

Central Valley Regional Water Quality Control Board

HEARING PROCEDURE - REVISION NO. 2
FOR CEASE AND DESIST ORDER AND
ADMINISTRATIVE CIVIL LIABILITY ORDER

PROPOSED TO BE ISSUED TO
CITY OF COLFAX
WASTEWATER TREATMENT FACILITY
PLACER COUNTY

SCHEDULED FOR 30 NOVEMBER/1-2 DECEMBER 2011

PLEASE READ THIS HEARING PROCEDURE CAREFULLY. FAILURE TO COMPLY WITH THE DEADLINES AND OTHER REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

Background

The City of Colfax owns and operates a wastewater treatment facility that discharges treated wastewater to a tributary of the North Fork American River, as allowed by Waste Discharge Requirements Order R5-2007-0130 (NPDES Permit No. CA0079529) (the "WDRs"). The City cannot currently comply with certain provisions of the WDRs and therefore the Water Board adopted a Cease and Desist Order ("CDO") in 2007, and an updated CDO in January 2010 (the "2010 CDO"). However, the 2010 CDO does not address all of the current issues at the wastewater treatment facility.

The Prosecution Team is proposing that the Water Board adopt a new CDO to address: (a) continued rehabilitation of the sewer collection system, (b) compliance with the requirement to hold all wastewater generated during a 100-year annual rainfall event, (c) installation of a liner in Pond 3, (d) temporary actions to allow de-watering of Pond 3, and (e) an updated interim copper effluent limit and an interim monthly flow limitation.

As required by California Water Code section 13385, the Water Board must assess mandatory minimum liabilities ("MMPs") against the City of Colfax for violations of the effluent limits found in the WDRs and 2010 CDO. Because the City is classified as a "small community with financial hardship" the Water Code allows the penalties to be applied to a compliance project which is designed to prevent future violations. The City has proposed that its penalties be applied to three different compliance projects. Prosecution Staff concurred, and circulated a draft Administrative Civil Liability ("ACL") Order for public comment. Because two environmental groups objected to the compliance projects, the Advisory Team determined that the matter must be heard by the Water Board. Therefore, this hearing is also to consider adoption of an ACL Order ("ACLO") which would allow the City to apply \$138,000 of its \$150,000 in MMPs toward three compliance projects. The remaining \$12,000 would be paid to the State Water Resources Control Board's Cleanup and Abatement Account.

A hearing is currently scheduled to be conducted before the Central Valley Water Board during its 30 November/1-2 December 2011 meeting.

Purpose of Hearing

The purpose of the hearing is to consider relevant evidence and testimony regarding the proposed CDO and ACL Order. At the hearing, the Central Valley Water Board will consider whether to issue the CDO and ACLO as proposed, issue the CDO or ACLO with minor modifications, postpone the matter to a future Board meeting, or refrain from issuing a CDO or ACLO. The public hearing on will commence at 8:30 a.m. or as soon thereafter as practical, or as announced in the Central Valley Water Board meeting agenda. The meeting will be held at

11020 Sun Center Drive, Suite 200, Rancho Cordova, California.

An agenda for the meeting will be issued at least ten days before the meeting and posted on the Central Valley Water Board's web page at:

http://www.waterboards.ca.gov/centralvalley/board_info/meetings.

Hearing Procedures

The hearing will be conducted in accordance with this Hearing Procedure. This Hearing Procedure has been proposed by the Central Valley Water Board's Prosecution Team for adjudication of the matter, and is subject to further revision by the Central Valley Water Board's Advisory Team or the Board Chair. A copy of the general procedures governing adjudicatory hearings before the Central Valley Water Board may be found at California Code of Regulations, title 23, section 648 et seq., and is available at <http://www.waterboards.ca.gov> or upon request. In accordance with Section 648, subdivision (d), any procedure not provided by this Hearing Procedure is deemed waived. Except as provided in Section 648, subdivision (b) and herein, Chapter 5 of the Administrative Procedures Act (commencing with Gov't Code § 11500) does not apply to this hearing.

ANY OBJECTIONS TO THE HEARING PROCEDURE MUST BE RECEIVED BY THE CENTRAL VALLEY WATER BOARD'S ADVISORY TEAM NO LATER THAN THE DEADLINE NOTED ON THE "IMPORTANT DEADLINES" PAGE, OR THEY WILL BE WAIVED. FAILURE TO COMPLY WITH THE DEADLINES AND REQUIREMENTS CONTAINED HEREIN MAY RESULT IN THE EXCLUSION OF DOCUMENTS AND/OR TESTIMONY.

