

**California Regional Water Quality Control Board  
San Francisco Bay Region**

**PROSECUTION TEAM RESPONSE  
TO WRITTEN COMMENTS**

On Tentative Cease and Desist Order for  
Sanitary District No. 1 of Marin County  
(also known as Ross Valley Sanitary District)  
Marin County

The Regional Water Board received written comments from the Ross Valley Sanitary District (District) and one interested person, Mr. Dennis Portnoy, on a tentative cease and desist order that Regional Water Board prosecution staff (Prosecution Team) distributed for public comment. This response to comments summarizes each comment in *italics* (paraphrased for brevity) followed with responses by the Prosecution Team. Interested persons should refer to the comment letter to ascertain the full substance and context of each comment. Some revisions to the tentative order are shown with underline for additions and strikethrough for deletions.

As the District's April 17, 2013, Submission of Evidence and Policy Statements explains, the District is not contesting this tentative order, and "intends to implement and comply with the terms of the Tentative CDO to the best of its ability." (*Id.*, p. 1.) The District's submission and this response from the Prosecution Team add to the administrative record and the information presented to the Regional Water Board Members to consider in whether to issue the tentative order. The evidence establishes that the District has violated the Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, State Water Resources Control Board Order No. 2006-0003-DWQ, and threatens to violate the order in the future.

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- I. Ross Valley Sanitary District**
  - II. Mr. Dennis Portnoy**

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**I. Ross Valley Sanitary District**

**District Comment 1**

*The District responded to the tentative order's allegation of the District's failure to adequately allocate resources for the proper operation, maintenance, and repair of its collection system. The tentative order relies on a July 2011 rate increase recommend by staff, and the original FY 2012-2013 capital budget as representative of system needs, and that the District has not allocated adequate resources because the District adopted a partial one-year rate increase in July 2011, and revised the FY 2012-2013 original budge to exclude revenue from the sale of revenue bonds. The District's approved fiscal year (FY) 2011-2012 budget was consistent with its previous budgets and still included proposed capital expenditures. Its FY 2011-2012 budget for capital projects exceeded other similar Bay Area agencies (Castro Valley Sanitary District, Napa Sanitation District, Novato Sanitary District, West County Wastewater District, and West*

*Bay Sanitary District). The District's capital budget and actual expenditures for FY 2011-2012 were more than adequate to ensure the proper operation, maintenance, and repair of its collection system.*

*The tentative order does not explain that the FY 2012-2013 budget was extremely aggressive with respect to proposed capital improvement expenditures, and was not consistent with previous budgets. The District revised its FY 2012-2013 budget due to a change in circumstances and found it necessary to re-evaluate its proposed expenditures, and to responsible balance system needs as compared to financial resources. The action in FY 2012-2013 should be considered as a single action that is not indicative or representative of the District's commitment to operating and maintaining its collection system.*

*Recently the District has been dealing with significant staffing issues, including the investigation of its former general manager. The Marin County District Attorney has filed nine felony counts against him alleging he misappropriated \$350,000.*

*The District provided sufficient funding for capital expenditures, FY 2012-2013 was a year of unusual circumstances, and the District contends that it is not in violation of State Water Resources Control Board Order No. 2006-0003-DWQ. Regardless of the above, the District intends to make diligent efforts to comply with the Tentative CDO.*

#### Response 1

The Prosecution Team appreciates the District's willingness to comply with the tentative order, but disagrees that the District provided adequate funding of capital expenditures. As detailed in the tentative order findings, the District's actions have not provided for adequate funding that moves towards timely completion of capital improvement projects identified in the District's own 2007 plans, and subsequent condition assessments. (See Sewer System Replacement Master Plan, Sewer Hydraulic Evaluation and Capacity Assurance Plan, and Technical Memorandum CIP-4.) Of most immediate concern is the inadequate funding to address 45 identified pipe locations needing urgent repair. Instead of repairing these pipe locations, the District ran out of FY 2011-2012 funds and took no action to secure additional funds to address them in FY 2012-2013.

As to the District comparing its FY 2011-2012 capital budget with those of other Bay Area collection systems of similar size, there are other factors involved in determining what an adequate budget is for capital improvements. Major factors include the overall condition of the sewer pipe infrastructure, and its age.

As compared to the other cited collection systems, the District has generally had more sanitary sewer overflows (SSOs), which indicates that the overall condition is worse than the others, thus warranting a higher level of capital investment to renew infrastructure.

Table 1 shows the average number of spills for the Bay Area districts that the District is comparing itself to.

