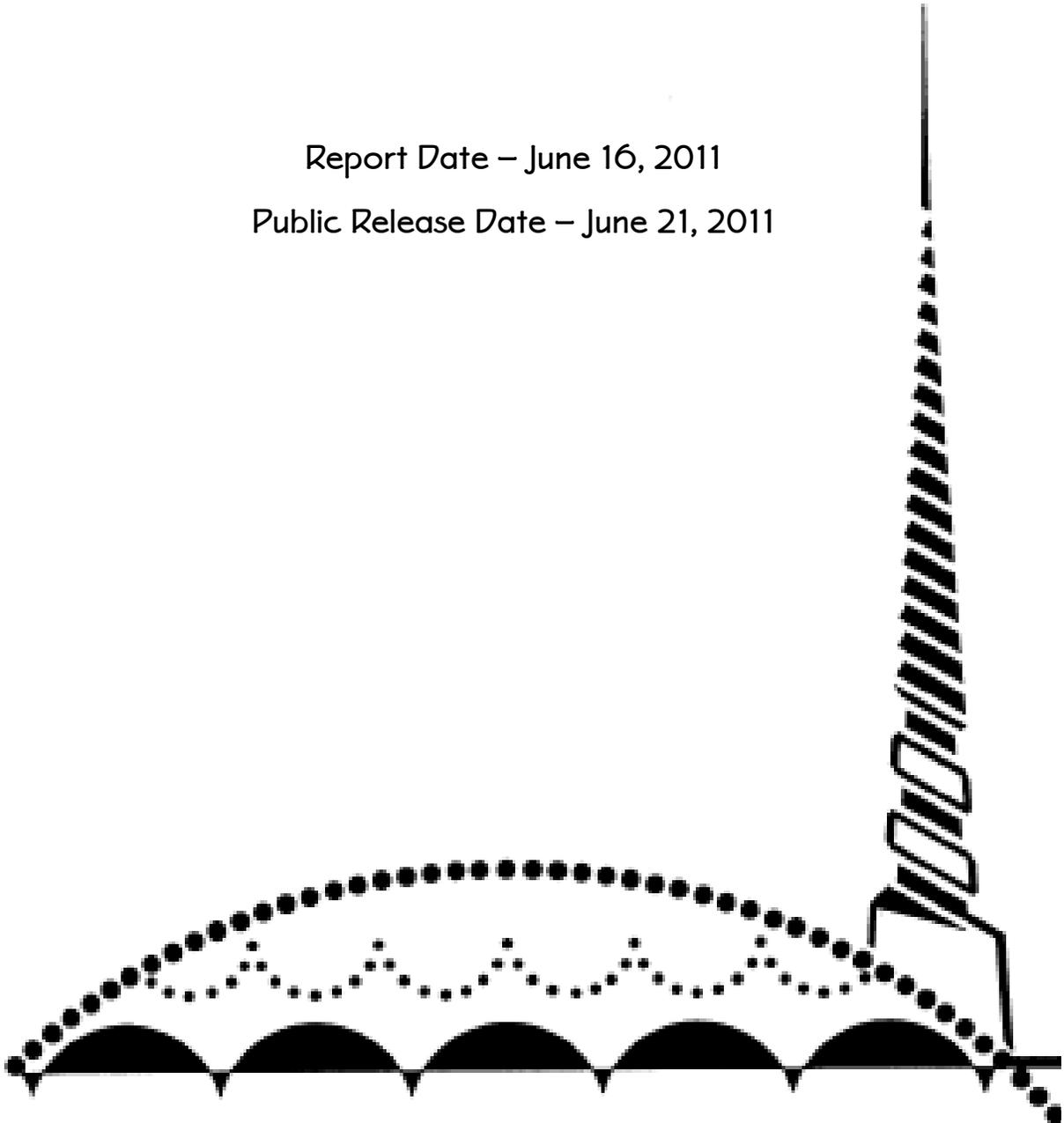


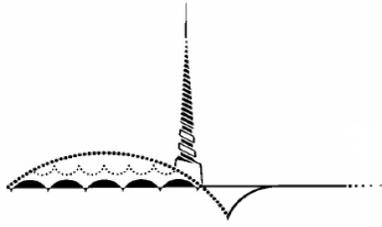
2010-2011 MARIN COUNTY CIVIL GRAND JURY

# Ross Valley Sanitary District: Not Again!

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## **Ross Valley Sanitary District: Not Again!**

### **SUMMARY**

For the third time in five years the Ross Valley Sanitary District (RVSD) is the subject of an independent Grand Jury report (2006 and 2009).<sup>1</sup> There is an old adage that even bad press is better than no press – something that is not true in the sanitation business. No one wants to think about sewers or pipes or overflows. They want to flush and forget. However, the Ross Valley Sanitary District, if measured by the amount of press it receives, is a local celebrity of superstar magnitude.

RVSD was established May 27, 1899 as a special district to collect and treat the wastewater from the Ross Valley area. It now provides collection service for 55,000 residents and businesses in San Anselmo, Ross, Larkspur, Greenbrae, Fairfax, Sleepy Hollow, Murray Park and San Quentin. In 1979 when RVSD closed their treatment plant, they entered into a joint powers agreement with other local collection agencies to form the Central Marin Sanitation Agency (CMSA). CMSA is a wastewater treatment plant that provides services for RVSD, San Rafael, Larkspur, and Corte Madera before releasing treated wastewater into the San Francisco Bay near the Richmond Bridge.

