

In the matter of City of Colfax Wastewater )  
Treatment Facility Central Valley Regional )  
Water Quality Control Board hearing of )  
November 30-December 2, 2011 )

## FRIENDS OF THE NORTH FORK ISSUES, POLICY AND EVIDENCE STATEMENT

Friends of the North Fork is greatly appreciative that the Regional Board has required this hearing. We believe that the hearing is a key step in the process of solving over thirty years of intractable water quality problems that have been created for the North Fork American River and its tributaries that carry POTW discharge, stormwater and non-point pollution from the City of Colfax.

### **I. ISSUES AND POLICY STATEMENT**

1. The September 19, 2011, and related actions of the State Water Resources Control Board to fund Colfax sewer operation improvements (e.g., CWSRF Project No. C-06-7806-110) and this Regional Board hearing on the CDO and ACLO and related matters are inseparable for the purposes of this hearing.

The state and regional board actions take place in furtherance of the application to Colfax sewer operations of the Clean Water Act and the California Porter Cologne Act.

The State of California can not leave unclear where the Colfax water quality ball lies nor can one board absolve itself of responsibility when the other board acts. They are two parts of the state water quality control bureaucracy.

2. Direct impacts on this hearing and on the results of this hearing from other actions, past, present and future, require specification

The water quality control enforcement and other including policy development actions that are based on, part of, contingent on, related to now or in the future, the will affect this matter now or in the future, or that not affected by this hearing require specification.

In this category looking ahead are the expiration of the Colfax NPDES permit next year, and what Friends considers to the need of Colfax for an industrial pretreatment program, for a stormwater program, for a non-point source pollution program, and any State or Regional Board policy development that could apply.

Looking back is the State Board hearing of September 19, 2011, the settlement in the case Allen Edwards and Environmental Law Foundation v. City of Colfax

(U.S. Dist. Ct. for the Eastern District, Civil Case No. 2:07-CV-02513-GEB-EFB, which also appears to have possible future action), last year's Colfax CDO hearing where the Regional Board gave direction to the staff, the 2007 NPDES hearing, mandated Colfax water quality compliance directives, Colfax water quality enforcement actions,

3. The 22-day time frame in which to submit this statement is wholly inadequate and unreasonable.

Friends received the PT's 400-plus item Evidence Lists on September 21, 2011 and Friends statement is due October 13.

While the October 13, 2011 deadline for filing Evidence and Policy Statements was extended from October 7, 2011, Friends, Michael Garabedian's availability to prepare these documents has been limited by short notice, longstanding prior commitments, and his lack of success in input to scheduling hearing dates or absence of opportunity to veto hearing dates.

4. State Board September 19, 2011 actions and the CDO and ACLO do not adequately address infiltration and inflow ("I&I").

Only partial I&I is addressed.

The State Board action violate and the CDO and the proposed ACLO would violate Clean Water Act Infiltration and Inflow regulation sections 40 CFR 35.927, 35.927-1 and 35.927-2, e.g., proposed CDO, Paragraph 38.

5. The State Board September 19, 2011, actions, and the CDO and ACLO fail to protect California Species of Concern and Threatened Species, the fishery and the macro invertebrate assemblage.

Discharges affect areas where there are field sightings of the foothill yellow legged frog, California newt, garter snakes, western pond turtles, and robust macro invertebrates, and a rainbow trout fishery

6. Regional Board and State Board actions and inaction in the past have led to and have resulted in promotion of residential and industrial growth that exceeds what Colfax sewer operations can manage and treat and that exceeds what Colfax has been capable of correcting.

There has been insufficient attention to assuring proper POTW operation, to moratoriums, and other needed controls, and there has been waiver of penalties and leniency in the face of failed efforts such as meeting deadlines and treatment objectives.

7. The State Board actions, and the CDO and ACLO fail to take into account that the continuation of Colfax as an entity is in question.

There are many indicators of the city's inability to meet its needs such as the March 2011 audit in the State Board files.

8. The Pond 3, 75-foot dam is unsafe and the dam and other reservoir slopes are inadequate for the purpose of placing a liner.

9. The discharges of industries on the Colfax sewer system are not identified, are not regulated by an industrial pretreatment or other program, and the State has failed to require the city to monitor its sewer system as is required when particular industries discharge into a sewer system.

