

A REPORT BY

THE 2020-2021 CONTRA COSTA COUNTY CIVIL GRAND JURY

725 Court Street
Martinez, California 94553

Report 2103

West County Wastewater District

Recommendations for the WCWD Board

APPROVED BY THE GRAND JURY

Date

11/22/2021



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ACCEPTED FOR FILING

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Contra Costa County Grand Jury Report 2103

West County Wastewater District

Recommendations for the WCWD Board

TO: WCWD Board of Directors

SUMMARY

The West County Wastewater District (WCWD) provides an essential public health service to its customers by collecting, treating, and disposing of wastewater. Management of the WCWD is overseen by an elected five-member Board of Directors (the Board) who delegate operational details and some spending decisions to a General Manager. The directors are elected from five geographical areas within the district.

Turmoil in Board operations has existed since at least 2017 when the Board censured one of its directors. This director was reelected to the Board in 2020 despite the censure vote and was censured again in December of 2020 and August of 2021. Discord during Board meetings and internal Board communication underlines the tension and factionalism among the members.

This investigation focused on general WCWD Board processes and governance. The investigation was initiated by a formal complaint. The complaint did not involve allegations of financial impropriety or general mismanagement. However, the Grand Jury noted several areas in which governance could be improved by implementing specific written procedures and clarifications. The Grand Jury recommends that the Board consider several changes to alleviate concerns about procedural confusion and financial transparency.

METHODOLOGY

The Grand Jury used the following investigative methods:

- Viewed videos posted online of WCWD board meetings and the associated meeting minutes.
- Conducted interviews with persons knowledgeable about WCWD governance and operations.
- Consulted available online databases, news articles, and web sites related to WCWD Board responsibilities, policies, and performance.

BACKGROUND

The West County Wastewater District serves approximately 34,000 residences and 2,450 commercial and industrial businesses in West Contra Costa County. The WCWD serves all or part of the cities of Richmond, San Pablo, and Pinole, including contiguous unincorporated areas of the county. The service area is outlined in Figure 1.

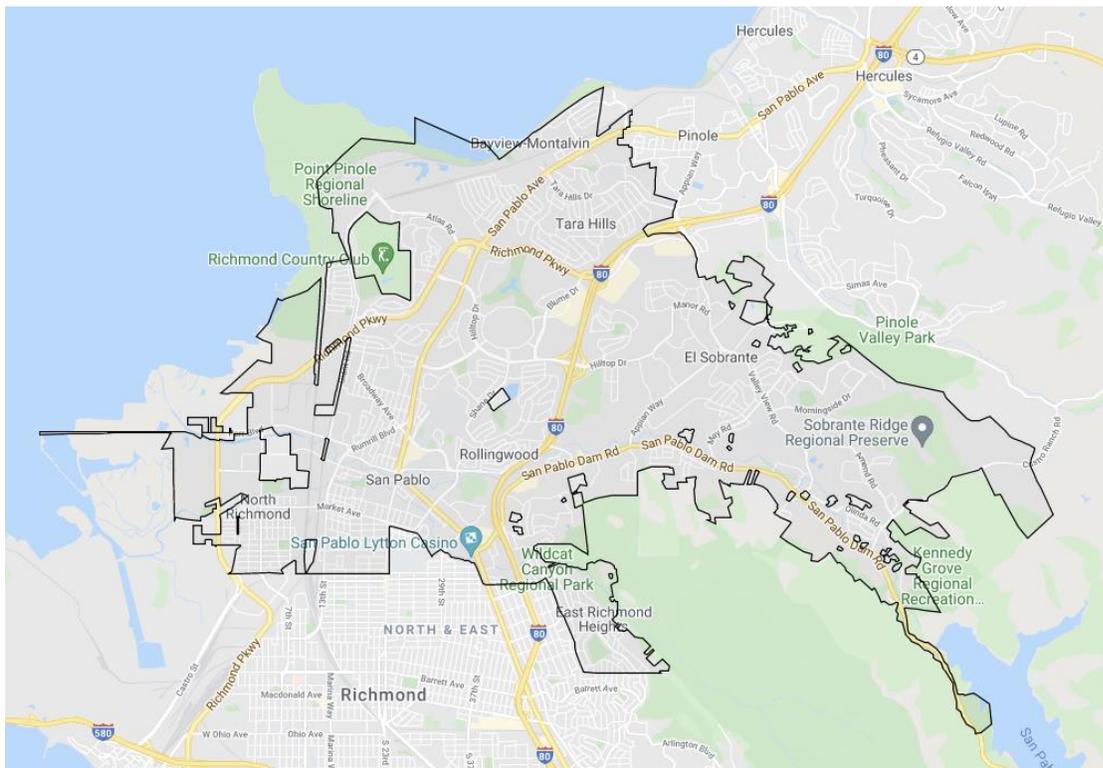


Figure 1 The WCWD service area is highlighted.

