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CRYSTAL SPRINGS COUNTY SANITATION
6 DISTRICT

7
8 BEFORE THE CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
9 SAN FRANCISCO REGION
10

11 In The Matter Of the

12
13 CRYSTAL SPRINGS COUNTY
SANITATION DISTRICT.

Case No. R-2-2008-0065

**RESPONSE OF THE CRYSTAL SPRINGS
COUNTY SANITATION DISTRICT TO
THE TENTATIVE CEASE AND DESIST
ORDER**

Hearing:

14
15
16 Date: December 10, 2008
Time: 9:00 a.m.
17 Location: Auditorium, Elihu Harris State
Building, 1515 Clay Street, Oakland
18

19
20 Pursuant to the September 16, 2008 Notice from the California Regional Water Quality Control
21 Board, San Francisco Bay Region (the "Board"), the Crystal Springs County Sanitation District (the
22 "District") hereby submits its written comments and evidence in response to the tentative cease and desist
23 order directed at the District (the "Tentative Order").¹
24

25
26 _____
27 ¹ The District has agreed to settle the Civil Liability Complaint (Complaint No. R2-2008-0065) seeking
28 administrative civil liability in an amount of \$23,375 (the "Complaint") and has waived its right to a
hearing regarding this matter.

1 **BACKGROUND LAW AND FACTS**

2 The following facts, which are set forth in the Board’s Tentative Order, are not materially in
3 dispute.

4 **The District**

5 The District, which provides sewer collection in an unincorporated area of the County, was
6 established in 1947 pursuant to legislative authority set forth in the County Sanitation District Act, which
7 is now codified at section 4700, *et seq.*, of the California Health and Safety Code. The District has a
8 population of 5,615 residents, based on 2000 census data, and approximately 1,430 sewer connections
9 and 1,532 equivalent residential units (ERUs), based on the District’s 2008-2009 sewer service charge
10 report. The District is comprised almost exclusively of residential customers, with only four non-
11 residential sewer connections. Residential customers are charged for sewer services at a rate based on
12 ERUs. (The present rate is \$900 per ERU.) The District maintains approximately 18.95 miles of sewer
13 lines, with approximately 29% of sewer mains located in easements in backyards and side yards and the
14 remaining 71% of sewer mains located within streets.

15 **County Sanitation District Act**

16 Under the Act, all powers of a county sanitation district are exercised by the district’s governing
17 board. Cal. H&S Code § 4763. As in the case of the District, where the territory of the sanitation district
18 does not include territory located within an incorporated city or a sanitary district, the county’s board of
19 supervisors also serves as the sanitation district’s governing board. Cal. H&S Code § 4730 (providing
20 that where “the district includes no territory which is in cities or sanitary districts, then the county board
21 of supervisors is the board of directors of the district”).²

22 While, in cases such as this, the county’s board of supervisors also serves as the board of directors
23 of a sanitation district, it is well established that sanitation districts are separate and distinct legal entities
24 that operate independently from the counties in which they are located. *Mitchell v. County Sanitation*
25

26 ² Sanitation districts “as formed may include incorporated or unincorporated territory, or both.” Cal.
27 H&S Code § 4711. When a sanitation district includes incorporated territory, the district’s board of
28 directors includes “the presiding officer of each city, the whole or part of which is included in the
sanitation district.” Cal. H&S Code § 4730.

1 *District No. 1 of Los Angeles County* (1958) 164 Cal. App. 2d 133, 144 (holding that sanitation districts
2 are “municipal corporations” that “operate independent of other agencies”).

