

Central Valley Regional Water Quality Control Board  
21/22 June 2007 Board Meeting

Response to Comments for the City of Colfax Wastewater Treatment Plant  
Tentative Waste Discharge Requirements and Cease and Desist Order

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The following are Regional Water Quality Control Board, Central Valley Region (Regional Water Board) staff responses to comments submitted by interested parties regarding the tentative Waste Discharge Requirements (NPDES Permit renewal) and Cease and Desist Order for the City of Colfax Wastewater Treatment Plant. Public comments regarding the proposed Orders were required to be submitted to the Regional Water Board by 15 June 2007 in order to receive full consideration.

The Regional Water Board received comments regarding the tentative Order by the deadline from City of Colfax (Discharger); California Sportfishing Protection Alliance (CSPA); Central Valley Clean Water Association (CVCWA); Lawyers for Clean Water, Attorneys for Allen and Nancy Edwards and Environmental Law Foundation (Environmental Parties); Friends of the North Fork; Ken Berry on behalf of California Citizens for Environmental Justice (CCEJ). The comments are summarized below, followed by staff responses.

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**CITY OF COLFAX (DISCHARGER) COMMENTS**

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**DISCHARGER COMMENT # 1. Compliance Deadline in CDO for Lining Storage Pond.** The first addresses the October 2008 mandate to cease wastewater seepage from the storage reservoir. The city has previously committed to lining the reservoir (Pond 3). The interim tertiary treatment plant was constructed and put on line in August 2005 to allow for dewatering of the reservoir which was substantially accomplished by November 2005. The dewatering was necessary to conduct the necessary geotechnical studies to enable design of the lining project. However, as the dewatering process was approaching completion, the plant experienced tremendous inflow of water due to an extremely wet 2005/6 winter season. We have not been able to complete the dewatering process since that time. Now, in making every effort to get the new plant under construction, the city is on the threshold of beginning that construction. It is critical that the storage reservoir remain in operation during the construction of the new plant. The existing interim plant will continue in full operation during the entire construction of the new plant. To take it "off-line" to stop the seepage puts the city in an extremely precarious position. Ponds 1 and 2 have a combined storage capacity of five million gallons as compared to the 69 million-gallon capacity of the reservoir. It is not possible to continue operation of the existing plant without the benefit of the reservoir. To do so puts the city in an almost certain position to be in violation of the permit and certainly creates potential for downstream degradation.

The point is: the city needs the reservoir in operation during construction of the new plant to provide a failsafe operation and treatment storage in the event of a system disruption. The reservoir is an integral component in addressing any catastrophic occurrence.

The city has previously provided a time schedule indicating that the pond could be lined by November 2009. This assumes that construction of the new plant can begin on July 1, 2007 with targeted completion being August 2008. On completion, dewatering of ponds 1 and 2 will occur for maintenance, patching and permanent pump back facilities. This process is anticipated to cover three months from August 2008 to mid-November 2008. The new plant would then be used to dewater the reservoir and remove the sludge by routing through the new belt filter press preparing for construction of the pond liner August 2009 through November 2009.

**RESPONSE:** The Regional Water Board has not and is not requiring the Discharger to line the storage reservoir. The proposed renewal includes a prohibition of discharge of wastewater at a location or in a manner different from that described in the permit findings. The proposed CDO implements that prohibition by requiring the Discharger to cease discharges from the storage reservoir to surface waters. As referenced in the comment above, the Discharger proposed lining the storage reservoir as part of its compliance project and the interim facility was constructed to dewater the storage pond to allow investigation and lining. The Discharger has provided dates for completion of this part of the project previously, but has been unable to meet those dates. The 1 October 2008 compliance deadline in the proposed CDO is based on the Discharger's statement in documents submitted to Regional Water Board staff on 21 February 2007 that lining of the storage pond would be completed by Fall 2008. During agenda preparation, staff asked the Discharger for an update and at that time was informed by e-mail that the projected completion date had changed to Fall 2009. Given that the completion date for the storage pond lining has changed over time, staff concluded it was appropriate for the Board to consider extending the completion date until late 2009.

**DISCHARGER COMMENT # 2. Basis for CDO.** The second point focuses on the premise of the proposed cease and desist order itself. The city takes the position that it is in compliance with the current mandates. All of the seepage is now captured and pumped back to the treatment plant for treatment. There is no seepage bypass of the collection system discharging to surface water. There is no violation.

The proposed order for the FIRST time indicates to the city that Regional Water Quality Control Board (RWQCB) staff believes that ". . . it is possible that wastewater seepage bypasses this collection system or occurs at other locations and discharges to surface water in violation of Discharge Prohibition A". There is absolutely no evidence of this. On what basis is this statement made?

In fact preliminary evidence suggests that the seepage may not be coming from the reservoir at all and may in fact be groundwater. The city refers to a March 2004 City of Colfax Wastewater Treatment Plant Geology, Soils, and Seismicity study prepared by Brown and Caldwell that states: "Current conditions indicate that infiltration of fluids through the bedrock material to the underlying groundwater from the unlined surface

impoundments is **minimal to non existent.**" (Emphasis added). Combined with the analytical results of a chemistry analyses conducted by the RWQCB staff October 12, 2006 at four sites and provided to the city after request on June 4, 2007, there is certainly preliminary evidence that suggests the constituents in the pond and the water at the toe of the dam are not the same. The fingerprints of the water from the four sample sites clearly indicate similarities in the creek to seepage waters and in the treated effluent to reservoir waters. There is no similarity between the reservoir and seepage waters.

Granted further testing must be done to determine whether the October 2006 set of samples is representative or not. And, the city also grants the fact that other constituents need to be analyzed as well to ascertain with certainty the waters are different.

If the result of the tests show that the seepage is groundwater and not reservoir water, and if there continues to be seepage after the reservoir is dewatered, it may not be possible to stop the seepage.

A cease and desist at this point without substantiating data is premature at best. At a projected cost of approximately \$9 per month per EDU to line the pond, there is an obligation on all sides to make certain there is quantifiable justification for the expense.

**RESPONSE:** The proposed CDO requires the Discharger to correct a problem with the facility the Discharger had previously concluded was necessary to correct and has proposed to do for several years. Because the Regional Water Board cannot specify the method of compliance (e.g. liner), the CDO requires that discharges from the storage reservoir to surface water be ceased, but does not mandate a liner.

The seepage from the base of the dam ranges from 50,000 – 100,000 gallons per day and averages about 75,000 gallons per day (information provided by the discharger). While some portion of that is likely natural groundwater, it is reasonable to assume that a 69 million gallon unlined reservoir, constructed in fractured bedrock would leak, and the collection system will not capture all the seepage.

As stated in the comment, staff has collected one set of samples of storage pond, effluent, upstream creek, and seepage waters, had them analyzed for chemical constituents and evaluated the results. These results show greater similarity in chemical constituent makeup between storage pond water and effluent versus seepage and creek waters, however the results are not conclusive that seepage does not contain some wastewater, or that all seepage is collected.

