California Regional Water Quality Control Board

San Francisco Bay Region

RESPONSE TO WRITTEN COMMENTS
On the Tentative Order and Tentative Cease and Desist Order for
Stevens Creek Quarry, Inc., Cupertino Quarry, Cupertino, Santa Clara County

The Regional Water Board received written comments on a draft NPDES permit (tentative order) and draft cease and desist order (tentative CDO) distributed for public comment on April 1, 2021. The following parties provided comments:

1. Stevens Creek Quarry, Inc.
2. Ms. Rhoda Fry
3. Ms. Cathy Helgerson

The comments are summarized below in *italics* (paraphrased for brevity), followed by a staff response. For the full content and context of the comments, please refer to the comment letters. To request copies of the letters, see the contact information provided in Attachment F, section VIII.G, of the revised tentative order.

Revisions are shown with strikethrough ~~text~~ for deletions and underline text for additions.

STEVENS CREEK QUARRY

Stevens Creek Quarry Comment 1.

Stevens Creek Quarry requests that we revise the tentative order's Fact Sheet to state that the average monthly effluent limits will be removed from the permit in the next reissuance if the data on stormwater discharge duration collected over this permit term show that site discharges do not exceed four consecutive days. Stevens Creek Quarry believes that chronic (i.e., 4-day) water quality objectives should not apply to the discharge if it is unlikely to cause an exceedance in the receiving water for more than four consecutive days. Stevens Creek Quarry understands that there are not enough data available on stormwater runoff and discharge duration at this time to make this determination.

Response to Stevens Creek Quarry Comment 1.

We have not made changes in response to this comment. We agree that discharge duration must be considered when determining the water quality objectives relevant to a particular discharge. Discharge data collected during this permit term will be useful in determining the applicability of chronic water quality objectives expressed as 4-day averages. During reissuance, if the Regional Water Board finds there is no reasonable potential for particular pollutants in the discharge to cause or contribute to exceedances of the chronic water quality objectives, related water quality-based effluent limits may be removed. Doing so would be consistent with State Water Board Order WQ 2001-16.

For pollutants that show reasonable potential, average monthly effluent limits are required in accordance with the State Water Board *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* (State Implementation Plan or SIP). Water quality-based

effluent limits for priority pollutants with reasonable potential must be calculated according to SIP section 1.4.

Stevens Creek Quarry Comment 2.

Stevens Creek Quarry requests that we revise the tentative CDO to increase or remove the cyanide interim effluent limit of 19 micrograms per liter (µg/L) at Discharge Points 002, 003, and 004. Stevens Creek Quarry suggests instead an interim cyanide limit of 47 µg/L based on the 75th percentile of cyanide concentrations in the National Stormwater Quality Database. Stevens Creek Quarry points out that it has sampled cyanide only twice and Table 3, footnote 4, of the tentative CDO states, "…the few available discharge data probably do not represent the full variability of the expected discharge…." Therefore, it is unclear if the 19 µg/L interim effluent limit is reasonable. Stevens Creek Quarry also states that cyanide is neither used nor produced onsite.

Stevens Creek Quarry also points out a typographical error where the word "selenium" is used instead of "cyanide" in Footnote 4 to Table 3 of the tentative CDO.

Response to Stevens Creek Quarry Comment 2.

We agree that the source of the cyanide detected in the two samples is unclear considering that Stevens Creek Quarry does not use or produce cyanide onsite. However, we also agree that the highest cyanide concentration found in the two samples may not adequately reflect the range of concentrations expected under existing conditions. Therefore, we calculated a revised interim cyanide effluent limit of 72 µg/L. Rather than rely on the National Stormwater Quality Database as Stevens Creek Quarry proposes, we used the two samples collected onsite and, to account for potential variability, the method described in section 3.3.2 of the *Technical Support Document for Water Quality-Based Toxics Control*, *EPA 505-2-90-001* (U.S. EPA, March 1991). We multiplied the maximum observed effluent concentration (MEC) of 19 µg/L by a factor of 3.8 based on the 95 percent confidence level, number of data points (n = 2), and an assumed (default) coefficient of variation (CV) of 0.60.

We revised Table 4 of the tentative CDO as follows:

Parameter	Maximum Daily Effluent Limit
Discharge Point 001 and 006	
Total Suspended Solids	12,000 mg/L
pH	8.9
Discharge Points 002, 003, and 004	
Total Suspended Solids	1,200 mg/L
pH	10
Cyanide	~~19~~ 72 µg/L

We revised finding 15 of the tentative CDO as follows:

> The interim effluent limits for TSS, pH, and cyanide listed in Table 4 are intended to ensure that the Discharger maintains at least its existing performance while completing the tasks the time schedule requires. These interim effluent limits were determined as described below. ~~are set equal to the maximum TSS and pH observed at Discharge Point 006, and the maximum TSS, pH, and cyanide observed at Discharge Points 002, 003, and 004, from December 2018 through March 2020. The MEC was chosen because data are insufficient to estimate a distribution and determine an interim limit statistically, except~~

~~for TSS at Discharge Points 002, 003, and 004, at which the 99.87th percentile (i.e., three standard deviations) is the same as the MEC.~~

The interim effluent limits for TSS and pH were set equal to the maximum TSS and pH observed at Discharge Point 006, and at Discharge Points 002, 003, and 004, from December 2018 through March 2020. The maximum effluent concentration (MEC) was chosen because we have enough TSS and pH data to be confident that the MEC estimates the high end of their distributions.

Because there are only two data points for cyanide, one each from Discharge Points 003 and 004 collected in March 2019, these data do not represent the full variability of the expected discharge. To account for variability, the interim effluent limitation for cyanide was calculated using the method in *Technical Support Document for Water Quality-Based Toxics Control*, *EPA 505-2-90-001* (U.S. EPA, March 1991), section 3.3.2. We multiplied the MEC of 19 µg/L by a factor of 3.8 based on the 95 percent confidence level, number of data points (n = 2), and an assumed (default) coefficient of variation (CV) of 0.60.

The interim TSS effluent limits serve as proxies for settleable matter and the metals listed in Table 1 (i.e., chromium (III), chromium (VI), copper, led, nickel, selenium, and zinc). Settleable matter removal is expected to correlate roughly with TSS removal….

We revised footnote 4 of Table 3 of the tentative CDO to correct the typographical error as follows:

> Only two cyanide samples have been collected, and the maximum ~~selenium~~ cyanide concentration of 19 µg/L exceeds the average monthly effluent limit. Because the few available discharge data probably do not represent the full variability of the expected discharge, consistent compliance with both limits is considered unlikely.

Because more cyanide data are needed to confirm whether cyanide is present and, if necessary, to provide data for treatment system design, we also increased the cyanide monitoring frequency to quarterly. Specifically, we revised Attachment E, Table E-2, of the tentative order as follows:

Parameter	Units	Sample Type [1]	Minimum Sampling Frequency
Flow [2]	gpd	Continuous	1/Month [3]
⋮	⋮	⋮	⋮
Zinc	µg/L	Grab	1/Year or 1/Month [5]
Cyanide	µg/L	Grab	~~1/Year or 1/Month [5]~~ 1/Quarter
Acute Toxicity [6]	% Survival	Grab	1/Year or 1/Month [5]
⋮	⋮	⋮	⋮

We also revised Attachment F, Table F-10, of the tentative order as follows:

Parameter	Effluent EFF-001 through EFF-004 and EFF-006	Effluent EFF-005	Receiving Water RSW-001 through RSW-004
Conductivity	—	2/Year	—
⋮	⋮	⋮	⋮
Zinc	1/Year or 1/Month [1]	—	2/Year
Cyanide	~~1/Year or 1/Month [1]~~ 1/Quarter	—	2/Year
Acute Toxicity	1/Year or 1/Month [1]	—	—
⋮	⋮	⋮	⋮
Visual Observations	1/Month and during sampling events	Each Occurrence	—

Stevens Creek Quarry Comment 3.