3 Such districts are vested with broad-ranging powers, such as the power to sue and be sued in its
4 own name. Cal. H&S Code §4738. They may also employ such sanitation experts, surveyors, counsel,
5 and other persons as are needed to carry into effect any powers of the district; own property and sewer
6 systems; impose and collect rates, fees and charges for service provided; join with any other
7 governmental agency in the purchase, ownership, use, construction, maintenance, or operation of a sewer
8 system or treatment plant; contract with the county to apportion the costs of locating, or repairing, any
9 facilities on the property of the other party; sell, lease, or otherwise dispose of any property of the
10 district; issue bonds; incur bonded debts. Cal. H&S Code §§ 4739, 4740-4741.6, 4741.7 and 5471,
11 4742, 4742.4, 4743, 4746, and 4746.1. District may also cause to be levied and collected taxes upon all
12 the taxable real property in the district sufficient to meet the obligations evidenced by its bonds, to
13 maintain the works of the district, and to defray all other expenses incidental to the exercise of the district
14 powers. Cal. H&S Code §4747. They *shall* also employ sanitation engineers to make a survey and report
15 on the problems of the district concerning sanitation especially with reference to the matters of sewage
16 collection, treatment, and disposal, and refuse transfer or disposal. Cal. H&S Code §§ 4748-4758. They
17 may borrow money and incur indebtedness; (§4764) lobby for legislation (§4765); and contract with any
18 state agency to finance any district facilities authorized by state law. Cal. H&S Code §§ 4764, 4765,
19 4764.5.

20 **District Operations and Finances**

21 The sewage collected within the District is transported through jointly used sewer trunk mains
22 owned and operated by the Town of Hillsborough (“Hillsborough”) and the City of San Mateo (“San
23 Mateo”). The District is party to a 1989 four-party Sanitary Sewage Agreement (the “Agreement”) with
24 San Mateo, Hillsborough, and the County of San Mateo (the “County”)³, which sets forth the parties’
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26 _____
27 ³ The County of San Mateo is a party to the Agreement in its capacity as a property owner, in that it
28 operates sewer facilities upstream from the District that also flow through sewer trunk mains owned and
operated by Hillsborough and San Mateo.

1 respective responsibility for the above described sewers and other jointly used facilities, including a
2 waste water treatment plant (“WWTP”) operated by San Mateo, to which waste from each of the parties’
3 sewers flows.⁴ Under the Agreement, each party is responsible for necessary maintenance, repair, and
4 improvement of the sewers that it owns, and the Agreement also requires the District to pay a
5 proportional share of downstream capital improvement projects in Hillsborough and San Mateo. Also,
6 the Agreement specifies how sewage flows to the WWTP will be measured, and how plant-related
7 expenses will be allocated between the parties, based on their respective proportional contributions to
8 total flow to the WWTP.

9 **Crystal Springs Sewer Master Plan, Planned System Improvements, and District Finances**

10 In 1999, the District prepared a Crystal Springs Sewer Master Plan. The plan identified nine
11 capital improvement projects that were deemed necessary to address capacity limitations and structural
12 deficiencies in the sewer system. One of the nine projects, involving the replacement of sewer lines
13 along Polhemus Road, was intended to address system capacity deficiencies, and was completed in 2003.
14 This project was paid for out of the District’s fund balance. Further, the County loaned the District
15 approximately \$1 million dollars to help pay for the District’s proportional share of liability for a capital
16 improvement project undertaken by Hillsborough. The District has not yet repaid this loan.⁵ The other
17 eight projects, which would correct structural deficiencies or replace deteriorating sections of the system,
18 have not been undertaken, due to a lack of funding. Further, the City of San Mateo has nearly completed
19 capital improvements at the WWTP and, pursuant to the Agreement, the District is responsible for a
20 share of financial responsibility for this project.

21 In 2006, the District’s Board of Directors attempted to raise sewer service charge rates from
22 \$496.00 per ERU to \$ 1,517 per ERU, beginning in the 2006-2007 fiscal year, in order to provide the
23 revenue necessary to pay for capital improvements to the District’s sewer system and the District’s share
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25 ⁴ A copy of the Agreement is attached as Exhibit A to this memorandum.

26 ⁵ The loan was from the County’s general fund, in the amount of one million dollars. The loan, which
27 was made in 2006, is for a seven year period, with the first two years being interest only. The 2008-2009
28 fiscal year is the first one in which the District is required to make principal payments. A copy of the
loan document is attached hereto as Exhibit B.

1 of cost of downstream improvements and implement a Sewer System Management Plan for the District.⁶
2 However, property owners within the District mounted a successful majority protest pursuant to Article
3 13C of the California Constitution (Proposition 218) and the District was unable to implement the
4 proposed rate structure. In the 2006-2007 fiscal year, the revenue from the sewer rates was
5 approximately \$739,000.

