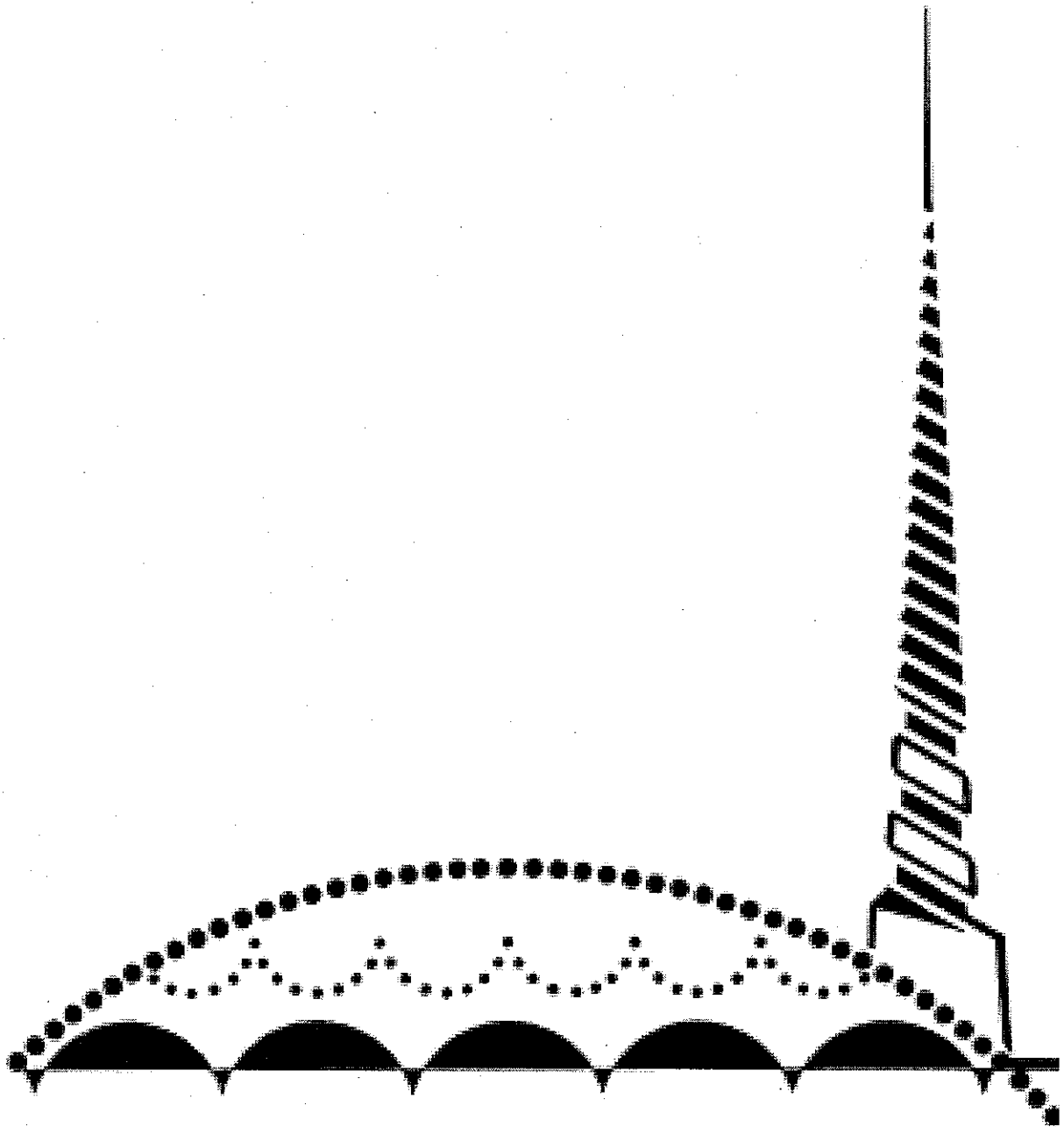


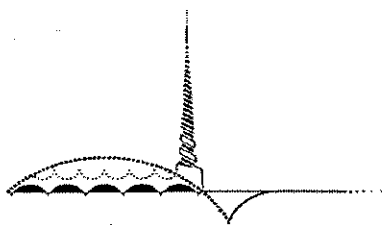
2008-2009 MARIN COUNTY CIVIL GRAND JURY

Central Marin Sanitation Agency: Bickering board breeds discontent

June 23, 2009



Marin County Civil Grand Jury



SUMMARY

The Central Marin Sanitation Agency (CMSA) operates the largest wastewater treatment facility in Marin County, serving about 110,000 people. By most accounts, it runs smoothly and efficiently to the point of winning numerous industry awards for its operations and financial practices. And yet, for the last couple of years its Board of Commissioners has been beset by dysfunction and infighting.

The four member agencies that comprise CMSA are all vastly different. San Rafael is a city with its own separate sanitation agency. The Ross Valley Sanitary District is purely a sanitary district, collecting and transporting sewage. The Town of Corte Madera has its own sanitary district that is a subset of the Town Council yet contracts with CMSA for some services. And Larkspur sewer services are all provided by the Ross Valley District.

Each of those agencies appoints the representatives who make up the six-member CMSA Board of Commissioners. The board has no bylaws and only two official policies, which are supposed to cover recording of meetings and compensation for travel expenses. Nothing more.

For the most part, the CMSA commissioners don't get along with each other. The member agencies argue over who's carrying their fair share and some of the senior staff communicate with each other by lengthy letters even though their respective offices are practically next door. At the CMSA Board meetings a commissioner and member of the public both videotape the proceedings, public comments are generally not included in the minutes and the commissioners won't respond to questions raised by the public. The agencies won't even share their own documents among themselves.