Stevens Creek Quarry requests that we group outfalls for the purpose of acute toxicity monitoring and compliance, and require sampling on a rotating basis. Stevens Creek Quarry also requests that we reduce the acute toxicity monitoring frequency to no more than the minimum the Basin Plan requires.

Response to Stevens Creek Quarry Comment 3.

We agree and revised section IV.D of the tentative order as follows:

> Discharges at Discharge Points 001, 002, 003, 004, and 006 shall comply with the following effluent limitation: no bioassay test shall show survival of less than 70 percent. Compliance shall be measured at Monitoring Locations EFF-001 and EFF-006 combined, and Monitoring Locations EFF-002, EFF-003, and EFF-004 combined, as described in the MRP.
>
> ~~Discharges at Discharge Points 001, 002, 003, 004, and 006 shall comply with the following effluent limitations, with compliance measured at Monitoring Locations EFF-001, EFF-002, EFF-003, EFF-004, and EFF-006 as described in the MRP:~~
>
> ~~**1.** Three-sample median value of not less than 90 percent survival; and~~
>
> ~~**2.** Single-sample value of not less than 70 percent survival.~~
>
> ~~These acute toxicity limitations are defined as follows:~~
>
> - ~~**Three-sample median.** A bioassay test showing survival of less than 90 percent represents a violation of this effluent limit if one of the past two bioassay tests show less than 90 percent survival.~~
>
> - ~~**Single-sample maximum**. A bioassay test showing survival of less than 70 percent represents a violation of this effluent limit.~~

We revised Attachment E, Table E-2, Footnote 6, of the tentative order as follows:

> Acute bioassay tests shall be performed in accordance with MRP section V. One of either Monitoring Location EFF-001 or EFF-006, and one of Monitoring Location EFF-002,

EFF-003, or EFF-004, shall be monitored on a rotating basis. If no discharge flow is present, monitoring shall take place at the next monitoring location in the rotation.

We revised Attachment F of the tentative order to add section IV.C.4.d as follows:

> **d. Acute Toxicity.** This Order's acute toxicity effluent limitation is based on Basin Plan Table 4-3. This limit is appropriate because the discharges are intermittent.

Stevens Creek Quarry Comment 4.
Stevens Creek Quarry requests that we revise Attachment E, Table E-2, Footnote 5, and Attachment F, Table F-10, Footnote 1, of the tentative order to allow the monitoring frequency to revert to once per year after the report of waste discharge (application for permit reissuance) is submitted on October 3, 2025.

Response to Stevens Creek Quarry Comment 4.
We agree. The tentative order includes a period of monthly monitoring to ensure that Stevens Creek Quarry provides data that reflect treatment improvements with its application for permit reissuance. Fewer data will be needed after the application is submitted. As such, we revised Attachment E, Table E-2, footnote 5, and Attachment F, Table F-10, footnote 1, of the tentative order as follows (the two footnotes are identical):

> Frequency shall be once per year (1/Year) until July 31, 2024, and once per month (1/Month) beginning August 1, 2024. Frequency shall revert to 1/Year on October 3, 2025, if a complete Report of Waste Discharge is timely submitted (see Table 3 of this Order).

Stevens Creek Quarry Comment 5.
Stevens Creek Quarry provides a revised process flow diagram and asks that we replace the process flow diagram in Attachment C of the tentative order.

Response to Stevens Creek Quarry Comment 5.
We agree. Attachment C of the revised tentative order includes the new process flow diagram.

Stevens Creek Quarry Comment 6.
Stevens Creek Quarry requests several revisions to Table 5, Time Schedule and Prescribed Actions, of the tentative CDO.

Stevens Creek Quarry requests that we add the following footnote to Table 5, task d.i, of the tentative CDO, which would require Stevens Creek Quarry to construct the Drainage Area 2 Basin (i.e., BAGG Basin):

> *This deadline will be extended if Santa Clara County does not issue permit approval in a timely manner and no later than August 1, 2021.*

Stevens Creek Quarry states that Santa Clara County has not yet approved constructing the basin and that Stevens Creek Quarry needs approval by August 1, 2021, to meet the tentative CDO deadline of November 1, 2021.

Stevens Creek Quarry also requests that we remove Table 5, tasks d.ii and d.iii, of the tentative CDO and include those projects in Attachment F, section II.E.3, of the tentative order, where completed corrective actions are discussed.

Stevens Creek Quarry further requests that we revised the deadline for Table 5, task e (Pilot Study Plan), of the tentative CDO from September 30, 2021, to January 1, 2022. Stevens Creek Quarry states that the September 30, 2021, deadline leaves only 1.5 months to implement the pilot study plan, which may not be enough time considering site constraints. The revised deadline would provide two more months to implement the pilot study plan and collect data during the 2021-2022 rainy season.

Finally, Stevens Creek Quarry requests that we revise the deadline for Table 5, task h, of the tentative CDO to September 30, 2023, to be consistent with previous reporting deadlines.

Response to Stevens Creek Quarry Comment 6.

We mostly agree. We did not, however, add the requested footnote to allow extension of the deadline to construct the Drainage Area 2 Basin. Santa Clara County staff have determined that Stevens Creek Quarry does not need County approval for the Drainage Area 2 Basin as shown in documents previously submitted (April 27, 2021, email "SCQ detention basin" from Robert Salisbury, County of Santa Clara Planning Office, to John Madigan, Robert Schlipf, and Lisa McCann of the Regional Water Board, and Jason Voss of Stevens Creek Quarry), so the requested footnote is unnecessary.

We revised Table 5 of the tentative CDO as follows:

Table 5: Time Schedule and Prescribed Actions

Task	Deadline
a. Implement or maintain operational management actions described in *Level 2 Exceedance Response Action (ERA) Technical Report for TSS and Iron (Geosyntec Consultants, July 1, 2020)*, including, at minimum: **i.** Maximizing pumping from existing sediment ponds and traps to Quarry Pit/Pond; **ii.** Maximizing onsite use of storm and process water (e.g., for dust control to the extent feasible); and **iii.** Evaluating the feasibility of installing a mechanical enhanced evaporation system for the Quarry Pit/Pond.	August 15, 2021
⋮	⋮
c. Submit plan and implementation schedule for pilot study of advanced treatment systems described in *Level 2 Exceedance Response Action (ERA) Technical Report for TSS and Iron* (Geosyntec Consultants, July 1, 2020).	September 30, 2021
d. Take actions necessary to control and treat stormwater runoff, as proposed in Level 2 Exceedance Response Action (ERA) Technical Report for TSS and Iron (Geosyntec Consultants, July 1, 2020), including~~:~~ **i.** ~~I~~ installing Drainage Area 2 basin with capacity to treat runoff from Drainage Areas 1 and 6, and upgradient portion of Drainage Area 2, produced by an 85th percentile, 24-hour storm. These drainage areas are defined in Permit Attachment F, section II. ~~**ii.** Install additional Drainage Area 3 basin with capacity to treat runoff from Recycle Plant area produced by an 85th percentile, 24-hour storm. Drainage Area 3 is defined in Permit Attachment F, section II.~~ ~~**iii.** Regrade Recycle Plant area and install stormwater conveyance infrastructure to reduce sheet flow through the Recycle Plant and divert runoff from concrete and asphalt stockpile locations to the new Drainage Area 3 sediment pond described above.~~	November 1, 2021
e. Implement pilot study plan required in task c.	~~November 15, 2021~~ January 1, 2022
f. Submit report on treatment pilot study results and preliminary design specifications based on those results, including a plan and schedule to select and implement a preferred option.	September 30, 2022

Task		Deadline
g.	Implement plan required in Task f.	November 15, 2022
h.	If by May 1, 2023, discharge data continue to show that discharges do not comply with Permit effluent and receiving water limits, submit a report identifying additional actions to ensure compliance. These actions shall include, but not be limited to, reviewing pretreatment options and treatment upgrades. The report shall identify an implementation schedule for investigating these options, selecting a preferred option, and implementing the preferred option. At a minimum, the report shall plan for the following activities: **i.** Bench scale testing or pilot scale testing or both, **ii.** Development of preliminary design specifications, **iii.** Development of final design specifications, **iv.** Procurement of funding, **v.** Acquisition of necessary permits and approvals, and **vi.** Construction.	~~July 15,~~ September 30, 2023
i.	Implement the plan required in Task h.	August 31, 2023
⋮		⋮

Stevens Creek Quarry Comment 7.

