code, was passed.

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

B. Discussion and Possible Action Regarding Accepting the Comprehensive Annual Financial Report and the Independent Auditor's Report for the Fiscal Year Ended June 30, 2014:

Mr. Kenneth Pun, Pun & McGeady Accounting, gave a brief presentation on the independent auditor's report for the fiscal year ended June 30, 2014.

Agenda Item 9-B (continued):

The Board asked clarifying questions.

Director Gustafson made a motion to accept the Comprehensive Annual Financial Report and the Independent Auditor's Report for the Fiscal Year Ended June 30, 2014. Vice President Lee seconded the motion. The motion was passed.

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

C. Discussion and Possible Action to Consider Adoption of Resolution No. 2014-48 to Extend a Certificate of Deposit Secured Non-Revolver Line of Credit from Rabobank, N.A. for \$3,276,000 to December 1, 2015:

Mr. Lee introduced this item.

Director Gustafson made a motion to adopt Resolution No. 2014-48 to extend a Certificate of Deposit Secured Non-Revolver Line of Credit from Rabobank, N.A. for \$3,276,000 to December 1, 2015. Director Shriner seconded the motion. The motion was passed.

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

D. Discussion and Possible Action Regarding Director's Request for Information:

Mr. Lee introduced this item. Discussion regarding how much information should be provided to Directors followed. Mr. Masuda provided Director Le a copy of the District's Procurement Policy.

President Moore made a motion to ask staff to provide items 2, 9, 10, and 11 from Director Le's email request. Director Shriner seconded the motion. The motion failed.

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

Director Le made a motion to direct staff to provide all the items requested in Director Le's email. Vice President Lee seconded the motion. The motion was passed.

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

- E. Discussion and Possible Action to Consider Adoption of Resolution No. 2014-46 to Authorize a Construction Contract with Dilbeck & Sons Incorporated to Construct a Building E at 940 Imjin Office Parkway, Authorize the General Manager to Execute a Loan with Rabobank for Said Construction, and Authorize the General Manager to Execute General Services Administration Lease Amendments 1&2:

The Board made comments and asked clarifying questions of staff.

Following discussion, Director Gustafson made a motion to adopt Resolution No. 2014-46 to authorize a construction contract with Dilbeck & Sons Incorporated to construct a Building E at 940 Imjin Office Parkway, authorize the General Manager to execute a loan with Rabobank for said construction, and authorize the General Manager to execute General Services Administration Lease Amendments 1&2. Vice President Lee seconded the motion. The motion was passed.

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

- F. Discussion and Possible Action to Consider Adoption of Resolution No. 2014-47 to Approve Funding for Directors to Attend the Association of California Water Agencies Fall Conference in San Diego:

Ms. Jean Premutati, Management Services Administrator, introduced this item. Mr. Masuda noted that as the reimbursement directly benefits Director Le, he suggested Director Le recuse himself and remove himself from the chambers.

Director Le made comments then recused himself and left the chambers at 9:24 p.m.

Vice President Lee made a motion to adopt Resolution No. 2014-47 to approve funding for Directors to attend the Association of California Water Agencies Fall Conference in San Diego and to approve the cost for meals in exception to the District's Travel Policy. Director Gustafson seconded the motion. The motion was passed.

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

Mr. Masuda noted that California Government Code Section 53232.3 (d) states: *Members of a legislative body shall provide brief reports on meetings attended at the expense of the local agency at the next regular meeting of the legislative body.*

10. Informational Items:

A. General Manager's Report:

1. Correspondence Received by Board or General Manager:

No report.

B. Counsel's Report:

1. General Counsel's Report:

Mr. Masuda commented that he would like the Board to consider asking staff to compile a list of Director Le's requests for him to review and see what is still outstanding. He added that, although it will time consuming for staff, he hopes this will clear up any miscommunication on what items Director Le is still looking for. Mr. Masuda noted that he and Mr. Lee were working on the Groundwater Sustainability issue, and surrounding agencies were interested in joining and supporting an MOU.

2. District Special Counsel:

Ms. Jeanine DeBacker, McPharlin, Sprinkles & Thomas, noted that she had two items to discuss. 1) She referred to a memorandum handed out to the Board on the dais and available to the public in the back of the room. Ms. DeBacker noted that there was a complaint made regarding behavior of a Director at a public meeting and directed at staff. 2) Ms. DeBacker also noted that during this evening's meeting, she observed criticisms and an inappropriate tone directed at staff while at the lectern. She reminded the Board, that as their HR Labor and Employment Counsel, they needed to be mindful of their actions and what is written in the Board Procedures Manual.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Shriner noted that the period to receive applications for public membership was now closed and gave a brief update of the November 6th meeting.

2. Joint City District Committee:

President Moore noted that they will meet on November 19th.

3. Executive Committee:

No meeting was held.

2. Community Outreach Committee:

Director Shriner commented that they met in November and would like to meet again in January 2015.

3. MRWPCA Board Member:

President Moore noted the next meeting was November 24th.

4. LAFCO Liaison:

Director Shriner stated that no meeting was held in November and the next meeting was early December.

5. FORA:

President Moore noted they met on November 14th and gave a brief update of the meeting.

6. WWOC:

No report.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison:

No report.

12. Board Member Requests for Future Agenda Items:

A. Board Member Requests:

Director Shriner asked for: 1) discuss adding term limits to the Board Procedures Manual; 2) moving Board meetings to one meeting per month with a stand-by date for a second meeting if needed; 3) a policy on staff reports; 4) agendize further Board action regarding the complaint and investigation report received from Special Counsel; and 5) consolidation of infrastructure as discussed in Strategic Plan section 2.2.

Director Le asked for: 1) provide a list of items; 2) forensic audit of two projects; and 3) review responses to the SCSD engineering report.

Vice President Lee asked to look into resolving the issues that was precluding the District from leasing the land to the farmers.

13. Director's Comments:

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

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

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

President Moore recessed the meeting from 9:55 to 10:00 p.m.

The Board returned to closed session at 10:00 p.m. to discuss items 4-D, 4-E, 4-F, and 4-G.

4. Closed Session:

D. Pursuant to Government Code 54957
Public Employee Appointment
Title: General Manager

E. Pursuant to Government Code 54957
Public Employee Performance Evaluation
Title: Legal Counsel

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

G. Pursuant to Government Code 54956.8
Conference with Real Property Negotiator
Property: Recycled Water Pipeline, Recycled Water
Negotiating parties: Tom Moore and Peter Le
Under Negotiation: Price and Terms

The Board ended closed session at 10:52 p.m.

5. Possible Action on Closed Session Items:

President Moore stated that items 4-D and 4-G were discussed during closed session, with items 4-E and 4-F postponed. Mr. Masuda stated that no reportable action was taken on any item during closed session.

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14. Adjournment:

The meeting was adjourned at 10:53 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Paula Riso, Deputy Secretary