The Discharger or other designated party shall contact the Prosecution Team to try to resolve objections regarding due dates, the hearing date, hearing time limits and other procedural matters BEFORE submitting objections to the Advisory Team.

Hearing Participants

Participants in this proceeding are designated as either “parties” or “interested persons.” Designated parties to the hearing may present evidence and cross-examine witnesses and are subject to cross-examination. Interested persons may present non-evidentiary policy statements, but may not cross-examine witnesses and are not subject to cross-examination. Interested persons generally may not present evidence (e.g., photographs, eye-witness testimony, monitoring data). Both designated parties and interested persons may be asked to respond to clarifying questions from the Central Valley Water Board, staff or others, at the discretion of the Central Valley Water Board.

The following participants are hereby designated as parties in this proceeding:

1. Central Valley Water Board Prosecution Team
2. City of Colfax
3. Allen and Nancy Edwards
4. Friends of the North Fork
5. Save the American River Foundation

Requesting Designated Party Status

Persons who wish to participate in the hearing as a designated party must request party status by submitting a request in writing (with copies to the existing designated parties) so that it is received no later than the deadline noted on the “Important Deadlines” page, by the Advisory Team attorney (contact information listed below). The request shall include an explanation of the basis for status as a designated party (i.e., how the issues to be addressed in the hearing and the potential actions by the Central Valley Water Board affect the person, and the need to present evidence or cross-examine witnesses), the information required of designated parties as provided below, and a statement explaining why the party or parties designated above do not adequately represent the person’s interest. Any opposition to the request must be received by the Advisory Team, the person requesting party status, and all other parties by the deadline noted on the “Important Deadlines” page. The parties will be notified by the deadline noted on the “Important Deadlines” page whether the request has been granted or denied.

Primary Contacts

Advisory Team:

Kenneth Landau, Assistant Executive Officer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4726
klandau@waterboards.ca.gov

David Coupe, Senior Staff Counsel
c/o San Francisco Bay Regional Water Quality Control Board
1515 Clay Street, Suite 1400
Oakland, CA 94612
Phone: (510) 622-2306
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Prosecution Team:

Pamela Creedon, Executive Officer
Frederick Moss, Assistant Executive Officer
Wendy Wyels, Environmental Program Manager
Victor Vasquez, Senior Water Resources Control Engineer
Mike Fischer, Water Resources Control Engineer
11020 Sun Center Drive, Suite 200, Rancho Cordova, CA 95670
Phone: (916) 464-4835; fax: (916) 464-4645
wwyels@waterboards.ca.gov

Cris Carrigan, Senior Staff Counsel
State Water Resources Control Board, Office of Enforcement
Physical Address: 1001 I Street, Sacramento, CA 95814
Mailing Address: P.O. Box 100, Sacramento, CA 95812
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ccarrigan@waterboards.ca.gov

Discharger

City of Colfax
Bruce Kranz, City Manager
Phone: (530) 346-2313 ; Fax: (530) 346-6214
colfaxkranz@foothill.net

Other Designated Parties:

Allen and Nancy Edwards
edtreefarm@gmail.com

Mr. Michael Garabedian
Friends of the North Fork
Phone: (916) 719-7296
mikeg@gvn.net

Save the American River Association
4441 Auburn Blvd., Suite H
Sacramento, CA 95841-4139
Phone: (916) 482-2551
info@SARAriverwatch.org

Separation of Functions

To help ensure the fairness and impartiality of this proceeding, the functions of those who will act in a prosecutorial role by presenting evidence for consideration by the Central Valley Water Board (Prosecution Team) have been separated from those who will provide advice to the Central Valley Water Board (Advisory Team). Members of the Advisory Team are: Kenneth Landau and David Coupe. Members of the Prosecution Team are: Pamela Creedon, Frederick Moss, Wendy Wyels, Victor Vasquez, Mike Fischer, and Cris Carrigan. Any members of the Advisory Team who normally supervise any members of the Prosecution Team are not acting as their supervisors in this proceeding, and vice versa. Pamela Creedon regularly advises the Central Valley Water Board in other, unrelated matters, but is not advising the Central Valley Water Board in this proceeding. Other members of the Prosecution Team act or have acted as advisors to the Central Valley Water Board in other, unrelated matters, but they are not advising the Central Valley Water Board in this proceeding. Members of the Prosecution Team have not had any ex parte communications with the members of the Central Valley Water Board or the Advisory Team regarding this proceeding.

