

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

**Minutes of Tuesday, March 13, 2012  
7:00 P.M.**

**CALL MEETING TO ORDER**

Chair Dupar called the meeting to order at 7:01 p.m. A quorum was present.

Members Present:

Dupar, Guasco, Hartzell, Heller, Phillips (for Boro)

Members Absent:

Boro, Johnson

Staff Present:

Jason R. Dow, General Manager; Mary J. Brown, Recording Secretary; Rob Cole, Environmental Services Manager; Chris Finton, Treatment Plant Manager; Ken Katen, Engineering Manager

Public Present:

Jack F. Govi, County Counsel's Office, and Mary Sylla

**OPEN PERIOD**

There were no comments made in public open time.

**CONSENT CALENDAR**

Action

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

- a. Minutes of February 14, 2012
- b. Treasurer's Report—Operating Account—February 2012
- c. Treasurer's Report—Revenue Bond—February 2012
- d. Schedule of Investments—February 2012
- e. Performance Metric Report—February 2012
- f. NPDES and Process Report—February 2012
- g. 2012 CASA Spring Conference
- h. Procurement of Two Primary Clarifier and Two Aeration Tank Sluice Gates
- i. Procurement of Primary Clarifier Replacement Equipment
- j. Bond Counsel Legal Services Agreement with Hawkins Delafield Wood

Alternate Commissioner Phillips stated that he would abstain from voting on Item 4.a. Minutes of February 14, 2012, as he was not in attendance at that meeting.

The motion carried with the following vote:  
 AYES: Dupar, Guasco, Hartzell, Heller, Phillips  
 NAYS: None  
 ABSTAIN: None (see note above re: Item 4.a.)

**RAGGHIANI & FREITAS  
OPINION ON CMSA  
PROVIDING CONTRACT  
SERVICES TO LOCAL  
AGENCIES OUTSIDE THE  
JPA SERVICE AREA**

Counsel Govi referred to the staff report and explained the general history of this item, noting that the Board had previously sought his and additional outside counsel regarding whether or not it was proper for CMSA to provide contract services to agencies outside of the JPA service area. He stated that the Board asked him to again

seek outside counsel at their February board meeting, and he said the Agency sought the opinion of the Ragghianti & Freitas law firm. He stated he received their opinion and that they found that it is indeed proper for CMSA to engage in contracts outside the JPA service area. Counsel Govi noted that Commissioner Johnson expressed her concern at the February meeting that the law firm(s) opining on this topic in the past did not have all the relevant documents necessary to deliver an opinion, and he said that he invited her to name any documents she would like included, but he did not hear back from her.

The Board briefly discussed Ragghianti & Freitas' opinion. This item was informational and no formal action was taken. Chair Dupar suggested that GM Dow provide a copy of the firm's opinion to the RVSD Board members and to the JPA managers. The Board concurred. GM Dow stated that he would email the opinion to the RVSD directors and member agency managers.

**DIGESTER  
IMPROVEMENTS/FOG FACILITY  
PROJECT—TASK ORDER FOR  
SUPPLEMENTAL ENGINEERING  
SERVICES DURING  
CONSTRUCTION**

GM Dow referred to the staff report and explained that a task order for supplemental engineering services to augment the budget during construction has been developed for specific tasks that are being performed and because of additional engineering support needed from Kennedy Jenks during the start-up of the retrofitted digesters and the FOG/Food-to-Energy facility. GM Dow stated that the task order fee allowance is \$92,300 and will be funded from the approved project budget in the capital improvement program.

Action

M/s Hartzell/Heller to approve Task Order 2E for the Digester Improvement/FOG Facility Project's Professional services Agreement with Kennedy/Jenks Consultants, and authorizes the General Manager to sign the Agreement's amendment for the Task Order. The motion carried unanimously.

**REGIONAL CHARGE FLOW  
BASED ALLOCATION  
PROCEEDURES**

GM Dow referred to the staff report and explained that the Board asked staff to collaborate with the Finance Committee to prepare procedures for the annual flow and three year flow allocation methods, and to begin sampling the wastewater from each satellite collection agency to determine its quality. He explained that staff has prepared the final draft procedures that include comments from the February 17, 2012 Finance Committee meeting discussion on the item. GM Dow referred to the section of the JPA that allows Board discretion to consider the wastewater quality when establishing the Regional Charge.

After brief discussion, GM Dow clarified that staff is currently gathering the collection agencies' strength data. He also clarified that this discussion and these proceedings pertain only to the Agency's operating expenses and not to the debt service payments.

Action

M/s Heller/Hartzell approve the annual flow and three year flow average Regional Charge allocation procedures as presented, and directs staff to incorporate the procedures into the Agency's Revenue Management Financial Policy. The motion carried with the following vote:

AYES: Dupar, Hartzell, Heller, Phillips

NAYS: Guasco

**FEBRUARY 18, 2012  
VIOLATION OF CMSA BOARD  
DECORUM POLICY**

ABSTAIN: None

Chair Dupar stated that he is bringing this item to the Board. Commissioner Guasco stated that he wished to recuse himself from this item and left the room (7:47p.m.).

