

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
SAN FRANCISCO BAY REGION**

**PROSECUTION TEAM'S RESPONSE TO WRITTEN COMMENTS**  
ON THE ISSUANCE OF CEASE AND DESIST ORDER FOR:

City of San Mateo  
Town of Hillsborough  
Crystal Springs County Sanitation District  
in San Mateo County

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- I. San Francisco Baykeeper – October 15, 2008**  
**II. California Citizens for Environmental Justice – October 28, 2008**  
**III. City of San Mateo – November 12, 2008**  
**IV. Town of Hillsborough – November 12, 2008**  
**V. Crystal Springs County Sanitation District – November 12, 2008**
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*Note: The format of this staff response begins with a brief introduction of the party's comments, followed with the Prosecution Team's response. Interested persons should refer to the original letters to ascertain the full substance and context of each comment.*

**I. San Francisco Baykeeper (Baykeeper) – October 15, 2008**

*Baykeeper Comment 1*

*Baykeeper points out that the proposed Cease and Desist Order (proposed CDO) does not limit peak wet weather flow from the Crystal Springs County Sanitation District (District) into the Town of Hillsborough (Hillsborough) and from Hillsborough into the City of San Mateo. Baykeeper further comments that unchecked flows from Hillsborough and the District will cause sanitary sewer overflows (SSOs) and force the City of San Mateo Wastewater Treatment Plant (San Mateo WWTP) to continue discharging partially blended sewage during wet weather.*

*Response 1*

At this time, there is insufficient information to develop accurate and enforceable peak flow limits for Hillsborough and the District. However, we agree that such limits will likely be necessary between connected systems and we address this issue in CDO Provision IV.B.3.e Capacity Assessment. This provision would require the City of San Mateo, Hillsborough, and the District to develop a method for the allocation of peak wet weather flows to the City of San Mateo wastewater treatment plant from the Crystal Springs/El Cerrito Trunk Sewer, and a future flow monitoring program to guide and assess adherence to each discharger's peak flow allocations.

*Baykeeper Comment 2*

*Baykeeper points out that the proposed CDO's requirements for reduction of SSOs should be made more explicit. Baykeeper specifically comments that rather than*

*requiring the dischargers to substantially reduce the frequency and volume of SSOs, the proposed CDO should require elimination of all capacity-related SSOs by a specific date. In addition, Baykeeper states that for all other types of spills, the proposed CDO should require regular reductions in each system's spill rate until each system achieves a good performance rate of between zero and two spills each year for each 100 miles of pipe.*

### Response 2

The Prosecution Team agrees that the CDO should require elimination of all capacity-related SSOs after the completion of all identified capacity-related capital improvement projects. Therefore, we have revised the Tentative CDO Provisions I.A. and V. to specify tasks and deadlines for the capacity-related capital improvement projects. Also, we revised the final compliance requirement (formerly at Provision I.B), and moved it to a new location, Revised Tentative CDO Provision VII, to more clearly state that by a certain date, the dischargers must fully eliminate conditions that cause or contribute to SSOs or unauthorized discharges after completion of the improvements required in the provisions preceding Provision VII.

In regards to the suggestion to require reductions of between zero to two spills each year, the State Water Resources Control Board (State Water Board) Order No. 2006-0003 DWQ, Statewide General Waste Discharge Requirements for Sanitary Sewer Systems (General WDR), prohibits collection systems from having any SSO resulting in a discharge to waters of the United States or creating a nuisance. Therefore, it is inappropriate to allow up to two SSOs for each 100 miles of pipe.

### Baykeeper Comment 3

*Baykeeper indicates that the proposed CDO does not specify a design storm for the Crystal Springs/El Cerrito Trunk Sewer capacity upgrade project nor Hillsborough's capacity assessment.*

### Response 3

It is not appropriate for the CDO to specify a design storm as there is no regulation in effect upon which to base a design storm. This Region's Basin Plan provision on wet weather overflows was remanded by the State Water Board in 2007 (WQ 2007-0004), in part because no SSO to surface water is allowable by law. If the CDO specified a design storm it could be interpreted that the Regional Water Board would be condoning SSOs resulting from storms that exceed the chosen design storm. Therefore, for practical purposes, the dischargers will utilize a design storm as part of their design process, but it will be their choice alone in recognition of the high standard imposed by law.

### Baykeeper Comment 4

*Baykeeper indicates that the proposed CDO should establish the minimum requirements of a Fats, Oils & Grease (FOG) program rather than merely requiring a summary of the dischargers' existing programs and proposals for modification. Additionally, Baykeeper indicates the minimum requirements should include the following: (a) an ordinance or regulation requiring installation of grease traps at all appropriate facilities (e.g., restaurants), (b) procedures for regular inspections of grease traps and enforcement if*

*necessary, (c) procedures for identifying residential FOG hotspots and requiring homeowner action. Finally, Baykeeper points out that if all of the dischargers, like the City of San Mateo, already have a FOG program that requires food service establishments to install and maintain grease traps, the proposed CDO should also require that the “description of the effectiveness of the [FOG] program include statistics on compliance with existing ordinances and on inspection and enforcement. (proposed CDO at page 17.)*

#### Response 4

General WDR Provision D.13(vii), FOG Control Program, specifically addresses FOG program elements and requires the development and implementation of source control measures for all sources of FOG discharged to the sanitary sewer system. To impose similar requirements in the CDO would be redundant or confusing. The CDO Provision III.D instead requires reporting on the effectiveness of the dischargers’ current programs along with any necessary modifications to improve them.

#### Baykeeper Comment 5

*Baykeeper indicates that the proposed CDO should require the dischargers to use the most current technology and procedures in conducting the collection system condition and capacity assessments. Specifically, Baykeeper indicates that the system assessments should be conducted using closed circuit television (CCTV) wherever feasible. In addition, Baykeeper indicates the proposed CDO should require the use of the Pipeline Assessment and Certification Program (PACP), or an equivalent, as the basis for scheduling and prioritizing repairs and replacements.*

#### Response 5

It is not appropriate for the Regional Water Board to require a specific technology that a discharger must use to achieve compliance. The Prosecution Team proposes that the CDO require the discharger to develop a viable long-term cost-effective program using the most appropriate technology in order to comply and maintain compliance. As demand for such technologies grows, new technologies may be developed that can be integrated into the program.