Stevens Creek Quarry requests that we define the term "MEC" in the tentative CDO.

Response to Stevens Creek Quarry Comment 7.

We agree and revised finding 15 of the tentative CDO to define MEC as "maximum effluent concentration" (see Response to Stevens Creek Quarry Comment 2).

Stevens Creek Quarry Comment 8.

Stevens Creek Quarry requests that the language in Table 4, footnote 1, and Table 5, footnote 1, of the tentative order be repeated in Table 1, footnote 1, of the tentative CDO. All three footnotes pertain to pH limits.

Response to Stevens Creek Quarry Comment 8.

We disagree. The tables in the tentative order and tentative CDO have different purposes. Tables 4 and 5 in the tentative order list effluent limits; Footnote 1 of these tables clarifies how to determine compliance with the pH effluent limits when pH is monitored continuously. Table 1 of the tentative CDO simply cites those effluent limits for reference; it imposes no new or different requirements. Therefore, a footnote regarding compliance determination is unneeded.

We recognize that the tentative CDO's language and table format were potentially confusing and, therefore, created new columns for the instantaneous pH limitations cited in Table 1 of the tentative CDO:

Table 1: Permit Effluent Limits

Parameter	Average Monthly Effluent Limit	Maximum Daily Effluent Limit	Instantaneous Minimum Effluent Limit	Instantaneous Maximum Effluent Limit
Discharge Points 001 and 006				
Oil and Grease	10 mg/L	20 mg/L	—	—
pH	~~[1]~~ —	~~[1]~~ —	6.5	8.5

Parameter	Average Monthly Effluent Limit	Maximum Daily Effluent Limit	Instantaneous Minimum Effluent Limit	Instantaneous Maximum Effluent Limit
Settleable Matter	—	1.0 mL/L-hr	—	—
Chromium (III)	370 µg/L	740 µg/L	—	—
Copper	17 µg/L	34 µg/L	—	—
Lead	8.8 ug/L	18 ug/L	—	—
Nickel	96 µg/L	190 µg/L	—	—
Selenium	4.1 µg/L	8.2 µg/L	—	—
Zinc	130 ug/L	270 µg/L	—	—
Discharge Points 002, 003, and 004				
Oil and Grease	10 mg/L	20 mg/L	—	—
pH	~~[1]~~ —	~~[1]~~ —	6.5	8.5
Settleable Matter	—	1.0 mL/L-hr	—	—
Chromium (VI)	5.6 µg/L	16 µg/L	—	—
Copper	14 µg/L	34 µg/L	—	—
Lead	8.1 µg/L	19 µg/L	—	—
Nickel	93 µg/L	200 µg/L	—	—
Selenium	4.0 ug/L	8.4 ug/L	—	—
Cyanide	4.3 µg/L	8.5 µg/L	—	—

Unit Abbreviations:

µg/L = micrograms per liter
mg/L = milligrams per liter
mL/L-hr = milliliters per liter-hour
s.u. = standard pH units

~~Footnote:~~

~~[1] Instantaneous effluent limitations: pH must remain within the range from 6.5 through 8.5.~~

Stevens Creek Quarry Comment 9.

Provision 6 (a through f, inclusive) of the tentative CDO states that if Stevens Creek Quarry fails to comply with any of the interim limits, it will be subject to mandatory minimum penalties (MMPs) for any and all violations at the same discharge location for the entire calendar month during which the non-compliance occurs. The Quarry requests the following edit to the language in sections a through f:

> *If the Discharger fails to comply with the ..., it shall be subject to mandatory minimum penalties in accordance with Water Code sections l 3385(h) and (i) for any and all violations of the Permit's monthly [pH] effluent limitations for the same discharge point for the entire calendar month during which the non-compliance with the interim [pH] effluent limitation occurs.*

Response to Stevens Creek Quarry Comment 9.

We did not make the specific revision requested because neither the tentative order (i.e., the Permit) nor the tentative CDO have a monthly pH limit. However, we discussed this matter with Stevens Creek Quarry and revised the tentative CDO to clarify that mandatory minimum penalties may be assessed for permit effluent limitation violations whenever a corresponding CDO interim limit violation occurs during the same time period. For example, if a violation of a daily maximum interim limit occurs, a mandatory minimum penalty may apply to the corresponding violation of the daily maximum permit limit. Likewise, if a violation of a daily maximum interim limit occurs, a mandatory minimum penalty

may apply to a corresponding violation of the monthly average permit limit for the month during which the interim limit violation took place. Thus, we revised provisions 6 and 7 of the tentative CDO as follows (and re-numbered what had been provision 8 to become provision 7):

6. As described below, violations of the Permit effluent limitations listed in Table 1 shall not be subject to the mandatory minimum penalties required by Water Code sections 13385(h) and (i) as long as the Discharger complies with this Cease and Desist Order.

a. If the Discharger fails to comply with the interim pH effluent limitation for Discharge Points 001 and 006 at either Discharge Point 001 or 006, it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's instantaneous pH effluent limitations for the same discharge point for the ~~entire calendar month during~~ day on which the non-compliance with the interim pH effluent limitation occurs.

b. If the Discharger fails to comply with the interim TSS effluent limitation for Discharge Points 001 and 006 at either Discharge Point 001 or 006, it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's maximum daily effluent limitations listed in Table 1 ~~(other than the pH effluent limitations)~~ for the same discharge point ~~for the entire calendar month during~~ at which the non-compliance with the interim TSS effluent limitation occurs. The Discharger shall also be subject to mandatory minimum penalties for any and all violations of the Permit's average monthly effluent limitations listed in Table 1 for the same discharge point for the calendar month during which the non-compliance with the interim TSS effluent limitation occurs.

c. If the Discharger fails to comply with the interim pH effluent limitation for Discharge Points 002, 003, and 004 at Discharge Point 002, 003, or 004, it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's instantaneous pH effluent limitations for the same discharge point ~~location~~ for the ~~entire calendar month during~~ day on which the non-compliance with the interim pH effluent limitation occurs.

d. If the Discharger fails to comply with the interim TSS effluent limitation for Discharge Points 002, 003, and 004 at Discharge Point 002, 003, or 004, it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's maximum daily effluent limitations listed in Table 1 (other than the ~~pH and~~ cyanide effluent limitation~~s~~) for the same discharge point ~~for the entire calendar month during~~ at which the non-compliance with the interim TSS effluent limitation occurs. The Discharger shall also be subject to mandatory minimum penalties for any and all violations of the Permit's average monthly effluent limitations listed in Table 1 (other than the cyanide effluent limitation) for the same discharge point for the calendar month during which the non-compliance with the interim TSS effluent limitation occurs.

e. If the Discharger fails to comply with the interim cyanide effluent limitation for Discharge Points 002, 003, and 004 at Discharge Point 002, 003, or 004, it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's maximum daily cyanide effluent limitations for the same discharge point ~~location~~ for the ~~entire calendar month during~~ day on which the noncompliance with the interim cyanide effluent limitation occurs. The Discharger shall also be subject to mandatory minimum penalties for any and all violations of the Permit's average monthly cyanide effluent limitation for the same discharge point for the calendar month during which the non-compliance with the interim cyanide effluent limitation occurs.

f. If the Discharger fails to comply with any of the narrative interim requirements of this Cease and Desist Order (e.g., those in Table 5) it shall be subject to mandatory minimum penalties in accordance with Water Code sections 13385(h) and (i) for any and all violations of the Permit's effluent limitations listed in Table 1 for the entire calendar month during which the non-compliance occurs. If and when the Discharger returns to compliance with all the interim requirements, violations of the Permit effluent limitations listed in Table 1 shall again not be subject to mandatory minimum penalties as of the first day of the month following the return to compliance.