This latest report concentrates on several key issues that can be attributed to the management of RVSD by its Board of Directors and General Manager. These issues are RVSD's inability or unwillingness to cooperate in a proactive manner with the Central Marin Sanitation Agency (CMSA) and its Board Members, its extensive use of litigation to resolve issues instead of arbitration, and business practices outside the norm.

RVSD has an ongoing confrontational relationship with the sewage treatment plant, operated by the CMSA and its Board Members. Disagreements appear to be centered on a joint effort to study the potential of consolidation for the benefit of the public. We found that there is little or no effort on the part of RVSD to work together to create a mutually beneficial relationship with CMSA. While this report is not about the benefits of consolidation, the Grand Jury believes that the issue should be studied jointly by all entities using the treatment plant in San Rafael.

RVSD has a history of using costly litigation to resolve problems rather than seeking compromise. In their 2009 response to the Grand Jury report, the president of the RVSD board endorsed the use of arbitration to resolve disputes with CMSA. However, there is little evidence this is happening. Evidence seems to point to a continued break down in that relationship at the detriment to the ratepayer. In addition, we found that they have made little

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<sup>1</sup> 2006 Stuck in the Muck, and 2009 Bickering Boards

or no effort to cooperate with any of the neighboring sanitary districts or municipalities, which would be a benefit to them and their customers.

Finally, of the greatest concern is the decision by the RVSD Board to move ahead with an as yet unproven Capital Improvement Program to replace pipe in-house at an accelerated rate by hiring additional employees. Not only was an in-house staff test inconclusive, the management and board have insisted on moving forward without an in-depth analysis by third-party professionals. Given the large spills of the last winter, we believe that RVSD should focus on managing its existing staff and eliminating spills by repairing and maintaining their sewer lines. When developing plans for pipe replacement, which involve the ratepayers' money, RVSD should thoroughly evaluate the financial impact with external expert analysis.

Ultimately, it is the voter who decides if the Board is providing the services customers want. Unfortunately, the voter often does not get involved until it is too late - when rates are increasing and contracts have been signed increasing the liabilities. The Grand Jury would like to caution the voter: *Caveat Emptor*.

## BACKGROUND

Press coverage of RVSD began to intensify in July 2010 with numerous news stories and letters to the editors. Of immediate concern was the lack of communication between RVSD, the agency that collects the sewage and Central Marin Sanitation Agency (CMSA) the agency that treats the sewage before it is released into the San Francisco Bay. In 2010 RVSD contracted with a company to clean the inside of sewers pipes with the chemical, metam sodium, that kills infiltrating weeds. This chemical produces a cyanide-based by product that can cause cyanide permit violations at the processing plant. Unfortunately, RVSD did not notify CMSA that they would be using this method to clean pipes.

At the August 24, 2010 Marin County Board of Supervisor's meeting several officials from San Anselmo, Larkspur, and CMSA, appeared before the board to voice their complaints. These complaints included:

- Extensive legal fees in the RVSD 2010/2011 budget
- Recent salary raises given to employees of RVSD relative to other public entities in Marin County
- RVSD's General Manager salary and severance package seems excessive when compared to the top manager salaries of other public agencies
- Whether the reported RVSD budget amount of \$32,000 for Board compensation is excessive.

Even though the Marin County Board of Supervisors has no oversight of RVSD, complaints by citizens motivated a county supervisor to ask the County Counsel's office to investigate. Subsequently, County Counsel presented a seven-page report<sup>2</sup> in letter format to the Board of Supervisors on November 2, 2010. RVSD made a presentation and supported their case with

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<sup>2</sup> Letter dated November 2, 2010 by County Counsel presented to Board of Supervisors

a 51 page report called the *White Paper*,<sup>3</sup> prepared on September 15, 2010, to answer the citizen concerns expressed at the August 24 Board of Supervisors meeting.

In December 2010, sewage spills made headlines. RVSD had two very large spills that threatened the health of the residents and the environment of Marin County. The potential fines for these spills could be as high as \$10 a gallon and \$10,000 per day: the first spill was recorded at 842,000 gallons, and the second at 1,400,000 gallons. In the interest of public safety and protection of the environment, the 2010-2011 Civil Grand Jury decided to investigate Ross Valley Sanitary District.

## METHODOLOGY

The 2010-2011 Grand Jury's approach to this investigation was an extensive interviewing program, review of numerous newspaper articles, financial reports of different sanitary districts, and background research into the formation of special districts and their fiduciary responsibility to the public they serve. In addition, a telephone survey was conducted regarding the business practices of Marin County sanitary districts. The following is a list of interviews conducted:

- Board Members of multiple sanitary districts
- General Managers of multiple sanitary districts
- San Rafael city officials
- State and Regional Water Quality Control Board personnel
- Larkspur city official
- Former and current employees of various sanitary districts
- Local Agency Formation Commission (LAFCO) Official
- Engineers specializing in sanitation districts
- Marin County's Environmental Health Services personnel

In addition, jurors attended meetings conducted by RVSD, Sewer Agency of Southern Marin (SASM), LAFCO, Marin County Board of Supervisors, and CMSA. We researched and studied extensive governmental and special district regulations, as well as reviewed past meeting agendas and minutes.