While civilized debate is a vital part of the democratic process, this report is aimed at pointing out examples of what the Grand Jury considers petty, unacceptable and counter-productive behavior, while outlining some simple, initial steps that hopefully will lead to a sense of civility and respect that the people served by CMSA deserve.

METHODOLOGY

Members of the Grand Jury attended board meetings of CMSA and member districts. We interviewed over a dozen individuals involved with the organization including officials and staff members of various agencies. The Grand Jury reviewed pertinent documents including the joint powers agreement, multi-year budgets, agendas and minutes of board meetings of CMSA and member agencies, board policies and procedures, internal memos, consolidation studies and websites of the various districts. Jurors also toured CMSA's wastewater treatment facility.

DISCUSSION

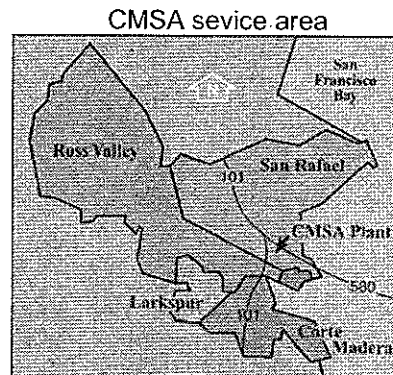
The Central Marin Sanitation Agency was formed in 1979 pursuant to a joint powers agreement among four sewage collection agencies. Its purpose is to treat and dispose of wastewater collected by those agencies. Its wastewater treatment facility is the largest in the county, serving approximately 110,000 people. Located in San Rafael, it treats sewage from central Marin and disposes of the treated waste stream via deep water outfall pipes into San Francisco Bay. The facility treats an average of 11 million gallons per day and approximately 10 times more than that during major storms. The CMSA wastewater treatment facility consistently receives awards for accomplishments, ranging from operations to financial practices.

CMSA has a staff of 40 and an annual operating budget of just under \$9 million. The agency is funded by its member districts in proportion to their respective amount of influent into the facility.