~~7. If and when the Discharger returns to compliance with all the interim requirements, violations of the Permit effluent limitations listed in Table 1 shall again not be subject to mandatory minimum penalties as of the first day of the month following the return to compliance.~~

MS. RHODA FRY

Ms. Fry Comment 1.
Ms. Fry asks why it took the Regional Water Board so long to become involved in water quality in the Stevens Creek watershed.

Response to Ms. Fry Comment 1.
The Regional Water Board has regulated discharges from Stevens Creek Quarry under the State Water Board's *General Permit for Stormwater Discharges Associated with Industrial Activities* (Industrial General Permit) since 1992. Regional Water Board inspections and enforcement from 2016 through 2020 are discussed in Attachment F, section II.E, of the tentative order. Based on these actions, we determined that an individual permit would be a more effective means of protecting the receiving waters than the Industrial General Permit. Because we understand that Stevens Creek Quarry cannot immediately comply with the tentative order's requirements, we propose the tentative CDO to enforce it.

Ms. Fry Comment 2.
Ms. Fry would like to see the Regional Water Board get involved with the large unpermitted dam that is holding back a significant amount of flowable material from Rattlesnake Creek. Ms. Fry believes it is a health and safety hazard that must not be ignored.

Response to Ms. Fry Comment 2.
Follow-up communication with Ms. Fry established that her comment refers to the most upstream of the unpermitted dams in Rattlesnake Creek adjacent to Stevens Creek Quarry. This dam forms the "Sediment Pond" marked "1" shown at the bottom of the figure on page B-2 of the tentative order. Ms. Fry provided documentation from the Department of Water Resources Division of the Safety of Dams indicating that it added this dam to its list of jurisdictional dams in 2016 as "Upper Settling Basin Dam No. 7000.138" and assessed its hazard classification as "low" in a letter dated July 14, 2017.

We agree that the health and safety risks posed by this dam should not be ignored; however, this tentative order and tentative CDO do not directly relate to the dam. The tentative order would authorize discharges from Discharge Points 001 and 005 to Rattlesnake Creek above the dam. The other discharge points are downstream. The tentative order sets forth discharge requirements necessary to protect the beneficial uses of Rattlesnake Creek. We intend to address creek restoration through other means.

Ms. Fry Comment 3.
Ms. Fry requests that the Regional Water Board remain vigilant about the quarry's expansion proposal currently before the Santa Clara County Department of Planning and Development. Ms. Fry says the proposal considers excavating to levels below those deemed safe for water quality by the previously approved mining plan.

Response to Ms. Fry Comment 3.
The tentative order and tentative CDO do not relate to any plans Stevens Creek Quarry might have to expand. The Santa Clara County Planning Commission is the permitting authority to approve any such expansion. We intend to work with County staff to ensure that any approvals protect water quality.

Ms. Fry Comment 4.
Ms. Fry requests that we educate the public at the May 12, 2021, hearing about the impacts of exceedances. Ms. Fry notes that, at a County Supervisor's annual quarry update meeting, emphasis was placed on the impacts of selenium in water for human consumption, but nothing was mentioned about chromium (VI). Ms. Fry asks how chromium (VI) might make its way into her community's drinking water. She also asks how other pollutants might affect humans and aquatic life, now and five years from now.

Response to Ms. Fry Comment 4.
Stevens Creek Quarry discharges will not threaten drinking water supplies. As discussed further in Attachment F, section IV.C.3.a, of the tentative order, drinking water standards assume long-term exposures. The tentative order prohibits discharge unless driven by precipitation, which will ensure that Stevens Creek Quarry discharges remain short-term and intermittent. Furthermore, the Santa Clara Valley Water District monitors its wells for potential drinking water contaminants and treats drinking water to State and federal requirements. To our knowledge, the District has not identified any problems related to pollutants discharged from the Stevens Creek Quarry.

The tentative order's requirements were developed to protect aquatic life. We prepared the tentative CDO because we recognize that Stevens Creek Quarry cannot immediately comply with the tentative order's requirements. Our expectation is that Stevens Creek Quarry will be able to comply by the time it implements all the actions the tentative CDO requires.

Ms. Fry Comment 5.
Ms. Fry asks how Stevens Creek Quarry's compliance can be expedited, and states that a five-year compliance schedule seems unreasonable.

Response to Ms. Fry Comment 5.
Five years is a reasonable amount of time considering all the tasks the tentative CDO requires. Nevertheless, we hope Stevens Creek Quarry can comply sooner. The tentative CDO requires installation of a treatment system by November 15, 2022, which should substantially reduce pollutant discharges and may be sufficient to comply with most, if not all, of the tentative order requirements. However, the tentative CDO would continue the Regional Water Board's oversight and enforcement beyond November 15, 2022, to ensure that Stevens Creek Quarry refines its treatment system and implements additional treatment if necessary to achieve compliance.

MS. CATHY HELGERSON

We numbered Ms. Helgerson's comments in the order in which she presents them. See the annotated comments (Appendix C).

Ms. Helgerson Comment 1.
Ms. Helgerson points out that findings 1 through 4 of the tentative CDO contain conflicting information, stating that process wastewater is not discharged to Rattlesnake Creek and that industrial stormwater commingled with process wastewater is discharged to both Rattlesnake Creek and Swiss Creek.

Response to Ms. Helgerson Comment 1.
To clarify, industrial stormwater commingled with process wastewater is discharged to both Rattlesnake and Swiss creeks. These discharges occur from Discharge Points 001 through 004, and 006. Stormwater not commingled with process wastewater is discharged to Rattlesnake Creek from Discharge Point 005.

We revised the tentative CDO, finding 4, as follows:

> The Facility discharges industrial stormwater commingled with process wastewater to Rattlesnake Creek and Swiss Creek through Discharge Points 001, 002, 003, 004, and 006. The Facility also discharges stormwater not ~~containing~~ commingled with process wastewater to Rattlesnake Creek through Discharge Point 005. These discharges ~~occur at six discharge points as~~ and discharge points are described in Permit Table 2 and Permit Attachment F (Fact Sheet) section II.B. The discharge points and their locations are shown in the site maps included as Permit Attachment B. The wastewater flow configuration is shown in Permit Attachment C.

Ms. Helgerson Comment 2.
Ms. Helgerson asks how much industrial stormwater commingled with process wastewater is discharged to Swiss Creek then flows to Permanente Creek, and whether such flows contribute to pollution in Permanente Creek.

Response to Ms. Helgerson Comment 2.

Swiss Creek does not flow into Permanente Creek. It flows into Stevens Creek Reservoir, as indicated on the site maps attached to the tentative order (Attachment B) and as stated in Attachment F, section II.B, of the tentative order. Stevens Creek Quarry's discharges contribute no pollution to Permanente Creek.

Ms. Helgerson Comment 3.

Ms. Helgerson asserts that Stevens Creek Quarry discharges are polluting Stevens Creek Reservoir and the groundwater aquifer, and these waters eventually end up in San Francisco Bay. She adds that airborne dust from both Stevens Creek Quarry and the Lehigh Hanson Cement and Quarry add to the water pollution. She asks how industrial wastewater mixes with stormwater. She also asks whether Stevens Creek Quarry may need to install a wastewater treatment plant.

Response to Ms. Helgerson Comment 3.

Quarry operations are discussed in Attachment F, sections I.A and II, of the tentative order and are indicated in the flow diagram in Attachment C of the tentative order. "Process wastewater" is water used for mining operations and to process mined materials. This water is used to control dust, crush rock, wash crushed rock and sand, produce topsoil, and wash recycled material. When it rains, stormwater runoff commingles with the process wastewater in onsite ponds. The tentative CDO would require installation of basins to control and treat process wastewater and stormwater runoff, and other actions to reduce discharges and prevent pollution. The tentative CDO would also require pilot testing and installation of a treatment system and any additional upgrades needed to comply with the tentative order. See Response to Ms. Fry Comment 4.

Ms. Helgerson Comment 4.