If the City properly installs an engineered liner, groundwater seepage to surface water is likely to continue, but there should be no further commingling with wastewater.

**DISCHARGER COMMENT # 3. Specific Comments/Edits to Permit.** The Discharger provided the following table of specific comments and proposed edits to the permit. Responses to each have been added in bold to each.

1	Cover page, Table 2. Discharge Location	Discharge Point Latitude and Longitude Suggest to add $\pm 30$ " after latitude and longitude <b>Your comment is noted, however no change was made.</b>
2	Page 1, Table 4	In the table heading, add "Existing" prior to Facility Information <b>Your comment is noted, however no change was made.</b>
3	Page 1, Table 4	Undefined Facility Design Flow Replace the "Facility Design Flow" with <ul style="list-style-type: none"> <li>• <i>Inflow Annual Dry Weather Flow (ADWF) 0.2 mgd</i></li> <li>• <i>Discharge Flow 0.5 mgd</i></li> </ul> <b>The allowable discharge flow in the draft Order is 0.2 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board.</b>
4	Page 1, A. line 7	Change to "...permit renewal to <i>plant inflow up to 0.2 mgd and discharge up to 0.65 mgd</i> of treated...." <b>The allowable discharge flow in the draft Order is 0.2 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board</b>
5	Page 3, H, line 9	Add <i>Lake Clementine</i> after source to <b>Your comment was noted, however the statement was correct as stated.</b>
6	Page 4, Table 5	Add "... <i>tributary to Bunch Creek</i> , tributary to the North Fork of the American River." <b>Your comment is noted, however the change was not necessary.</b>

7	Page 6, M, line 4	Clarify "pathogens" <b>Pathogens are specific causative agents of disease.                  The term was correctly used in this instance.</b>
8	Page 9, Effluent Limitations	<p>The CTR samples prior to October 2005 were taken at the seepage plant effluent. The MEC from the Reasonable Potential Analysis used in developing the effluent limits in this permit was based on the seepage plant effluent quality. That does not represent the effluent concentration from the interim tertiary treatment plant.</p> <p>The effluent quality data, particularly ammonia concentrations from the interim plant was included in the Anti-degradation and Infeasibility Report (AD&amp;I Report) submitted to the Board on February 23, 2007. These numbers should be used as the basis for developing interim plant effluent limits.</p> <p><b>Staff utilized all available data from the previous permit term while performing the reasonable potential analysis. This includes data originally collected by the Discharger representing flows collected and treated seepage from the storage reservoir, as well as more recent data representing flows from the interim tertiary treatment system, that include treated domestic wastewater, collected and treated seepage from the storage reservoir, and storm water runoff. In some cases the more recent data indicates higher concentrations of some pollutants than the original data, and in other cases the recent data indicated lower concentrations for some pollutants. Therefore, staff believes that although the earlier data is for collected and treated seepage only, it still represents the potential pollutants of concern that could be present in discharges from the interim tertiary treatment plant.</b></p>
9	Page 9, Table 6.	Copper – <ul style="list-style-type: none"> <li>• Please clarify the Maximum Daily copper limit - Page F-49 shows the interim copper limit is 17.73 µg/L. But this table is showing 5.5 µg/L.</li> <li>• Provide basis of the Average Monthly copper limit included in this table.</li> <li>• Limits in Table 6 and Table 8 shall be consistent.</li> </ul> <p><b>Table 6 includes final, water quality based effluent limits for copper. The basis for the final limits are</b></p>

		<p><b>provided in the Fact Sheet, Section IV.C. Table 8 includes interim, performance-based limits, and would not be consistent with water quality-based limits.</b></p>
10	Page 9, Table 6	<p>Ammonia and Nitrate –</p> <ul style="list-style-type: none"> <li>• Interim tertiary treatment system does not have nutrient removal capability. Effluent from the interim tertiary treatment system cannot meet both ammonia and nitrate limits.</li> <li>• Nitrate limit should be removed from Table 6.</li> <li>• Ammonia limit in Table 6 and Table 8 should be consistent.</li> <li>• Ammonia limit in Table 8 shall be re-established based on the CTR results from the interim tertiary plant in AD&amp;I Report.</li> </ul> <p><b>Table 6 includes final, water quality based effluent limits for ammonia and nitrate. The basis for the final limits are provided in the Fact Sheet, Section IV.C. Table 8 includes interim, performance-based limits, and would not be consistent with water quality-based limits.</b></p> <p><b>Regarding nitrate, the facility effluent data supports that it can currently comply with the final limitation for nitrate. However, in recognition that plant modifications to improve ammonia removal may increase nitrate concentrations, if the City provides new information to support an interim limit for nitrate, the permit can be modified pursuant to Special Provision C.1.b.ii.</b></p>
11	Page 10, j.	<p>Revise j. to  <b>Average Daily Discharge Flow.</b> Average Daily Discharge Flow shall not exceed 0.65 mgd.  <b>The allowable discharge flow in the draft Order is 0.2 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those</b></p>

		<p><b>changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board</b></p>
12.	Page 11, Table 7	<p>Copper –</p> <ul style="list-style-type: none"> <li>• Provide basis of the copper limits included in this table.</li> <li>• The new plant performance on copper removal is unknown. Copper will be closely monitored after the new plant is in operation.</li> </ul> <p><b>Table 7 includes final, water quality based effluent limits for copper, and are unchanged from Table 6. The basis for the final limits are provided in the Fact Sheet, Section IV.C.</b></p> <p><b>We acknowledge the uncertainty related to the expected effluent characteristics of the new wastewater treatment plant for copper, as well as all other pollutants. However, consistent with the approach used when issuing NPDES permits to new dischargers, and as authorized under Section 3 of the Policy for Implementation of Toxic Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, water quality-based effluent limitations can be established using other data and information to represent the potential effluent characteristics. In this Order, the Regional Water believes that the data representing the past and current discharge from the City of Colfax wastewater treatment plant is sufficient for determining if there is a reasonable potential to exceed water quality objectives and for establishing water quality-based effluent limitations.</b></p>
13	Page 12, j	<p>Revise j. to  <b>Average Daily Discharge Flow.</b> Average Daily Discharge Flow shall not exceed 0.5 mgd.  <b>The allowable discharge flow in the draft Order is 0.275 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board</b></p>