#### Baykeeper Comment 6

*Baykeeper points out that failing private sewer laterals can be responsible for a significant portion of inflow and infiltration in a system that can contribute greatly to capacity-related SSOs. Therefore, Baykeeper indicates that the proposed CDO should require more than a plan to address private lateral repair, rehabilitation, and replacement as needed. Specifically, Baykeeper indicates that the proposed CDO should require each discharger to adopt legal authority to require regular inspection of privately owned laterals, (e.g., upon sale or remodel of property), replacement or rehabilitation when necessary. Furthermore, Baykeeper points out that if any of the dischargers already have adopted lateral line ordinances, the proposed CDO should require the discharger to provide data on the number of lines inspected and replaced as a result. Finally, Baykeeper indicates the proposed CDO should require each discharger to submit a plan for inspection of all of the laterals within its ownership within five years.*

### Response 6

The Prosecution Team agrees that failing private sewer laterals can contribute significantly to capacity-related SSOs. However, while we would encourage and advocate for sewer system utilities with high inflow and infiltration to establish legal authority over private laterals, the Regional Water Board does not have express authority to specifically require a utility to do so. The Regional Water Board can prohibit SSOs. However, we cannot specify how the utility chooses to achieve and maintain compliance with this prohibition. Therefore, we believe it is appropriate for the tentative CDO to require each discharger to submit a plan to take measures already legally authorized by local statute to address and assess private sewer laterals. We do note that Hillsborough already has a program similar to the one that Baykeeper suggests, and that the City of San Mateo and the District are considering private lateral programs in the near future. Therefore, as suggested, we revised the CDO at Provision VI.B that would require reporting in an annual report the number of private laterals inspected and replaced for dischargers with a program.

Finally, as to the comment suggesting the inspection of laterals owned by the dischargers within five years, we believe that Provision IV.A of the tentative CDO fully addresses this comment. This provision requires each discharger to submit a plan and schedule to inspect and assess the condition of its entire collection system. Furthermore, this provision requires each discharger to complete a system-wide assessment by November 15, 2011.

### Baykeeper Comment 7

*Baykeeper points out that the City of San Mateo is planning a mixed-use development for the site of the Bay Meadows racetrack. Therefore, Baykeeper indicates that the Regional Water Board seek assurances from the City of San Mateo that all necessary capacity improvement projects will be implemented by the time the development at the Bay Meadows site is completed so that the increase in wastewater volume will not exacerbate the sewershed's existing problems.*

### Response 7

The Prosecution Team agrees with the comment and asked the City of San Mateo to provide information on its plans to handle flows from the development. Based on this information we added a new Finding (No. 27) to the tentative CDO. In essence, the City will prohibit sewer connections from the development until completion of a relieve sewer that serves that area.

## **II. California Citizens for Environmental Justice – December 5, 2008**

### Comment

*On behalf of California Citizens for Environmental Justice, Ken Berry indicates that the Regional Water Board's proposed action to approve a proposed CDO for the City of San Mateo, Hillsborough, and the District violates the requirements of the California*

*Environmental Quality Act. This is because the proposed CDO cites Title 14 of the California Code of Regulations Section 15321 as the authority for not preparing an environmental analysis. Mr. Berry points out that 14 CCR Section 15300.2(e) prohibits any categorical exemption from being utilized to avoid preparing an environmental analysis for any site on any list compiled pursuant to Government Code (GC) §65962.5. GC §65962.5(c)(3) requires the listing of any site for which a proposed CDO is issued pursuant to California Water Code (CWC) §13301 concerning the discharge of hazardous materials. “Hazardous materials” are defined in Health and Safety Code (HSC) §25501(o).*

Response

The Prosecution Team disagrees that the Cortese List (compiled pursuant to Government Code §65962.5) applies to the City of San Mateo, Hillsborough, and the District and the tentative CDO.

First, the Cortese List laws specified in Government Code Section 65962.5(c)(3), which mandates, in relevant part, that the State Water Board compile a list of “[a]ll Cease and Desist orders issued after January 1, 1986, pursuant to Section 13301 of the Water Code..., that concern the discharge of wastes that are hazardous materials,” were not intended to apply to the discharge of domestic sewage from publicly owned sanitary sewer systems, such as the sanitary sewer systems owned by the City of San Mateo, Hillsborough, and the District. Instead, the intent of the law was to provide notice to land use developers regarding the presence of hazardous materials that had been released on the property proposed for development.

This legislative intent is shown by where Section 65962.5 of the Government Code is placed in that Code: Title 7 (Planning and Land Use), Division 1 (Planning and Zoning), Chapter 4.5 (Review and Approval of Development Projects), and Article 6 (Development Permits for Classes of Projects). As is apparent from these code titles, all of these sections of the Government Code concern planning and land use development.

Further evidence of this legislative intent is also provided by subdivision (f) of Section 65962.5. Subdivision (f) states in relevant part:

Before a lead agency accepts as complete an application for any **development project** which will be used by any person, the applicant shall consult the lists ... and shall submit a signed statement to the local agency indicating whether the project and any alternatives are located on a site that is included on any of the lists compiled pursuant to this section [65962.5] and shall specify any list. If the site is included on a list, and the list is not specified on the statement, the lead agency shall notify the applicant .... The statement shall read as follows:

**HAZARDOUS WASTE AND SUBSTANCES STATEMENT**

The development project and any alternatives proposed in this application are contained on the lists compiled pursuant to Section 65962.5 of the Government Code. Accordingly, the project applicant is required to submit a signed statement that contains the following information... Specify any list pursuant to Section 65962.5 of the Government Code....

(Emphasis added)

Moreover, additional legislative intent is shown in section 65963.1(a) of the Government Code, the statutory section that immediately follows Section 65962.5. It states, in relevant part:

[T]his chapter applies to the making of a land use decision or the issuance of a permit for a hazardous waste facility project by a public agency..., including, but not limited to, all of the following actions:

- (a) The approval of land use permits and conditional use permits, the granting of variances, the subdivision of property, and the modification of existing property lines....

These statutory provisions make clear that the Cortese List law was part of a comprehensive scheme relating to planning and land use development, and that its purpose was to provide information to developers regarding the presence of hazardous materials on property being considered for development. Accordingly, the Cortese List law was not intended to apply to waste discharges from sanitary sewer systems regulated by the State and Regional Water Boards.