6 Thereafter, District staff met multiple times with District community members/rate payers to
7 discuss the need for increased fees to finance District operations and improvements.⁷ As a result of these
8 efforts, the District Governing Board was able to raise the District's sewer service charge rates to \$900
9 per ERU, beginning in the 2007-2008 fiscal year, without a majority protest. The District's revenue from
10 the 2007-2008 fiscal year rates was approximately \$1,349,000. This rate and the revenue it generated
11 was anticipated to allow the District to repay the loan from the County, pursuant to the terms of the loan
12 agreement, as well as to allow the District to pay, over a fifteen-year term, its share of the cost of
13 improvements at the San Mateo WWTP. It does not, however, provide the revenue necessary to
14 complete the remaining eight projects described in the Crystal Springs Sewer Master Plan, nor does it
15 provide funds for the out-of-District projects described in the Tentative Order.

16 Sewer service charges have remained at the rate of \$900 per ERU during the 2008-2009 fiscal
17 year.⁸ Staff has continued to meet with members of the community to educate them on the need to
18 increase the District's revenues in order to fund operations and maintenance activities and in- and out-of-
19 District capital improvement projects such as those set forth in the Tentative Order. The District staff
20 intends to recommend to its Board of Directors a sewer service charge rate increase for the 2009-2010
21 fiscal year. The proposed rate increase will come to the District's Board of Directors in April 2009.
22 Assuming that the Board of Directors approves the rate increase, and further assuming that it is not the
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24 ⁶ A copy of the staff report materials proposing the increased rates is included as Exhibit C to this
25 memorandum.

26 ⁷ A partial list of the dates of staff meetings with District residents/rate payers is attached as Exhibit D to
27 this memorandum.

28 ⁸ A summary of the District's financial information as of November 7, 2008 is attached hereto as Exhibit
E.

1 subject of a successful majority protest, the District would nevertheless not begin to receive revenue from
2 such an increase until December 2009, as the fees are collected by the County Tax Collector on the
3 County property tax bills, and the first annual property tax payment is not deemed late until after
4 December 10th.

5 **ADMINISTRATIVE CIVIL LIABILITY COMPLAINT AND TENTATIVE CEASE AND**
6 **DESIST ORDER**

7 The Board's Complaint and Tentative Order alleges that the District violated various laws and
8 permits by allowing 22 sanitary sewer overflows ("SSOs") throughout the system since December 2004.
9 The Board alleges that these 22 SSOs resulted in a total of 18,000 -19,000 gallons of spilled sewage,
10 15,000 of which resulted from one event on January 25, 2008. The Tentative Order alleges that the SSOs
11 were caused by, among other things, debris and root blockages and storm water inflow and infiltration
12 into the sewer collection system from leaky pipes. The administrative complaint seeks to assess a
13 penalty of \$23,375 from the District and the District has agreed to waive its right to a hearing to
14 challenge this penalty.

15 The Tentative Order would require the District, Hillsborough and San Mateo to take certain
16 actions to eliminate the SSOs. Among other things, the District would be required to complete, by
17 October 31, 2013, eight remaining capital improvement projects identified in the 1999 Sewer Master
18 Plan (SMP).⁹ It would also require the District to develop an SSO Response Plan that describes
19 emergency response and contingency procedures to address SSOs, and development of a Sewer System
20 Cleaning and Root Control Program to ensure that at least thirty percent of the District's sewer pipe
21 mileage is cleaned each year. The Tentative Order would also require the preparation and submission of
22 a number of reports, assessments, plans and certifications, including a plan, due by March 15, 2011, to
23 address short and long-term repair, rehabilitation, and replacement of sewer pipes.

24
25 ⁹ The 1999 Sewer Master Plan (SMP) identified nine capital improvement projects necessary to address
26 capacity limitations, structural deficiencies, and areas of excessive maintenance in the sewer system.
27 One of the nine projects was completed in 2003. The other eight projects have been deferred, due to a
28 lack of funding. It is estimated that it would cost approximately \$2.3 million to complete the remaining
projects.