14	Page 13, Table 8	<p>Ammonia limit –                  The limit should be re-established based on the CTR results from the interim tertiary plant in AD&amp;I Report.  <b>The interim limitation for ammonia has already been recalculated based on the available information, resulting in a daily maximum limit of 16.1 mg/l.</b></p>
15	Page 14, V.A. line 3.	<p>The receiving water limitations do not apply to Smuthers Ravine. Smuthers Ravine is far downstream of the designated plant downstream sampling point.</p> <p>The City has no control on the tributary section in between the plant discharge point and the downstream sampling point. Any domestic stock, wide life and human activities could impact the water quality. The City cannot be held responsibility to maintain the water quality beyond the discharge point.</p> <p>Will end of pipe samples be accepted as indication Smuthers Ravine is not being impacted?  <b>Receiving water limits apply to all downstream waters. We agree that Smuthers Ravine is far downstream, and have made a late revision to simply state that the limits apply to the receiving water.</b></p> <p><b>With regard to the second point, the permit says “the discharge shall not cause...”, meaning that the Discharger is not responsible if another discharge or activity causes violations of receiving water limits. Both effluent and receiving water monitoring information support compliance with these limits.</b></p>
16	Page 14, A. 8.	<p>pH –                  Historically, the upstream water pH is consistently below 6.5. Please advise how the stream pH can be maintained in between 6.5 to 8.5 with less than 0.5 change in plant effluent.  <b>The City is not responsible for background conditions, however the discharge may not cause the receiving water to exceed the limitations.</b></p>
17	Page 16, B.2	<p>Please explain paragraph. How do you achieve a daily median based on four times per year testing?  <b>The groundwater limitations contained in Section V.B.2 of the Limitations and Discharge Requirements portion of the Order are based on the water quality objectives</b></p>



		<p><b>contained in the Basin Plan (Section III, pages III-9.00 through III-10.00). Although these limitations are based on achieving the Basin Plan total coliform objective of 2.2 MPN/100 mL over any 7-day period, daily monitoring is not required to determine compliance. Section VII.B of the Limitations and Discharge Requirements portion of the Order explains how compliance with these total coliform groundwater limitations will be determined.</b></p>
18	Page 27, iv.	<p>The Freeboard requirement is redundant. The requirement is stated, or repeated in v.</p> <p>Suggest deleting iv.  <b>We agree that the limits were redundant, and have deleted the last sentence of Special Provision C.4.b.v.</b></p>
19	Page 29, 6. a.	<p>These provisions only apply to the new plant. The interim plant is not designed to comply with those provisions.</p> <p><b>Staff agrees with the comment. It was our intent to provide a time schedule for compliance with Title 22, or equivalent, treatment. In order to clarify our intent, we have deleted Other Special Provision 6.a., and added the language to require Title 22, or equivalent treatment to Compliance Schedule 7.a.1.</b></p>
20	Page 29, 6. a.	<p>The new plant will have the ability to operate with coagulation/flocculation mode if needed  <b>Your comment is noted.</b></p>
21	Page 31, VII. C.	<p>The average dry weather influent flow (ADWF) is not necessarily equal to the equalized treated effluent discharge flow. The City's WWTP will treat stored raw sewage and partially treated water during the dry months. Therefore, dry weather effluent discharge flow will be higher than the ADWF coming into the treatment plant. Suggest providing definitions of ADWF and Effluent Limitation.</p> <p><b>The definition of average dry weather flow is for the effluent from the wastewater plant, not the influent flow. A definition of ADWF effluent limitations is provided in the Compliance Determination section.</b></p>

22	Page C-1	<p>Clarify that this is the interim plant process schematic. And please incorporate the markups on the attached schematic.</p> <p><b>The process flow schematic diagram provided in Attachment C has been changed to reflect the correct configuration of the interim tertiary treatment plant.</b></p>
23	Attachment C	<p>Suggest inserting the new plant process schematic (which is significantly different from the interim plant's).</p> <p><b>Your comment is noted. A new schematic has been added to indicate the new plant process schematic.</b></p>
24	Page D-2, c. d. and e.	<p>Operation of UV disinfection system will be based on the manufacture provided equipment specific O&amp;M requirements as approval by California DHS.</p> <p><b>Your comment is noted.</b></p>
25	Page D-8, C.2	<p>Please provide forms, or add when forms are made and provided to City by the RWCB</p> <p><b>Your comment is noted.</b></p>
26	Attachment E	<p>It is not clear which plant (interim or the new plant) this Monitoring and Reporting Program applies to.</p> <p>The interim plant and the new plant will have significantly different treatment processes. Therefore, a "plant-specific" monitoring and reporting program shall be developed for either interim plant or the new plant.</p> <p>Suggest to develop a specific monitoring and reporting program for the interim plant and a specific program for the new plant</p> <p><b>The Monitoring and Reporting Program applies to the discharge and receiving water, regardless of which plant is operating.</b></p>
27	Page E-4	<p>Please define what intermittent discharge is because under normal operations, the system is shut down twice weekly for maintenance</p> <p><b>Shutting down the system is an intermittent discharge and would require sampling on the first day of each discharge, but not more than two times the specified frequency.</b></p>
28	Page E-2, Table E-1	<p>Monitoring Location Name – P-001 and P-002                  Change to aerated storage pond</p> <p><b>Table E-1 has been revised to include monitoring of the Storage Reservoir, but monitoring of P-001 and P-002 will remain.</b></p>

29	Page E-2, Table E-1	R-002 Delete. End of pipe is the location. <b>We disagree that there should be no downstream receiving water monitoring. No change was made.</b>
30	Page E-8, VIII. A. 1.	Delete "Smuthers Ravine" None of the monitoring locations are located on the Smuthers Ravine which is far downstream of the treatment plant outfall. <b>We agree, and have modified the language to state, "The Discharger shall monitor the receiving water at Monitoring Locations R-001U and R-002D as follows".</b>
31	Attachment F	Clarify which plant this Fact Sheet applies to, the interim plant or the new plant. <b>The Fact Sheet specifies the facts upon which the permit limitations are based, and are not specific to which plant is in operation.</b>
32	Page F-3, Table F-1	Provide definition of Threat to Water Quality -2; Provide definition of Complexity – B <b>These definitions are provided in California Code of Regulations, Title 23, Division 3, Chapter 9, Section 2200. Threat Category "2" includes those discharges of waste that could impair the designated beneficial uses of the receiving water, cause short-term violations of water quality objectives, cause secondary drinking water standards to be violated, or cause a nuisance. Complexity Category "B" includes any discharger not included in Category A, that has physical, chemical, or biological treatment systems (except for septic systems with subsurface disposal), or any Class 2 or Class 3 waste management units.</b>
33	Page F-3, Table F-1	Add " <i>Existing</i> " to the Facility Information <b>Your comment is noted. No change was made.</b>
34	Page F-4, C. line 4	Change "replaced" to " <i>upgraded</i> " <b>Your requested change was made.</b>
35	Page F-4, C. line 5	Change "with" to " <i>to</i> " <b>Your requested change was made.</b>
36	Page F-5 &6, Item II.A. 2.	Please review and replace II. A. 2 with these updated facts per attached information. <b>Please see response to Comment #4.</b>