Second, the definition of “hazardous material” cited in Health and Safety Code Section 25501(o) was also intended to have a special and limited meaning, as evidenced by its placement in that portion of the Health and Safety Code. The definition is contained in Chapter 6.95, which is titled “Hazardous Materials Release Response Plans and Inventory,” and Article 1 of that chapter, titled “Business and Area Plans.” The legislative intent of Chapter 6.95 is explicitly stated in Section 25500 of Article 1. Since the definition echoes the intent language used, it is instructive to quote the relevant parts of Section 25500:

The Legislature declares that, in order to protect the public health and safety and the environment, it is necessary to establish business and area plans relating to the handling and release or threatened release of hazardous materials. The establishment of minimum statewide standards for these plans is a statewide concern. Basic information on the location, type, quantity, and the health risks of hazardous materials handled, used, stored, or

disposed of in the state, which could be accidentally released into the environment, is not now available to firefighters, health officials, planners, public safety officers, health care providers, regulatory agencies, and other interested persons. The information provided by business and area plans is necessary in order to prevent or mitigate the damage to the health and safety of persons and the environment from the release or threatened release of hazardous materials into the workplace and the environment....

As mentioned, the definition of “hazardous material” echoes the legislative intent expressed in Section 25500. Of particular importance for determining the meaning of this definition is the following language used in the definition:

‘Hazardous material’ means any material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if **released** into the workplace or the environment....

(Health & Saf. Code, § 25501, subd. (o). Emphasis added.)

“**Release**” is defined in Section 25501(s) of the Health and Safety Code as:

[A]ny spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, **unless permitted or authorized by a regulatory agency**.

(Emphasis added)

There are two important points to make regarding this definition. First, the many terms used, such as spilling, leaking, etc., signify that the release was an action, either intentional or unintentional, that caused a material to enter into the environment. Second, and more importantly, the exception provided by the phrase, “unless permitted or authorized by a regulatory agency,” makes it clear that the various types of releases into the environment are the subject of the types of releases intended to be covered within the definition of “hazardous material.” Therefore, the types of releases that are contemplated within the definition of “hazardous material” are only those releases that are **not** permitted or authorized by a regulatory agency and that meet the other elements of the definition (i.e., present a significant hazard to human health and safety or to the environment).

In sum, the Cortese List laws were not intended to apply to discharges of domestic wastewater from regulated sanitary sewer systems, such as the sanitary sewer systems owned by the City of San Mateo, Hillsborough, and the District.

Last, the exception in section 15300.2(e) applies only to those sites that are already on the list compiled pursuant to Government Code section 65962.5. Because the tentative CDO would not result in approval for a project located on a particular site it is not possible to conclude that the tentative CDO would affect a project on a list compiled pursuant to the referenced Government Code section.

### **III. City of San Mateo (San Mateo) – November 12, 2008**

#### City of San Mateo Comment 1

*The NPDES permit cited in Finding 2 incorrectly indicates the specified coverage of the permit.*

#### Response 1

The Prosecution Team agrees with the comment and made revisions to Finding 2.

#### City of San Mateo Comment 2

*Regarding Finding 3, the proposed CDO has missing language at the end of the paragraph.*

#### Response 2

The Prosecution Team agrees with the comment and made revisions to Finding 3.

#### City of San Mateo Comment 3

*Regarding Finding 4, the State and Regional Water Board requirements stipulate that Sewer System Management Plans (SSMPs) must be “developed” but not “submitted.”*

#### Response 3

The Prosecution Team agrees with the comment and made revisions to Finding 4.

#### City of San Mateo Comment 4

*Regarding Finding 9, the City of San Mateo’s contribution to the Crystal Springs/El Cerrito Trunk Sewer is, characterized incorrectly.*

#### Response 4

The Prosecution Team agrees with the comment and made revisions to a new Finding 10 by including two tables (Tables 1A and 1B), one characterizing each collection system and the other characterizing each collection system’s contribution to the Crystal Springs/El Cerrito Trunk Sewer.

#### City of San Mateo Comment 5

*The Regional Water Board has inappropriately characterized violations in the proposed CDO. Finding 11-13 of the proposed CDO: The Regional Water Board has inappropriately characterized violations in the proposed CDO. The City of San Mateo points out that its NPDES permit contains the following language, “While the Discharger must comply with both the General Waste Discharge Requirements [WDR] for Collection*



*System Agencies (General Collection System WDR) and this Order, the General Collection System WDR more clearly and specifically stipulates requirements for operation and maintenance and for reporting and mitigating sanitary sewer overflows.” In addition, the City of San Mateo points out that the WDR states that SSOs are prohibited if they cause a nuisance. Furthermore, the City of San Mateo comments that it is disingenuous for the Regional Water Board to state that all SSOs, no matter how big or small, no matter where they end up, are violations. Finally, the City of San Mateo points out that this is unreasonable public policy and is inappropriate in a resource-limited society.*

Response 5

The Prosecution Team disagrees and stands behind its interpretation that all SSOs are violations of the General WDR.

City of San Mateo Comment 6

*The Regional Water Board has not described how the enforcement discretion factors were considered, as required under the General WDR. The City of San Mateo points out that the General WDR requires State and/or Regional Water Boards to consider the seven enforcement discretion factors in any enforcement proceeding.*

Response 6

We disagree. The Prosecution Team interprets the General WDR to provide that the seven factors listed in the order apply to imposition of administrative civil liabilities, not CDOs. This is based on the WDRs reference to Section 13327 of the Water Code which specifies factors that must be considered in determining the amount of liabilities. On this issue, the General WDR states in part,

“the Regional Water Boards must consider the Enrollee’s efforts to contain, control, and mitigate SSOs when considering the California Water Code Section 13327 **factors**. In assessing these **factors**, the ... Regional Water Boards will also consider ...: (i) ... (vii)....[emphasis added]”

Moreover, the Prosecution Team addressed the 13327 factors together with the seven discretionary factors in the General WDR as part of the Administrative Civil Liabilities Complaint issued to the City in parallel with a draft of the CDO.

City of San Mateo Comment 7

*The proposed CDO mischaracterizes wastewater treatment plant blending. Finding 18 essentially repeats the language in Order No.R2-2007-0075, which allows blending during wet weather events. However, this section is labeled “San Mateo WWTP Problems.” The City believes that this heading is a mischaracterization of the blending concept and current regulatory framework, because blending is specifically allowed, and the City has agreed in good faith to a series of steps to reduce blending. In addition, Regional Water Board staff has indicated that the City really should be conducting more blending, because blending can help prevent SSOs. This paragraph should be completely removed or else the Regional Water Board should communicate that the City should*

*currently use blending more frequently in order to prevent SSOs. Alternatively, a new Finding 18, with more applicable content, could replace the draft one.*

#### Response 7

The Prosecution Team agrees with the majority of the comment. In response, we renamed Finding 18 (now Finding 21) to “San Mateo WWTP and Blending.” In addition, we added a new Finding 19, entitled, “City of San Mateo Collection System Relief Lines” as suggested by the City. The only difference from the City’s suggested language is in the sentence where the (wet weather capacity) study will form the basis of the future Capital Improvement Plan projects to bring the City into compliance with no SSOs during “peak wet weather” as opposed to “a design storm.” This language difference is because the study must identify the necessary capital improvement projects that will prevent SSOs during peak wet weather (not necessarily during a particular design storm) to eliminate capacity-related SSOs. (See related response to Baykeeper Comment 3 on the issue of design storm.)

