

**THE COMMISSIONERS OF THE  
CENTRAL MARIN SANITATION AGENCY  
HELD A REGULAR MEETING AT THE AGENCY OFFICE**

**Minutes of Tuesday, February 14, 2012  
7:00 P.M.**

**CALL MEETING TO ORDER** Chair Dupar called the meeting to order at 7:00 p.m. A quorum was present.

Members Present: Boro, Dupar, Guasco, Hartzell, Heller, Johnson

Members Absent: None

Staff Present: Jason R. Dow, General Manager; Mary J. Brown, Recording Secretary; Rob Cole, Environmental Services Manager; Hank Jen, Finance Manager; Ken Katen, Engineering Manager

Public Present: Jack F. Govi, County Counsel's Office, Donna Bjorn, John Clark, RVSD, Wendy Martin-Miller, RVSD, Thomas Morell (RVSD Counsel), and Mary Sylla

**OPEN PERIOD** There were no comments made in public open time.

**CONSENT CALENDAR** Commissioner Johnson asked questions related to Item 4.a, Minutes of January 10, 2012. She noted that on page 3, regarding the item on CMSA Regional Charge Alternatives, that the minutes state "the Board concurred." She said that this was inaccurate. GM Dow stated that the minutes could be amended to state "the majority of the Board concurred." She further stated that on page 4, the minutes record that the Board reported in open session the action that they took while in closed session. She disagreed that this had occurred. The majority of the Board, GM Dow, and Agency Counsel Jack Govi, stated that the minutes were accurate. Chair Dupar stated that the wording related to this action, "approved a settlement agreement with RVSD" be changed to "approved a proposed settlement agreement with RVSD" to more accurately reflect the Board's action. Commissioner Johnson recommended that the recording devices be turned back on once the Board reconvenes in open session.

Commissioner Johnson asked questions related to Item 4.g., Revised Sanitary District #2 Pump Station Forcemain Operation and Maintenance Agreement. GM Dow answered her questions and there was a brief discussion.

Action M/s Hartzell/Heller to approve the consent calendar:

- a. Minutes of January 10, 2012 (as amended)
- b. Treasurer's Report—Operating Account—January 2012
- c. Treasurer's Report—Revenue Bond— January 2012
- d. Schedule of Investments— January 2012
- e. Performance Metric Report—January 2012
- f. NPDES and Process Report—January 2012

g. Revised Sanitary District #2 Pump Station and Force-main Operation and Maintenance Agreement

The motion carried with the following vote:

AYES: Boro, Dupar, Hartzell, Heller

NAYS: Guasco, Johnson

ABSTAIN: None

**INTERIM WASTEWATER  
SERVICE AGREEMENT FOR  
SAN QUENTIN STATE  
PRISON**

GM Dow reviewed the staff report and a letter from the Deputy Director of the Department of Correction's (CDCR) requesting a 12-month wastewater agreement.

GM Dow referred to a letter from RVSD's counsel that he received that day, stating RVSD's belief that CMSA does not have the authority to enter into an agreement with the Department of Corrections. GM Dow referred to his handout and explained that there is nothing in the JPA Agreement that prohibits CMSA providing the proposed services to San Quentin. He explained that if the JPA does not provide specific guidance, then CMSA defers to the Sanitary District Act. He further explained that San Quentin is not a member of the JPA, therefore the JPA agreement does not apply to them.

Chair Dupar asked if staff envisions an agreement longer than one year, and GM Dow answered that ultimately, after the initial one-year term, the CDCR has requested a multi-year agreement. He stated that the wastewater treatment work is already being done by CMSA. He explained that the new work, maintaining the pump station, would provide CMSA with added revenue, which is a benefit to CMSA and the member agencies' mutual customers.

Commissioner Johnson stated that there is a question as to who owns the pipes. GM Dow responded it is his understanding that CDCR believes they own the 16" San Quentin forcemain.

Counsel Govi stated that there was an issue in the recent past presented to his office about whether CMSA could contract with outside entities and provide services to them. He reminded the Board that this issue has also been looked at by outside counsel, and that both he and outside counsel have opined that CMSA can indeed contract with outside entities.

Comments from the public:

Thomas Morell, Counsel for RVSD, stated his opinion that the Department of Corrections has not vetted whether or not they are able to enter into agreement with CMSA, as he contends that the transportation infrastructure belongs to RVSD. Counsel Govi responded.

Commissioner Dupar, and the majority of the Board, asked Counsel Govi to seek another outside opinion about whether or not CMSA can provide outside services. Commissioner Johnson stated that she did not believe counsel has not received sufficient documentation in order to make a fair assessment. Counsel Govi asked Commissioner Johnson to indicate to him what other

documents should be provided to outside counsel. She said she would defer to RVSD's legal counsel.

Action

M/s Boro/Heller to develop an interim wastewater service agreement for the San Quentin State Prison property and for Counsel Govi to review the letter from RVSD's counsel and seek another opinion from outside counsel regarding whether CMSA can provide a service agreement to San Quentin State Prison. The motion carried with the following vote:

AYES: Boro, Dupar, Hartzell, Heller

NAYS: Guasco, Johnson

ABSTAIN: None

**GREENHOUSE GAS (GHG)  
EMISSIONS STUDY  
AGREEMENT WITH CH2MHILL**

GM Dow referred to the staff report and explained that this item was developed as part of the Agency's FY12 workplan and its Strategic Business Plan, and was an initiative suggested by Commissioner Guasco at the June 2011 Board meeting. He said that he requested and received a study proposal from CH2MHILL and reviewed the scope of work within the proposed Agreement, which has a service fee of \$19,860.