37	Page F-7 last line (strike out version)	Solids that settle in the chorine contact chamber <u>are diverted to Pond 3</u> <b>We modified the sentence to indicate solids are returned to the Storage Reservoir.</b>
38	Page F-8, paragraph 3, line 6	Add " <i>pressure</i> " prior to sand Delete " <i>that are more typically used in agricultural operations.</i> " <b>Comment noted. The Compliance Summary section of the Fact Sheet is intended to be a summary of compliance issues during the term of the permit being renewed. A late revision is proposed to change the detailed listing of violations to a general statement.</b>
39	Page F-8, paragraph 5, line 7	Out-dated information Delete "Solicitation of bids is ....the New WWTP". Replace with " <i>the City received bids on April 26, 2007.</i> " <b>Comment noted. The Compliance Summary section of the Fact Sheet is intended to be a summary of compliance issues during the term of the permit being renewed. A late revision is proposed to change the detailed listing of violations to a general statement.</b>
40	Page F-9 through F-12	We've scanned reviewed D. 2 through 24. We question why there is a compliance summary included in the proposed permit. The permit applies to the future operation of the plant. If the summary is a mandated component of the permit, then why are alleged violations after 2003 included? The city received by hand a draft list of alleged violations on December 7, 2006 but has never received further notice of violation in order to respond. The city believes most of the alleged violations dated after implementation of the interim plant are not violations.  Correction of the records will be provided once official notice is received. <b>Comment noted. The Compliance Summary section of the Fact Sheet is intended to be a summary of compliance issues during the term of the permit being renewed. A late revision is proposed to change the detailed listing of violations to a general statement.</b>
41	Page F-14, c. line 5	Delete ", that there is a potential .... a cold water designation." This is not a fact. There is no access for anadromous fish to reach the North Fork. <b>The statement was based on a determination by the Department of Fish and Game. No change was made.</b>

42	Page F-19, b.	Flow – Delete what is written and replace with attached. <i>For clarity, there is a need to clarify flows, equalized daily flows,</i> and difference between current plant and new plant items. <b>Please see response to comment 5.</b>
43	Page F-20, Table F-4	Why are these pH limits used in the permit? The permit has pH limits of 6.5 to 8.5. <b>The Fact sheet discussed the appropriate technology-based and water quality-based limits for pH. Because the water quality-based limits are more stringent, they were applied as the effluent limits. The Fact sheet was modified for clarity.</b>
44	Page F-21 B.2.a Line 16 (strike out version)	“From Order No. 5-01-190” appears to be typo—should be “from Order No. 5-01-180” <b>The typographical error was corrected.</b>
45	Page F-26 h. line 2	The Discharger uses sodium bisulfite, not sulfur dioxide <b>The requested change was made.</b>
46	Page F-26 h. line 17	The Facility discharges through an “energy attenuating structure” <b>The sentence was modified to make accurate.</b>
47	Page F-27 Second to last line from bottom (strike out version)	“summer of 2008” should read January 1, 2009 <b>The requested change was made.</b>
48	Page F-34 last line of paragraph 3 (strike out version)	“were estimated at \$298,000”—add by RWQCB staff <b>The sentence was modified to read, “were estimated in that Order to be \$298,000”.</b>
49	Page F-66 7.a. second paragraph (strike out version)	Bids for the new plant construction were received and opened on April 26 with a 90-day bid hold pending final funding approval <b>A minor edit the sentence was made to indicate that bids were received.</b>
50	Page G-2 footnote 9 (strike out version)	(e.g., 17, 700 mg/L) should read (e.g, 17.7 mg/L) <b>The typographical error has been corrected.</b>

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**DISCHARGER COMMENT # 4. Edits to Fact Sheet (Attachment F).** The Discharger proposes the following edits to the Fact Sheet (Attachment F), Item II.A.2. Staff responses are included in bold type following each proposed edit.

*First Paragraph rewrite*

A schematic diagram of the *current* interim tertiary treatment system is shown on Attachment C. The current interim tertiary treatment system consists of a parshall flume inlet measuring device, two mechanically aerated treatment lined ponds (Pond 1 and Pond 2) arranged in series, chlorination, coagulation, sedimentation, filtration, dechlorination, PH control, and a 69 million gallon unlined storage reservoir (Pond 3). Wastewater first enters the plant and is measured by the Parshall Flume, and then flows through Pond 1, Pond 2, chlorination/coagulation chamber, filters, dechlorination and PH control, and metered effluent. The tertiary treated effluent is then discharge through Discharge Point No. 001 to the unknown tributary of Smuthers Ravine. In case of operational problem (for example power outage, discharge quality limits being approached, among others), wastewater from the treatment is automatically diverted to Pond 3 for storage and the on duty/off duty on-call plant operator is automatically called to respond. No effluent is subsequently discharged to the unnamed tributary of Smuthers Ravine until the operational problem has been corrected and turned back on by the Operator. The stored water in Pond 3 is later returned into Pond 2 of the treatment system.

**Your suggested rewrite of this paragraph was not made, however minor adjustments were made to clarify the schematic of the wastewater plant.**

*Second paragraph in the Tentative Permit is adequate.*

*Third paragraph*

First line: change 262 inches long to: **262 feet** long...

**Your requested change was made.**

Tenth line: after problems add: **the filter pumps automatically shut off**

**Your requested change was made.**

*Fourth Paragraph*

First line: change four to: **eight 4 foot** diamenters...

**Your requested change was made.**

Fourth line: change 0.5 mgd to: **0.65** mgd...

*Note: the 0.65 mgd is the interim plant discharge limit.*

**The allowable discharge flow in the draft Order is 0.2 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time,**

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**however the matter will receive further discussion at the meeting of the Regional Water Board**

Seventh line: change 2,000-gallon... to: **2,600**-gallon...

**Your requested change was made.**

*Fifth Paragraph*

Second line: change 0.5 mgd to: **0.65** mgd...

*Note: the 0.65 mgd is the interim plant discharge limit.*

**The allowable discharge flow in the draft Order is 0.275 mgd at this time. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board**

*Sixth Paragraph*

Delete 4<sup>th</sup> sentence and replace with the following:

Seepage from below the reservoir has occurred since its initial use in 1979 and the seepage flow may be a function of the reservoir, or natural springs that may be in the area, or ground water.

**Your comment is noted. Some minor edits were made to the sentence for clarity.**

Last sentence after pumped, add: into Pond 3, for subsequent return to Pond 2 and the interim...

**Your comment is noted. Some minor edits were made to the sentence for clarity.**

**DISCHARGER COMMENT # 5. Edits to Fact Sheet (Attachment F).** The Discharger proposes the following redraft to the Fact Sheet (Attachment F), Item IV.B.2b., to clarify flows as ADDWF influent flows; treated equalized effluent discharge flows; and to better distinguish between current interim plant and proposed new plant

**Flow.** The *current* interim WWTP is designed and provides a tertiary level of treatment for an average day dry weather inflow (ADDWF) of 0.20 mgd and a maximum daily tertiary treated equalized effluent flow of 0.65 mgd needed for processing plant influent flows during wet weather plus the rainfall that occurs on the approximately ten acres of pond surface, dewatering of the large equalization partially treated storage pond, and pond seepage returned water during periods when plant inflow is less than 0.50 mgd.

