

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

**Tuesday, March 10, 2009
7:00 P.M.**

CALL MEETING TO ORDER

Commissioner Sinnott called the meeting to order at 7:03 p.m. with the Pledge of Allegiance. A quorum was present.

Members Present:

Boro, Brown, Dupar, Johnson, Miller, Sinnott

Members Absent:

None

Staff Present:

Jason Dow, General Manager; Mary Brown, Recording Secretary; Nathan Brennan, Plant Manager; Hank Jen, Finance Manager; Ken Katen, Senior Engineer; Chris Finton, Assistant Treatment Plant Manager.

Public Present:

Jack Govi, Asst. County Counsel; Brett Richards, SD #1; Peter Sullivan, SD #1; Patrick Guasco, SD #1. There were no other names recorded on the sign-in sheet, however, there were several members of the public present.

OPEN PERIOD

There were no public comments.

CONSENT CALENDAR

Commissioner Johnson asked that Consent Calendar Items 4.a., Minutes, 4.j., Award of Emergency Generator and Dechlorination System Improvements Project/CMSA Contract No. 09-01, and 4.k., Adoption of Outfall Interior Solids Removal Contract/CMSA Contract No. 09-03 be removed from the Consent Calendar for further discussion. Chair Sinnott moved discussion of these items to the end of the agenda.

Action

M/s Dupar/Miller to approve the remaining items on the consent calendar:

- b. Treasurer's Report-Operating Account—February 2009
- c. Treasurer's Report-Revenue Bond—February 2009
- d. Schedule of Investments—February 2008
- e. Performance Metric Report—February 2009
- f. NPDES and Process Report—February 2009
- g. Fats Oils and Grease (FOG) Source Control Agreement with the Tamalpais Community Services District
- h. Wet Weather Improvement Project Monthly Report—February 2009
- i. Outfall Improvements Project Phase II—Professional Services Agreement with Carollo Engineers

The motion carried unanimously.

**CAPITAL REVENUE BOND
PROGRAM REVISIONS FOR
FY 09/10**

GM Dow reviewed the staff report and referred to a handout with revisions of the bond program. He explained how the revenue bond program had been expanded and revised in FY08/09, and identified the proposed revisions for FY 09/10. GM Dow talked about the descriptions and format of the bond program and how the program is represented by category, and reported that there is an approximate projected balance of \$2.4 million dollars in FY11/12.

Commissioner Johnson referred to spreadsheets from June 2008 and inquired as to why there were now different dollar amounts and category names being used. She shared her concern that the retitling of line items made it difficult to understand the bond program. She asked if there should be a description of the line items to assist the Board with understanding what is involved in the bond program and as part of the approval process.

GM Dow stated that most of the projects are summarized and described in last year's adopted budget. He referred to his staff report as describing the significant proposed changes and pointed out the summaries there. GM Dow explained that some of the project titles had been changed to better describe the work being done. Some of the prior years' cost figures had changed because financial staff did a high-level audit of the general ledger and bond financials, resulting in some expenses and items moving to make the document more accurate.

Commissioner Dupar asked if the document would continue to be refined and made more accurate from year-to-year, and GM Dow responded that the bond program is a working document that is annually revised to better reflect the projects it refers to.

Commissioner Johnson stated that she believed the Board should be responsible for prioritizing the budget and that she did not believe the General Manager should be overseeing the prioritization of millions of dollars.

Commissioner Dupar stated that the Board approves the budget, and that the General Manager does not have the authority to solely oversee the distribution of monies.

Commissioner Johnson reiterated her concern that the documentation makes it hard to follow funding of projects from one year to another. GM Dow explained that the included projects have either been described in the previous years' adopted and approved budgets or are defined in the staff report, and in items under the consent calendar. He stated that this is the same process that had

been used three times prior, and that the program has been refined to make it more accurate each year.

Commissioner Johnson asked why the revised interest in the summary was more if the interest rate went down. GM Dow explained the actual interest earnings decreased due to the economic downturn. The earnings Commissioner Johnson referred to were related to the arbitrage rate; as the total expenditures change each year, the interest earnings change.

Commissioner Boro asked if all the projects reflected in the bond program had been approved. GM Dow responded that all of the projects, except for the ones noted in his staff report, had been approved last year.

Comments from members of the public:

Bruce Baum inquired about the use of bond monies and asked about the possibility of overage funds being returned as credit to member agencies.

Garryl Page shared her concern that the item descriptions do not allow people other than the General Manager to track changes.

Peter Sullivan stated that he believed audited expenditures should not be moved or retitled.