1 While the Board recognizes that District itself lacks resources to pay the administrative penalty
2 and/or undertake the systems improvements sought in the Tentative Order, it alleges that the District is
3 operated by the County and that the County has resources in its general fund to pay fines and undertake
4 the activities required by the Tentative Order.

5 **DISTRICT RESPONSE TO ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

6 As noted, the District has waived its right to contest the imposition of the administrative civil
7 liability in the amount of \$23,375.

8 **DISTRICT RESPONSE TO TENTATIVE CEASE AND DESIST ORDER**

9 By way of background, it is important to note that the District maintains nineteen miles of pipe,
10 that there were twenty-two SSOs during the time period in question, and that there were a total of 18,763
11 gallons of waste spilled in connection with these SSOs. This reflects approximately 987 gallons of waste
12 spilled for each mile of pipe during the time period at issue. It is also important to note that the one large
13 spill discussed in the Tentative Order and the Complaint (of approximately 15,000 gallons) that occurred
14 during a storm event significantly distorts this data.¹⁰ If that one spill were removed from the analysis,
15 the total gallons spilled from the District's system would be approximately 3,763 gallons and the gallons
16 spilled per each mile of pipe would be reduced to 198.

17 **The County Does Not Operate the District**

18 On Page 3 of the Tentative Order, the Board asserts that the "County of San Mateo operates the
19 Crystal Springs Sanitation District." This is factually and legally incorrect. As noted, the District is a
20 legal entity separate and distinct from the County and the County does not operate the District's
21 collection system. *Mitchell v. County Sanitation District No. 1 of Los Angeles County* (1958) 164 Cal.

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23
24 ¹⁰ In the Complaint, the Board states that the "SSO of 15,000 gallons to Polhemus Creek is especially
25 grave because it reached surface waters and adversely impacted water contact recreation and aquatic
26 life." Complaint, at 4. The discharge of 15,000 gallons was due to a root blockage and occurred during a
27 major storm event. It was *not* caused by insufficient carrying capacity of wet weather flows in the sewer
28 main. This discharge, while unfortunate, does not compare in size to the other discharges alleged by the
Board, with the next largest one being 650 gallons. The 15,000 gallon SSO substantially distorts the total
discharge quantity at issue here, as it represents approximately 80% of the total gallons discharged by the
District that are cited in this action.

1 App. 2d 133, 144 (holding that sanitation districts are “municipal corporations” that “operate independent
2 of other agencies”).

3 Rather, the District operates its own system pursuant to its authority under the County Sanitation
4 District Act. As discussed above, the District’s powers under that Act include that of retaining staff
5 necessary for operation and maintenance of its facilities. Here, for reasons of convenience and economy,
6 the District has chosen to utilize staff members who are employees of the County to maintain the
7 District’s system. This does not, however, mean that the County itself operates the District systems,
8 which are owned and operated by the District under State law. For the Board to argue otherwise is to
9 ignore the separate corporate existence that the District enjoys under State law.

10 Section 2.50.020 of the San Mateo County Ordinance Code recognizes, in fact, the separate legal
11 status of each special district, including the District, formed pursuant to state law, and further requires
12 that the County’s expenses in serving such districts be recovered from them:

13 The [County] Director of Public Works shall be ex-officio engineer of any and all sewer
14 maintenance, water maintenance, drainage, street lighting, flood control or sanitation districts or
15 service areas formed to provide heretofore described services, for which the Board of Supervisors is
16 the governing body.

17 For those entities for which the Director serves as ex-officio engineer, the Director shall collect all
18 revenues, pay all bills and generally administer the affairs and coordinate the administration. To
19 accomplish said purpose, the Director is hereby given the authority pursuant to orders of the Board
20 of Supervisors to transfer equipment, machinery, furnishings or supplies from one district to
21 another. ***Subject to the approval of the Board of Supervisors, the Director may create and abolish
22 positions in any of the districts under the Director’s supervision, or use County Public Works
23 employees to perform the duties required therein and charge the respective districts therefore on
24 a prorata basis.***

25 San Mateo County Ord. Code § 2.50.020 (emphasis added). Thus, districts such as the one at issue
26 here have their own operating budgets and the time of County Department of Public Works personnel
27 spent working on matters for a given district is charged to it.