The *proposed* WWTP is designed to provide a Title 22 equivalent treatment for 0.275 mgd ADDWF inflow and a maximum daily Title 22 equivalent treated equalized effluent flow of 0.50 mgd needed for processing plant influent flows during wet weather plus the rainfall that occurs on the approximately ten acres of pond

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surface, dewatering of the large equalization partially treated storage pond, and pond seepage returned water during periods when plant inflow is less than 0.50 mgd. The 0.50 mgd new plant Title 22 effluent discharge is less than the current plant tertiary effluent discharge of 0.65, because when the large storage equalization pond is lined, the seepage water returned will be substantially less. Most of the current seepage returned water is collected shallow ground water and not stored partially treated wastewater.

Therefore, this Order: for the *current* tertiary treatment plant contains an ADDWF plant inflow at the headworks limit of 0.2 mgd with a maximum treated equalized effluent discharge flow of 0.65 mgd; and, for the *proposed* new Title 22 equivalent treatment plant contains an ADDWF plant inflow at the headworks limit of 0.275 mgd with a maximum treated equalized effluent discharge flow of 0.50 mgd.

Mass –based effluent limitations for pollutants continue to be based on the ADDWF inflow of the facilities (0.2 mgd ADDWF for the current tertiary plant, 0.275 ADDWF for the new Title 22 equivalent plant) and remain applicable during storm events.

**RESPONSE: The allowable discharge flow in the draft Order is 0.2 mgd at this time, and 0.275 mgd after the new plant is operational. It appears that there is confusion over the allowable discharge flow. In order to authorize any increased flow rate, the permit would need to be reissued for public comment of those changes. No changes have been made at this time, however the matter will receive further discussion at the meeting of the Regional Water Board**

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## **CALIFORNIA SPORTFISHING PROTECTION ALLIANCE (CSPA) COMMENTS**

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**CSPA – COMMENT #1. Effluent Limitation for Iron.** CSPA states that the proposed iron limitations are not protective of the Basin Plan’s toxicity and color water quality objectives in violation of 40 CFR 122.44 and the California Water Code (CWC). Iron levels in the discharge have reasonable potential to exceed the US EPA ambient water quality criteria for the protection of freshwater aquatic life. The proposed effluent limitation for iron prescribed as an annual average is not protective of the domestic and municipal uses of the receiving stream and has a reasonable potential to exceed the Basin Plan objectives for toxicity, color and taste and order in violation of the CWC and Federal Regulations. The proposed limitation as an annual average violates 40 CFR 122.45.

**RESPONSE:** The effluent limitations for iron in the proposed Order were developed to protect the MUN beneficial use of the receiving water and are based on the Department of Health Services (DHS) Secondary Maximum Contaminant Level (MCL). MCLs are drinking water standards adopted by DHS pursuant to the California Safe Drinking Water Act and are found in Title 22 of the California Code of



Regulations (CCR), Division 4, Chapter 15, Article 16, Section 64449. The CCRs stipulate that compliance with the secondary MCLs shall be determined based on a running annual average of at least four quarterly samples. Therefore, the effluent limitation for iron in the proposed Order has been established as an annual average and is fully protective of the MUN beneficial use.

CSPA also comments that the annual average effluent limitation for iron of 300 µg/L is not protective of aquatic life, based on the USEPA's National Ambient Water Quality Criteria (NAWQC), which includes a criteria continuous concentration (4-day average) of 1000 µg/L for iron. CSPA argues that average monthly effluent limitations (AMEL) and maximum daily effluent limitations (MDEL) for iron based on USEPA's NAWQC must be included in the proposed permit. The TSD includes statistical equations to convert 4-day average criteria to a long-term average (LTA), which are then used to calculate an AMEL and MDEL. The LTA based on the NAWQC chronic criterion is 527 µg/L, which is nearly twice the proposed average annual effluent limitation, and result in an AMEL of 819 µg/L. Since the proposed annual average effluent limitation is essentially the LTA, the annual average effluent limitation based on the MCL is more stringent and is fully protective of aquatic life.

**CSPA – COMMENT #2. Effluent Limitation for Manganese.** CSPA states that the proposed permit fails to contain effluent limitations for manganese that are protective of the beneficial uses of domestic and municipal supply and agricultural irrigation in violation of 40 CFR 122.44 and the CWC. The proposed permit limitation for manganese as an annual average violates 40 CFR 122.45.

**RESPONSE:** The effluent limitation for manganese is based on the Secondary MCL. See response to CSPA – COMMENT #1, regarding the basis for setting the effluent limitation as an annual average.

CSPA argues that the annual average effluent limitation of 50 µg/L is not protective of the agricultural water supply beneficial use of the receiving water. *Water Quality for Agriculture*, Food and Agriculture Organization of the United Nations - Irrigation and Drainage Paper No. 29, Rev. 1, Rome (1985), includes a water quality objective of 200 µg/L for the protection of agricultural use. *Water Quality for Agriculture* recommends the following with regards to the water quality objective in Section 5.3.3, "*It is recommended that the values be considered as the maximum long-term average concentration based upon normal irrigation application rates.*" The proposed annual average limitation of 50 µg/L is the maximum long-term average and is more stringent than the water quality goal recommended by *Water Quality for Agriculture*. Therefore, the proposed effluent limitation is fully protective of the agricultural water supply beneficial use of the receiving water.

**CSPA – COMMENT #3. Tertiary Treatment.** CSPA states that the proposed permit fails to protect the beneficial uses of the receiving stream and is misleading with regard to the currently provided level of treatment in violation of CWC Section 13377 and 40

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CFR 122.4 (a), (d) and (g). The interim treatment system does not provide tertiary treatment, which is equivalent to the requirements of Title 22 for reclamation systems. The term “tertiary treatment” is not well defined in the literature; however its use in the context of this proposed permit is at best misleading, leading one to believe that the beneficial uses are protected by the level of treatment provided by the interim system. Rather than continually cite that the interim system provides tertiary treatment, the Regional Board, as a responsible state agency, should alert downstream water users that the current quality of water is unfit for specific designated uses.

**RESPONSE:** Staff agrees that the term “tertiary treatment” is not well defined and not used consistently. Staff concurs with the commenter that the interim treatment system in place does not provide an equivalent to Title 22 tertiary treatment. At the request of Regional Water Board staff, DHS evaluated the interim treatment system, the results of which are discussed in the proposed permit. The intent of including that information is to clarify the current level of treatment. Order No. 5-01-180 required that “...the wastewater be settled, oxidized, coagulated, and filtered, or equivalent treatment provided...”. The interim treatment system provides that level of treatment. To avoid confusion about what is meant by tertiary treatment, the proposed permit renewal states: “Wastewater shall be oxidized, coagulated, filtered, and adequately disinfected pursuant to the DHS reclamation criteria, California Code of Regulation, Title 22, Division 4, Chapter 3 (Title 22), or equivalent”.