**Table 1. Average number of SSOs normalized by miles of sewer system owned by each district.**

District	Waste Discharge Identification number	Number of SSOs per 100 miles of sewer system per year	
		Category 1 <sup>1</sup>	Category 2 <sup>2</sup>
<b>Castro Valley Sanitary District</b>	2SSO10103	2.03	1.35
<b>Napa Sanitation District</b>	2SSO10159	Not Available <sup>3</sup>	Not Available
<b>Novato Sanitary District</b>	2SSO10162	3.11	2.67
<b>Ross Valley Sanitary District</b>	2SSO10172	7.4	7.4
<b>West Bay Sanitary District</b>	2SSO10215	0.0	4.76
<b>West County Wastewater District</b>	2SSO10216	3.52	0.39

(Data from CIWQS Operational Reports downloaded 4/24/13.)

At 7.4 spills per 100 miles of sewer system per year for both Category 1 and 2 SSOs, the District’s average number of spills is substantially higher than the other Bay Area districts it is comparing itself to. This clearly indicate that District’s system overall condition is poor.

Comparing the District with the five sanitary sewer agencies that the District discusses in its submission, the District has the oldest system with 81 percent having been constructed before 1960. Table 2 shows when the sanitary sewer systems were constructed (as a percentage of the total). The last column, before 1960, shows the percentage of the system that is older than 50 years.

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<sup>1</sup> State Water Resources Control Board Order No. 2006-0003-DWQ defines a Category 1 SSO to include all discharges of sewage resulting from a failure in a discharger’s sanitary sewer system that (a) equals or exceeds 1,000 gallons, or (b) results in a discharge to a drainage channel and/or surface water, or (c) discharges to a storm drainpipe that was not fully captured and returned to the sanitary sewer system.

<sup>2</sup> State Water Resources Control Board Order No. 2006-0003-DWQ defines a Category 2 SSO to include all discharges of sewage resulting from a failure in a discharger’s sanitary sewer system that does not meet the definition of a Category 1 SSO.

<sup>3</sup> The Operational Report was not available for the Napa Sanitation District. However, review of the SSO data for Category 1 SSOs indicates that the number and volume for Napa are significantly lower than the District’s. Napa has only reported 16 Category 1 SSOs, with the largest SSO reported as 15,000 gallons.

**Table 2. Age of sanitary sewer system as percentage of total**

District	Waste Discharge Identification number	Last Updated On	Percent Constructed							Before 1960
			Before 1900	1900-1919	1920-1939	1940-1959	1960-1979	1980-1999	2000 - current	
<b>Castro Valley Sanitary District</b>	2SSO10103	3/29/2013	0	0	5	56	24	12	3	<b>61</b>
<b>Napa Sanitation District</b>	2SSO10159	2/14/2013	7	10	10	15	30	25	3	<b>42</b>
<b>Novato Sanitary District</b>	2SSO10162	4/2/2013	0	0	0	22	46	22	10	<b>22</b>
<b>Ross Valley Sanitary District</b>	2SSO10172	10/17/2012	0	5	5	71	0	10	9	<b>81</b>
<b>West Bay Sanitary District</b>	2SSO10215	2/21/2013	0	8	17	32	17	16	10	<b>57</b>
<b>West County Wastewater District</b>	2SSO10216	10/25/2012	0	0	18	31	34	9	8	<b>49</b>

(Data downloaded on 4/19/2013 from California Integrated Water Quality System (CIWQS).)

Regional Water Board staff looks forward to working with the District to ensure future compliance.

**District Comment 2**

*The District wants to ensure that the Regional Water Board is fully aware of the cost of complying with the Tentative CDO over the next five years. Specifically, the District estimates the cost of the projects identified in Attachment D (see District Comment 3) is approximately \$45 million. These costs do not include the costs associated with replacement and/or rehabilitation of the 45 pipe segment locations identified in Attachment A and the costs associated with other requirements contained the Tentative CDO. The Tentative CDO as proposed imposes significant costs to the District and its ratepayers. The District must still identify and implement appropriate financing measures to ensure compliance.*

**Response 2**

The Prosecution Team recognizes that compliance with the Tentative CDO will cost tens of millions of dollars. These costs are necessary to protect public health, water quality, and the environment, as well as to maintain the very valuable sewer system asset. We also contend that much of the expense should have already been spent on maintaining the prior to issuing this

tentative order. We estimate from U.S. census information available on the internet that the median annual household income for the communities in the District's service area is roughly \$100,000. Compared to the sewer service rate of \$638 (less than 0.7 percent of median income) the District should be able to support higher rates to comply with federal and State laws. (See District Board Meeting Minutes, July 20, 2011, Prosecution Evidence List no. 4h.)