CMSA member agencies

CMSA is governed by a board of six commissioners appointed by the following four agencies:

- **San Rafael Sanitation District** collects wastewater for most of the City of San Rafael and some unincorporated areas of Marin County. The San Rafael District's three-member board consists of the mayor of San Rafael, a city council representative, and a county supervisor. The district appoints two commissioners to the CMSA Board.
- **City of Larkspur** sewage collection was annexed to the Ross Valley Sanitary District in 1993. Larkspur retains a representative on the CMSA Board who is appointed by the Larkspur City Council.
- **Sanitary District No. 1**, also known as Ross Valley Sanitary District, manages wastewater collection from Larkspur, Kentfield, Greenbrae, Ross, San Anselmo, Fairfax, San Quentin Prison and some unincorporated areas. Ross Valley's five-member governing board is elected at large and two Ross Valley board members are appointed to the CMSA Board.
- **Sanitary District No. 2** consists primarily of the Town of Corte Madera with some nearby unincorporated areas. The Corte Madera CMSA commissioner is appointed by the Corte Madera town council.



The four member agencies that form CMSA have different needs, concerns and motivations. San Rafael is a city with its own separate sanitation agency. Ross Valley is purely a sanitary district, collecting and transporting sewage. The Town of Corte Madera has its own sanitary district that is a subset of the town council yet contracts with CMSA for some services. Larkspur sewer services are all provided by Ross Valley Sanitary District.

These member districts don't get along and problems seem to go back 30 years, to the formation of the agency. The general manager of Ross Valley was passed over when he applied for the new position of general manager of CMSA. Neither he nor the board of Ross Valley was happy about that.

The normal ebb and flow of business and personalities since that time has led to the point where the long-brewing issues of perceived inequity between the various parties are coming to a head. It may have been exacerbated by consolidation talks between the agencies, which broke down last fall. During those negotiations, the heightened ill will between San Rafael and Ross Valley became apparent to all and led to the failure of the consolidation effort.

Ross Valley contends that, since it represents over 50 percent of the influent to the CMSA plant and consequently provides over 50 percent of the revenue to CMSA, its vote on the CMSA Board should be 50 percent rather than 33 percent as decreed by the joint powers agreement. The other districts contend that the voting allotments are fair and just as is.

Ross Valley seems to believe that the other members of CMSA are just interested in Ross Valley's money and, after 30 years, Ross Valley commissioners are now referring to CMSA as an "experiment."

The result of this divisiveness and mistrust can be seen in the actions of the general managers of CMSA and the Ross Valley district. Though their offices are literally a stone's throw apart at the CMSA plant, they communicate by trading long, detailed, legally reviewed letters rather than getting together in person and trying to equitably resolve whatever differences they have.

Recently the fighting between Ross Valley and the other member districts of CMSA has resulted in a ridiculous legal battle over whether Ross Valley can have access to public documents held by the agency it belongs to and helps fund.

In March 2009, Ross Valley Sanitary District and its new general manager filed a formal Public Records Act Request for documents from CMSA that it wished to review. The legal wrangling over access to these documents continued at the time of this report. In question were about 30 file boxes of primarily financial documents. Many of these documents had previously been provided on an ongoing basis to the CMSA commissioners, including those appointed by Ross Valley. Legal counsel for CMSA has advised the agency that formulas embedded in financial spreadsheets of the agency are proprietary and should not be released, even to commissioners.

All is not well with the Board of Commissioners

The Grand Jury has witnessed hostility and unacceptable behavior by commissioners at public meetings. Commissioners verbally attack each other and berate staff routinely at meetings. Commissioners have been warned by counsel that their comments might be cause for a lawsuit against the district by certain employees. In a letter to the CMSA Board, dated May 28, 2009, all CMSA senior staff managers stated "we do not feel that the agency is well-served when Commissioners echo ill-informed, negative comments about the capabilities, competency, and integrity of CMSA management and staff in administering Agency business." The Grand Jury

has been told that staff is becoming more concerned by the actions and innuendos of individual commissioners who question staff competency, particularly in the financial arena.