Ms. Helgerson says the Santa Clara Valley Water Company ignores the pollution from Stevens Creek Quarry and asks when the Regional Water Board will do something. She wonders why no one mentions the cumulative effects of the pollution the public has been subjected to.

Response to Ms. Helgerson Comment 4.

If adopted, the tentative CDO would be a serious enforcement action to ensure compliance with the tentative order's requirements. We cannot speak for the Santa Clara Valley Water District. See Response to Ms. Fry Comment 4.

We agree that combinations of pollutants can have cumulative effects. In the context of Stevens Creek Quarry discharges, such cumulative effects would be more likely to affect aquatic life than human health. Section IV.D, and Attachment E, section V, of the tentative order impose acute toxicity effluent limitations and corresponding monitoring requirements to ensure there is no cumulative effect on water quality and aquatic life.

Ms. Helgerson Comment 5.

Ms. Helgerson observes that Table 1 of the tentative CDO lists some average monthly and maximum daily effluent limits from the tentative order. She would like to know how much pollution Stevens Creek Quarry actually discharges.

Ms. Helgerson asks who sets the effluent limits and what criteria are used, noting that Stevens Creek Quarry has violated the limits but the extent has not been disclosed. She says effluent limits are always set very high so as to allow companies to continue to conduct their businesses. In doing so, they pollute.

Ms. Helgerson notes that combinations of pollutants may pose cumulative effects.

Finally, Ms. Helgerson asks why a specific instantaneous effluent limitation is not specified for pH, noting that the footnote to Table 1 of the tentative CDO gives a range from 6.5 through 8.5.

Response to Ms. Helgerson Comment 5.

Table 1 of the tentative CDO lists the effluent limits in the tentative order we foresee may be violated. Attachment F, sections II.D, II.E, and IV.C.3, of the tentative order, and Tables 2 and 3 of the tentative CDO, describe Stevens Creek Quarry's discharges. Attachment F, Tables F-3, F-6, and F-7, in particular, present the maximum pollutant concentrations discharged. Stevens Creek Quarry has not yet violated any effluent limitations in the tentative order because the tentative order has not yet been adopted. The tentative CDO is an enforcement action for foreseeable future violations of the tentative order.

The Regional Water Board establishes effluent limitations as explained in Attachment F, sections IV.B and IV.C, of the tentative order. The water quality-based effluent limitations are based on scientifically derived water quality objectives established to protect beneficial uses of State waters. Neither the water quality-based effluent limits, nor the water quality objectives they are derived from, account for the cost of compliance.

Regarding cumulative effects of pollutants, see Response to Ms. Helgerson Comment 4.

The pH effluent limits are not expressed as within a range. The pH must be maintained within the specific limits of 6.5 and 8.5.

Ms. Helgerson Comment 6.

Ms. Helgerson notes that consistent compliance is considered unlikely and that the discharge will exceed the permit limits. She asks how much pollution is being discharged and why Stevens Creek Quarry is allowed to continue polluting.

Response to Ms. Helgerson Comment 6.

See Responses to Ms. Helgerson Comment 5. The tentative CDO does not allow Stevens Creek Quarry to continue polluting; it requires a series of actions that will result in compliance with the tentative order. At that time, the discharges will be sufficiently controlled to maintain water quality standards.

Ms. Helgerson Comment 7.

Ms. Helgerson asks about finding 6a and Table 2 of the tentative CDO, and how much Stevens Creek Quarry discharges to the State's creeks. She asks why settleable matter was not monitored. She states that violations of the federal Clean Water Act and Clean Air Act should allow U.S. EPA to implement a massive Superfund cleanup. She says the land could be sold to the State or federal government for use as a park or low-income housing.

Response to Ms. Helgerson Comment 7.

Regarding pollutant levels discharged, see Response to Ms. Helgerson Comment 5.

Regarding settleable matter, thus far Stevens Creek Quarry has been enrolled under the Industrial General Permit, which does not require settleable matter monitoring. Attachment E, Table E-2, of the tentative order will require settleable matter monitoring.

Regarding the potential involvement of U.S. EPA, U.S. EPA is free to enforce the Clean Water Act, but the Regional Water Board exercises certain Clean Water Act authorities delegated from U.S. EPA, as well as its own authorities under State law. Comments related to the federal Superfund program are beyond the scope of the proposed orders. U.S. EPA is solely responsible for the Superfund cleanup program. Stevens Creek Quarry (EPA ID: CAN000909322) is not on U.S. EPA's National Priorities List because the "Site does not qualify for the National Priorities List based on existing information" and "EPA has determined that no further federal action (NFFA) will be taken at this site" (see https://cumulis.epa.gov/supercpad/CurSites/srchsites.cfm).

Regarding future use of the site, neither U.S. EPA nor the Regional Water Board may make land use decisions.

Ms. Helgerson Comment 8.

Ms. Helgerson asks why, if finding 6.b and Table 3 of the tentative CDO indicate that future compliance is considered unlikely, Stevens Creek Quarry should remain open for business.

Response to Ms. Helgerson Comment 8.

If adopted, the tentative order and tentative CDO will control Stevens Creek Quarry discharges by imposing stringent limits and prohibitions, and a specific, enforceable schedule of tasks to meet them. Providing Stevens Creek Quarry with clear requirements and a path toward compliance is a fair and reasonable course of action at this time.

Ms. Helgerson Comment 9.

Ms. Helgerson says the extent of pollution at Stevens Creek Quarry is unknown. She says U.S. EPA's Superfund program will need to make sure the public is protected.

Response to Ms. Helgerson Comment 9.

Comments related to the federal Superfund program and groundwater conditions are beyond the scopes of the proposed orders, which relate to Stevens Creek Quarry's discharges to waters of the United States. See Response to Ms. Helgerson Comment 7.

Ms. Helgerson Comment 10.

Ms. Helgerson notes, based on Table 3, footnotes 2 and 3, of the tentative CDO, that few selenium samples were collected and settleable matter was not monitored. The tentative CDO findings say Stevens Creek Quarry is unlikely to comply with the proposed limits. She asks why, if Stevens Creek Quarry has been out of compliance with its permit for decades, this continues to be a problem.

Response to Ms. Helgerson Comment 10.

Attachment E, Table E-2, of the tentative order will require settleable matter and selenium monitoring. See Response to Ms. Helgerson Comment 8 and Response to Ms. Fry Comment 1.

Ms. Helgerson Comment 11.

Regarding Table 3, footnote 4, of the tentative CDO, Ms. Helgerson notes that only two cyanide samples were collected. She says Stevens Creek Quarry's violations are serious and asks why there was not more testing and enforcement.

Response to Ms. Helgerson Comment 11.

The tentative order would impose new monitoring requirements to better characterize discharges; see Attachment E, Table E-2, of the tentative order, which includes cyanide monitoring. Regarding the need for enforcement, see Response to Ms. Helgerson Comment 8 and Response to Ms. Fry Comment 1.

Ms. Helgerson Comment 12.

Ms. Helgerson says finding 8.a of the tentative CDO is beating around the bush when it describes the potential to violate receiving water limits. She says the violations are serious. She also says Swiss Creek runs into Permanente Creek, which flows to San Francisco Bay, and all have been polluted. She asks why Stevens Creek Quarry has been allowed to stay in business.

Response to Ms. Helgerson Comment 12.

We have proposed the tentative CDO because we take Stevens Creek Quarry's potential future violations seriously; see Response to Ms. Helgerson Comment 8 and Response to Ms. Fry Comment 1. Also, Swiss Creek does not flow into Permanente Creek; see Response to Ms. Helgerson Comment 2.

Ms. Helgerson Comment 13.

Ms. Helgerson believes the tentative CDO does not sufficiently describe the problem. She asks that the information in Table 4 of the tentative CDO be added to finding 8.b. She wants a full investigation.

Response to Ms. Helgerson Comment 13.

Findings 5 through 10 of the tentative CDO explain all the future violations of the tentative order we foresee at this time. The information in Table 4 of the tentative CDO cannot be added to finding 8.b of the tentative CDO because finding 8 describes foreseeable violations of the tentative order's receiving water limits and Table 4 sets forth tentative CDO requirements.

