

Marina Coast Water District

Marina Council Chambers
211 Hillcrest Avenue
Marina, California

Regular Board Meeting
December 1, 2014
6:00 p.m.

Draft Minutes

1. Call to Order:

President Moore called the meeting to order at 6:00 p.m. on December 1, 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
Paula Riso, Executive Assistant

Audience Members:

Andy Sterbenz, Schaaf & Wheeler Engineering
Melvin Mason, Jr., 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) 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).

5) 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 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

- G. 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 6:03 p.m. The Board ended closed session at 6:58 p.m.

President Moore reconvened the meeting to open session at 7:00 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, and 4-D during closed session and 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, B and C from the Consent Calendar.

- A. Receive the Quarterly Financial Statements for April 1, 2014 to June 30, 2014:

Director Le asked clarifying questions.

Agenda Item 8-A (continued):

Director Gustafson made a motion to receive the Quarterly Financial Statements for April 1, 2014 to 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	-	Abstained			

B. Receive the Quarterly Financial Statements for July 1, 2014 to September 30, 2014:

Director Le asked clarifying questions.

Director Shriner made a motion to receive the Quarterly Financial Statements for July 1, 2014 to September 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	-	Abstained			

C. Approve the Draft Minutes of the Regular Board Meeting of November 17, 2014

Director Le asked clarifying questions.

Director Gustafson made a motion to approve the draft minutes of the regular Board meeting of November 17, 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	-	Abstained			

9. Action Items:

A. Receive a Report from Special Legal Counsel Regarding the Investigation on Director Peter Le's Actions at a Public Meeting and Consider Adoption of Resolution No. 2014-49 to Censure Director Peter Le:

Director Gustafson made a motion to drop this item from the agenda. Vice President Lee seconded the motion. Discussion followed.

Vice President Lee called for the question. Director Gustafson seconded the call for the question.

Agenda Item 9-A (continued):

Ms. Jeanine DeBacker spoke as a member of the public. She cautioned that Director to Director comments were treated differently than Director to Staff comments. Ms. DeBacker stated that staff members were protected under privacy considerations in the Government Code as well as the Board Procedures Manual. She added that this Director was censured in April 2014 and there was discussion about leaving some leeway to allow for additional training and guidance. Ms. DeBacker again cautions that staff members were protected under privacy considerations in the Government Code as well as the Board Procedures Manual.

The motion for the call to question was passed.

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

Director Shriner made a substitute motion to remove Director Le from all Committees for six months. President Moore seconded the motion. The substitute motion failed.

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

The main motion to drop this item from the agenda was passed.

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

B. Discussion and Possible Action to Consider Second Reading of Amended Ordinance No. 58 Amending Section 6.08.080 of the District Code:

Mr. Brian Lee, Interim General Manager, stated that this was the second reading of Ordinance No. 58.

Director Gustafson made a motion to waive the entire reading of amended Ordinance No. 58 amending Section 6.08.080 of the District Code. Director Shriner 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			

Agenda Item 9-B (continued):

Director Gustafson made a motion to approve the amended Ordinance No. 58 amending Section 6.08.080 of the District Code. Vice President Lee seconded the motion. The motion to approve the amended Ordinance No. 58 was passed.

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

C. Discussion and Possible Action to Consider Adoption of Resolution No. 2014-50 to Establish a Fire Service Policy:

The Board asked clarifying questions and suggested some changes to the policy.

Director Le made a motion to adopt Resolution No. 2014-50 to establish a fire service policy removing the following items from the policy:

- 1) Approved building plans showing the fire system piping and sizes,
- 2) Fire system design calculations for the building, signed by the system designer, showing the piping sizes, and
- 4) Photographs of the building fire riser. Include a ruler or tape measure in the photograph to provide a scale. Note that a site inspection will be required to verify the riser size and verify that it is the only fire pipeline to the building, and
- the last sentence under APPEALS “The decision of the General Manager shall be final and conclusive.” be deleted.

Director Gustafson seconded the motion.

Director Shriner made a substitute motion to approve the policy to include all five items listed with the last sentence under APPEALS amended to read, “A final appeal can come before the Board.” or to delete the last sentence altogether as long as it is understood that any appeal can come before the Board. President Moore seconded the motion. The motion failed.

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

The original motion was passed.

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

D. Discussion and Possible Action to Consider Adoption of Resolution No. 2014-51 to Amend the Professional Services Agreement with Bob Neher and Associates to Conduct an Executive Search and Placement for the Position of General Manager:

Director Shriner made a motion to adopt Resolution No. 2014-51 to amend the Professional Services Agreement with Bob Neher and Associates up to \$4,000 in direct costs to hire a temporary General Manager and a permanent General Manager. The motion failed for lack of a second.

President Moore made a motion to adopt Resolution No. 2014-51 to amend the Professional Services Agreement with Bob Neher and Associates up to \$2,000 in direct costs to hire a temporary General Manager and a permanent General Manager. Director Shriner seconded the motion.

President Moore amended his motion to include a time limit of 60 days. Director Shriner seconded the amended motion. Mr. Masuda clarified the motion. The motion was passed.

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

E. Discussion and Possible Action to Staff Regarding Agendizing Items Requested by the Board in Support of the District's Strategic Plan Goals:

Director Le made a motion to direct staff to agendize the items in the following months:

a. February 2015	g. January 2015	m. June 2015
b. February 2015	h. March 2015	n. January 2015
c. February 2015	i. April 2015	o. April 2015
d. March 2015	j. March 2015	p. May 2015
e. January 2015	k. March 2015	q. May 2015
f. January 2015	l. April 2015	

Director Gustafson seconded the motion. The motion was passed.

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

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:

No report.

2. District Special Counsel:

No report.

C. Committee and Board Liaison Reports:

1. Water Conservation Commission:

Director Shriner noted that the next meeting was December 4th meeting.

2. Joint City District Committee:

President Moore gave a brief update.

3. Executive Committee:

No meeting was held.

4. Community Outreach Committee:

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

5. MRWPCA Board Member:

President Moore gave a brief update.

6. LAFCO Liaison:

Director Shriner gave a brief update.

7. FORA:

President Moore noted they were meeting on December 12th.

Agenda Item 10-C (continued):

8. WWOC:

No report.

9. JPIA Liaison:

No report.

10. Special Districts Association Liaison:

The next meeting is January 20, 2015.

11. Board Member Requests for Future Agenda Items:

Director Le asked for: 1) RFP for forensic audit of two projects; and 2) review responses to the SCSD engineering report.

Mr. Masuda advised that the forensic audit of the Regional Project should be run through Attorney Markman's office as they are the ones working on the litigation and the information is confidential.

12. Director's Comments:

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

The Board returned to closed session at 8:10 p.m. to discuss items 4-B, 4-C, 4-F, and 4-G.

3. Closed Session:

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

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G. Pursuant to Government Code 54956.8
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The Board ended closed session at 8:28 p.m.

5. Possible Action on Closed Session Items:

Mr. Masuda stated that items 4-B, 4-C, 4-F and 4-G were discussed during closed session and that no reportable action was taken on any item during closed session.

13. Adjournment:

The meeting was adjourned at 8:28 p.m.

APPROVED:

Thomas P. Moore, President

ATTEST:

Paula Riso, Deputy Secretary