Commissioner Brown asked if the concerns raised could be further considered and if staff could work on the bond program to address questions prior to approving it as is.

Commissioner Boro objected to the implication that CMSA staff were intentionally obfuscating financial matters and asked that commission members review agenda items prior to the board meeting to save time.

Action

Boro/Dupar to ask GM Dow to explain the past refund of bond money to each agency, and why it is appropriate to spend the remainder money for the proposed projects as permitted by the bond counsel; to create a capital budget summary with the description and dates of when the budgets were adopted; to have summary descriptions of changes that are new; and to identify line item or project name changes and the reasons the changes were made. The motion carried unanimously.

**FOOD-TO-ENERGY
PROJECT (F2E)—2009
WORKPLAN**

GM Dow reviewed the staff report that outlined a focused workplan to continue exploring the F2E concept. The first draft of the workplan included Outreach and Education, Permitting and CEQA Review, and Predesign Activities.

Commissioner Brown asked if the scope of work would be conducted in the chronological order presented, that is,

outreach first, then CEQA review, then predesign. GM Dow responded that many of the tasks would be completed concurrently.

Commissioner Brown asked if ratepayers and council members would be told how their rates would be affected in the town and city presentations. GM Dow said that presentations would include a Board-approved project budget and the different possible methods for funding.

Commissioner Brown questioned whether CMSA, as a Joint Powers Authority, had the legal authority to amend its mission to include processing food waste.

GM Dow stated that he and CMSA's legal counsel, Jack Govi, had talked preliminarily about CMSA embarking on the F2E project. Counsel Govi stated that CMSA is governed under the Sanitary District Act of 1923 and that as such, he believed the Board was within its rights to initiate the project.

Commissioner Johnson said that there were items in the workplan that were not in the original budget. She commented that EBMUD is operating an experimental program and that she had questions that would not be answered by a facility tour. Chair Sinnott suggested modifying the workplan item regarding EBMUD so that more answers could be obtained from them about the practicality of proceeding.

Commissioner Boro spoke about the Marin Energy Authority's efforts to go forward with their proposals without having resolved all funding and budget issues. He reminded the Board about state and national legislation addressing greenhouse gas emissions and stated he believed there would be various funding opportunities for programs addressing environmental concerns. Commissioner Boro stated that information about the F2E project should be made available to all city councils within Marin because CMSA may be able to eventually collect food waste from throughout the county.

Chair Sinnott clarified that the Board would like CMSA staff to secure legal authority for pursuing an F2E project, and to research EBMUD's experience and do an analysis of what has and has not worked at their facility.

Commissioner Dupar asked about a tour of EBMUD and if the tour would be open to the public. Counsel Govi said that the Board could visit EBMUD in small groups, or attend as a Board. Commissioner Boro stated that he supported the idea of going as one group and that the public could be a part of seeking information from EBMUD.

Commissioner Brown said that she thought it important to invite EBMUD to come to CMSA, and Chair Sinnott agreed that an invitation could be extended to them after the Board had gone to their facility.

Comments from members of the public:

Bruce Baum spoke about amending the JPA and asked if it would be necessary to gain concurrence from the legal advisors of all member agencies. He commented on the methods of gaining public support for a project, and spoke about the benefits of collecting FOG from San Quentin.

Commissioner Johnson suggested identifying major road blocks to the project and "front-loading" those issues in the chronology of how the project is investigated.

There was discussion about ways to reach out to haulers and methods of finding out their levels of interest in participating in an F2E project. GM Dow stated that he would start giving presentations to councils and would contact haulers to discuss the project concept, and he would be able to give feedback to the Board as he continues to give presentations.

The Board identified three items: gaining an opinion on CMSA legal authority, the need for an interested hauler, and receiving more information from EBMUD regarding their F2E experience.

Action

M/s Miller/Dupar to approve the workplan as amended to include additional research on the EBMUD facility, extending an invitation to EBMUD officials to come to one of CMSA's Board meetings, securing more information from legal counsel regarding the JPA document and the ability to pursue F2E project, and the prioritization of items to identify roadblocks. The motion carried unanimously.

**ROSS VALLEY SANITARY
DISTRICT'S PUBLIC
RECORDS ACT REQUEST**

GM Dow reviewed the staff report, explained the scope of the Public Records Act (PRA) request issued to CMSA by the Ross Valley Sanitary District's attorney, and gave a brief summary of the Agency's attempts to clarify and comply with the request. He stated he brought this item to the board last month and was asked to agendaize the item in March. He asked Counsel Jack Govi to talk about the correspondence between RVSD and CMSA's respective legal attorneys.