#### City of San Mateo Comment 8

*The proposed CDO mischaracterizes the Crystal Springs/El Cerrito Trunk Sewer. Inadequate capacity to the WWTP and Dale Avenue Pump Station operation does not currently contribute to backups on the Crystal Springs/El Cerrito Trunk Sewer because the trunk lines from Hillsborough to Dale Avenue cannot transmit the flow. The second and third paragraphs are likewise inaccurate and should be removed. The City provides suggested language that revises the first paragraph.*

#### Response 8

The Prosecution Team agrees with the comment and replaced that finding (old Finding 19) with the City’s suggested changes with minor editorial revisions in a new finding (Finding 20 in the Revised Tentative CDO).

#### City of San Mateo Comment 9

*The City of San Mateo does not own the lower lateral. The City states it does not own the lower laterals, although it does maintain them as a service to the property owner if a cleanout has been installed.*

#### Response 9

The Prosecution Team agrees with the comment and replaced that finding (old Finding 20) with a new finding (Finding 22 in the Revised Tentative CDO).

#### City of San Mateo Comment 10

*Regarding Finding 22, the City has obtained new information and the estimated cost of these capital improvements has changed significantly. Costs have escalated since the original estimates were made, and new geotechnical information shows that the nature of the soils in the area will result in increased construction cost.*

Response 10

The Prosecution Team revised that finding (now Finding 24 in the Revised Tentative CDO) to reflect these increased estimated costs.

City of San Mateo Comment 11

*Regarding Finding 24, language regarding blending in the NPDES permit for the treatment plant is mischaracterized in the proposed CDO. The short-term goal is to “reduce” blending not “eliminate” it.*

Response 11

The Prosecution Team agrees with the comment and revised the language in that finding of the tentative CDO in now Finding 26 in the Revised Tentative CDO.

City of San Mateo Comment 12

*Regarding Provision I.B, it will be difficult if not impossible to obtain CEQA approval for the capital improvements suggested in the proposed CDO. The proposed CDO language specifies completion of the Crystal Springs/El Cerrito Trunk Sewer prior to installation of the downstream 10,300 lineal feet of trunk sewer. However, this will just move the SSOs from their current location to El Camino Real. The City does not believe that it will be possible to obtain environmental clearance on a project that would create overflows at a new location. It should be required instead that the District, Hillsborough, and the City of San Mateo install relief trunk lines that will convey the storm peak flow to the Dale Avenue Pump Station.*

Response 12

The Prosecution Team has moved the requirements of Provision I.B.1-3. into a revised Provision I.A.1 and inserted tables describing tasks, deliverables, and completion dates for the various capital improvement projects. These tables will ensure coordination amongst the agencies to prevent capacity-related SSOs from being moved to a different location within the collection systems.

City of San Mateo Comment 13

*It appears that Provision V.A., Short-Term Contingency Plan was placed in the proposed CDO by mistake.*

Response 13

The Prosecution Team agrees with the comment and removed that provision because it concerned the wastewater treatment plant and not the collection system.

City of San Mateo Comment 14

*The capacity assurance plan in Provision V.B. should identify a design storm for the system, and a schedule for improvements. The capacity assurance plan developed in this provision needs to recognize that there are engineering limitations on the size of the infrastructure. In addition, reporting requirements should recognize that the agencies are separate jurisdiction and be consistent with the removal of provision A. Finally, it is impossible for all improvements to be constructed by 2013. Not all of the improvements*

*have even been identified yet, but the general cost estimate is in excess of \$200 million. Therefore, the city can only commit to making significant progress by 2013, not completing all possible improvements. The plan and schedule could be revisited with Regional Water Board staff at that time to determine progress and results to date, to determine future actions and schedule.*

Response 14

It is not appropriate for the CDO to specify a design storm at this time as there are no regulations in effect upon which to base a design storm. (See Prosecution Team's response to Baykeeper Comment 3 for further discussion on specifying a design storm.)

As to the completion date for improvements, the Prosecution Team agrees that it is probable that all improvements would not be completed by 2013. In addition, we understand that the Capacity Evaluation the City is conducting as required by Provision VI.C.6. of its NPDES permit is due August 1, 2009. This will place the City on a faster track than the Town of Hillsborough and Crystal Springs County Sanitation District in identifying improvement projects in addition to some projects already planned by the City. Therefore, we have revised the tentative CDO to include a new Provision V, which replaces the old Provision I.A.3. This new provision would require the City to submit a plan and schedule for the projects identified in its Capacity Evaluation by November 15, 2009. This plan and schedule would be subject to Executive Officer approval and will set the deadlines for completing the improvements.

City of San Mateo Comment 15

*Regarding Provision VI.A.5, private laterals are not within the jurisdiction of the City. The City requests that this provision be revised as the City cannot be held responsible for repair, rehabilitation, and replacement of laterals.*

Response 15

The Prosecution Team agrees with the comment and revised the tentative CDO to reflect that the City does not own the private sewer laterals. Also, since the substance of Provision VI.A.5 already addresses the private lateral element proposed in the original Provision V, private laterals has been removed from revised Provision V in the Revised Tentative CDO.