The commenter references and attached several comments by DHS on NPDES permits for other facilities that are specific to those facilities. DHS has provided more recent guidance (1 July 2003 letter from David Spath to Thomas Pinkos) on use of DHS “Uniform Guidelines for Disinfection of Treated Wastewater Discharges”. In response to the question about the level of treatment required relative to 20:1 dilution, the DHS letter states:

“A filtered and disinfected effluent should be required in situation where critical beneficial uses (i.e., food crop irrigation or body contact recreation) are made of the receiving water unless a 20:1 dilution ratio (DR) is available. In these circumstances, a secondary, 23 MPN discharge is acceptable. A secondary, 23 MPN discharge can also be considered when the DR is less than 20:1 for certain times (e.g., winter months) when the discharger can demonstrate that these use are not present.”

**CSPA – COMMENT #4. Reasonable Potential Analysis and Use of Statistical Multipliers.** CSPA states that the permit contains an inadequate reasonable potential analysis by not using statistical multipliers contrary to Federal Regulations 40 CFR 122.44(d)(1)(ii) which, as prescribed by EPA in the TSD, would likely have resulted in additional effluent limitations for arsenic, chlorodibromomethane, chromium VI, dichlorobromomethane, mercury and methylene blue activated substances (MBAS). Failure to include effluent limitations when a proper reasonable potential exists violates

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Federal Regulations 40 CFR 122.44 and the permit should not be adopted in accordance with CWC Section 13377.

**RESPONSE:** Until adoption of the SIP by the State Water Board, USEPA's Technical Support Document for Water Quality-based Toxics Control (TSD) was the normal protocol followed for permit development for all constituents. The SIP is required only for California Toxics Rule (CTR) and National Toxics Rule (NTR) constituents and prescribes a different protocol when conducting a Reasonable Potential Analysis (RPA), but is identical when developing water quality-based effluent limitations (WQBELs). For some time after SIP adoption, SIP protocols were used for CTR/NTR constituents, and TSD protocols were used for non-CTR/NTR constituents. While neither protocol is necessarily better or worse in every case, using both protocols in the same permit has led to confusion by dischargers and the public, and greater complexity in writing permits. Currently there is no State or Regional Water Board Policy that establishes a recommended or required approach to conduct an RPA or establish WQBELs for non-CTR/NTR constituents. However, the State Water Board has held that the Regional Water Board may use the SIP as guidance for water quality-based toxics control. The SIP states in the introduction "*The goal of this Policy is to establish a standardized approach for permitting discharges of toxic pollutants to non-ocean surface waters in a manner that promotes statewide consistency.*" Therefore, for consistency in the development of NPDES permits, we have begun to use the RPA procedures from the SIP to evaluate reasonable potential for both CTR/NTR and non-CTR/NTR constituents.

**CSPA – COMMENT #5. Mass Limitations.** CSPA states that the proposed Permit fails to include mass based effluent limitations contrary to Federal Regulations and contrary to technical advise.

**RESPONSE:** 40 CFR § 122.25(f) states:

*Mass limitations.* (1) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of mass except:

(i) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(ii) When applicable standards and limitations are expressed in terms of other units of measurement; or

(iii) If in establishing permit limitations on a case-by-case basis under §125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(2) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

40 CFR § 122.25(f)(1)(ii) states that mass limitations are not required when applicable standards are expressed in terms of other units of measurement. All the pollutants with numerical effluent limitations in this tentative permit are based on water quality standards and objectives. These are expressed in terms of concentration. Pursuant to 40 CFR § 122.25(f)(1)(ii), expressing the effluent limitations in terms of concentration is expressly allowed and is in no way contrary to Federal Regulations.

**CSPA – COMMENT # 6. Effluent Limitation for Electrical Conductivity (EC).** CSPA states that the proposed permit fails to include an effluent limitation for electrical conductivity that is protective of the irrigated agriculture and municipal and domestic beneficial uses of the receiving stream contrary to Federal Regulations 40 CFR 122.44. Substantial economic harm has been caused to downstream neighbors that have water rights for irrigation by the Regional Board's failure to adequately regulate EC. This causes yield losses at concentrations above 700 umhos/cm.

**RESPONSE:** The 700 umhos/cm value cited by the commenter is not an adopted water quality objective, but rather a goal that is intended to be adjusted based on site-specific characteristics such as soil type, drainage, rainfall, etc. An EC level fully protective of the agricultural irrigation use may differ from the 700 umhos/cm value depending upon the local conditions. It would not be possible to determine if the levels in the effluent caused yield losses without evaluating the site-specific conditions. The average effluent EC concentration is 445 umhos/cm based on 284 samples which is well below the agricultural goal and the secondary MCL. Also, the 900 umhos/cm secondary MCL is not intended to be applied as a instantaneous maximum. The Regional Water Board has begun a long-term process of developing a policy for regulating salinity. In the interim, while the policy is being developed the Regional Water Board strategy is to prevent salinity levels from becoming worse, by capping discharges at current levels and requiring dischargers to implement salinity reduction measures to reduce salinity. Limiting effluent salinity of POTWs to an increment of 500 umhos/cm over source water is being considered as representing BPTC. In the case of Colfax, there is insufficient information on source water levels. Consequently, the proposed permit establishes an interim performance-based limit and requires (1) monitoring of source water, (2) implementation of a Salinity Evaluation and Minimization Plan, and (3) reports on progress in reducing salinity levels in the discharge. As stated in the Fact Sheet, final effluent limitations for salinity based on BPTC will be established subsequent to the collection and analysis of EC in the Discharger's water supply.

**CSPA – COMMENT # 7. Effluent Limitation for Acute Toxicity.** CSPA states that the proposed permit contains an effluent limitation for acute toxicity that allows mortality

that exceed the Basin Plan water quality objective and does not comply with Federal Regulations 40 CFR 122.44 (d)(1)(i).

**RESPONSE:** The tentative permit contains several mechanisms to ensure that effluent discharge does not cause acute or chronic toxicity in the receiving water. Receiving water limits proscribe the discharge from causing toxicity in the receiving water. For effluent limitations included for the protection of the aquatic life beneficial use, the tentative permit includes end-of-pipe effluent limits and were developed based on aquatic life toxicity criteria. Furthermore, the proposed Order requires whole effluent chronic toxicity testing, which identifies both acute and chronic effluent toxicity. If this testing shows that the discharge causes, has the reasonable potential to cause, or contributes to an in stream excursion of the water quality objective for toxicity, the proposed Order requires the Discharger to investigate the causes of, and identify corrective actions to eliminate the toxicity.