Counsel Govi explained that he considered it very unusual to receive a PRA request from one public entity to another. He outlined his response to the PRA, referenced the correspondence written by himself and RVSD's attorney, and said that records could have been obtained in a less formal manner. He stated his concern that involving legal

counsel to obtain records had not been a good use of public resources.

Chair Sinnott stated that he asked GM Dow to agendize this item because of his dismay and concern at being issued a formal PRA request prior to an informal attempt to obtain CMSA records.

Commissioner Dupar asked GM Dow how requests are normally treated at CMSA. GM Dow stated that he talks with the person to find out what records they are seeking and makes the time to share information or provide answers to their questions. He outlined his hope that CMSA and RVSD could work collaboratively to resolve this issue.

Commissioner Johnson spoke about her requests for CMSA financial spreadsheets and said that they had not been complied with. There was discussion regarding spreadsheets that include formulas and assumptions, and whether or not electronic budgetary documents with formulas need to be shared as document files. Counsel Govi stated his legal opinion that electronic files minus codes are legally sufficient.

Commissioner Boro stated his support for providing documents to agencies requesting them, and stated his overriding concern was the insulting tone of the email sent to GM Dow by the Ross Valley Sanitary District's General Manager.

Commissioner Brown asked for clarification of how the RVSD General Manager could have requested documents. Counsel Govi explained that the number of records requested was so large, perhaps in excess of 30 bankers' boxes, that he proposed options to RVSD's attorney on various ways to garner the records. Options included having an RVSD staff person come to CMSA and identify records to have copied, or CMSA copying all documents that may have been interpreted as relevant to the PRA request, regardless of copy fees. Counsel Govi stated that RVSD's attorney ultimately opted to have RVSD staff come to the CMSA office to peruse documents for copy and to receive available records electronically.

Comments from members of the public:

Garryl Page, a member of the public, stated her opinion regarding PRA requests.

Bruce Baum, a member of the public, talked about electronic spreadsheets as part of a PRA request.

Jim Garrity, a member of the public, spoke about his own use of PRA requests to gain access to information.

Brett Richards, General Manager of the Ross Valley Sanitary District, introduced himself and explained that he needs financial information in order to address ratepayers' questions and concerns. He offered the specific example of RVSD raising rates and how that action was necessary because of its payments to CMSA. Mr. Richards stated that PRA requests were part of daily business in his work with his previous employer and that the formal request is a business tool meant to quantify and gather information such as budgets and audits.

Commissioner Brown asked if any of the documents had been provided to RVSD. Counsel Govi reiterated that he had made various options available to RVSD's legal counsel and that RVSD had opted to send a staff person over to identify which documents they wanted copied. He reconfirmed that the PRA request had been complied with and deadlines had been met.

Commissioner Boro spoke directly to Mr. Richards about the example regarding RVSD raising its rates, and stated for the record that he believed the reason RVSD needed to raise their rates was because they had agreed to participate in a capital improvement program, the Wet Weather Improvement Project, and the increase was not a surprise.

Commissioner Brown stated that she had not received easy access to records from CMSA and she handed out emails she had sent to GM Dow asking to see records in the CMSA "vault." She stated that she has been granted one hour, on one occasion, on March 10, 2009, to view those records. GM Dow referenced a spreadsheet identifying seven times that Commissioner Brown had come to the CMSA offices to view public records, often for multiple hours. Commissioner Brown disagreed with this representation and said that she wanted it reflected in the record that she had not had the access she sought.

Commissioner Boro said that he has been on the CMSA Board for 20 years and has sat on numerous other boards, including the City of San Rafael, Golden Gate Bridge, SMART, and others, over the last 20 years, and that he had never seen the interaction between agencies occur the way it did at this board meeting, and had never seen a board member of any agency ask the agency for its public records the way members of the CMSA board had. He said he had never seen board members take hours of a General Manager's time to ask questions and suggested board members find a better way seek information. He also suggested that Board members think about how they

operate, reminding the board that they are board members, not staff members.

Chair Sinnott reiterated that the goal is to have CMSA and RVSD work together collectively, for the good of the public. He stated he believed the issue to have been complicated by communication errors and he encouraged the board and all parties to move forward. He expressed his belief that both CMSA and RVSD are excellent organizations, and he asked that the board support the CMSA staff.

Action

There was no action taken on this item.

BREAK

The Board of Commissioners took a break for approximately 15 minutes.