Ex Parte Communications

The designated parties and interested persons are forbidden from engaging in ex parte communications regarding this matter with members of the Advisory Team or members of the Central Valley Water Board. An ex parte contact is any written or verbal communication pertaining to the investigation, preparation or prosecution of the draft CDO and ACL Order between a member of a designated party or interested person on the one hand, and a Central Valley Water Board member or an Advisory Team member on the other hand, unless the communication is copied to all other designated parties (if written) or made in a manner open to all other designated parties (if verbal). Communications regarding non-controversial procedural matters are not ex parte contacts and are not restricted. Communications among one or more designated parties and interested persons themselves are not ex parte contacts.

The following communications to the Advisory Board must be copied to all designated parties: Objections to these Hearing Procedures; requests for modifications to these Hearing Procedures; requests for designated party status, or objections thereto; and all written evidence, legal argument or policy statements from designated parties. This is not an all-inclusive list of ex parte communications.

Hearing Time Limits

To ensure that all participants have an opportunity to participate in the hearing, the following time limits shall apply: The Prosecution Team and the City of Colfax shall each have a combined **60 minutes** and Allen and Nancy Edwards, Friends of the North Fork, and Save the American River Association shall each have a combined **30 minutes** to present evidence (including evidence presented by witnesses called by the designated party), cross-examine witnesses (if warranted), and provide a closing statement; and each interested person shall have 3 minutes to present a non-evidentiary policy statement. Participants with similar interests or comments are requested to make joint presentations,

and participants are requested to avoid redundant comments. Participants who would like additional time must submit their request to the Advisory Team so that it is received by date listed in the “Important Deadlines” page. Additional time may be provided at the discretion of the Advisory Team (prior to the hearing) or the Central Valley Water Board Chair (at the hearing) upon a showing that additional time is necessary. Such showing shall explain what testimony, comments or legal argument require extra time, and why the Discharger could not adequately provide the testimony, comments or legal argument in writing before the hearing.

A timer will be used, but will not run during Board questions or the responses to such questions, or during discussions of procedural issues.

Submission of Evidence and Policy Statements

Each designated party must submit the following information in writing in advance of the hearing

1. All evidence (other than witness testimony to be presented orally at the hearing) that the Designated Party would like the Central Valley Water Board to consider. Evidence and exhibits already in the public files of the Central Valley Board may be submitted by reference as long as the exhibits and their location are clearly identified in accordance with California Code of Regulations, title 23, section 648.3. Board members will generally not receive copies of materials incorporated by reference, and the referenced materials are generally not posted on the Board’s website.
2. The name of each witness, if any, whom the designated party intends to call at the hearing, the subject of each witness’ proposed testimony, and the estimated time required by each witness to present direct testimony. (This information is not required for rebuttal witnesses or rebuttal testimony.)
3. The qualifications of each expert witness, if any. (This information is not required for rebuttal witnesses.)

The Prosecution Team shall submit a list of all evidence on which the Prosecution Team relies, which must include, at a minimum, all documents cited in the CDO, ACLO, or Staff Report, and shall submit the witness information required under items 2-3 for all witnesses, including staff. The Prosecution Team shall submit one hard copy and one electronic copy of this information to Kenneth Landau and one electronic copy to David Coupe by the deadline listed below.

The Discharger shall submit comments regarding the proposed CDO and ACLO, along with any additional supporting evidence not cited by the Central Valley Water Board’s Prosecution Team, by the deadline listed below. For these comments and evidence, three hard copies and one electronic copy shall be submitted to Kenneth Landau; one electronic copy shall be submitted to David Coupe; and one hard copy and one electronic copy shall be submitted to Wendy Wyels.

Pursuant to the 13 October 2011 deadline noted under "Important Deadlines" below, for all designated parties other than the Prosecution Team, three hard copies shall be submitted to Mr. Landau, one electronic copy to Mr. Coupe, one hard copy and one electronic copy to Ms. Wyels, and one electronic copy to the other designated parties.

Rebuttal: All designated parties that would like to submit evidence, legal analysis or policy statements to rebut the information previously submitted by other designated parties shall submit three hard copies of their rebuttal information to Kenneth Landau, one electronic copy of the information to David Coupe, one hard copy and one electronic copy to Wendy Wyels, and one electronic copy to the other designated parties so that they are received by 5 p.m. on the due date under "Important Deadlines", below. "Rebuttal" means evidence, analysis or comments offered to disprove or contradict other designated parties' submissions. Rebuttal shall be limited to the scope of the materials previously submitted by the other designated parties. Rebuttal information that is not responsive to information previously submitted by other designated parties may be excluded.