28 **Factors Contributing to Violations – General Problems**

29 In section 17 of the Tentative Order, on Page 6, the Board asserts that “[e]ach of the collection
30 systems and the San Mateo WWTP receive high flows during the rainy season.” However, the District
31 respectfully submits that this statement is not supported by reference to any specific evidence and that the
32 record is unclear as to what research or data was referred to in order to make this determination. The

1 District requests that the Board identify the data upon which it relies in making this assertion.

2 The Board also states, in the Tentative Order, that “the collection systems currently have
3 insufficient capacity to handle peak wet weather flows.” However, as noted above, the District’s Sewer
4 Master Plan identified only one capital improvement plan that was necessary to address hydraulic
5 deficiencies/capacity issues. Attached hereto as Exhibit F is a copy of the Sewer Master Plan. This
6 project, involving the replacement of sewer lines along Polhemus Road, was completed in 2003 and the
7 District therefore requests that the Board clarify that its statement regarding insufficient capacity does not
8 apply to the District.

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

18 **Current Operation and Maintenance of the Town of Hillsborough Collection System**

19 In section 30 of the Tentative Order, on Page 10, the Board reports that Hillsborough has
20 determined that it will wait until San Mateo addresses capacity issues at the WWTP and upgrades its
21 portions of the trunk lines before it proceeds with improvements that will increase the capacity of the
22 Crystal Springs/El Cerrito Trunk Sewer. However, the District has received a letter, dated September 23,
23 2008, from Martha Debry, employed by Hillsborough, wherein she states that Hillsborough intends to
24 proceed with the project to make improvements to the Crystal Springs/El Cerrito Trunk Sewer, such that
25 it can be bid in the Fall of 2009.¹¹ It seems unlikely that San Mateo will have addressed capacity issues
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27

28 ¹¹ A copy of this letter is attached as Exhibit G to this memorandum.

1 by then and, in this regard, the Tentative Order and the correspondence from Hillsborough appear to be
2 inconsistent. The District requests that the Tentative Order be revised to resolve this apparent
3 inconsistency.

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

8 **Current Operation and Maintenance of the Crystal Springs County Sanitation District**
9 **Collection System**

10 In section 35 of the Tentative Order, on page 11, the Board states that "the Polhemus Road
11 project has reduced SSOs that were caused by insufficient capacity in the District." However, this
12 statement is speculative in that District's Sewer Master Plan determined that there were hydraulic
13 deficiencies in the section of pipe that was replaced, but the Tentative Order does not indicate what data
14 it relies on to conclude that there have been SSOs in the past in the section of pipe that was replaced.

15 **Timetable of Ordered Actions, Plans, Reports, and Coordination**

16 In the Tentative Order, the Board has ordered the District, Hillsborough, and San Mateo to
17 undertake a number of actions to immediately eliminate SSOs and to prepare and submit to the Board
18 several reports and plans regarding their respective systems. The District has reviewed these
19 requirements and concluded that it would cost the District an estimated \$13 million dollars in additional
20 capital improvement and operations and maintenance expenses through the end of 2013 to comply with
21 all of the actions mandated by the Tentative Order, including approximately \$447,300 in 2009 and
22 \$17,020,300 in 2013.¹² The District does not presently have the financial resources or the rate structure
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24 ¹² Attached hereto as Exhibit H is a spreadsheet showing the District's analysis/estimate of the additional
25 expenses that it would incur in complying with the Tentative Order. Further, the District notes that
26 because there are studies that are ordered/under way (including the capacity evaluation referenced in the
27 Board's Order Number R2-2007-0075) that may identify additional capacity-related work that needs to
28 be done on the sewer collection system for which the District may be partially responsible, the District's
ultimate costs of compliance based on potential additional identified projects, could far exceed the
estimates provided herein.

1 necessary to implement the Board’s Tentative Order. Further, Proposition 218 provides that the District
2 cannot raise rates unless it complies with certain constitutional mandates and unless it avoids a successful
3 majority protest.