Chair Dupar reviewed his memorandum to the Board and explained that Commissioner Johnson had disagreed with the Finance Committee members at their last meeting on February 17, 2012 regarding the allocation of the Regional Charge in relationship to the revenue shortfall. He said that during the discussion at the meeting, Commissioner Johnson became agitated and made disparaging comments toward staff and committee members, saying that they were dishonest and deceitful, and implied that staff and Board members were in collusion against her. Chair Dupar said that she clearly violated the Board's Decorum Policy, specifically the section stating, "Do not criticize or denigrate staff in public or at meetings." Chair Dupar stated that he believes she should be removed from the Finance Committee in order for the Committee to continue working productively together.

Commissioner Hartzell stated that Commissioner Johnson's remarks at the meeting were indeed inappropriate and that it was unfortunate that the remarks were made about staff, in front of staff.

Alternate Commissioner Phillips asked Commissioner Hartzell if she agreed with Chair Dupar's account of the meeting in his memo, and she indicated that she did. Alternate Commissioner Phillips stated that a letter to the RVSD Board should be drafted as recommended in the staff report.

After some discussion, the Board agreed that the current Decorum Policy be added as a future Agenda Item to ensure it contains wording specific to the removal of members from standing committees.

Counsel Govi said that the Board does have the right to remove Commissioner Johnson from a standing committee based on what occurred and suggested sending RVSD a letter explaining the removal of Commissioner Johnson and asking them to recommend a replacement.

**Comments from the Public:**

Mary Sylla asked for clarification about whether the Board was discussing removing Commissioner Johnson from the Finance Committee or from the Board of Commissioners. Chair Dupar responded that this would be removal from the Finance Committee.

**Action**

M/s Hartzell/Dupar to remove Commissioner Johnson from the Board's Finance Committee, and to write a letter to RVSD and to their Board of Directors requesting representatives to replace Commissioner Johnson on the Finance Committee. The motion carried with the following vote:

AYES: Dupar, Hartzell, Heller, Phillips

NAYS: None

ABSTAIN: None

RECUSALS: Guasco

(Note Commissioner Guasco rejoined the Commission at 8:12pm).

**FY12 RVSD DEBT SERVICE  
PAYMENT**

GM Dow reviewed the staff report and gave a brief overview of the history of this item and the actions of the Board at the February meeting.

He noted that SRSD and SD2 paid the supplemental FY12 debt service invoices and the final draft default documents have been prepaid. He recounted that RVSD staff delivered their FY12 underpayment check with conditions on February 17, 2012, and that bond counsel and Counsel Govi both advised that staff should not deposit the check and accept the conditions, and that RVSD would remain in default. GM Dow presented three options for the Board to consider for handling the RVSD debt service underpayment check. The options were to accept the underpayment check, accept the underpayment check and prepare an advance refund, or to not accept the underpayment check. GM Dow explained that options one and two cure RVSD's default.

Commissioner Guasco noted that the FY12 EDU count information from RVSD was delivered to CMSA that day, and Commissioner Phillips asked if the second option is satisfied. GM Dow stated that if the EDU counts are verified, then option two could occur.

Commissioner Phillips recommended verifying the count, and if it is accurate, to deposit the check and issue the refund.

Action

M/s Hartzell/Phillips to direct staff to conduct an expeditious analysis of the EDU substantiation documents received on March 13, 2012, and following the conclusion that they do indeed verify the actual count, accept and deposit RVSD's check, and prepare a refund within five days of the deposit. The motion carried unanimously.

**RVSD NOTICE OF DEFAULT  
DOCUMENTS**

This item was stricken due to action taken during the previous agenda item.

**NORTH BAY WATERSHED  
ASSOCIATION (NBWA) REPORT**

Commissioner Hartzell gave a brief report and referred to a handout she had crafted detailing the agenda of the March NBWA meeting.

**VERBAL REPORT BY  
COMMISSIONERS**

GM Dow reviewed his handout highlighting Agency business, including:

- The RVSD Board approved a \$125k contract with StepWise Utility Advisors for their consolidation study. The firm sent PRAR requests to the member agencies and CMSA has responded.
- Wastewater strength sampling for each collection agency started in early March.
- CSRMA has reimbursed CMSA \$73,269 for a portion of our legal expenses defending SD2 in the lawsuit brought by RVSD.
- THE NPDES tentative order has been prepared by the Regional Water Board, and the RWB accepted most of the Agency's comments on the administrative draft.

- Proposals received from nine auditing firms to provide auditing services for the Agency's FY13-15 financial statements.
- RVSD's Environmental Compliance/Safety Coordinator terminated the CMSA/RVSD FOG Service Agreement, effective May 31.

**BREAK**

Chair Dupar called a break at 8:47pm. The Board reconvened in Closed Session at 8:53pm.

**CLOSED SESSION**

CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION  
California Government Code Section 54956.9(a).  
Name of Case: *CMSA v. Sanitary District No. 1 of Marin County*,  
Matter Pending before potential Arbitrator or Arbitration Panel

**RECONVENE IN OPEN SESSION**

Chair Dupar reconvened the Board in Open Session at 9:27 pm. He reported that the Board directed staff to proceed with arbitration.

**DATE OF NEXT MEETING**

The next commission meeting is scheduled for April 10, 2012 at 7:00 pm.

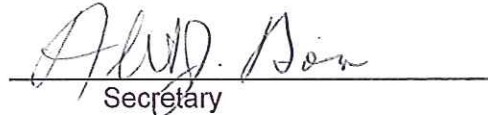
**ADJOURN**

The meeting was adjourned at 9:28 p.m.



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Recording Secretary



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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.