## DISCUSSION

### **Special Districts 101: an Overview**

RVSD is a special district. Marin County has thirteen of the 73 sanitary districts in the State of California. Given the limited interest in special districts by the voter, much of their operations go unchallenged and unnoticed. Special districts are required by State law Government Code 53890 to file financial reports annually with the office of the State Controller. Government Code 26909 requires county auditors to regularly audit special districts' accounts and records. Neither office has any authority to assess the performance of special districts or hold them accountable for fiscal decisions. Special districts are not answerable to the County Board of Supervisors or elected officials of municipalities they

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<sup>3</sup> White Paper prepared on September 15, 2010, a response from Ross Valley Sanitary District located on [www.RVSD.com](http://www.RVSD.com)

serve. Special districts have most of the same basic powers as counties and cities. Special districts, however, are not required to participate in the development of County or municipal general plans, or to cooperate and coordinate their activities with neighboring local governments.<sup>4</sup>

In 1963, the Local Agency Formation Commission (LAFCO) was created by the Legislature to function as a “watchdog” with local appointees to oversee the formation, consolidation, and dissolution of special districts. Their original mandate was to encourage special district reorganization and make government more easily understood, efficient, and accountable. However, the State failed to provide LAFCO with a clear policy direction, the necessary resources, and more importantly has not required them to oversee the operations of special districts.<sup>5</sup>

Under Penal Code 925, County Civil Grand Juries of each county have been granted the authority to investigate special districts and to act as a watchdog for the public. County civil grand juries are empanelled every year and are allowed, if they so choose, to investigate special district operations, and publicize their findings. They can make recommendations which must be responded to but special districts do not have to accept their findings or adopt their recommendations.

### **A Collection Agency: Zero Tolerance for Spills**

Ross Valley Sanitary District (RVSD) is a wastewater collection agency for Fairfax, San Anselmo, Ross, the City of Larkspur (including Bon Air), and the unincorporated areas of Sleepy Hollow, Kentfield, Kent Woodlands, Oak Manor, and Greenbrae. It also contracts with Marin County to provide collection services for Murray Park and the State of California for San Quentin Prison. This wastewater is then treated by Central Marin Sanitation Agency (CMSA). According to one sanitation general manager, well-run wastewater collection agencies do more for the immediate protection of the environment and the health of the public than perhaps all other health agencies combined. The monitoring and treatment of wastewater has reduced illness and promoted the well being of the public in a multiple of ways.

While there is no day-to-day authority by any local or state agency, sewer districts are required to have a permit from the Environmental Protection Agency (EPA) and are regulated by the State Water Resources Control Board (SWRCB) and Regional Water Quality Control Board (RWQCB). These boards monitor sewer collection districts to make sure their first priority is to prevent Sanitary Sewer Overflows. As part of the permitting process, these boards require sewer districts to develop a detailed plan for the repair, maintenance and replacement of pipes known as a Sewer System Management Plan. One of the goals of the plan is to specifically address the potential of overflows in wet weather. Table 1 is adapted from reports maintained by these boards and identifies the number one concern of these agencies: the reduction of sewer overflows. The board tracks the volume of spills regardless of size of the collection agency.

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<sup>4</sup> State of California Little Hoover Commissions Special Districts: Relics of the Past or Resources for the Future? May 2000

<sup>5</sup> What's So Special About Special Districts? A Citizen's Guide to Special Districts in California (Fourth Edition) Senate Local Government Committee, October 2010

**TABLE 1: Total Gallon Volume of Spills<sup>6</sup>**

Sanitary District	2011*	2010	2009	2008	
Las Gallinas	260	225	3955	409	
San Rafael	530	4276	3917	9176	
Corte Madera	0	115	308	675	
Novato	4,163	53,495	16,709	424,084	
RVSD	22,063	2,704,856	14,386	146,280	

\*as of mid-April

As the table indicates, Las Gallinas Valley Sanitary District consistently and successfully maintains a very low volume of sewer overflows. They recently won the “2010 Collection System of the Year” Award from the California Water Environment Association, (CWEA)<sup>7</sup> which measures success on achieving this objective. They are a model of what a sanitary district should be doing. They have an organizational chart with the ratepayer at the top. They also have a very clear mission statement aligned with the objectives of eliminating the number of SSOs: *It is imperative to minimize these incidents because of the potential impact to public health and the water environment, as well as avoiding the fiscal impacts.*<sup>8</sup> To achieve these goals, they televise the interior of the pipes of the entire sewer system regularly, and have developed a prioritized plan for repairs and replacement. Repairs are done by their permanent staff and replacement is contracted out to engineering firms who have the expertise, skills, and the latest equipment.

**Board of Directors: The Buck Stops Here**

Special district Boards of Directors are elected from the public-at-large. There are no specific requirements to serve, and they often come from a variety of professional backgrounds. Once elected, they are required by state law to take a two hour ethics class within the first year of their term, and every other year thereafter. Novato Sanitary District board members are encouraged to take a series of classes at California Association of Sanitation Agencies (CASA), California Special Districts Association (CSDA), or Special District Institute (SDI) to learn more about the fiduciary responsibilities of board members to the public.

Boards of Directors oversee the general manager and the agency’s legal representation. The Board of Directors is responsible for determining the long range planning for the district, which is typically 5-10 years. Most boards set up into subcommittees such as: operations, personnel, financial or capital improvement, and ad hoc committees as required. Business items are presented at monthly board meetings. If more information or review is needed before the board can make a well-informed decision, the item will be sent to a specific subcommittee.