4 **Collection System Capacity Assessment**

5 For example, on page 18 of the Tentative Order, the Board sets forth a requirement that by March
6 15, 2009, the District, the Town of Hillsborough and the City of San Mateo “shall each install flow
7 meters to assess average and peak dry and wet weather flow rates through its collection system.”

8 Initially, and putting aside the financial constraints facing it, the District respectfully submits that March
9 15, 2009 is likely to be too late in the season to yield useful data regarding average and peak dry and wet
10 weather flows throughout the collection system. Further, by the time the hearing has occurred in this
11 matter, and given the amount of time necessary to coordinate contracts necessary to comply with this
12 order (and in light of the extraordinarily constrained near-term financial circumstances facing the District
13 and other public agencies), the District is unlikely to be able to complete the consultant contracts and
14 other financial arrangements necessary to install the mandated flow meters by March 15, 2009.

15 Therefore, the District respectfully requests that the timeline for compliance with this flow-metering
16 requirement be moved to the winter of 2009-2010, and that the District (and other agencies subject to this
17 order) be required to install the flow meters by December 15, 2009. The District further requests that the
18 other dates for completion of actions set forth in the Tentative Order that are premised on flow metering
19 occurring beginning on March 15, 2009, be continued to correspond to flow metering taking place
20 beginning on December 15, 2009.

21 **Sewer System and Root Control Program**

22 The Tentative Order requires that a number of reports, including an annual report addressing
23 sewer cleaning and root control, be submitted to the Board. However, the Tentative Order does not
24 indicate what actions, if any, the Board will take on these reports. For example, the District submits that
25 the Board should consider including a timeline for the Board to review and respond to reports submitted
26 by the District so that any Board feedback is timely. Moreover, the District requests clarification
27 regarding the time period to be covered by reports referenced in the Tentative Order that are due on
28 March 15th of each year.

1 **Pump Station and Force Main Reliability Certification**

2 The Tentative Order, in Section III.C. requires the District to submit certifications and reports
3 regarding pump stations and force mains. However, the District does not own, operate, or maintain any
4 pump stations or force mains and the District submits that Section III.C. should therefore be amended to
5 delete references to the District.

6 **Fats Oils and Grease (FOG) Blockage Control Report**

7 The Tentative Order requires a report documenting its program to control FOG and the
8 effectiveness of the program. The District, however, is made up almost exclusively of residential
9 customers. Subsection 3 of Section III.D. requires the following: a FOG source control program,
10 including ordinances, treatment, best management practice requirements, source inspections and
11 enforcement procedures, and outreach and education efforts. The District program should not require
12 matters such as treatment, source inspections, and enforcement procedures, as the District does not have
13 the customers that require this (i.e., food service and preparation establishments). The Tentative Order
14 should state the customer type base for the District and acknowledge that some of the requirements of the
15 FOG program do not apply to it.

16 **Collection System Condition Assessments**

17 The Tentative Order requires a system-wide condition assessment of the District's sewers by no
18 later than November 15, 2010. However, the sewer rate structure that the District has been able to
19 impose beginning in the 2007-2008 fiscal year includes an element providing for system-wide CCTV
20 inspection only on a six-year cycle. Consequently, the District will not have collected sufficient money
21 to perform this work by November 15, 2010, even if a sewer rate increase is adopted in the near future to
22 support this work. (Even assuming the absence of a successful majority protest, the District would not be
23 able to begin collecting revenues associated with increased sewer service rates until December of 2009.)
24 Consequently, the District respectfully requests that the Tentative Order be amended to set the deadline
25 for a system-wide condition assessment for 2012-2013.

26 Further, the Tentative Order requires that, by March 15, 2011, the District shall complete an
27 assessment and submit a report to the Board on the collection system flows and hydraulic capacity. The
28 Tentative Order does not indicate whether all sewer lines are to be modeled, and often, hydraulic models

1 do not include sewer lines of 6 or 8 inch in diameter. The Tentative Order is not specific on this issue.
2 Requiring a model of all sewer lines will unnecessarily increase the cost to the District and may not
3 provide useful information regarding the system. In any event, in light of the foregoing discussion
4 regarding its financial circumstances, the District respectfully requests, as noted in the preceding
5 paragraph, that the Tentative Order be amended so that any such assessment shall be due during the
6 2012-2013 fiscal year.