**District Comment 3**

*Provision I.e.ii should reference Attachment D instead of Attachment E.*

**Response 3**

The Prosecution Team believes the District meant to refer to Provision I.e.iii instead of Provision I.e.ii. We agree with the comment and revised Provision I.e.iii as requested so that it references Attachment D.

**District Comment 4**

*The District points out that the capital improvement subprojects from 2007, listed in Attachment D of Provision I.e.iii, will be subject to possible amendment during development of its Infrastructure Asset Management Plan (IAMP). The District requests that the Regional Water Board Executive Officer be granted authority to change the current descriptions in response to the IAMP.*

**Response 4**

The Prosecution Team agrees that the capital improvement subprojects identified by the District in 2007 may be amended due to its IAMP recommendations. In fact, we intended Provision I.f of the tentative order to acknowledge that the District's IAMP may revise the capital improvement projects listed. For clarity therefore, we propose the revisions as follows:

Provision I.e..iii.

Prioritize and establish a schedule for capital improvement subprojects as identified in the Discharger's ~~Capital Improvement Strategic Plan portion of its January 31, 2007, Draft Final Technical Memorandum CIP-4CIP~~, which are identified in Attachment ~~E~~D to this Order, incorporated herein by reference. (Attachment D may be subsequently amended by the Executive Officer after consideration of subprojects from the IAMP.) The schedule shall show that such capital improvement subprojects will be completed no later than June 30, 2019.

Provision I.f.

The Discharger shall implement the recommendations of the IAMP which includes, but is not limited to, completing the capital improvement projects (e.g., replacement or rehabilitation of gravity pipelines, pump stations, and force mains) identified in its Sewer Master Plan, SHECAP, and CIP ~~(including any revisions to Attachment D. Attachment D may be amended by the Executive Officer after consideration of based on the IAMP).~~(Attachment D may be subsequently amended by the Executive Officer after consideration of subprojects from the IAMP.)

**District Comment 5**

*A number of references with respect to feet in Attachment D are incorrect and should be revised.*

Response 5

The Prosecution Team agrees with the comment and made revisions to Attachment D.

**District Comment 6**

*Page 1, Finding 3 - The collection system has 19 pump stations, not 20.*

Response 6

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

**District Comment 7**

*References to the Grade 4 and Grade 5 defects should be referred to as structural defects.*

Response 7

The Prosecution Team agrees with the comment and made revisions for clarity to Findings 7.f, Provision I.e, h and I, and footnotes 3 and 5.

**District Comment 8**

*Provision I.i should reference Provision I.h instead of Provision I.g.*

Response 8

The Prosecution Team agrees with the comment and made a revision to Provision I.i. The Prosecution Team also corrected an incorrect reference in Provision I.k and revised as follows:

By January 1, 2014, and quarterly for two years and annually thereafter for the duration of this Order, the Discharger shall submit a report providing the status of its Rehabilitation and Capital Improvement Projects as identified in Provisions I.a through I.hj...

**II. Mr. Dennis Portnoy**

**Portnoy Comment**

He is a concerned private citizen who believes the District should be repairing and replacing sewer pipe, and include funding, in the current fiscal year budget and ensuing years. He also asks if the District could be placed in a receivership. He is hopeful, but not convinced that the Regional Water Board will adopt a cease and desist order for the District at the May 8, 2013, Board Meeting. If a final cease and desist order is not adopted, he suggests a referral to the Attorney General.

Response

The tentative CDO will require the District to have adequate funding to rehabilitate its sanitary sewer system. In addition, given that the District has indicated its intention to comply with the tentative CDO, the Prosecution Team believes Mr. Portnoy's concerns will be mollified by the adoption of the tentative CDO. Thus, no changes to the tentative CDO are necessary due to Mr. Portnoy's comment.

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**Staff Initiated Changes**

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The Prosecution Team made the following editorial changes.

Finding 4.

...A private sewer lateral is that portion of a sewer pipe from a building foundation to the property line, or in some cases extending to the sewer main line, that the property owner is responsible for maintaining. Defective private sewer laterals ~~are a contributor~~ to wet weather inflow and infiltration into the Discharger's system and can contribute to the frequency and volume of sanitary sewer overflows.

Finding 7.b.

At an April 7, 2011, Discharger Board Meeting, the Discharger's staff proposed a sewer service rate increase of up to \$904 per year for five years to expand the District's funding for operation and maintenance of the District's sewer system, increase funding for capital projects, and ~~to~~ increase the District's rate of pipe replacement.