

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 NOVEMBER 3, 2011 REBUTTAL

The City of Colfax comments are at their root, a series of multiple requests to weaken proposed order content. Their comments support, ask for, and suggest that Colfax is accustomed to, ratcheting down, trying to avoid and to postponing critically needed action incrementally, indefinitely and in the name of improving water quality. The comments document that the City's advocacy of "cost effectiveness" means spending money on studies and other initiatives that are far less effective and less costly in the short run instead of investing now in more costly permanent fixes that are much cheaper in the long run. The comment posits that cost effectiveness must in all cases override the City and Board water quality responsibilities.

1. The Prosecution Team's practice of including its "case-in-chief, including its evidence, legal argument and policy statements" in the proposed orders and evidentiary document lists, and in the absence of preparing and submitting actual legal argument and policy statements for this hearing, deny due process to designated parties and contravene rules applicable to this hearing.

Friends has no objection to a 400-item evidentiary list in itself, but having limited time to review it before party deadlines means the hearing process is not sustainable. Friends' having to deal with and to react to a combined evidentiary list that comprises perhaps 10,000 or more pages that are said by the PT to be part of the Prosecution Team case-in-chief, legal argument and policy statement is a fundamental and shocking absence of due process. For the PT to argue that the documents and orders are or contain legal argument is, of course, preposterous.

2. Friends adopts and supports in the November 1, 2011 Allen Edwards Rebuttal to City of Colfax comments on draft Cease and Desist Order No. R5-2011-xxxx for the City of Colfax Wastewater Treatment Plant and incorporates it into this Rebuttal.

Friends flagged for its own rebuttal nearly all of the City of Colfax ("City") points that are addressed by the Edwards Rebuttal, and finds that the Edwards rebuttal addresses them in the necessary manner. We supplement the Edwards Rebuttal in this Rebuttal.

3. The City is mandated to take all necessary action to maintain and repair Infiltration and Inflow and the Board cannot excuse or postpone this.

The City is requesting delays and changes in the CDO and is engaging in actions pursuant to the CDO that interfere with fixing Infiltration and Inflow ("I & I"). "The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the discharger to achieve compliance with the conditions of this permit." CFR 122.41(e).

4. Completion of Infiltration and Inflow maintenance and repairs for the entire POTW public and private collection system are the required, direct and fastest way to address the many actions and requests in the City CDO comments that are efforts to address the I&I problem.

The City comments continue, promote, and seek to reduce, delay and to make flexible a large number of procedures that would be unnecessary when I&I control is completed. I&I correction should be the priority.

5. Reliance on Pond 3 as part of the operation should be phased out as rapidly as possible because the hoped for improvements to it are problematic, key Pond 3 projects are likely to fail, liner placement is inconsistent with the geology and dam safety, the dam is unsafe geologically, and the City has failed to provide consistent necessary documentation about settlement of the dam material.

The City's postulations that there are no known seepages from Pond 3 that "circumvent" the collection system ignores a wealth of evidence and is irresponsible.

Photos in DWR files of the pond dam construction site demonstrate a likelihood of seepage from the pond and dam areas and that placement a liner is is problematic.

6. The City's claims that past absence of refinancing, litigation, its being a disadvantages community, and so forth are the source of its problems are misleading.

The March audit, dated June 30, 2010, reads, "The City is party to various claims, legal actions and complaints that arise in the normal operation of business. Management and the City's legal counsel believe that there are no material loss contingencies that would have a material adverse impact on the financial position of the City." Page 39.

7. The City's assertion of its right to assess fees for commercial facilities indicates the continuation of having no known fees for them, and neglects to address the industrial facilities on the system, both categories that are of the type

including toxicants.

The City engages in significant impermissible interfund borrowing that has created significant interfund liability without demonstrating the ability to repay the funds that are limited to specific uses (Mitigation Funds; Street Improvement Funds) within the subsequent fiscal year due to insufficient revenue sources. The auditor recommends the City establish a plan to eliminate the need for the Sewer Fund to continue using financing in the form of interfund borrowing

For at least two years in a row audits have recommended that the City implement a formal ethics and whistleblower policy, that monthly bank reconciliation statements by the Finance Director, who can sign checks and has access to the general fund, have documented review by the city manager before the Finance Director sees them, and that the City develop a risk assessment policy to identify potential risks areas with controls in place to identify potential risk with processes to mitigate those risks.

8. Chlorination and the ultraviolet system advocated by the City create problematic substances.

An ultraviolet facility should be considered to be both inappropriate and antiquated.

Respectfully Yours,

Michael Garabedian