As noted, an elected five-member Board, headed by a president, is responsible for the overall management and governance of the WCWD, providing oversight of financial and large-scale operational decisions. Operational management of the WCWD is delegated

to a General Manager, who has freedom to hire employees and solicit contracts for infrastructure maintenance and improvement. The General Manager works closely with the District Counsel to ensure that policies approved by the Board are followed in carrying out WCWD operations. The Board has also delegated to the General Manager the discretion to spend up to \$50,000 per vendor per fiscal year of WCWD funds without Board approval.

The Board members are restricted by written Policies and Procedures,¹ which prohibit direct communications between Board members and WCWD employees other than the General Manager. Proper ethical behavior is specifically addressed in the Board's Ethical Policy guidelines.² Section 9 of the Board's Ethical Policy statement, on Compliance and Enforcement, stipulates that those suspected of violations of the Policy must be reported to the General Manager or Board Attorney. The General Manager or Board Attorney must then determine the severity of the violations. If the alleged violations are not minor in nature, then the Board and its designees conduct proceedings, and use personnel as necessary, to investigate the issues. After the completion of this investigation phase, the Board of Directors must place the matter on a public agenda for possible action and imposition of appropriate discipline.

Disciplinary measures include a public reprimand ("censure"), removal from committee assignments, reduction in compensation, referral of the violation to the District Attorney or Grand Jury, a resignation request, and other discipline as the Board deems appropriate.

The Board has experienced internal turmoil since at least 2017 when one director was admonished by the Board for statements made to an employee in violation of the district's policy against harassment. Training and a formal apology from the director resulted. However, another similar charge to one of the directors followed in 2020 with the Board President citing "unprofessional and confrontational or combative" communications with district staff and the General Manager.³ That investigation was conducted by an independent attorney investigator. As a result of this investigation, the Board voted to censure the director (Resolution No. 2020-53). The Board initiated another investigation this year. At a special Board meeting on August 26, 2021, the Board voted to impose disciplinary action on two directors, including the previously censured director.

¹<https://www.wc wd.org/wp-content/uploads/2021/02/2021.02.12-District-Counsel-CLEAN-Board-Policies-and-Procedures.pdf>

²https://www.wc wd.org/wp-content/uploads/2021/02/Board_Ethics_Policy_2021.pdf.pdf

³ Attachment A: Supporting Documents – WCWD Special Board Meeting 11-30-2020f (Director Censure).

The issue of reimbursement for legal fees incurred by a censured director surfaced after the 2020 censure vote. The Board had no written policy on compensation or reimbursement for directors to obtain legal advice or representation, either for directors who are the subjects of an investigation or in general. For the 2020 investigation, the Board approved a stipend of \$1000 to both directors under investigation to obtain legal advice. For the more recent 2021 investigation, no stipend was approved. At this time, the Board still does not have a written policy on when it will compensate or reimburse directors for legal advice or representation. Based on the above, the Grand Jury voted to investigate further to determine whether irregularities in Board governance and procedures existed.

DISCUSSION

The Complaint – Issues Raised

A complaint submitted to the Grand Jury alleged violations of Board Ethical Policy and personal bias. These allegations were vaguely stated and difficult to substantiate. However, during this phase of the Grand Jury’s investigation, some aspects of the Board’s internal process were found to be potentially problematic.

The Grand Jury did not pursue the question of the conduct of the Board members that led to their censure as there was no request to do so. The Grand Jury considered these issues to have been resolved internally by the censure votes. However, the Grand Jury voted to investigate whether irregularities or significant omissions in Board operations and procedures existed.

The current WCWD Board is divided. A majority of the Board members support the General Manager and take a hands-off approach to WCWD governance and operations. Other Board members have significant disagreements with the General Manager and would take a more hands-on approach to WCWD governance and operations.

This split has led to a serious breakdown of civility between the majority and the minority, as manifested at the October 6 and 20, 2021 Board meetings⁴ and internal Board communication.⁵ The Grand Jury learned that the minority Board members feel completely frozen out of any role in representing the voters who elected them to the Board. The governing structure has been described as a “three-legged stool;” the legs

⁴ October 6, 2021, WCWD Board Meeting starting at 36 minutes; October 20, 2021, WCWD Board Meeting, starting at 1:28:40.