<sup>6</sup> www.rwqcb.org

<sup>7</sup> Website of CWEA.com

<sup>8</sup> Las Gallinas Valley Sanitary District Website

Subcommittees have an opportunity to study different proposals at length brought by the general manager or staff. An example would be labor negotiations. Most boards<sup>9</sup> will delegate this to a personnel subcommittee that will consult with outside professionals concerning appropriate salary, wages, and benefit packages. They may also contract actuarial firms for an assessment of the financial impact of pension costs and liabilities. When an agreement is reached, the subcommittee will bring it back to the full board for approval. When presented with a proposal to add three new positions to RVSD staff, the board sought the opinion of the general manager, rather than having the decision vetted through a committee prior to being brought before the Board.<sup>10</sup>

Boards often develop ad hoc committees populated from the community at-large. This provides the public with an excellent opportunity to become involved in evaluating solutions to difficult issues facing the district. Currently, the Marin Municipal Water District (MMWD) has brought two citizens who have expert financial backgrounds on to an ad hoc “rate” committee. It is also a good business practice when board members may lack the experience or professional acumen to create ad hoc committees to study issues with consultants to help them make prudent decisions for the ratepayers.

One of the most important responsibilities of a board of directors is to review the performance of the general manager annually, and determine the salary and benefits based on the evaluation. Performance goals should be determined that will be useful to assist the general manager in performing his/her responsibilities. Most boards require managers to attend local, regional, and statewide industry meetings, and local and regional meetings with neighboring sanitation districts.<sup>11</sup> Attendance at local and neighboring boards is not a current requirement of the RVSD general manager.

Another important responsibility of the board is the review of expenditures for which authority has been delegated to the general manager. All boards approve a defined amount that a manager can spend without bringing it to the board for approval. Depending on the size of the sanitary district, the threshold for such spending could be anywhere between \$5,000 and \$30,000. The RVSD general manager can make expenditures up to \$30,000 without board approval. Even though Novato Sanitary District and Las Gallinas Sanitary District general managers have the same discretionary threshold as RVSD, they bring expenditures for as little as \$5,000 before the board to remain transparent in their spending. Both general managers commented that they value board input and want the board to understand and to approve of all their decisions.

Managing legal representation is also a board responsibility. Legal fees can cover a wide range of services from employment policies to suing for lack of performance. The smaller sanitation districts in Marin County use legal services provided by the County Counsel’s office. The larger ones often choose to hire outside firms and pay a retainer. RVSD has hired a legal firm on retainer. In fiscal year 2009-2010, their legal expense budget was \$381,276. However, the actual amount spent in 2009-2010 totaled \$2,384,596.<sup>12</sup> RVSD has

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<sup>9</sup> From interviews with sanitary boards in Marin County

<sup>10</sup> RVSD Board Meeting of December 2010.

<sup>11</sup> From interviews with boards of sanitary districts in Marin County

<sup>12</sup> 2009-2010 Audited Financial Statements on the RVSD website.

been involved in a number of lawsuits for a wide range of reasons as detailed in the following section.

### **Conflict Resolution: An Environment of Litigation**

Ross Valley Sanitary District has been involved with numerous, costly lawsuits over the last ten years. The RVSD Board of Directors has responsibility regarding legal actions taken by the district. Legal actions are intended to be undertaken in defense of the district and to protect the ratepayers. The following is a summary of legal actions RVSD has been involved in at the expense of the ratepayer:

- 2006 – Consent Decree Litigation:  
After the 2005 spills, a concerned resident sued RVSD for their failure to prevent harmful spills. All parties, in return for termination of litigation, negotiated the Consent Decree. The Consent Decree specified that RVSD must annually repair or replace two miles of sewer pipe, video record (CCTV) four miles of the insides of sewer pipes, and/or invest a required dollar amount in the upgrading of the system.
- 2009 – The Sale of 2000 Larkspur Landing:  
The 2000 Larkspur Landing Circle property owned by RVSD was the original location of their sewer treatment plant. The plant was demolished in 1979, when RVSD joined CMSA for sewage treatment. In 1999, RVSD entered into a sales contract with Campus St. James for an estimated \$12.5 million. In the fall of 2009, Campus halted development plans and sued the district for \$15 million. In its suit, filed in Marin Superior Court, Campus claimed that the sanitary district contaminated the property while conducting demolition and grading operations. The lawsuit was recently settled. RVSD is now paying a \$4.75 million settlement to Campus.
- 2009 – Ruptured Pipe near Highway 101 and Sir Francis Drake Blvd.:  
When drilling for soil samples Pitcher Drilling Co. ruptured an RVSD pipe whose location had been marked by the District. RVSD paid \$265,000 to have the pipe repaired. Subsequently, RVSD sued Corte Madera along with Pitcher Drilling Co., Parikh Consultants Inc., and the Transportation Authority of Marin. There has been no final settlement to date.
- 2009 – The Parking Lot at 2000 Larkspur Landing:  
Ross Valley Sanitary District started construction to build a parking lot on 1.5 acres it owns at 2000 Larkspur Landing Circle. However, on Aug. 21, Larkspur contended that the parking lot was impermissible under city zoning and building ordinances, filed suit and sought preliminary injunction to halt construction. Subsequently, RVSD won a legal victory March 22, 2011 against the city of Larkspur because special districts are exempt from municipal and county ordinances and regulations.