Regarding what is known about site discharges, see Response to Ms. Helgerson Comment 5. Regarding U.S. EPA involvement, see Response to Ms. Helgerson Comment 7.

Ms. Helgerson Comment 14.

Ms. Helgerson would like to better understand finding 8.c of the tentative CDO. She compares 92 NTUs to a background value of 2.9 NTU, and concludes this may exceed the water quality objective.

Response to Ms. Helgerson Comment 14.

Ms. Helgerson appears to understand finding 8.c of the tentative CDO. Indeed, Stevens Creek Quarry discharges could cause exceedances of the turbidity water quality objective. To provide more clarity, we revised finding 8.c of the tentative CDO as follows:

> The Facility discharges turbidity at levels up to 2,720 nephelometric turbidity units (NTU); the maximum receiving water turbidity detected <u>downstream of the discharge</u> during Facility discharges was 92 NTUs compared to a background <u>(i.e., upstream of the discharge)</u> value of 2.9 NTU. The Facility's discharges therefore have potential to violate the receiving water limit in Item 7.a.iii, above….

Ms. Helgerson Comment 15.

Ms. Helgerson says she is confused because finding 9 of the tentative CDO references Table 1, which states that the pH must remain within the range of 6.5 through 8.5, but finding 9 says the maximum pH detected was 10. Ms. Helgerson also notes that the discharge does not receive significant dilution and

wonders what can be done about that. She wonders whether we adjusted the pH limit due to the rain in March.

Response to Ms. Helgerson Comment 15.

Finding 9 compares the proposed pH limits in Table 1 of the tentative CDO to the actual pH measurements presented in Tables 2 and 3 of the tentative CDO. The comparison supports the conclusion that violations of the tentative order's pH receiving water limit are foreseeable.

The pH limit has not been adjusted based on dilution or precipitation (including the recent precipitation in March). Little or no dilution occurs in the receiving waters because they are relatively small streams. This is, in part, why the tentative order prohibits Stevens Creek Quarry from discharging except as a result of precipitation, when stream flows are relatively high. Accounting for dilution would result in less stringent limits than those proposed.

Ms. Helgerson Comment 16.

Regarding finding 10 of the tentative CDO, Ms. Helgerson repeats comments about the seriousness of Stevens Creek Quarry's violations and ongoing pollution.

Response to Ms. Helgerson Comment 16.

If adopted, the tentative CDO would be a serious enforcement action to ensure compliance with the tentative order's requirements. See Response to Ms. Fry Comment 1 and Response to Ms. Helgerson Comment 8.

Ms. Helgerson Comment 17.

Ms. Helgerson repeats comments that Stevens Creek Quarry has been in violation for decades. She says U.S. EPA conducted a Superfund Site Investigation years ago at Stevens Creek Quarry and the Lehigh Hanson Cement and Quarry, but failed to implement a major cleanup. She says the tentative CDO requirements should not be allowed to continue for 5 years. Now is the time to stop this pollution immediately.

Response to Ms. Helgerson Comment 17.

See Response to Ms. Helgerson Comment 7, and Responses to Ms. Fry Comments 1 and 5.

Ms. Helgerson Comment 18.

Ms. Helgerson is disappointed to see that Stevens Creek Quarry has been allowed to continue to pollute for decades, and Table 5 of the tentative CDO pushes compliance out until June 1, 2026.

Response to Ms. Helgerson Comment 18.

It will take time for Stevens Creek Quarry to put measures in place to fully comply with the tentative order. The time schedule in Table 5 of the tentative CDO imposes specific tasks and an enforceable schedule for completing them to ensure compliance with the tentative order. See Responses to Ms. Fry Comments 1 and 5.

Ms. Helgerson Comment 19.

Regarding Table 5 of the tentative CDO, Ms. Helgerson says there should be no uncertainty in determining the effective treatment measures necessary to achieve compliance. She expects this to be done immediately. Otherwise, she believes the time has come to shut down Stevens Creek Quarry and the Lehigh Hanson Cement and Quarry.

Response to Ms. Helgerson Comment 19.

The tentative CDO provides a reasonable amount of time to develop and implement necessary treatment and other measures to control pollutant discharges. Stevens Creek Quarry cannot immediately comply with the tentative order, but it has already installed new basins and infrastructure to control stormwater runoff and reduce TSS in its discharge, and has designed another basin that the tentative CDO requires. See Response to Ms. Helgerson Comment 8, and Responses to Ms. Fry Comments 1 and 5.

Ms. Helgerson Comment 20.

Ms. Helgerson says the tentative CDO should not allow Stevens Creek Quarry five years to comply with the tentative order. The continued mining and pollution should be immediately stopped because the pollution is destroying the creeks, Stevens Creek Reservoir, the aquifer, and San Francisco Bay.

Response to Ms. Helgerson Comment 20.

See Response to Ms. Helgerson Comment 19.

Ms. Helgerson Comment 21.

Regarding finding 15 of the tentative CDO, Ms. Helgerson says it is difficult to comprehend how the Regional Water Board cannot determine what is necessary to comply with the permit and to protect the public from pollution. The Regional Water Board and U.S. EPA need to investigate as soon as possible. The pollution is serious and needs to end.

Response to Ms. Helgerson Comment 21.

The tentative CDO sets forth what is necessary to comply with the tentative order and protect the public from pollution. See Responses to Ms. Helgerson Comments 7 and 19.

Ms. Helgerson Comment 22.

Ms. Helgerson says the Regional Water Board should have assessed stiff penalties long ago. She objects to the 5-year time table in the tentative CDO. She asks that something be done to expedite the cleanup, stop the mining, and close the quarry. She asserts that groundwater and drinking water supplies are contaminated. She interprets finding 16 of the tentative CDO as poor excuses.

Response to Ms. Helgerson Comment 22.

See Responses to Ms. Fry Comments 4 and 5, and Response to Ms. Helgerson Comment 19.

Finding 16 of the tentative CDO simply lists the conditions the Water Code specifies a discharger like Stevens Creek Quarry must meet in order not to be subject to mandatory minimum penalties. It does not present excuses. Moreover, the tentative CDO does not prevent the Regional Water Board from imposing financial penalties if warranted.

Ms. Helgerson Comment 23.

With respect to finding 17.a of the tentative CDO, Ms. Helgerson reiterates that the violations have been going on for decades and penalties should be imposed.

Response to Ms. Helgerson Comment 23.

See Responses to Ms. Helgerson Comments 18, 19, and 22.

Ms. Helgerson Comment 24.

Ms. Helgerson reiterates that the tentative CDO does not give the exact pollution levels that Stevens Creek Quarry discharges.

Response to Ms. Helgerson Comment 24.

See Response to Ms. Helgerson Comment 5.

Ms. Helgerson Comment 25.

Ms. Helgerson reiterates her objection to the tentative CDO's 5-year timeline and desire for U.S. EPA to investigate. She would like to see Stevens Creek Quarry shut down.

Response to Ms. Helgerson Comment 25.

See Responses to Ms. Helgerson Comments 7, 8, and 19, and Response to Ms. Fry Comment 5.

Ms. Helgerson Comment 26.

Referring to finding 17.d of the tentative CDO, Ms. Helgerson says a pollution prevention plan is impossible. Stevens Creek Quarry cannot operate without polluting. Even if Stevens Creek Quarry installed a wastewater treatment system it would still pollute. The Lehigh facility has a wastewater treatment system and continues to discharge polluted water into Permanente Creek. Lehigh's wastewater cannot be treated down to zero pollution. Stevens Creek Quarry is no different.
Ms. Helgerson adds that Stevens Creek Reservoir is full of mercury and other pollution from Stevens Creek Quarry.

Response to Ms. Helgerson Comment 26.

We agree that Stevens Creek Quarry is unable to eliminate all pollutant discharges; however, the tentative order and tentative CDO, together, will significantly improve water quality and ensure that water quality standards are met. Comments regarding Lehigh are not directly relevant to these orders, but we note that the Regional Water Board followed a similar approach with Lehigh (issuing an individual NPDES permit and CDO) and its compliance significantly improved.