Copies: Board members will receive copies of all materials submitted in hard copy or electronic format. The Board's copies will be printed in black and white from the designated parties' electronic copies. Designated parties who are concerned about print quality of all or any part of their written materials should submit a high-resolution pdf or provide an extra nine paper copies for the Board members. For items with voluminous submissions, Board members may receive copies electronically only. Electronic copies are also posted on the Board's website.

Parties without access to computer equipment are strongly encouraged to have their materials scanned at a copy and mailing center. However, the Board will not reject materials solely for failure to provide electronic copies.

Other Matters: The Prosecution Team shall prepare a summary agenda sheet ("buff sheet") and will respond to comments raised by the Designated Parties by the date listed in the "Important Deadlines" page. Both the buff sheet and the responses will be included in the Board members' agenda package and will be posted on the internet. These documents shall clearly state that they were prepared by the Prosecution Team. The Prosecution Team shall provide copies to all parties via mail or email.

Interested persons who would like to submit written non-evidentiary policy statements are encouraged to submit them to the Advisory Team as early as possible, but they must be received by the date specified in the "Important Deadlines" page in order to be included in the Board's agenda package. Interested persons do not need to submit written comments in order to speak at the hearing.

In accordance with California Code of Regulations, title 23, section 648.4, the Central Valley Water Board endeavors to avoid surprise testimony or evidence. Absent a showing of good cause and lack of prejudice to the parties, the Central Valley Water Board may exclude evidence and testimony that is not submitted in accordance with this Hearing Procedure. Excluded evidence and testimony will not be considered by the Central Valley

Water Board and will not be included in the administrative record for this proceeding. Power Point and other visual presentations may be used at the hearing, but their content may not exceed the scope of other submitted written material. Designated parties must provide the Advisory Team with a printed copy of such materials at or before the hearing, for inclusion in the administrative record. Additionally, any witness who has submitted written testimony for the hearing shall appear at the hearing and affirm that the written testimony is true and correct, and shall be available for cross-examination.

Evidentiary Documents and File

The draft CDO, ACLO, and related evidentiary documents are on file and may be inspected or copied at the Central Valley Water Board office at 11070 Sun Center Drive, Rancho Cordova, CA. This file shall be considered part of the official administrative record for this hearing. Other submittals received for this proceeding will be added to this file and will become a part of the administrative record absent a contrary ruling by the Central Valley Water Board's Chair. Many of these documents are also posted on-line at http://www.waterboards.ca.gov/centralvalley/board_decisions/tentative_orders/index.shtml Although the web page is updated regularly, to assure access to the latest information, you may contact Wendy Wyels (contact information above).

Questions

Questions concerning this proceeding may be addressed to the Advisory Team attorney (contact information above).

original signed by
KENNETH D. LANDAU
ADVISORY TEAM

12 October 2011

IMPORTANT DEADLINES

All required submissions must be received by 5:00 p.m. on the due date except for the deadline provided below on 14 November 2011 (previously 15 November 2011) where the deadline is noon on 14 November 2011.

- 6 September 2011 Prosecution Team issues draft CDO, ACLO and Hearing Procedures to Discharger, Advisory Team, and public.
- 15 September 2011 Prosecution Team's deadline for submission of all information required under "Evidence and Policy Statements," above.
- 20 September 2011 Objections due on proposed Hearing Procedure. Hearing Procedure will become final if no objections received.
- 26 September 2011 Deadline for submission of request for designated party status.
- 6 October 2011 Deadline for opposition to request for designated party status.
- 13 October 2011 Remaining Designated Parties' (including the Discharger's) deadline for submission of all information required under "Evidence and Policy Statements," above. This includes all written comments regarding the draft CDO and ACL Order.
- 13 October 2011 Interested Persons' comments are due.
- 17 October 2011 Advisory Team issues decision on requests for designated party status, if any.
- 3 November 2011 All Designated Parties shall submit any rebuttal evidence, written rebuttal to legal argument and/or written rebuttal to policy statements; and all evidentiary objections to other Designated Parties' submittals.
- 9 November 2011 Requests for additional hearing time (see Hearing Time Limits, above).
- 14 November 2011 Prosecution Team shall submit the "buff sheet" and written responses to comments received by the 13 October 2011 deadline to the Advisory Team and all other Designated Parties and Interested Persons.
- 30 November/1-2 December 2011 Hearing