City of San Mateo Comment 16

*Regarding the City's NPDES permit, the schedule for infrastructure renewal for the City of San Mateo should be clarified. During discussions with Regional Board staff on renewal of the City's NPDES permit for the wastewater treatment plant, there appears to have been a misunderstanding about the language used in Provision VI.C.6, "Corrective Measures to Minimize Blending Events" (page 25 of permit). In particular, City staff provided information about the City's Capital Improvement Plan (CIP) budget, and the respective timing for budgeting of certain projects. In the City's No Feasible Alternatives Analysis (NFAA), a range for the timing of implementation (or beginning of construction), was indicated in the context of CIP budgeting, for use by Regional Water Board staff. However, the City is concerned that the language that ended up in the permit, which is different from what was proposed in the NFAA, may be misinterpreted to*

*mean that the dates the City provided were for completion of projects. In addition, some conditions have changed since the permit was adopted, including that improvements are more extensive than originally anticipated, and the costs have escalated as well. Therefore, the City requests that a clarification be made in the proposed CDO, by adding a new section.*

#### Response 16

The Prosecution Team agrees with the comment. As noted in our response to the City's comment 14, we have made revisions to Provision V of the Revised Tentative CDO listing the CIPs with updated estimated costs and project initiation dates. However, this does not and cannot amend Provision VI.C.6 of the City's NPDES permit because that action would need to be separately noticed. Therefore, the City should submit to the Regional Water Board an official request for modification of the NPDES permit prior to the compliance deadlines to correct the language in Provision VI.C.6.

#### City of San Mateo Comment 17

*Regarding Provision VII, language should be revised to address real coordination issues. The City of San Mateo, Town of Hillsborough, and the Crystal Springs County Sanitation District have been meeting quarterly for several years to coordinate efforts on improvements to the El Cerrito Trunk Line, the one asset that is shared among the three agencies. All three agencies contribute flow to this trunk line. However, due to a lack of commitment by the Crystal Springs County Sanitation District to provide its financial share of costs for improvements, recent coordination efforts on the El Cerrito Trunk Line have been only perfunctory. The original language in the proposed CDO will not change this situation. In addition, sections B and C are completely unrelated to SSOs. For these and other reasons, the City of San Mateo requests that this section be revised to be more specific to the El Cerrito Trunk Line.*

#### Response 17

The Prosecution Team believes the revisions made to Provision I.A which includes the insertion of tables delineating specific tasks and completion deadlines for each agency address the coordination and financial issues. (See Response to Baykeeper comment 2.) In addition, we have revised VII (numbered VIII in the Revised Tentative Order) to focus development and discussion of coordination efforts on the asset that is shared by the dischargers: the Crystal Springs/El Cerrito Trunk Sewer. Finally, we agree that Provisions VII.B and C of the tentative CDO are not necessary and have removed them.

### **IV. Town of Hillsborough (Hillsborough) – November 12, 2008**

#### Hillsborough Comment 1A

*Hillsborough requests modification of dates in the proposed CDO. I/I improvement should precede large capacity improvement projects. To aid this situation, Hillsborough requests that the Regional Board consider re-sequencing the events required under the proposed CDO. The dates for large capital projects like increasing the capacity in the El Cerrito trunk sewer should be deferred until after the implementation of I/I reduction*

*measures (Provision I.B.3) to make sure that capacity levels constructed are actually necessary after appropriate I/I controls are implemented. The proposed CDO should recognize that additional improvements will be among the recommendations from the ongoing I/I study. The I/I study will likely be finished by late fall 2009 or early in 2010. The Dale Avenue pump station design has not started, and in the best case with excellent engineers, it will likely take a year for design or through early 2011. While that leaves approximately 2 years for construction, the current plant may not have adequate capacity for the additional flows and this must be taken into account.*

*Thus, the proposed CDO should consider delaying the El Cerrito trunk sewer project until Crystal Springs County Sanitation District implements the tasks set forth in its I/I study as this work may decrease flows enough to make the trunk sewer improvements unnecessary. The \$8 million cost of the trunk sewer project would likely be better spent on I/I controls to decrease volume of water through the pipes and to the treatment plant.*

Response 1A

We disagree. There is no need to delay the El Cerrito trunk sewer project. Based on our understanding of the design process from the City of San Mateo staff, while implementation of upstream I/I reduction measures will probably result in significant reduction of I/I flows, those measures and reductions cannot be quantified accurately and will thus not be factor into the design of downstream capital improvement projects. In addition, we met with the City of San Mateo, Hillsborough, and the District and came up with an agreed upon schedule to complete the construction of the El Cerrito trunk sewer project. This schedule is now part of Provision I.A.1 of the Revised Tentative CDO.

Hillsborough Comment 1B

*Modify or defer date for completion of Crystal Springs/El Cerrito Trunk Sewer until after downstream improvements completed. The current sequence of events in the proposed CDO is not workable because it requires Hillsborough to implement improvements on the Crystal Springs/El Cerrito trunk line before San Mateo has completed (or is near completion of) their improvements to the Dale Avenue Pump Station and downstream pipes, which is essentially the distance from Hillsborough to the treatment plant. Improperly sequencing the repairs will merely cause additional spills that are not caused by the Town's actions, but by inadequately sized pipes and operational decisions downstream.*

*Hillsborough fails to see the current benefit in improving the capacity in its pipes if the wastewater has no where to go once it reaches city limits, except to cause additional spills in Hillsborough's jurisdiction. Such a result should be avoided by having the proposed CDO specify the timing of the downstream pump station and sewer pipe capacity improvements before the improvements on the upstream Crystal Springs/El Cerrito trunk sewer. Thus, at a minimum the proposed CDO Provision I.B.1 should be amended to a date after upgrades are made to the San Mateo pump stations, sewers, and treatment plant to increase capacity.*

*Another potential solution to this issue would be to treat the El Cerrito trunk sewer rehabilitations from Crystal Springs in Hillsborough to Highway 101 in San Mateo as*

*one project since it consists of about 4 miles of continuous pipeline. If this project were approached as one project, there would be some economy of scale in that the municipalities involved could share the cost of the CEQA analysis and other environmental procedures that are required by the State Revolving Fund. Likewise, if this is approached as one project, and bid at the same time (either jointly or separately), there will be more assurances that Hillsborough's improvements would be effective and that additional SSOs would be avoided.*

#### Response 1B

The Prosecution Team agrees with the majority of this comment and has treated the Crystal Springs/El Cerrito Trunk Sewer capacity upgrade as one project. This project's completion date and subtasks completion dates are included in a table as part of a new Provision I.A.1. This table will ensure timeliness of subtasks and coordination between agencies. (See also Responses to Baykeeper Comment 2 and City of San Mateo Comment 17.)