While Stevens Creek Reservoir is impaired by mercury, we do not believe Stevens Creek Quarry's existing discharges are a significant source of that mercury. Its discharges, which are driven by precipitation, are infrequent, and the mercury in its discharges is typically either not detectable or detected at too low a level to be quantifiable.

Ms. Helgerson Comment 27.

Referring to finding 18 of the tentative CDO, Ms. Helgerson questions why the tentative CDO is exempt from the California Environmental Quality Act (CEQA). She believes CEQA covers the violations addressed through the tentative CDO. She views this as an excuse to protect polluters.

Response to Ms. Helgerson Comment 27.

We disagree. Title 14 of the California Code of Regulations, section 15321, exempts Regional Water Board enforcement actions, such as the tentative CDO, from the provisions of CEQA (Public Resources Code § 21000 et seq.), i.e., the requirements to prepare a negative declaration or environmental impact report.

Ms. Helgerson Comment 28.

Ms. Helgerson objects to finding 19 of the tentative CDO, stating she was never contacted about the tentative CDO prior to its adoption.

Response to Ms. Helgerson Comment 28.

Ms. Helgerson submitted timely comments regarding the tentative CDO; therefore, she was made aware of the Regional Water Board's intention to consider it. As always, we provided public notice of the tentative order and tentative CDO, the opportunity to submit written comments, and the hearing at which the Regional Water Board would consider these orders.

Ms. Helgerson Comment 29.

Ms. Helgerson says interim effluent limitations are not enough. She also says the tentative CDO does not describe actual discharges. She describes this as a deception that agitates the public.

Ms. Helgerson also objects to the tentative order requiring Stevens Creek Quarry to collect its own samples. She prefers that the Regional Water Board monitor independently. She also thinks Santa Clara County should conduct testing.

Response to Ms. Helgerson Comment 29.

The tentative CDO does not rely on the interim limits to ensure compliance with the tentative order. Table 5 of the tentative CDO lists extensive requirements to ensure compliance. The tentative order and tentative CDO describe existing discharges. There is no deception. See Response to Ms. Helgerson Comment 5.

The tentative order's approach to monitoring and reporting is consistent with the Clean Water Act and all NPDES permits nationwide. The NPDES program places the burden of compliance monitoring and reporting on dischargers, rather than the public agencies that oversee them. Attachment G, section III.A.1, of the tentative order requires Stevens Creek Quarry to use certified laboratories, and Attachment D, section V.B, requires Stevens Creek Quarry to certify its reports under penalty of perjury. This system works well because filing a false report carries a risk of incarceration.

Ms. Helgerson Comment 30.

Ms. Helgerson questions whether allowing the Executive Officer to reduce accelerated monitoring if further monitoring would not provide useful information is defeating the purpose of controlling Stevens Creek Quarry's pollution. She says Stevens Creek Quarry will probably exceed the interim effluent limits. She calls for stiffer conditions and enforcement, and closing down the quarry.

Response to Ms. Helgerson Comment 30.

Provision 2 of the tentative CDO requires accelerated monitoring if Stevens Creek Quarry violates any interim effluent limit so we know how long the violation persists. However, if for some reason accelerated monitoring no longer provides such useful information (e.g., if a violation were caused by a known, ongoing condition that could not be resolved immediately), it makes sense not to require it. As for stiffer enforcement and closing down the quarry, see Response to Ms. Helgerson Comment 8.

Ms. Helgerson Comment 31.

Ms. Helgerson asks what will happen if Stevens Creek Quarry does not comply with the tentative CDO.

Response to Ms. Helgerson Comment 31.

If Stevens Creek Quarry does not comply with the tentative CDO, the Regional Water Board could pursue additional enforcement as described in provisions 4 and 6 of the tentative CDO. Such enforcement may include injunctive and civil remedies, if appropriate, or financial penalties (i.e., administrative civil liabilities). Stevens Creek Quarry could also be subject to mandatory minimum penalties for certain types of violations.

Ms. Helgerson Comment 32.

With respect to Table 5, task a.i, of the tentative CDO, Ms. Helgerson wonders how the Regional Water Board will know if Stevens Creek Quarry is monitoring and reporting correctly. She asks whether the State will be in charge of making sure that receiving waters are clear of pollution.

Response to Ms. Helgerson Comment 32.

If adopted, the Regional Water Board will oversee compliance with the tentative order and tentative CDO. We will evaluate compliance by reviewing self-monitoring reports submitted in accordance with Attachment E, section VI.B, of the tentative order and provision 2 of the tentative CDO. We will also inspect Stevens Creek Quarry operations to ensure compliance. See Response to Ms. Helgerson Comment 29.

Ms. Helgerson Comment 33.

With respect to Table 5, tasks a.ii and a.iii, of the tentative CDO, Ms. Helgerson asks where the water used onsite goes after it's used. She also asks what a mechanical enhanced evaporation system is and whether pollution and chemicals might be associated with it. Would such pollution be allowed to be emitted into the air?

Response to Ms. Helgerson Comment 33.

Water used onsite is retained in pits, ponds, and tanks, and is not discharged unless commingled with stormwater during rain events that result in more runoff than can be used and stored onsite.

A mechanical enhanced evaporator would maintain greater storage capacity in the Quarry Pit/Pond by reducing the amount of water in the Quarry Pit/Pond. Greater storage capacity in the Quarry Pit/Pond would reduce the need to discharge. A mechanical enhanced evaporator works by withdrawing a water stream from a pond or basin; the water is either propelled into the air through a high-speed fan or sprayed through nozzles and propelled into the air by compressed air, creating fine droplets that evaporate readily. Mechanical aeration does not use chemicals. Given that the pollutants of concern in Stevens Creek Quarry's stormwater and process water are mostly associated with solids and are inorganic, rather than dissolved and volatile or semi-volatile, it is unlikely that such a process would result in significant air pollution; however, the Bay Area Air Quality Management District would oversee and possibly regulate any potential air pollution.

Ms. Helgerson Comment 34.

Ms. Helgerson again suggests that we have not divulged the pollution levels discharged. She wants this information to be publicly available. She points out that Stevens Creek Quarry and the Lehigh Hanson Cement and Quarry test their own water and submit the results to the Regional Water Board. She indicates that the pollution contains recycled concrete dust full of mercury and other contaminants.

Response to Ms. Helgerson Comment 34.

Discharge data is publicly available upon request. We summarized available data in the tentative order and tentative CDO; see Response to Ms. Helgerson Comment 5. With respect to the self-monitoring requirements, see Response to Ms. Helgerson Comment 29.

Ms. Helgerson Comment 35.

Ms. Helgerson repeats concerns regarding the requirement for a pollution prevention plan in Table 5, task b, of the tentative CDO, and her desires for a Superfund cleanup and closing down the quarry.

Response to Ms. Helgerson Comment 35.

The pollution prevention plan described in Table 5, task b, of the tentative CDO is just one of the many requirements listed in Table 5. We anticipate that taking all these actions, together, will result in compliance with the tentative order. See Responses to Ms. Helgerson Comments 7, 8, and 26.

Ms. Helgerson Comment 36.

Ms. Helgerson repeats her objection to the tentative CDO's 5-year timeline and calls for numerous agencies to increase oversight of Stevens Creek Quarry, particularly if it means closing the quarry down.

Response to Ms. Helgerson Comment 36.

See Response to Ms. Helgerson Comment 8 and Response to Ms. Fry Comment 5. We cannot speak for other agencies.

Ms. Helgerson Comment 37.

Ms. Helgerson is appalled by the lack of real pollution prevention at Stevens Creek Quarry. She wants new treatment technologies to be developed, but does not trust Stevens Creek Quarry to do so. She wonders whether a new wastewater treatment plant is possible. She concludes that the best way to stop the pollution is to shut down the quarry.

Response to Ms. Helgerson Comment 37.