- 2011 – RVSD suit against JMB Construction:  
RVSD brought suit against JMB Construction for breach of contract and negligence, and is seeking more than \$650,000 in damages. The district's suit alleges that JMB damaged one of its old sewage lines while installing a new line and "placed, and/or failed to remove and/or allowed others to place" construction debris into one or both of the lines. Since the December spills, RVSD has withheld progress payments to JMB for work that has been completed.

While some lawsuits are in defense, it is the number of lawsuits RVSD is involved in compared to other sanitary districts that is of concern. In their legally mandated written response to the 2009 Grand Jury Report recommendation, the RVSD Board President concurred with the use of arbitration and mediation to solve problems rather than enter into costly litigation. The audited financial statements of 2009-2010 recognize an estimated liability, inclusive of legal fees, of approximately \$5.5 million in connection with the above mentioned lawsuits excluding the current lawsuit with JMB Construction.<sup>13</sup>

### **General Manager: The Job Description**

The general manager is the District's chief executive officer. He therefore has ultimate control over the District's operations. He contributes to the facilities and strategic plan. He oversees the day-to-day work plans, and manages the operations and maintenance of the sewer collection system. He hires, controls, and directs the staff. He reports to the Board and serves as a spokesperson for the District to the community. The general manager is fully responsible for all that happens at the District.<sup>14</sup>

The general manager of RVSD is one of the highest paid public employees in Marin County. According to the Bay Area News Group's public employee salary data base, he is the 13<sup>th</sup> highest paid public employee in Marin at \$308,622 for his total annual cost of employment.<sup>15</sup> As such, he is the highest paid general manager of any sanitary district in Marin County.

The first responsibility of the general manager is the management of the collection agency and prevention of spills. Preventing spills is managed by televising the interior of sewer pipes, developing a plan for repairs, maintenance, and pipe replacement per state requirements.<sup>16</sup> The RVSD general manager has developed an extensive and detailed plan for the replacement of aging pipes. He first introduced this at a board meeting on March 24, 2010. He proposed replacing pipes with an increase in internal staff rather than hiring outside contractors. (*More detail can be found in the following section*).

In 2009 the RVSD Board gave the general manager responsibility for negotiating with the unions. Most sanitary districts hire outside consultants to perform this function.<sup>17</sup> Other districts contend that there is a potential conflict of interest as management salaries and benefits reflect those negotiated for line employees. In 2009, the RVSD general manager negotiated a six-year contract with the American Federation of State, County, and Municipal

<sup>13</sup> [www.rvsd.com](http://www.rvsd.com) Audited Financials for 2002-2010

<sup>14</sup> "How We Do Business", A Special Workshop August 15, 2006 Rauch Communication Consultants

<sup>15</sup> Marin Independent Journal, dated 5.22.2011

<sup>16</sup> Website of EPA and Bay Area Regional Water Quality Control Board

<sup>17</sup> Board of Directors Meeting, Jan 20, 2011

Employees (AFSCME) with annual increases in base salary. Contracts are not typically negotiated beyond three-year terms. The following survey details current union contracts negotiated by public agencies in Marin. In this current time of economic uncertainty, the Grand Jury believes it is unusual to commit to salary increases so far out into the future.

**TABLE 2: Negotiated Salary Increase for Union Employees<sup>18</sup>**

Salary Increases for RVSD Compared with Other Marin Agencies						
	FY 09/10	FY 10/11	FY 11/12	FY 12/13	FY 13/14	FY 14/15
RVSD	5%	4%	3%	3%	3%	4%
County of Marin	3%	0*				
SRSD	0	0				
CMSA	0	0.7%				
City of San Rafael	0	0				
MMWD	3%	3%				
City of Novato	0	0				
SASM	3.5%	0				
LGVSD	1%	1.7%	1-2.25%	1-3%	1-4%	
NSD	3.5%	0				

*\*The county of Marin gave a special 2% increase to line attorneys because of a previously negotiated union agreement.*

*NOTE: Blanks indicate "not yet negotiated" contracts.*

**Replacing Pipes: In-source or Outsource**

The biggest issue facing most collection agencies is reducing sewer spill overflows, which are often caused by inflow and infiltrations, and may be corrected by replacing old clay pipes. In response to the EPA and Regional Water Control Boards, sanitary districts are required to develop a detailed plan for the repair, maintenance, and replacement of pipes known as a Sewer System Management Plan. Master plans must specify detailed plans for repairs, maintenance, and the replacement of pipes.

The objective of a master plan is to identify which pipes have priority needs for repairs and maintenance, followed by a manageable replacement schedule. Repairs and maintenance are typically done by staff employed by the collection agency. In contrast, pipe replacement is usually contracted out complying with governmental standards and procedures in the bidding process. There are several techniques for replacing pipes but the most common one is known as pipe-bursting. Pipe-bursting is considered a less invasive method. To accomplish this, replacement pipe is pulled through the existing pipe. As it moves along, it “bursts” the existing clay pipe allowing for an entire new pipe to actually replace the old clay pipe.