7 Finally, the Tentative Order would require the District to complete any capacity improvements
8 identified in the capacity assessment. While the specific financial impact on the District is unknown, the
9 District anticipates that the amounts at issue are substantial and that the District lacks the financial ability
10 to implement such proposals.

11 **Sewer Repair, Rehabilitation, and Replacement**

12 Section VI.A. of the Tentative Order requires a plan that incorporates, among other things,
13 research and assessment of data relating to pipes repaired, rehabilitated, or replaced during the last
14 twenty years. While record keeping has improved over time, making information regarding more recent
15 repairs easier to locate, the District does not have the resources to dedicate to this extensive research,
16 especially given the relatively little benefit that would flow from it.

17 Further, this plan also must address private lateral repair, rehabilitation and replacement as
18 needed pursuant to the Capacity Assurance Plan in Paragraph V.B. of the Tentative Order. The District
19 does not own the sewer laterals and the sewer service charges collected do not cover replacement of the
20 laterals. Moreover, the Tentative Order does not specify what sections of the private laterals the plan is
21 required to address.

22 **Options for Coordination**

23 Section VII of the Tentative Order requires that San Mateo, Hillsborough, and the District
24 complete a study by March 15, 2009 that evaluates options for coordination to implement and comply
25 with the requirements of the Tentative Order. However, there are several other activities that are to be
26 completed within the same time period and the agencies have the daily administration, customer service,
27 operations, and maintenance activities to perform during the same time period. This also requires
28 coordination between three agencies, which is at time difficult to accomplish. There is insufficient time

1 to complete this work and the District respectfully submits that this timeline should be extended. In light
2 of the foregoing information provided by it, the District requests that the deadline for preparation of this
3 study be extended by one year, to March 15, 2010.

4 **Due Dates for Annual Reports**

5 There are several annual reports in Section VIII of the Tentative Order that are required by
6 November 15, 2009. The order does not specifically indicate the time period that the reports are to cover.
7 For example, are they for the previous fiscal year or some other time period?

8 **Time Frames for Plan Review, Approval, and Implementation**

9 Putting aside the practical difficulties with implementation of the capacity assessment-related
10 requirements of the Tentative Order, which are discussed at length, above, the District does not presently
11 have the funds necessary to pay for implementation of the Board's Tentative Order. The District had a
12 fund balance of \$357,223 as of November 7, 2008, and its anticipated revenue for the 2008-2009 fiscal
13 year is \$1,395,400.¹³ The District anticipates expending \$1,727,415 for in-District and out-of-District
14 costs, far exceeding the District's annual revenues.¹⁴ Further, as discussed, District staff has estimated
15 that it would cost approximately \$460,000, over and above the District's existing financial obligations
16 (which the District does not presently have the revenues to meet) to implement the various mandates of
17 the Tentative Order to be accomplished in 2009.

18 Given the ordinary budgetary cycle and the specific processes for, and limitations on, increasing
19 sewer rates, the District is unable to secure the funds necessary to implement the Board's mandates to be
20 accomplished in 2009 that are set forth in the Tentative Order. As described above, assuming no
21 successful majority protest, the soonest that the District could anticipate increased revenues from higher
22 sewer service rates would be December 2009 and without increased revenues, the District simply lacks
23 the ability to implement the Board's orders.

24
25 ¹³ See Exhibit G to this memorandum.

26 ¹⁴ The in-District costs include operations and maintenance expenses and costs associated with the Sewer
27 System master Plan. Out-of-District expenses include sewage treatment, debt service on completed
28 projects and projected debt service on pending projects. At this point, expenditures exceed revenues by
over \$300,000 per year.