Tempers of the commissioners sometimes run hot. Also worrisome is the lack of civility and the fact that the same arguments often occur month after month with no movement from either side. The tension in the room at board meetings can be palpable. The Board of Commissioners vote is often split with Ross Valley generally in the minority. Ross Valley's response appears to include intimidation with video cameras, long-winded and detailed editing of minutes, and an undercurrent of dissatisfaction with most everyone and everything involved in the organization. A skilled facilitator could be helpful in resolving some of these long-standing rifts.

Despite the board problems CMSA appears to be operationally sound. But prolonged bickering and unrest among the board, over time, will likely be detrimental to the entire organization.

Lack of board policies and bylaws

The joint powers agreement provides that the commissioners shall "adopt from time to time such rules and regulations for the conduct of its affairs as may be required." CMSA has only two official board policies that cover recording of board meetings and commissioner compensation for travel expense. There are no board policies on any of the following:

- Protocol for board meeting decorum
- Protocol for commissioner response to public queries
- Posting of board minutes and agendas to the CMSA website
- Protocol for allocation of excess operating funds
- Stipends to commissioners for board meetings
- Standing or ad hoc committees
- Access to public documents

There are no official board bylaws. Without written policies, expectations differ between the participants and controversy ensues.

Public interface

Few members of the public normally attend CMSA board meetings. The public has been told that the board will not reply to questions posed by the public even on agenda items. Board minutes of September 9, 2008 show that the board has been advised by its attorney "not to respond to public comments." Listening to and treating the public respectfully should be part of the job. A hard and fast rule of no response from commissioners thwarts the public's role in the democratic process. Rules governing response to public queries need to be clarified and enforced.

Video recording is out of control

CMSA staff makes an audio recording of every board meeting that is considered the official record of the meeting. Most CMSA board meetings are also videotaped by a Ross Valley commissioner and one member of the public. Multiple video cameras are an intimidating presence. The tapings create anxiety for staff members, particularly if the camera is focused on them for the entire meeting. The videotaper in the audience posts segments of the videos on the Internet. A plan is in the works for CMSA to "officially" videotape the board meeting. The Grand Jury hopes that the plan would limit the taping to just one camera although the Ross Valley commissioner has indicated an intention to continue personal videotaping. This is a classic example of the kind of petty discord that permeates the meetings.

Board-staff relationships

There is concern that the CMSA board often treads too heavily into staff responsibilities. Commissioner Al Boro, who is mayor of San Rafael, is quoted in the minutes of a CMSA Board meeting as having said "board members are not staff members." Communications between commissioners and staff should be filtered through the general manager whose responsibility is managing the staff. Some of these commissioner "issues" take up considerable time for certain staff members. This may amount to more than 30 hours a month. At least one of the commissioners from Ross Valley berates and insults staff at board meetings without the courtesy of a phone call to the general manager signaling that she has problems or questions. At the June CMSA board meeting, this Ross Valley commissioner, who is also on the finance committee, removed the budget item from the consent agenda and asked many specific questions that were all answered by the general manager and staff, whom she had not contacted in advance. At the end of the discussion both Ross Valley commissioners simply voted to disapprove the 2009/2010 budget without explaining why. This non-collaborative approach to the budget has led to increasing problems of morale with CMSA employees.

Commissioner behavior

Certain commissioners often re-visit decisions after votes have been taken and matters ought to have been closed. Accepting the will of the majority and moving on is part and parcel of a commissioner's role. An example of this can be seen in continued bickering over the agency's Wet Weather Project. In September 2006, CMSA issued \$68 million in revenue bonds to build a Wet Weather Improvement Project that is still under construction but is moving ahead on time and under budget. This project provides excess hydraulic and treatment capacity to handle increased flows even in severe storms. The planning and management of this spill prevention project is commendable. Even though its commissioners joined the unanimous vote in favor of the project in 2005, Ross Valley can't leave the issue alone even as construction nears completion.