For example, 40 CFR Part 122 applies to Colfax, at Appendix A and B for the city's printing and vehicle cleaning industries.

10. The September 19, 2011, actions, and the CDO and ACLO cannot base water quality decisions on federal case settlement.

The case heading does not list the state as a party to the case.

11. It is inappropriate for the State to rely on everything in a report or other document just because it has the seal of a Professional Engineer.

The State can not rely on matters outside the professional competence of the certifier, or matters without any supporting documentation or source. E.g., a statement that there are no industries in the City of Colfax.

Once doubt has been cast on any certified statement, the state is required to look into the issue.

12. There is failure to anticipate the failure of the I&I measures, inability to install the pond lining in a timely manner or failure to install it at all, failure of an installed pond lining, and failure of the city itself.

13. The above-described actions of the State Board and proposed Regional Board CDO/ALCO fail to address environmental impacts as required by CWQA.

There may be a significant impact on the environment from the continued pollution and species affecting changes in water flow out of the facility from inadequate infiltration and inflow controls and planning, from failure of the pond liner, and the failure to consider alternatives such as a development moratorium and alternatives in the short and long run to the facility location and connection to a regional POTW.

14. The proposed waiver of penalties is inadequate, excessive and must be based on analysis of past financial and other waivers given to the City of Colfax.

Prior waivers of all kinds given by the State to the city need to be chronicled and their outcomes need to be evaluated. Alternatives to the waiver proposed need to be considered.

15. The conditions for and standards for referral to the Attorney General for criminal investigation need to be identified.

In addition to referral standards, State and Regional board referrals to the Attorney General for investigation of water quality violations need to be identified, as well as examples of such prosecutions. Friends is seeking this for informational and is not advocating such a referral.

16. All issues raised in our communications to the State (9/15/11, 9/19/11 e-mails to comment letters) and Regional boards including but not limited to in 2010 and 2011 are at issue in this hearing.

## **II. WITNESSES**

1. The preparers of each Colfax infiltration and inflow study will be identified in order to secure their testimony.
2. Victor Vasquez will be asked to testify about infiltration and inflow and about industrial pretreatment.
3. Michael Garabedian may testify about his hiking experience and his observations when touring the facility.

## **III. EVIDENCE**

6/13/10

Placer County Local Hazard Mitigation Plan.

<http://www.placer.ca.gov/Departments/CEO/Emergency/Final%20Hazard%20Mitigation%20Plan.aspx>

(Placer County Home > Departments > County Executive Office > Emergency Services > Local Hazard Mitigation Plan)

5/11/07

City of Colfax Request for Reconsideration by CVRWQCB of Executive Officer Determination of Non-Compliance and Order to Pay Fine

3/23/07

City of Colfax Wastewater Treatment Plant Upgrade Project Issued for Bids Construction Documents Project Manual

2/21/07  
City of Colfax WWTP Reasonable Potential and Anti-Degradation analysis and Infeasibility Report

12/19/06  
Letter from City of Colfax to Pamela Creedon

12/11/06  
Letter from State Department of Health Services to Pamela Creedon

11/15/06  
Letter from City of Colfax to Pamela Creedon

11/1/06  
Recommendations for Smuthers Ravine Stream Flows, Dept. of Fish and Game memo,

8/7/96  
Letter from City Manager to

8/1/96  
Letter from

7/19/96 Notice of Violation

June 1998  
Draft Focused EIR for the General Plan, City of Colfax

7/31/96  
Gold Country News Service article, Colfax Sewage plant to amend capacity problems  
From microfilm:

6/24/73  
Letter to Terry Tice of State Water Resources Control Board

4/16/73  
Letter from State Water Resources Control board Division of Water Quality to City Engineer

September 1972  
City of Colfax Sewage Plant Modification EIR

Central Valley Regional Water Quality Control Board Order No. 72-107, WDR for City of Colfax

4/21/72

State Water Resources Control Board City of Colfax Report

#### **IV. HEARING PROCEDURES**

The hearing would be facilitated were the Advisory Team to schedule a pre-hearing conference.

Dated: October 11, 2011

Respectfully submitted,

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Michael Garabedian  
Friends of the North Fork