See Responses to Ms. Helgerson Comments 8, 19, and 26. Also, Table 5, Tasks c, e, f, and g, of the tentative CDO requires Stevens Creek Quarry to complete a pilot study and implement a treatment system. We contend that requiring Stevens Creek Quarry to undertake these tasks is more reasonable than expending limited public resources to do so.

Ms. Helgerson Comment 38.

Ms. Helgerson would like regulatory agencies to look at the cumulative effects of the pollutants and how they affect the human body and cause sicknesses like cancer.

Response to Ms. Helgerson Comment 38.

The Regional Water Board establishes effluent limitations as explained in Attachment F, sections IV.B and IV.C, of the tentative order. The water quality-based effluent limitations are based on scientifically derived water quality objectives established to protect beneficial uses of State waters. Several water quality objectives are specifically derived to protect against cancer and other long-term human health effects. Because section III.B of the tentative order prohibits Stevens Creek Quarry from discharging except as a result of precipitation, discharges will be infrequent, which will significantly limit the

potential for the discharges to pose any long-term health risks. See Response to Ms. Helgerson Comment 4.

Ms. Helgerson Comment 39.

Ms. Helgerson asks that the Geosyntec Consultants study, Level 2 Exceedance Response Action (ERA) Technical Report for TSS and Iron*, be made public. She says pilot studies are not designed well.*

Response to Ms. Helgerson Comment 39.

The cited Geosyntec report is a public document; we provided Ms. Helgerson with a copy via email. The report does not contain the results from a pilot study; it is a proposal to conduct one.

Ms. Helgerson Comment 40.

Ms. Helgerson asks how stormwater is treated and where it ends up. She also requests a better description of the recycled concrete and asphalt material mentioned in Table 5, task d, of the tentative CDO. She says stormwater washes over the piles of recycled concrete and asphalt, and is stored under the weigh-in trailer in a containment tank. The water from this tank is then piped to a small holding pond and released through a pipe under Stevens Canyon Road that flows to Stevens Creek Reservoir. This discharge contains high levels of mercury and is eventually released to Silicon Valley's aquifer. She has complained to federal, State, and local agencies and elected representatives for decades about these problems and believes U.S. EPA should be involved.

Response to Ms. Helgerson Comment 40.

Stevens Creek Quarry's operations, including the recycled concrete and asphalt operation and the discharge points, are described in Attachment F, section II, of the tentative order and are shown in Attachments B and C of the tentative order. The discharge described in the comment is to Swiss Creek, which then flows through a culvert to Stevens Creek Reservoir. See Response to Ms. Helgerson Comment 26 regarding mercury. See Response to Ms. Helgerson Comment 7 regarding U.S. EPA involvement. Also, see Response to Ms. Fry Comment 4 regarding drinking water supplies.

Ms. Helgerson Comment 41.

Regarding Table 5, task e, of the tentative CDO, Ms. Helgerson believes a pilot study plan is not good enough. A U.S. EPA Superfund cleanup is necessary. She refers to a massive copper-colored mountain of rock that Stevens Creek Quarry is mining down to the ground and requests that the Regional Water Board inspect the site.

Response to Ms. Helgerson Comment 41.

Regarding the adequacy of the pilot study plan, Table 5, Tasks c, e, f, and g, of the tentative CDO requires Stevens Creek Quarry to complete a pilot study and implement a treatment system based on that study. Because these tasks include implementation, these requirements are adequate. Regarding U.S. EPA and Superfund, see Response to Ms. Helgerson Comment 7. Regarding shutting down the quarry, see Response to Ms. Helgerson Comment 8.

We presume that "massive copper-colored mountain of rock" refers to the actively mined (or potentially mineable) parts of the Stevens Creek Quarry facility. Although we can't speak for other agencies, the Regional Water Board has inspected Stevens Creek Quarry five times since 2016. The results of the first four of these inspections are described in Attachment F, sections II.E.1.a through d, of the tentative order. The latest inspection was conducted on February 19, 2021. It identified three corrective actions needed to improve stormwater best management practices: clean accumulated sediment out of a drop

inlet north of the main office building, move drums and spill containment equipment in the fueling area indoors or within secondary containment, and stabilize unvegetated slopes adjacent to Sediment Trap 6 and along the gravel path toward Discharge Point 005.

Ms. Helgerson Comment 42.

Regarding Table 5, tasks f through k, of the tentative CDO, Ms. Helgerson objects to pushing the final deadline out to June 1, 2026. She calls for a U.S. EPA Superfund cleanup. She says the tentative order and tentative CDO serve one purpose: to allow Stevens Creek Quarry to continue to pollute. She says the pollution onsite cannot be contained by a mechanical enhanced evaporation system because the pollution is deep in the soil of the quarry pit and the land around it. Soil needs to be removed to protect groundwater. Ms. Helgerson asks whether there are new technologies to help with this cleanup and how the Water Board will ensure it is used. Finally, she asks how implementation and compliance with Regional Water Board requirements will be verified.

Response to Ms. Helgerson Comment 42.

Comments on soil and groundwater are beyond the scopes of the tentative order and tentative CDO, which pertain only to discharges to waters of the United States (surface water).

Regarding the June 1, 2026 deadline, see Response to Ms. Fry Comment 5. Regarding U.S. EPA and the Superfund program, see Response to Ms. Helgerson Comment 7. Regarding a mechanical enhanced evaporation system, see Response to Ms. Helgerson Comment 33. Regarding compliance verification, see Response to Ms. Helgerson Comment 32.

Ms. Helgerson Comment 43.

Ms. Helgerson notes that the consequences of non-compliance described in provision 4 of the tentative CDO do not include closing the mine and suspending Stevens Creek Quarry's mining rights. If Stevens Creek Quarry cannot comply with permit requirements, she says the Regional Water Board should rescind the permit. She also says Stevens Creek Quarry should be subject to a U.S. EPA Superfund site cleanup as soon as possible.

Ms. Helgerson opines that Stevens Creek Quarry does not hold a big enough reclamation bond to pay for site cleanup. This means the public will have to pay for cleanup, which is unacceptable. She asks what Santa Clara County will do about this and suggests there may be a cover-up.

Response to Ms. Helgerson Comment 43.

Provision 4 of the tentative CDO describes available remedies to enforce the tentative CDO. The Water Board does not regulate mining or mining rights; comments on the adequacy of mining law, regulation, and enforcement, and reclamation bonds, are beyond the scope of the tentative order and tentative CDO. Moreover, we cannot speak for Santa Clara County. Regarding U.S. EPA and the Superfund program, see Response to Ms. Helgerson Comment 7.

Ms. Helgerson Comment 44.

Ms. Helgerson interprets provision 5 of the tentative CDO as allowing Stevens Creek Quarry to get out of permit requirements by claiming a force majeure. She asks who decides what a force majeure is and states there should be no force majeure of any kind for any reason, except maybe an earthquake.

Response to Ms. Helgerson Comment 44.

The footnote to provision 5 of the tentative CDO defines "force majeure" to include acts of God, natural disasters, acts of war, and the like. Provision 5 does not relieve Stevens Creek Quarry of any requirement. Instead, it requires notification and timely compliance.

Ms. Helgerson Comment 45.

Ms. Helgerson objects to provision 6 of the tentative CDO exempting certain permit violations from mandatory minimum penalties. She prefers maximum penalties and possible criminal charges.

Response to Ms. Helgerson Comment 45.

Water Code sections 13385(h) and (i) set forth mandatory minimum penalties for certain permit violations, except when a discharger complies with a CDO that addresses those violations. Provision 6 of the tentative CDO describes exactly how this exception is to work with respect to this tentative order. If Stevens Creek Quarry fails to comply with the tentative CDO, it may be subject to mandatory minimum penalties. See Response to Stevens Creek Quarry Comment 9.

The Regional Water Board has no evidence of criminality.

Ms. Helgerson Comment 46.

Ms. Helgerson asks whether anyone really believes Stevens Creek Quarry will ever be in compliance. She asks that the Regional Water Board do all it can to bring Stevens Creek Quarry to justice as soon as possible.

Response to Ms. Helgerson Comment 46.

See Response to Ms. Helgerson Comment 45.