The general manager of RVSD first proposed replacing their pipes by using internal pipe-bursting crews at the March 24, 2010 board meeting. There was much discussion about hiring outside consultants to review the feasibility of the project before board approval. One director said they “didn’t personally need an outsider to validate what the general manager was telling...about the costs or the project.” Another director was quite concerned about the

<sup>18</sup> White Paper dated 11.02.2010 by the County Counsel Office

overall cost of the proposal and the impact on pension liabilities. The general manager subsequently said that he would take it back to his staff to address the concerns. At the April 20, 2010 Board Meeting, (Item #10) the proposed pipe-bursting plan was discussed again at length. At that meeting, it was decided not to hire an outside financial consultant to review the proposed plan and to let the general manager use the existing staff to test it. The vote was 4 to 1.

An industry magazine, *Municipal Sewer and Water*<sup>19</sup> printed an article about Ross Valley Sanitary District and their efforts, labeling it “A Leap of Faith.” Although the magazine praised RVSD for their efforts to look for cost-savings, they stated that “the technology has been around for years; it is uncommon for a district to use its own crew to take advantage of pipe-bursting, instead of contracting the work out.”

A survey of Marin collection agencies revealed that RVSD would be the only collection agency to use their own crews for pipe-bursting. One district prefers to outsource (hiring outside contractors) because they believe that they get a more experienced team, and reduce their exposure to potential liability. In addition, pipe-bursting is limited as a year round function due to weather constraint. It also requires a substantial investment in equipment and training.

In a management report to the RVSD Board on January 26, 2011 regarding the in-house pipe bursting test, it stated that “three employees were trained but not able to finish the project, requiring more training with new employees. The rental equipment had its trouble from the very beginning as rental equipment is known to have....To make a fully staffed team RVSD will need to hire 1 Lead, 2 Operators and 2 Trainees.” Our investigation revealed that employees were taken off repair and maintenance crews to perform in-house pipe bursting, therefore not performing their normal duties. The Grand Jury questions whether their trial run was successful enough to provide sufficient data to support their proposed in-house pipe bursting plan.

However, RVSD is proceeding ahead with a proposal to increase staff to expand their ability to replace pipes internally. At a workshop on April 7, 2011<sup>20</sup> they proposed increasing rates. The proposal would increase revenue requirements from \$15.5 million in 2011 to \$28 million in 2012 (including \$1.5 million payment for the lawsuit settlement and increased reserves of \$6 million). There would be an increase in the number of employees from 38 in 2010 to 50 in 2012, a 33% increase in staff in less than two years. The following is a list of all the proposed uses for the rate increases:

- Adding 11 positions with annual estimated costs of \$1.2 million
- Making a \$500,000 outlay for additional equipment
- Hiring a HR generalist for \$130,000/year
- Funding settlement payments of \$1,568,000/year for three years
- Increasing the reserve account.

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<sup>19</sup> December 20, 2010 Issue

<sup>20</sup> [www.rsvd.com](http://www.rsvd.com) and meeting April 11, 2011

In the opinion of the Grand Jury, RVSD's decision to proceed with the proposed pipe-bursting plan, given that the in-house test was unsuccessful and no outside consultation was used to fully evaluate the financial impact is questionable. For example, when Novato Sanitary District (which also has 200 miles of pipe, a treatment plant but only 22 employees) was evaluating the financial costs and staffing requirements for their new plant, the general manager and staff developed a plan. The Board hired Eisenhardt Group, an industry consultant, to further study and make recommendations to fully vet the decision.

### **The 2010 Spills: What Happened?**

It is difficult to decipher what actually happened to cause the spills of December 2010. There were multiple accounts from RVSD about who was to blame for the spills. They included: environmental terrorism, a disgruntled individual, and negligence on the part of the construction company. The RVSD general manager called in the Federal Bureau of Investigation (FBI) to investigate the matter. The FBI turned the case over to the EPA for a criminal investigation that was later dropped. Ironically, the spills of 2010 seemed to mirror the spills of 2005, including the mismanagement of information provided to the public and the treatment plant.

On December 17, 2010, 842,000 gallons of wastewater spilled into Corte Madera Creek and San Francisco Bay. Per state regulations, spills are to be reported to the Marin County Office of Emergency Services, the County's Environmental Health Services Division, and the Regional Water Quality Control Board within two hours if they are more than one thousand gallons and/or flowed into public waterways. RVSD reported that they had complied with all reporting regulations. However, that was not verified by the agencies they were supposed to notify. Subsequently, in the March 23, 2011 written response by the RVSD general manager to a request by the San Francisco Bay Regional Water Board for additional information, he stated that an employee "may not have made two important calls: one to RWQCB, and one to Marin County Department of Environmental health."<sup>21</sup>

On December 22, 2010, there was a second spill into Corte Madera Creek amounting to almost 1.8 million gallons. Unfortunately, many who live on the creek said they were unaware of the hazard for days. In addition to homeowners along the creek not being informed of the danger, several town officials from Larkspur complained that they too were not notified.

In an emergency meeting called on December 6, 2010 the general manager asked the board to approve an emergency replacement of a pipe. The replacement of this pipe has been a high priority for the District since 2007. During the fall of 2010, there had been three separate incidents when the connections to this pipe failed. Subsequently, the RVSD Board used its power as a special district to unanimously approve the emergency repair in the high rain season.

During one of the wettest storms to hit Marin County, the Kentfield Pump Station was shut down. This is the pump station that was responsible for the 2005 spills when there was an electrical brown out and the pump station stopped functioning. The Kentfield Pump Station

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<sup>21</sup> The RVSD response to inquiries by the Regional Water Quality Board February 3, 2011

is responsible for 60% of the total flow of the entire Ross Valley Sanitary District to the sewer treatment plant. During the spills of December 2010, CMSA was not informed that the pump was shutdown. Due to professional diligence on the part of CMSA during the storm, they noticed the sudden decrease in flow. They were able to manually adjust their pumping system to coordinate with decreased flows, and in doing so prevented damage to the plant.