The Board had a brief discussion on this item. Chair Dupar asked if the Agency may be getting ahead of itself going forward with a GHG study during a revenue shortfall. He asked if the study could be deferred.

Comments from the Public:

Donna Bjorn of San Anselmo asked if there is baseline data available to show where CMSA's GHG information for 2011. GM Dow responded.

Chair Dupar asked GM Dow to follow up with CH2MHILL regarding Ms. Bjorn's question.

After some discussion, Commissioner Guasco suggested postponing the study to FY 13-14.

Action

M/s Guasco/Hartzell to postpone the Greenhouse Gas Emissions Study to FY 13-14. The motion carried unanimously.

**FY 2012 DEBT SERVICE  
PAYMENT OPTIONS**

GM Dow referred to the staff report and to a handout that has corrections on it based on an error made in the coverage ratio. He stated that two of the options, #s one and three, listed in the initial agenda packet are not options under the corrected calculations. He stated that CMSA's Bond Counsel has opined that a decision should be made that evening regarding taking an action.

GM Dow referred to the three options available, and noted that option three was the option selected by the Board in December 2011.

Comments from the Public:

Thomas Morell, RVSD's counsel, spoke during public open time. Counsel Govi responded.

The Board discussed the issues related to the payment options. Chair Dupar noted that if RVSD had paid its full invoices, they could have asked for a refund. GM Dow explained that this was offered by staff back in August 2011.

Commissioner Guasco asked Counsel Govi if there is a default, and Counsel Govi stated that Bond Counsel has explained that once an agency invoices, and its not been paid, it is a default. Commissioner Guasco asked if CMSA is in default, and Counsel Govi said that it is in default by virtue by RVSD being in default.

Commissioner Johnson stated that she believes RVSD has paid their share of what is due and does not believe the financial policy that guides this issue is lawful and considers it null and void. She said she would like to see the calculations of the Agency's FY12 coverage ratio. GM Dow agreed that he would provide them.

Action

M/s Heller/Hartzell to file the notice of default against RVSD and invoice SRSD and SD2 for the underpayment amount per the figures in the revised staff report. The motion carried with the following vote:

AYES: Boro, Dupar, Hartzell, Heller

NAYS: Guasco, Johnson

ABSTAIN: None

**BREAK**

Chair Dupar called a break at 8:41pm. The Board reconvened at 8:50pm.

**CMSA/RVSD SETTLEMENT  
AGREEMENT STATUS**

GM Dow referred to the staff report and to a handout of the Settlement Agreement proposed by RVSD which was delivered to CMSA after the agenda was distributed. He explained that at the last Board meeting, the Board met in closed session, and then in open session reported on a proposed agreement. He said he made the revisions agreed to at the Board meeting and sent the proposed agreement to Ross Valley Sanitary District and its Board members. He explained that CMSA asked RVSD to agendize the agreement for their January 25 meeting, and that the Marin Independent Journal reported on January 28<sup>th</sup> Commissioner Johnson's comments about arbitration.

Commissioner Johnson stated that she was misquoted in the newspaper.

Counsel Govi gave a synopsis of RVSD's proposed settlement agreement and referred to a table passed out by Commissioner Johnson which delineates some of the differences between the proposed CMSA agreement and the agreement from RVSD's counsel.

Commissioner Boro stated that he does not want to spend more time deliberating and discussing this issue, as it has not been productive, and would like to move forward with arbitration.

Comments from the public:

Thomas Morell, RVSD's counsel, spoke on this item. Counsel Govi responded.

Chair Dupar passed out a copy of his comments on this item's topic and read them into the record.

Action

M/s Boro/Heller to reject RVSD's settlement agreement and move forward with arbitration. The motion failed with the following vote:  
AYES: Boro, Dupar, Heller  
NAYS: Guasco, Hartzell, Johnson  
ABSTAIN: None

M/s Hartzell/Johnson to have representatives come together to move try again to come to agreement. The motion failed with the following vote:  
AYES: Guasco, Hartzell, Johnson  
NAYS: Boro, Dupar, Heller  
ABSTAIN: None

The Board took no action on this item. Commissioner Dupar clarified that the Board had previously decided to arbitrate the dispute and that is the current course of action. Counsel Govi concurred.

### NORTH BAY WATERSHED ASSOCIATION (NBWA) REPORT

Commissioner Hartzell stated that she went to the NBWA meeting which centered on the state of the San Francisco Bay and whether or not it is healthy. She said there was also a presentation on salmon recovery practices. The next meeting will be held in Novato.

### VERBAL REPORT BY COMMISSIONERS

GM Dow reviewed his handout highlighting Agency business, including:

- There is a finance committee meeting this Friday;
- CMSA has received the administrative draft of CMSA's 2012 NPDES Permit.

Commissioner Johnson asked about an item in the Information Packet and stated that not all the cash reserves were listed in CMSA's response to the Grand Jury survey. GM Dow responded that bond proceeds were not listed as they are not considered reserves.

### DATE OF NEXT MEETING

The next commission meeting is scheduled for March 13, 2012 at 7:00 pm.

### ADJOURN

The meeting was adjourned at 9:49 p.m.

  
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Recording Secretary

\_\_\_\_\_  
Secretary

Note: The minutes are an official record of the Board meeting. There is also an official audio record, available on the Agency's website at [www.cmsa.org](http://www.cmsa.org), and an official video record. Please contact CMSA at 415-459-1455 for information about receiving a copy of these records.