The acute whole effluent toxicity limits establish additional thresholds to control acute toxicity in the effluent: survival in one test no less than 70% and a median of no less than 90% survival in three consecutive tests. Some in-test mortality can occur by chance. To account for this, the acute toxicity test acceptability criteria allow ten percent mortality (requires 90% survival) in the control. Thus, the acute toxicity limits allow for some test variability, but impose ceilings for exceptional events (i.e., 30% mortality or more), and for repeat events (i.e., median of three events exceeding mortality of 10%). These effluent limitations are consistent with U.S. EPA guidance. In its document titled "Guidance for NPDES Permit Issuance", dated February 1994, it states the following:

*"In the absence of specific numeric water quality objectives for acute and chronic toxicity, the narrative criterion 'no toxics in toxic amounts' applies. Achievement of the narrative criterion, as applied herein, means that ambient waters shall not demonstrate for acute toxicity: 1) less than 90% survival, 50% of the time, based on the monthly median, or 2) less than 70% survival, 10% of the time, based on any monthly median. For chronic toxicity, ambient waters shall not demonstrate a test result of greater than 1 TUc."*

The proposed Order protects aquatic life beneficial uses by implementing numerous measures to control individual toxic pollutants and whole effluent toxicity. Both the acute limits and receiving water limits are consistent with numerous NPDES permits issued by the Regional Water Board and throughout the State and are appropriate.

**CSPA – COMMENT # 8. Effluent Limitation for Chronic Toxicity.** CSPA states that the proposed permit does not contain effluent limitations for chronic toxicity and therefore does not comply with Federal Regulations 40 CFR 122.44 (d)(1)(i) and the SIP.

**RESPONSE:** The Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California (SIP) contains implementation gaps regarding the appropriate form and implementation of chronic toxicity limits. This has resulted in the petitioning of a NPDES permit in the Los Angeles Region<sup>1</sup> that contained numeric chronic toxicity effluent limitations. As a result of this petition, the State Water Board adopted WQO 2003-012 directing its staff to revise the toxicity control provisions in the SIP. The State Water Board states the following in WQO 2003-012, *"In reviewing this petition and receiving comments from numerous interested persons on the propriety of including numeric effluent limitations for chronic toxicity in NPDES permits for publicly-owned treatment works that discharge to inland waters, we have determined that this issue should be considered in a regulatory setting, in order to allow for full public discussion and deliberation. We intend to modify the SIP to specifically address the issue. We anticipate that review will occur within the next year. We therefore decline to make a determination here regarding the propriety of the final numeric effluent limitations for chronic toxicity contained in these permits."* The process to revise the SIP is currently underway. Proposed changes include clarifying the appropriate form of effluent toxicity limits in NPDES permits and general expansion and standardization of toxicity control implementation related to the NPDES permitting process.

Since the toxicity control provisions in the SIP are under revision it is infeasible to develop numeric effluent limitations for chronic toxicity. Therefore, the proposed Order requires that the Discharger meet best management practices for compliance with the Basin Plan's narrative toxicity objective, as allowed under 40 C.F.R. 122.44(k).

**CSPA COMMENT - # 9. Groundwater Degradation.** CSPA states that the wastewater discharge from the City of Colfax has degraded groundwater quality and is not properly regulated in accordance with the Antidegradation Policy.

**RESPONSE:** The antidegradation analysis is not complete. Late revisions have been prepared to address the antidegradation issues.

**CSPA COMMENT - # 10. Antidegradation Analysis.** CSPA states that the proposed permit contains an inadequate antidegradation analysis that does not comply with the requirements of Section 101(a) of the Clean Water Act, Federal Regulations 40 CFR Section 131.12 and State Board's Resolution 68-16.

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<sup>1</sup> In the Matter of the Review of Own Motion of Waste Discharge Requirements Order Nos. R4-2002-0121 [NPDES No. CA0054011] and R4-2002-0123 [NPDES NO. CA0055119] and Time Schedule Order Nos. R4-2002-0122 and R4-2002-0124 for Los Coyotes and Long Beach Wastewater Reclamation Plants Issued by the California Regional Water Quality Control Board, Los Angeles Region SWRCB/OCC FILES A-1496 AND 1496(a)

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**RESPONSE:** The antidegradation analysis is not complete. Late revisions have been prepared to address the antidegradation issues.

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**CENTRAL VALLEY CLEAN WATER ASSOCIATION (CVCWA) COMMENTS**

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**CVCWA – COMMENT #1. Pollution Prevention Plan Requirements.** CVCWA contends that pollution plan requirements for ammonia and 4,4'DDE are not appropriate for these constituents because pollution prevention activities will not help to assist in achieving compliance with the proposed final effluent limitations and thus are a waste of public funds.

**RESPONSE:** Staff concurs that inclusion of ammonia in the requirements for a Pollution Prevention Plan (PPP) is not appropriate. Ammonia is an expected component of domestic wastewater and the discharger cannot control its source. A late revision is proposed to delete ammonia from the PPP. Staff does not agree that 4,4'DDE should be deleted from the PPP. 4,4'DDE is a persistent chlorinated hydrocarbon pesticide and a CTR constituent. It is appropriate for the discharger to take actions to the extent possible to reduce/eliminate sources of 4,4'DDE to the collection and treatment system.

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**LAWYERS FOR CLEAN WATER FOR ALLEN & NANCY EDWARDS AND ENVIRONMENTAL LAW FOUNDATION (ENVIRONMENTAL PARTIES) COMMENTS**

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**ENVIRONMENTAL PARTIES – COMMENT # 1. Addition of Compliance Dates.** The Environmental Parties applaud Regional Board staff for making changes to the earlier circulated draft of the permit and imposing compliance dates for the final effluent limits in the Draft Permit. Environmental Parties initial comment on the Draft Permit – that the Draft Permit contained no compliance deadline – has therefore been addressed. As the Regional Board indicated in its letter of March 20, 2007 to the City, Colfax failed to comply with the 2001 CDO requirements. The Environmental Parties are again before this Regional Board commenting on another Draft Permit that strives to force Colfax to finally fix the problem and comply with the law. It is critical that the Draft Permit and the accompanying CDO contain firm deadlines for Colfax, and that this time those deadlines are enforced.

**RESPONSE:** Comment noted. The administrative draft permit did include specific dates for compliance with final effluent limits for certain constituents as did the tentative permit. However, it did not include a specific time schedule for completion of the upgraded Title 22 equivalent plant. The agenda version of the permit was modified to include the time schedule for completion of the upgraded facility by 1 January 2009. Compliance dates for all final effluent limits were shortened to coincide with that date.

**ENVIRONMENTAL PARTIES – COMMENT # 2. Bacteria Effluent Limitations.** The Draft Permit contains a maximum effluent limitation for total coliform of 240 MPN/100 mL. The California Department of Food and Agriculture adopted guidelines in April 2007 for the production and harvest of lettuce and leafy greens. The guidelines set a maximum E. coli. concentration of 235 MPN/100 mL. If any water source that contacts the leafy greens exceeds the 235 MPN/100 mL criterion, it could lead to the shutdown of harvesting those crops for human consumption. To ensure the safety of downstream agricultural uses, the Draft Permit must be amended to reflect the limits in the new Food and Agriculture guidelines. Because the maximum criteria is 235 MPN/100 mL, the new Total Coliform effluent limit of should be slightly under that criteria, such as 220-230 MPN/100.