Ross Valley refers to this as the "big bathtub" and continues to voice displeasure with the project even though it was approved more than three years ago. The Wet Weather Improvement Project construction began in 2007 and will expand the facilities storage pond capacity. It is funded by revenue bonds and is slated for completion in 2010. Ross Valley resents the fact that so much of its money is being spent to simply increase storage capacity. It was created as a stopgap measure to ensure that no spills would occur during peak storms. Unfortunately, the collection agencies, including Ross Valley, have done little on their own to diminish extra flow into their systems and have simply increased pumping capacity to the CMSA plant.

Minutes and the board

Minutes are often "wordsmithed" by certain commissioners. While revising minutes one commissioner said, "this is what I meant...not what is written and the minutes need to be amended." There is even dispute over what form the minutes should take. One of CMSA's few policies states that they should be in what's termed action/summary format, but in fact, they typically take the narrative form. This is yet another petty issue and the policy should either be amended or enforced.

Minutes and the public

Board policy states "minutes shall note the general nature of public comments and questions." Yet, the public comments are not always included in the minutes. The public's comments should

be part of the meeting that is represented by the minutes. This is the current policy and it should be enforced.

The future

In the ideal, governance of public agencies occurs transparently and public input is welcomed. Honest and thoughtful discourse among officials is expected. If this is not the case, then changes should be made.

To even a casual observer, the lack of civility among members of the Central Marin Sanitation Agency Board of Commissioners and their interactions with staff and the public indicates problems. Although the bickering may not yet have negatively impacted the actual operations of the sewage treatment plant, it is bound to handicap the future of this organization if allowed to continue. The board is not behaving in a manner expected of public officials. There should be transparency, honesty and respect.

It is time to end the infighting and concentrate on serving the needs of the citizens. The public deserves it. The Grand Jury strongly urges it.

FINDINGS

The Grand Jury finds that:

F1. The Central Marin Sanitation Agency (CMSA) consistently receives industry awards for excellent operating and financial practices.

F2. CMSA is governed by a board of six appointed commissioners established under a joint powers agreement.

F3. CMSA board meetings are often characterized by hostile, petty, counter-productive behavior.

F4. CMSA has only two official board policies and no written bylaws.

F5. The CMSA joint powers agreement allows for the adoption of rules and regulations for the conduct of its affairs.

F6. CMSA is funded by member districts in proportion to their influent into the facility.

RECOMMENDATIONS

The Grand Jury recommends that:

R1. The CMSA Board of Commissioners create and adopt bylaws and policies consistent with the successful operation of similar agencies.

R2. The CMSA Board of Commissioners engage the services of a professional facilitator to assist in establishing procedures for orderly, efficient and productive public meetings.

REQUEST FOR RESPONSES

Pursuant to Penal Code Section 933.05, the Grand Jury requests responses from the following governing body:

- Central Marin Sanitation Agency to all **Findings and Recommendations**

The governing body indicated above should be aware that the comment or response of the governing body must be conducted in accordance with Penal Code Section 933 (c) and subject to the notice, agenda and open meeting requirements of the Ralph M. Brown Act.

California Penal Code Section 933 (c) states that "...the governing body of the public agency shall comment to the presiding judge on the findings and recommendations pertaining to matters under the control of the governing body." Further, the Ralph M. Brown Act requires that any action of a public entity governing board occur only at a noticed and agendized public meeting.

The Grand Jury invites responses from:

- San Rafael Sanitation District
- Sanitary District No. 2
- Ross Valley Sanitary District
- City of Larkspur

Reports issued by the Civil Grand Jury do not identify individuals interviewed. Penal Code Section 929 requires that reports of the Grand Jury not contain the name of any person, or facts leading to the identity of any person who provides information to the Civil Grand Jury. The California State Legislature has stated that it intends the provisions of Penal Code Section 929 prohibiting disclosure of witness identities to encourage full candor in testimony in Civil Grand Jury investigations by protecting the privacy and confidentiality of those who participate in any Civil Grand Jury investigation.