⁵ Statement from the WCWD General Manager entered into the September 15, 2021, Board Meeting Minutes.

are the Board majority, the General Manager, and the District Counsel. There is no leg for the Board minority.

WCWD Board meetings can be contentious. The Board meeting held on May 5, 2021, exemplifies the tension among the Board members with one director claiming that other members are corrupt.⁶ One of the specific items mentioned in the complaint to the Grand Jury is that free expression of differing views is curtailed. Further, the ability of the Board members to clarify spending procedures has deteriorated. Because the directors are prohibited by WCWD rules from talking to any employee directly, they cannot ask the Financial Manager for any budget or fiscal information; all information must come through the General Manager. Also, the General Manager establishes the agenda items for the board meetings. According to the WCWD rules, a director needs the approval of either the General Manager or the Board majority to place a matter on the agenda.⁷

Regarding the General Manager's \$50,000 discretionary funds, the directors review a check register. Some Board members complain that there is insufficient accountability for the discretionary expenditures. The check register does not flag which checks were drawn on the discretionary funds.

During the 2021 censure process, some directors had to hire and pay their own attorneys to defend themselves. The Board does not have a clear policy on reimbursement of directors for legal advice or representation.

The Investigation

During its investigation, the Grand Jury found no evidence of serious irregularities in the operations and procedures of the WCWD. Instead, the Grand Jury found that the probable basis for the instigating complaint lies in the political and personality divisiveness among the Board members. The Board members who are in the minority feel that they have no power to effect WCWD governance and operations. While this frustration is perhaps understandable, it is mostly the function of the political reality of the Board.

However, the Grand Jury is concerned that if there were mismanagement, with the current Board composition, there might be a serious lack of public transparency. For example, district management might not be held sufficiently accountable for financial or personnel decisions.

⁶ May 5, 2021, WCWD Board Meeting starting at 37 minutes.

⁷ See Board of Directors Policies and Procedures, sec. 5.4, Process for Putting Items on a Future Meeting Agenda

The Grand Jury also sees two areas where rule revisions or additions would improve transparency. First, it would improve financial transparency if the expenditures made by the General Manager under the \$50,000 discretionary authority were clearly identified. The directors themselves should have an easy way to identify the discretionary expenditures.

Second, there are several scenarios in which a director might need legal advice or representation. In addition to being the subject of an internal investigation, a director could be sued individually by an employee or outside party for some act or omission related to WCWD business.⁸ There should be a clear written policy on when a director is entitled to be compensated or indemnified from WCWD funds for personal legal expenses including attorney fees, consistent with applicable law.

FINDINGS

- F1. Board members are prohibited by WCWD Policies and Procedures from communicating directly with district staff other than the General Manager.
- F2. Therefore, a director cannot obtain non-publicly available information from district staff about district operations without the General Manager's consent.
- F3. The General Manager determines the agenda for district board meetings in consultation with the Board president.
- F4. Alternatively, a Board member may place an item on the meeting agenda, but only with a Board majority vote.
- F5. The Board has given the General Manager the discretion to spend up to \$50,000 (per vendor per fiscal year) of WCWD funds for district maintenance and operations without Board approval.
- F6. Board members can review the check register for the WCWD's general fund, but the General Manager's discretionary expenditures are not segregated or identified on the check register.

⁸The Government Code addresses when claims against employees brought by third parties are paid by the governmental entity. See, e.g., Gov. Code, §§ 995, 995.2 and 995.4 et seq.

- F7. In the Board’s 2020 investigation of two directors, the Board allocated a \$1000 stipend to each to obtain legal advice. In the Board’s most recent investigation of the same directors, no stipends were paid.
- F8. The WCWD has no written policy on when or under what circumstances it will pay for a director’s legal expenses.

RECOMMENDATIONS

The Grand Jury recommends that by July 2022:

- R1. The Board adopt procedures by which any Board member can obtain information about WCWD operations without the agreement of the General Manager.
- R2. The Board adopt procedures by which any Board member can place an item on the meeting agenda without the General Manager’s approval or a Board majority vote.
- R3. The Board adopt a written policy on reimbursement of a director’s legal fees for both internal investigations and claims brought against a director by an outside third party.
- R4. The Board adopt a procedure that requires the General Manager to identify expenditures made under the authority to make per-vendor payments of less than \$50,000 per fiscal year.

REQUIRED RESPONSES

	Findings	Recommendations
WCWD Board of Directors	F1-F8	R1-R4

These responses must be provided in the format and by the date set forth in the cover letter that accompanies this report. An electronic copy of these responses in the form of a Word document should be sent by e-mail and a hard (paper) copy should be sent to:

Civil Grand Jury – Foreperson
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