#### Hillsborough Comment 1C

*Hillsborough asks that the Regional Board reconsider the timeframes included in the proposed CDO regarding the cleaning and condition assessment schedule. The requirement of Provision III.A.1 to clean the whole sewer system in 3 years will create difficulties both economic and procedural. Although the 3-year timeframe is technically possible, this compressed timeframe will significantly impact Hillsborough's operating costs. In addition, the cleaning crews will also be less productive on getting cleaning done because of the extensive recordkeeping they must also do during their work day in order to meet the requirements of the proposed CDO.*

*In addition, the condition assessment will be difficult to complete by November 2010, Provision IV.A.1. Hillsborough has 2,500 manholes and 117 miles of pipe, which represents a great deal of infrastructure to assess. Hillsborough requests that the Regional Board extend this date until at least March 2012 (which will coincide with the 3 years given to clean 100% of the system or later if the previous request for additional cleaning time is provided. This modification would be more efficient and economical by allowing staff to do a complete assessment as they are cleaning.*

#### Response 1C

The Prosecution Team disagrees that 3 years is not enough time to clean the entire system. With 117 miles of collection pipe, a 3-year timeframe to clean the entire system equates to cleaning less than one mile of pipe a week [117 miles/3 years/52 weeks per year = 0.75 miles of pipe/week].

As to the second part of this comment, Provision IV.A.1 of the tentative CDO would have required a system-wide condition assessment by November 15, 2011, not the 2010 noted by the District. This is due to a typographical error. Provision IV.A.4, requires the submittal of a final inspections and condition assessments report by November 15, 2011; this provision implies that the system-wide condition assessment be completed prior to this date.

Given this correction we disagree that it will be difficult to complete a system-wide assessment in two years. Provision IV.A.1 of the tentative CDO also allows the use of reliable condition data obtained from an inspection and assessment conducted within the last five years. Therefore, we believe the tentative CDO provides adequate time to complete the system-wide assessment by November 15, 2011.

Because of the typographical error and for clarification, we have revised Provision IV.A.1 of the tentative CDO. The revised language is reflected in Provision IV.A.1 of the tentative CDO as follows:

“By November 15, 2009, ~~March 15, 2009~~, the City of San Mateo, Town of Hillsborough, and the District shall each submit a plan and schedule to the Regional Water Board for periodic inspection and assessment of the condition of gravity sewers and manholes throughout its collection system. The plan ~~inspection and condition assessment program~~ shall evaluate the condition of pipes following blockage-related spills, and identify pipes in need of emergency repair, ~~and complete a system-wide condition assessment no later than November 15, 2010...~~”

Hillsborough Comment 2

*Hillsborough requests consideration of the costs of the proposed CDO in addition to the ACL penalty costs and normal operating and compliance costs.*

Response 2

The costs of compliance for the community were considered in both actions. The Town has one of the highest median annual incomes in the country.

**V. Crystal Springs County Sanitation District (District) – November 12, 2008**

District Comment 1 **The County Does Not Operate the District** (Line 17, page 7)

*Finding 9 contains a factually and legally incorrect statement. The County of San Mateo does not operate the District.*

Response 1

The Prosecution Team agrees with this comment and has made revisions to the tentative CDO (now Finding 10) which reflects the facts surrounding the operation of the District. The Revised Tentative CDO now states that “the District uses the San Mateo County (County) Department of Public Works personnel to maintain the District’s collection system and reimburses the County for time rendered.”

District Comment 2 **Factors Contributing to Violations** (25, page 8)

*Finding 17 asserts that each of the collection systems and the San Mateo WWTP receive high flows during the rainy season. However, the District respectively submits that this statement is not supported by reference to any specific evidence and that the record is unclear as to what research or data was referred to in order to make this determination. The District requests that the Board identify the data upon which it relies in making this assertion.*



*Finding 17 also states that the collection systems currently have insufficient capacity to handle peak wet weather flows. However, the District's Sewer Master Plan identified only one capital improvement (project) that was necessary to address hydraulic deficiencies/capacity issues. This project, involving the replacement of sewer lines along Polhemus Road, was completed in 2003 and the District therefore requests that the Board clarify that its statement regarding insufficient capacity does not apply to the District.*

*Finally, Finding 17 also states that SSOs caused insufficient capacity can have adverse impact to fish and aquatic biota caused by biosolid deposition, oil and grease, and toxic pollutants common in sewage (such as heavy metals, pesticides, personal care products, and pharmaceuticals). This statement is potentially misleading because it suggests that if the overflows from SSOs had reached the San Mateo WWTP, the toxic pollutants identified by the Board would have been removed from the waste. This is not, however, the case. Neither the San Mateo WWTP, nor the wastewater treatment plants in general, are designed to remove these toxic pollutants from sewage. At a minimum, the Board's analysis should recognize this fact and avoid any inference that SSOs cause toxic pollutants to enter the water that would be removed at the WWTP.*

#### Response 2

The Prosecution Team bases the statement that the District's collection system receives high flows during the rainy season on flow monitoring information in the District's Sewer Master Plan (August 1999). Flow monitoring results in Table 5-1 of the Sewer Master Plan clearly indicate that flows significantly increase during a peak wet weather event. In addition, the District has not implemented major improvements to its collection system other than completing the one project to provide increased hydraulic capacity to the Polhemus Road trunk sewer. Therefore, the District's collection system still receives increased or high flows during wet weather events.

As to the second part of this comment, we base the statement that the collection systems currently have insufficient capacity to handle peak wet weather flows on the SSOs that occur during large rain events. We are defining "collection systems" as the entire collection systems of the District, Town of Hillsborough, and the City of San Mateo, as a whole. The District points out that it has completed its capital improvement project to address capacity issues. However, this project completion simply moved SSOs downstream into the Town of Hillsborough's collection system that would have otherwise occurred within the District. The insufficient capacity for the collection systems as a whole has not been adequately addressed.

Finally, we acknowledge that the San Mateo WWTP does not completely remove all of the toxic pollutants contained in raw sewage. However, we do not believe that the tentative CDO has to include such language.

**District Comment 3 Current Operation and Maintenance of the Town of Hillsborough Collection System (Line 18, page 9)**

*Finding 30 states that Hillsborough has determined that it will wait until San Mateo addresses capacity issues at the WWTP and upgrades its portions of the trunk lines before it proceeds with improvements that will increase the capacity of the Crystal Springs/El Cerrito Trunk Sewer. However, the District received a letter (dated September 23, 2008, from Hillsborough stating that it intends to proceed with the project to make improvements to the Crystal Springs/El Cerrito Trunk Sewer, such that it can be bid in the Fall of 2009. It seems unlikely that San Mateo will have addressed capacity issues by then and, in this regard, the proposed CDO and the correspondence from Hillsborough appear to be inconsistent. The District requests that the proposed CDO be revised to resolve this apparent inconsistency.*

*Moreover, based on available information, the District anticipates that Hillsborough's project will cost approximately \$8.6 million and that the District's required contribution will be significant. As discussed, the District does not currently have the ability to pay for such improvements and the District will need additional time to adjust its rate structure to allow it to do so.*

**Response 3**

Prosecution Team agrees with the first part of this comment and revised the tentative CDO to include tasks and deadlines to coordinate the completion of the improvements to the Crystal Springs/El Cerrito Trunk Sewer. (See also Responses to Baykeeper Comment 2 and City of San Mateo Comment 17.)