The exact cause of the spills will be unraveled with the help of the EPA and Bay Area Regional Water Control Board as their investigations continue over the next couple of months. Much of the problem centers on a \$4.5 million plan that is replacing the aging gravity sewer lines in Kentfield. The project was contracted to JMB Construction. Ross Valley Sanitary District has accused JMB of leaving behind debris that blocked the flow of wastewater through siphons in the December 17<sup>th</sup> spills. Siphons are pipes under the creeks which help manage sudden rises in flow of wastewater on its way to the treatment plant. They are routinely cleaned every six months. The siphon at College Avenue was cleaned in November, however, the siphon at the Kentfield Middle School was scheduled to be cleaned but “due to a communication error” was not cleaned in November and was placed on a “will do list to get a private contractor to clean it.”<sup>22</sup>

In response to the public outcry over the failure to communicate with local agencies and residents, two RVSD board members put forward a new plan for an electronic notification system. In March that new system was put to a test when a phone call was placed to the town managers of Ross and San Anselmo early in the morning advising them of a spill. Oddly enough, there was no spill. However, sometime later in the day between 11:50 am and 12:25 pm there was a spill of 9,000 gallons in San Anselmo. It wasn't until 6 pm that RVSD put out a press release notifying the public of the spill - so much for the “new system”.

As was previously stated in this report, the Grand Jury believes that RVSD should be focused on reducing spills while improving their ability to manage existing staff. There were two employee mistakes that contributed to the spills: one did not follow up on the cleaning of one of the critical siphons before the December storms, and another did not make the required public notifications to the appropriate agencies. Until internal management systems are perfected, increasing the number of employees will only add more opportunities for mishaps and spills; potentially damaging the environment and risking the health of Marin residents.

### **RVSD: A Lack of Cooperation**

Most of the contention between RVSD and the board members of CMSA appears to center around the joint study of consolidation. A brief history reveals that RVSD had been involved with CMSA, Corte Madera Sanitary District, City of Larkspur and San Rafael Sanitary District in jointly studying the possibility of consolidation. Corte Madera withdrew from the study in May 2007. At their August 2007 board meeting, CMSA made a presentation regarding what was to be the next step in the study. One of the new RVSD board members wanted more time to study the issue and postponed a decision until September. In September, it became clear that RVSD was uncomfortable with going forward with the proposed study. One director stated there has been bias in the studies submitted to date, and therefore, RVSD wanted to pursue their own study.<sup>23</sup> At that point, RVSD initiated its own

<sup>22</sup> The RVSD response to inquiries by the Regional Water Quality Board February 3, 2011

<sup>23</sup> The minutes of the Regionalization meeting Sept 11, 2007

study. In January 2008, San Rafael withdrew because they believed it was counterproductive to have one member agency doing a study independent of all the agencies.

At the same time, and as part of the consolidation study, RVSD was headquartered on the CMSA site. In December 2008, their lease came up for renewal (\$78,000 annually), which the Board of CMSA was willing to renew. RVSD declined the offer. Instead, they moved ahead with the purchase of a building in San Rafael for \$2.2 million,<sup>24</sup> and spent an additional \$750,000 to remodel it to meet their specifications.

The following issues detail a continual decline in the relationship between RVSD and CMSA:

- In the summer of 2010, RVSD was using a cyanide based root killer to clean pipes but failed to tell the sewer plant that they were using a chemical that could affect the bacterial levels at the plant.
- During the spills of 2010, they did not tell CMSA they were shutting down the Kentfield Pump Station. Because the staff at CMSA was continuously monitoring the inflow, they were able to make necessary adjustments to handle the unanticipated fluctuations.
- During the spills of 2010, RVSD stopped using the free lab services at CMSA for water testing, choosing to pay a lab, Brelje and Race, much further away in Santa Rosa.
- RVSD did not call on other sanitary agencies to help with the cleanup of the spills, as is accepted practice among sanitary agencies.
- Currently, CMSA is proposing a Mutual Aid and Assistance Agreement between Marin County Wastewater Agencies. RVSD board members have stalled efforts for its passing and are in the process of drafting its own agreement.
- In the meeting minutes of November 2010, RVSD passed a resolution praising a retiring board member for her “profound impact on discussing and ultimately stopping the unbridled move towards consolidation.”
- The general manager of RVSD no longer attends the CMSA manager meetings of which he is a member.
- At the March 23, 2011 RVSD meeting the Board discussed asking their attorney’s advice for withdrawing from the CMSA joint powers agreement. (Item #21)
- In April 2011, RVSD purposely missed two CMSA board meetings. One board member sat in the audience instead. They sent a letter to the board stating several grievances about the board including:
  1. CMSA voluntary compliance with Proposition 218<sup>25</sup> which as a joint power agency it is exempt,
  2. Decreasing the number of seats on the board and increasing the number RVSD should have, and
  3. Reviewing every contract that CMSA has entered into.
- At a special RVSD meeting called on April 7, 2011, the general manager discussed his objectives in a slide presentation. He stated “Objective 4: Stop the uncontrolled expansion of CMSA.”<sup>26</sup>

<sup>24</sup> Review of the sales contract

<sup>25</sup> Prop 218 defines the procedures which the ratepayer can protest a rate increase by a special district.