1 Proposition 218 provides that property-related fees and charges, including those for sewer
2 services, may not be increased if, at a public hearing, the majority of owners of parcels identified as
3 subject to the proposed increased fees submit a written protest against the increase. *See* Cal. Const., Art.
4 13D, § 6. Given the constitutional mandate preventing a California local governmental agency from
5 raising fees in the face of majority protest, the District is without the power to unilaterally raise the funds
6 necessary to implement the Tentative Order. *Cf. Ventura Group Ventures v. Ventura Port Dist.* (2001)
7 24 Cal. 4th 1089, 1104 (holding that Proposition 13 prohibits the levying of property taxes in excess of
8 1% to pay a money judgment). Moreover, the District submits that it would be an idle act for the Board
9 to order it to undertake measures for which funding is unavailable due to a majority protest of rate
10 increases.

11 However, District staff is committed to continuing to work to educate District ratepayers on the
12 need to increase rates, and as noted, District staff has undertaken extensive discussions and education
13 efforts directed towards the District's residents, and beginning in the 2007-2008 fiscal year, the District
14 was able to raise its sewer service charges to the level of \$900 per ERU. The rates of the 2008-2009
15 fiscal year remain at \$900 per ERU. District staff believes that continued discussion with the community
16 may result in a willingness to increase sewer service charges to a level that would allow the District to
17 begin implementation of the Tentative Order but again points out that, even if such increases are
18 implemented, they will not, even under the best case scenario, result in additional revenues until
19 December of 2009.

1 **CONCLUSION**

2 In light of the foregoing, the District requests that all required actions in the Tentative Order be
3 continued for twelve months, in order to allow the District (and other affected agencies) time to take
4 necessary action to attempt to increase sewer service charges and/or identify other revenue sources in
5 order to meet the expenses associated with the various actions ordered therein.

6
7 Dated: November 10, 2008

MICHAEL P. MURPHY, COUNTY COUNSEL

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9 By: 

John D. Nibbelin, Deputy

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11 Attorneys for
12 CRYSTAL SPRINGS COUNTY SANITATION
13 DISTRICT
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1 **PROOF OF SERVICE**

2 **In the Matter of the Crystal Springs County Sanitation District – R-2-2008-0065**

3 I do hereby declare that I am a citizen of the United States employed in the County of San
4 Mateo, over 18 years old and that my business address is 400 County Center, Redwood City, California.
5 I am not a party to the within action.

6 On November 10, 2008, I served the following document(s):

7 **RESPONSE OF THE CRYSTAL SPRINGS COUNTY SANITATION DISTRICT TO THE**
8 **TENTATIVE CEASE AND DESIST ORDER**

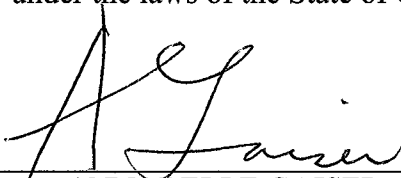
9 on all other parties to this action by placing a true copy of said document(s) in a sealed envelope in the
10 following manner:

11 (BY U.S. MAIL) by placing a true copy of said document(s) in a sealed envelope(s) addressed as
12 shown below for collection and mailing at Redwood City, California following our ordinary
13 business practices. I am readily familiar with this office's practice for collecting and processing
correspondence for mailing. On the same day that correspondence is placed for collection and
mailing, it is deposited in the ordinary course of business with the United States Postal Service in a
sealed envelope with postage fully prepaid.

14 (BY OVERNIGHT DELIVERY) by placing a true copy of said document(s) in a sealed
15 envelope(s) addressed as shown below for collection and delivery by an overnight delivery carrier
16 with delivery fees paid or provided for in accordance with this office's practice. I am readily
familiar with this office's practice for processing correspondence for delivery the following day by
an overnight delivery carrier.

17 (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of
18 the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent
19 to the persons at the e-mail address shown below. I did not receive, within a reasonable time after
the transmission, any electronic message or other indication that the transmission was unsuccessful.

20 (STATE) I declare under penalty of perjury under the laws of the State of California that the
21 foregoing is true and correct.

22 
23 _____
ANNABELLE GAISER

24
25 **NAME AND ADDRESS OF EACH PERSON TO WHOM SERVICE WAS MADE**

26 **See Attached Service List**

27 Please see attached service list.

SERVICE LIST

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Bruce Wolfe, Executive Officer
San Francisco Bay Regional Water Quality
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(Via Fedex)

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