On the issue of the District's ability to pay for the projects, based on our meetings with the District, Town of Hillsborough, and the City of San Mateo, it is our understanding that the District has made financial arrangements with the Town of Hillsborough in regards to the Crystal Springs/El Cerrito Trunk Sewer project.

**District Comment 4 Current Operation and Maintenance of the Crystal Springs County Sanitation District Collection System (Line 8, page 10)**

*Finding 35 states that the Polhemus Road project has reduced SSOs that were caused by insufficient capacity in the District. However, this statement is speculative in that the District's Sewer Master Plan determined that there were hydraulic deficiencies in the section of pipe that was replaced, but the proposed CDO does not indicate what data it relies on to conclude that there have been SSOs in the past in the section of pipe that replaced.*

**Response 4**

The Prosecution Team bases the statement on information in the District's Sewer Master Plan. The Sewer Master Plan contained a hydraulic model of the District's collection system to evaluate the capacity of the pipelines to carry existing peak wet weather flows. The selected design storm was based on a rainfall event on January 18, 1998, that the District believed was very similar to a 5-year storm event (Sewer Master Plan, page 9-1). The January 18, 1998, rainfall event was included as part of the flow monitoring

conducted for the Sewer Master Plan. The Sewer Master Plan (page 11-1) stated “the results of the model indicate a severe bottleneck where the Polhemus Road trunk sewer changes to 10 inches in diameter.” The Sewer Master Plan further stated that “nearly all the 10-inch-diameter sewer is unable to convey peak wet weather flow...” Based on these statements, we conclude that the District probably had an SSO during the January 18, 1998, rainfall event.

**District Comment 5 Timetable of Ordered Actions, Plans, Reports, and Coordination (Line 15, page 10)**

*The District has reviewed the requirements of the proposed CDO and concluded that it would cost the District an estimated \$13 million dollars in additional capital improvement and operations and maintenance expenses through the end of 2013 to comply with all of the mandated actions. The District does not presently have the financial resources or the rate structure necessary to implement the proposed CDO. Further, Proposition 218 provides that the District cannot raise rates unless it complies with certain constitutional mandates and unless it avoids a successful majority protest.*

**Response 5**

The Prosecution Team understands the District’s current financial situation. The District has conveyed to us that it has made progress in convincing its sewer rate payers that sewer rates need to be raised. At this time, we must proceed with the Revised Tentative CDO requiring timely actions towards compliance with applicable requirements under the assumption that the District will increase its sewer rates as necessary.

**District Comment 6 Collection System Capacity Assessment (Line 4, page 11)**

*Because of the issuance date of the proposed CDO, the District requests that the timeline for compliance with the flow metering requirement be moved to the winter of 2009-2010, and that the District (and other agencies subject to this order) be required to install the flow meters by December 15, 2009. The District further requests that the other dates for completion of actions set forth in the proposed CDO that are premised on flow metering occurring on March 15, 2009, be continued to correspond to flow metering taking place beginning on December 15, 2009.*

**Response 6**

The Prosecution Team generally agrees with this comment and proposes changes from the original timelines for compliance stated in the tentative CDO. Wet weather months are generally from October through April. Therefore, we revised the tentative CDO Provision IV.B to require the agencies to install flow meters by November 15, 2009, instead of the proposed date of December 15, 2009, in order to increase the chance of measuring more storms. In addition, the majority of the compliance dates were revised to be approximately six months later than original compliance dates.

**District Comment 7 Sewer System and Root Control Program (Line 21, page 11)**

*The proposed CDO requires that a number of reports, including an annual report addressing sewer cleaning and root control, be submitted to the Board. However, the proposed CDO does not indicate what actions, if any, the Board will take on these*

reports. For example, the District submits that the Board should consider including a timeline for the Board to review and respond to reports submitted by the District so that any Board feedback is timely. Moreover, the District requests clarification regarding the time period to be covered by the reports referenced in the proposed CDO that are due on March 15<sup>th</sup> of each year.

#### Response 7

No revisions are necessary as this comment was already addressed in the tentative CDO. Provision IX of the original tentative CDO (now Provision X of the Revised Tentative CDO) requires that all reports be subject to Regional Water Board review and approval within 60 days. In addition, contrary to the comment, there are no reports that are due annually on March 15<sup>th</sup>. However, there were several distinct reports that would have been due on March 15<sup>th</sup> of the years 2009 through 2011. (Because of the time it has taken to resolve the dischargers' issues, the new due date for these reports have been revised to November 15<sup>th</sup>.) Finally, the time periods covered by each of these reports are specified in the corresponding provisions that require each report.

#### **District Comment 8 Pump Station and Force Main Reliability Certification (Line 1, page 12)**

*Provision III.C requires the District to submit certification and reports regarding pump stations and force mains. However, the District does not own, operate, or maintain any pump stations or force mains and the District submits that Provision III.C should therefore be amended to delete references to the District.*

#### Response 8

The Prosecution Team agrees with this comment and will revise Provision III.C of the tentative CDO to delete references to the District.

#### **District Comment 9 Fats, Oils and Grease Blockage Control Report (Line 6, page 12)**

*The proposed CDO requires a report documenting its program to control FOG and the effectiveness of the program. The District, however, is made up almost exclusively of residential customers. The District program should not require matters such as treatment, source inspections, and enforcement procedures, as the District does not have the customers that require this (i.e., food service and preparation establishments). The proposed CDO should state the customer type base for the District and acknowledge that some of the requirements of the FOG program do not apply to it.*

#### Response 9

The Prosecution Team disagrees with this comment. Provision III.D of the tentative CDO requires the District to submit a report documenting its program to control sources of FOG but does not specifically require "treatment, source inspections, and enforcement procedures" as claimed by the District

#### **District Comment 10 Collection System Condition Assessments (Line 16, page 12)**

*The proposed CDO requires a system-wide condition assessment of the District's sewers by no later than November 15, 2010. However, the sewer rate structure that the District*