<sup>26</sup> RVSD’s website Meetings and Agendas April 7, 2011

It remains unclear to us what RVSD wants to achieve by their lack of cooperation with CMSA and the other members of the joint powers agreement. It is unclear to the Grand Jury what benefit RVSD believes will be derived from withdrawing from CMSA. Since RVSD is a collection only agency, they must contract with someone for the treatment of their effluents, unless their next plan is to build their own plant.

### **Conclusion: The Voter is the Ultimate Watchdog over Sanitary Districts**

The voters have the power to change members on the Board of Directors who are responsible for overseeing the management of sanitary districts. Voters can organize and use initiatives, referendums and recalls to affect oversight on decisions made by special districts. An example of the use of initiatives to influence the management of a special district occurred recently in Marin County during the November 2010 election. In an effort to have a voice in the decision whether or not to build a proposed desalination plant by Marin Municipal Water District, voters placed an initiative on the ballot to stop the project without first seeking voter approval. It is ultimately the responsibility of the voters to decide if they are comfortable with the decisions made by the Board of Directors of sanitary districts.

### **Recent Developments: It Just Keeps Flowing**

As this report goes to print, events at RVSD continue to make the news. The following details the concerns:

**Miscommunication:** Even though the RVSD Board of Directors has made efforts to improve their communication with the public, there are continual glitches in the *new* system. On May 15, 2011 a sewer spill occurred in San Anselmo. Local public safety employees responded to a call from a resident. When they called RVSD's 24 hour hotline, there was no response. Finally town staff contacted a local board member to report the spill. RVSD responded that their server was down. A 500 gallon spill was reported and according to RVSD the spill "was contained within a dry storm drain."<sup>27</sup>

**Mismanagement:** Fixing sewer lines on an emergency basis is costly. On May 18, 2011 the board voted unanimously to approve emergency repair work for \$2.5 M without going to bid. The emergency repair is to complete a "critical final step"<sup>28</sup> that workers did not have time to complete when the pipe was installed in a declared emergency repair in December 2010. It is now May, and it is questionable whether they did not have time to go out to bid between December and the latest declaration of emergency.

Finally, on May 18, 2011 the Larkspur City Council unanimously passed a bold resolution opposing the RVSD's proposed rate increases.<sup>29</sup> Following Larkspur's lead the Town of Fairfax unanimously passed a resolution opposing the rate increase on June 1, 2011.

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<sup>27</sup> Marin IJ May 16, 2011

<sup>28</sup> Marin IJ May 20, 2011

<sup>29</sup> Marin IJ May 21, 2011

## FINDINGS

The Grand Jury finds that:

**F1:** The Ross Valley Sanitary District has very little oversight by the state and no oversight locally except for direct election of its Board of Directors.

**F2:** The best sanitary districts concentrate on a zero tolerance for SSOs. Las Gallinas Valley has the lowest SSOs.

**F3:** The Ross Valley Sanitary District does not require their general manager to meet regularly with other general managers of sanitation agencies in Marin County.

**F4:** The Ross Valley Sanitary District has been involved in many costly lawsuits.

**F5:** The Ross Valley Sanitary District has one of the highest paid public employees in Marin County.

**F6:** The general manager of the RVSD negotiates salaries and wages for the line staff and ultimately, the management as well.

**F7:** The Ross Valley Sanitary District is considering a very expensive and risky business practice in an uncertain economy, the in-house pipe-bursting plan. This plan has been approved by the Board of Directors without thorough vetting by outside financial experts and actuaries.

**F8:** The Ross Valley Sanitary District is considering a new rate increase to cover a new plan for increasing pipe replacement and increasing the number of employees on its payroll.

**F9:** The Ross Valley Sanitary District has consistently mishandled the communications of spills, as evidenced in the spills of 2010.

**F10:** The Ross Valley Sanitary District does not have a good working relationship with CMSA and its other members, and has done nothing to improve that relationship even though they responded to a Grand Jury recommendation to use arbitration.

**F11:** Ross Valley Sanitary District is conducting its own study of consolidation.

## RECOMMENDATIONS

The Grand Jury recommends that:

**R1:** RVSD's number one concern be zero tolerance for spills of any size.

**R2:** The RVSD Board require their general manager to attend meetings with other CMSA members and other regional general managers.

**R3:** RVSD use mediation and/or arbitration as a means to resolve disputes.

**R4:** The RVSD Board hire consultants to negotiate with unions and remove the general manager from a potential conflict of interest.

**R5:** The proposed in-house pipe-bursting plan be reviewed by outside financial consultants and actuaries to determine the actual cost and benefits of the plan.

**R6:** RVSD, CMSA, City of Larkspur, Corte Madera Sanitary District, and San Rafael Sanitation District make a commitment to resolve issues.

**R7:** RVSD with other member districts of CMSA renew efforts to study the pros and cons of consolidation.

## REQUEST FOR RESPONSES

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

- CMSA: **R6 and R7**
- San Rafael Sanitation District: **R6 and R7**
- Sanitary District #2: **R6 and R7**
- City of Larkspur: **R6 and R7**
- Board of Directors for Ross Valley Sanitary District: **All findings and recommendations**

Governing bodies 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.

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.
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