ROSS VALLEY SANITARY DISTRICT'S WITHDRAWAL FROM THE JPA MANAGERS' MEETING

Chair Sinnott reported that the CMSA General Manager and the RVSD General Manager had spoken during the break and resolved this item, and that it was no longer at issue. RVSD GM Richards agreed to rejoin the JPA Managers' Group.

Action

There was no action taken on this item.

ROSS VALLEY SANITARY DISTRICT'S RELOCATION REPORT

Ross Valley Sanitary District's General Manager, Brett Richards, gave a brief update on RVSD's relocation.

Mr. Richards stated that RVSD had agreed to a purchase and sale agreement for a piece of property and that he anticipates leaving the CMSA property around the beginning of the fiscal year. He assured the board he would give more updates and would let CMSA know well in advance of RVSD's move.

Action

There was no action taken on this item.

NORTH BAY WATERSHED ASSOCIATION (NBWA) REPORT

Chair Sinnott distributed a written report related to this item.

Action

There was no action taken on this item.

VERBAL REPORT

GM Dow referenced his handout and reviewed Agency business, including:

- The biosolids management: contract has been extended with Synagro

- CMSA working on a long-term contract with Redwood Landfill regarding ADC
- The Biosolids to Energy contract is being completed; CMSA's contribution may be less than anticipated
- The Waukesha repairs are under way and CMSA staff anticipated the cogen coming back online in the next few weeks

Comments from members of the public:

Dr. Peter Sullivan asked if it was likely the cogen would malfunction in the same way again. GM Dow responded.

**DISCUSSION OF ITEMS
REMOVED FROM CONSENT
CALENDAR**

Item 4.a., Minutes of February 10, 2009:

Commissioner Johnson corrected some typographical errors. She clarified comments she made at the February meeting related to the Wet Weather Improvement Project, the Cost-Savings Award Program, and the Mercury Watershed Permit.

Commissioner Brown noted that Dr. Peter Sullivan's public comments and letter were not delineated in the minutes. She stated that the public comments were not comprehensive.

Public Comments:

Bruce Baum clarified the identity of a member of the public who spoke at the February meeting. He objected to the summaries of the public comments in the minutes.

Action

M/s Dupar/Johnson to approve Item 4.a Minutes of February 10, 2009, as amended. The motion passed with the following vote:

Ayes: Johnson, Dupar, Boro, Miller, Sinnott

Noes: Brown

Abstain: None

Item 4.i., Award of Emergency Generator and
Dechlorination System Improvements Project/CMSA

Contract No. 09-01:

Commissioner Johnson asked if CMSA was following the structure used in prior bid processes in regard to the Experience Modification Rates. She said she wanted to make sure there was consistency in the processes.

GM Dow explained how the EMR form had changed in the past, and why it had changed, and that staff had worked with CMSA's construction attorney to ensure that the low bidders' EMR requirements for themselves and their subcontractors were compliant with Agency provisions.

Action

M/s Dupar/Johnson to approve Item 4.j. Award of Emergency Generator and Dechlorination System Improvements Project/CMSA Contract No. 09-01. The motion passed with the following vote:
Ayes: Brown, Dupar, Boro, Miller, Sinnott
Noes: Johnson
Abstain: None

Item 4.k., Adoption of Outfall Interior Solids Removal Contract/CMSA Contract No. 09-03:

Commissioner Johnson expressed her concern with an ongoing problem of solids accumulation in the outfall, and asked if there was a long-term solution.

GM Dow stated that the outfall is very oversized to accommodate CMSA's wide range of flows, resulting in solids deposition. Periodic cleaning is the only solution and funding will be through the asset management program.

Action

M/s Miller/Dupar to approve Item 4.k. Adoption of Outfall Interior Solids Removal Contract/CMSA Contract No. 09-03. The motion carried unanimously.

The Board asked for clarification of two items in the Information Packet. GM Dow responded.

CLOSED SESSION

The Commission convened in closed session at 10:10 p.m. per Government Code 54954.5 to discuss:
Public Employee Performance Evaluation (CA Government Code §54957)
Title: General Manager

OPEN SESSION

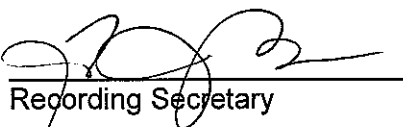
The Commission reconvened in Open Session and reported that no action was taken in Closed Session.

DATE OF NEXT MEETING

The next commission meeting is **TUESDAY, APRIL 14, 2008** at 7:00 p.m.

ADJOURN

The meeting was adjourned at 10:55 p.m.



Recording Secretary



Secretary