*has been able to impose beginning in the 2007-2008 fiscal year includes an element providing for system-wide CCTV inspection on a six-year cycle. Consequently, the District will not have collected sufficient money by November 15, 2010, even if a sewer rate increase is adopted in the near future to support this work. (Even assuming the absence of a successful majority protest, the District would not be able to begin collecting revenues associated with increased sewer service rates until December of 2009.) Consequently, the District requests that the proposed CDO be amended to set the deadline for a system-wide condition assessment for 2012-2013.*

*Further, the proposed CDO requires that, by March 15, 2011, the District shall complete an assessment and submit a report to the Board on the collection system flows and hydraulic capacity. The proposed CDO does not indicate whether all sewer lines are to be modeled, and often, hydraulic models do not include sewer lines of 6 or 8 inch in diameter. The proposed CDO is not specific on this issue. Requiring a model of all sewer lines will unnecessarily increase the cost to the District and may not provide useful information regarding the system. In any event, in light of the foregoing discussion regarding financial circumstances, the District requests that the proposed CDO be amended so that any such assessment shall be due during the 2012-2013 fiscal year.*

*Finally, the proposed CDO would require the District to complete any capacity improvements identified in the capacity assessment. While the specific financial impact on the District is unknown, the District anticipates that the amounts at issue are substantial and that the District lacks the financial ability to implement such proposals.*

#### Response 10

As to the first part of the comment, the Prosecution Team believes the District is referring to Provision IV.A.1. This provision would have required a system-wide condition assessment by November 15, 2011, not the 2010 noted by the District. This is due to a typographical error. See our response to Hillsborough Comment 1C for the revised language to Provision IV.A.1 of the Tentative CDO.

Given this correction, the District will have two years from the time it says it may be able to start collecting increased fees to complete the condition assessment and submit a report. We believe this is adequate time to assess just 19 miles of sewers.

As to the second part of the comment, Provision IV.B.3 requires the District to submit a capacity assessment. Instead of dictating how the District must conduct a capacity assessment, the provision more appropriately allows the District flexibility in completing the task.

Moreover, as the District referenced in its comment 2, the District has completed the one capital improvement project related to insufficient capacity identified in its 1999 Sewer Master Plan, and thus has no more hydraulic deficiencies. Therefore, the District could anticipate that no more deficiencies will be identified in the updated capacity assessment that would be required by the CDO, and that very little if any financial impacts will occur.

**District Comment 11 Sewer Repair, Rehabilitation, and Replacement (Line 11, page 13)**

*Provision VI.A of the proposed CDO requires a plan that incorporates, among other things, research and assessment of data related to pipes repaired, rehabilitated, or replaced during the last twenty years. While recordkeeping has improved over time, making information regarding more recent repairs easier to locate, the District does not have the resources to dedicate to this extensive research, especially given the relatively little benefit that would flow from it.*

*Further, this plan also must address private lateral repair, rehabilitation and replacement as needed pursuant to the Capacity Assurance Plan in Provision V.B of the proposed CDO. The District does not own the sewer laterals and the sewer service charges collected do not cover replacement of the laterals. Moreover, the proposed CDO does not specify what sections of the private laterals the plan is required to address.*

**Response 11**

The Prosecution Team disagrees with the first part of this comment. Provision VI.A of the tentative CDO does not require “research.” It simply requires an infrastructure renewal plan that describes information regarding the length of pipe repaired, rehabilitated, or replaced during the last 20 years. Moreover, this provision further states that if the records are not available, an estimate can be provided.

As to the second part of the comment, the Prosecution Team agrees with the comment and revised Provision VI.A.5 of the tentative CDO. See our comment to the City of San Mateo comment 15 for further discussion.

**District Comment 12 Options for Coordination (Line 22, page 13)**

*Provision VII of the proposed CDO requires that San Mateo, Hillsborough, and the District complete a study by March 15, 2009, that evaluates options for coordination to implement and comply with the requirements of the proposed CDO. However, there are several activities that are to be completed within the same time period and the agencies have the daily administration, customer service, operations, and maintenance activities to perform during the same time period. This also requires coordination between three agencies, which is at times difficult to accomplish. There is insufficient time to complete this work and the District submits that this timeline should be extended by one year, to March 15, 2010.*

**Response 12**

Due to the time it has taken to resolve dischargers’ issue, the revised Tentative CDO, the Prosecution Team has revised this provision (old Provision VII, now Provision VIII in the Revised Tentative Order) to require that the study be completed by November 15, 2009. See also response to City of San Mateo comment 17.

**District Comment 13 Due Dates for Annual Reports (Line 4, page 14)**

*There are several annual reports in Provision VIII of the proposed CDO that are required by November 15, 2009. The proposed CDO does not specifically indicate the time period that the reports are to cover.*

**Response 13**

As mentioned in our response to District Comment 6, the Prosecution Team recognized that the original timelines for compliance stated in the tentative CDO had to be revised. In addition to revising this provision (old Provision VIII) to include a new submittal date, it has been revised due to a typographical error. A new Provision IX in the Revised Tentative CDO would require all annual reports to be due May 15<sup>th</sup> of each year beginning in May 2010, and each annual report is to cover the previous calendar year.

**District Comment 14 Times Frames for Plan Review, Approval and Implementation (Line 4, page 14)**

*Putting aside the practical difficulties with implementation of the capacity assessment-related requirements of the proposed CDO, the District does not presently have the funds necessary to pay for the implementation of the proposed CDO. The District had a fund balance of \$357,223 as of November 7, 2008, and its anticipated revenue for the 2008-2009 fiscal year is \$1,395,400. The District anticipates expending \$1,727,415 for in-District and out-of-District costs, far exceeding the District's annual revenues. Further, District staff has estimated that it would cost approximately \$460,000 over and above the District's existing financial obligations (which the District does not presently have the revenues to meet) to implement the various mandates of the proposed CDO to be accomplished in 2009.*

*Given the ordinary budgetary cycle and the specific processes for, and limitations on, increasing sewer rates, the District is unable to secure funds necessary to implement the Board's mandates to be accomplished in 2009 that are set forth in the proposed CDO. Assuming no successful majority protest, the soonest that the District could anticipate increased revenues from higher sewer service rates would be December 2009 and without increased revenues, the District simply lacks the ability to implement the proposed CDO requirements.*

**Response 14**

The order proposed for adoption by the Regional Water Board would require that the District immediately start efforts to adjust its revenues as necessary to cover current and future costs to comply with existing statewide requirements. The tasks that would be imposed by the CDO are intended only to ensure timely implementation of actions to ensure compliance with those requirements, both by the District and by downstream collection agencies.