**RESPONSE:** Staff was not aware of any new guidelines at the time the renewed permit was drafted, and an evaluation has not been made regarding its applicability to this discharge. However, since E. coli is a subset of total coliform, staff believes that meeting a total coliform limitation of 240 MPN/100 mL would provide for compliance with an E. coli guideline of 235 MPN/100 mL.

**ENVIRONMENTAL PARTIES – COMMENT # 3. Compliance Schedule Justification for Copper Limitation.** The compliance schedule set forth in the Draft Permit for Copper fails to meet the requirements of the State’s implementation plan for toxic pollutant control, Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California, Section 2, p. 20 (2005) (“SIP”). Colfax did not submit the required documents to justify a compliance schedule for Copper. See Draft Permit, Table 8, p. 13. The SIP requires a discharger to submit documentation justifying the compliance schedule “before compliance schedules may be authorized in a permit.” SIP Section 2.1, p. 19.

**RESPONSE:** The commenter is correct that the SIP requires justification for a compliance schedule to be placed in a permit. In this case, the Discharger provided such justification for several time schedules based on the reasonable potential analysis provided to the discharger early in the permit development process. At that stage, the analysis did not find reasonable potential for copper. The copper limitation in the tentative order was based on monitoring data that became available before release of the tentative order. Therefore, the discharger did not have the opportunity to provide the time schedule justification prior to release of the tentative order. Consequently, the time schedule has been included in the tentative order with a requirement that the Discharger provide the required justification within 90 days of the effective date of the renewed permit. The copper time schedule is contingent upon the Discharger providing the required justification.

**ENVIRONMENTAL PARTIES – COMMENT #4. Compliance Schedule for Copper Limitation.** The Water Quality Control Plan, Central Valley Region (“Basin Plan”) does not provide a basis for the Draft Permit’s compliance schedule for Copper. Unlike the



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California Toxics Rule (“CTR”), 40 C.F.R. § 131.38, and SIP, the Basin Plan contains provisions that ostensibly still allow the use of compliance schedules, albeit in limited situations. Point # 4 of the Basin Plan’s “seven important points that apply to water quality objectives” authorizes compliance schedules to implement newly adopted objectives or standards. Basin Plan, pp. III-1.00 & 2.00. “This policy [authorizing compliance schedules] shall apply to water quality objectives and water quality criteria adopted after the effective date of this amendment to the Basin Plan.” *Id.* Compliance schedules must implement new standards in the shortest practicable period of time, not to exceed ten years after adoption of the new objectives or standards. *Id.* The current Basin Plan’s water quality objective for Copper has been in place since September 15, 1998 and is 0.0056 mg/L. Basin Plan, p. III-3.00. September 2008 is ten years from adoption of the water quality objective, and therefore this is the latest date for compliance with Copper WQBELs, and not December 3, 2008 as set forth in the Draft Permit.

The Regional Board’s assertion in the Draft Permit that for CTR constituents, such as Copper, the compliance schedule is ten years from the date of SIP adoption is incorrect. At a minimum the Draft Permit should correct the deadline for compliance for Copper to reflect the Basin Plan requirements and set the compliance deadline for September 15, 2008.

**RESPONSE:** The copper limit in the permit is not based on the copper water quality objectives in the Basin Plan, which do not apply to this water body. The copper limit is based on the CTR. See response to comment #3.

**ENVIRONMENTAL PARTIES COMMENT # 5. Compliance Schedules for Ammonia, Copper, and 4,4-DDE.** The CWA forbids the Regional Board from issuing compliance schedules which delay the effective date of Water Quality Based Effluent Limitations (“WQBELs”) past July 1, 1977. Several Regional Boards have asserted that provisions in the CWA and U.S. Environmental Protection Agency (“EPA”) regulations governing compliance schedules (33 U.S.C. § 1313(e)(3)(A), (F); 40 C.F.R. §§ 130.5(b)(1), (6), 131.38(e), 122.47) authorize using compliance schedules to delay the effective date of WQBELs in certain circumstances. The Draft Permit continues this pattern by asserting that compliance schedules are authorized in the circumstances specified by (1) the CTR, 40 C.F.R. § 131.38; (2) the SIP; and/or (3) Basin Plan. See Draft Permit, p. 4-5.

The CTR and the SIP, however, cannot provide the basis for the compliance schedules in the Draft Permit. While the CTR contains a provision allowing schedules of compliance when dischargers need time to achieve WQBELs based on CTR criteria, this provision expired by its own terms on May 18, 2005. 40 C.F.R. § 131.38(e). The SIP also purports to authorize compliance schedules for WQBELs based on CTR criteria, however, the SIP can no longer lawfully do so. When it promulgated the CTR, EPA explicitly stated that compliance schedules for CTR criteria can be issued after May of 2005 only if (1) the State Board adopts and EPA approves, a Statewide and/or regional policy authorizing compliance schedules, and (2) EPA acts to “stay the

authorizing compliance schedule provisions in [the CTR].” 65 Fed. Reg. 31704-5. Although EPA has partially approved the SIP provisions relating to CTR-based compliance schedules, it has not acted to amend the Federal regulations prohibiting the use of compliance schedules after 2005. Because the CTR compliance schedule provision has expired and EPA has not acted to amend the CTR, the Regional Board may not issue compliance schedules for WQBELs based on CTR criteria.

**RESPONSE:** The CTR and SIP apply to copper and 4,4 DDE. The SIP is the governing policy in California for implementing the CTR and it allows compliance schedules. USEPA approved the section of the SIP concerning compliance schedules. Although the CTR provisions for compliance schedules expired, that does not preclude the State Water Board from establishing its own version of compliance schedules since the SIP is intended to implement the CTR. The SIP allows compliance schedules that are short as practicable but in no case (1) allows more than 5 years to come into compliance with CTR-based effluent limitations and (2) allows the compliance schedule to extend beyond 10 years from the effective date of the SIP (18 May 2000) to establish and comply with CTR-based effluent limitations. The compliance schedules end prior to May 2010. For copper also see Response to Comment No. 3.

The ammonia limit is based on the narrative toxicity objective in the Basin Plan. The commenter is correct that in most circumstances the Regional Board may not include compliance schedules in NPDES permits. In general, an NPDES permit must include final effluent limitations that are consistent with Clean Water Act section 301 and with 40 CFR 122.44(d). There are exceptions to this general rule. The State Water Board has concluded that where the Regional Board’s Basin Plan allows for schedules of compliance and the Regional Board is newly interpreting a narrative standard, it may include schedules of compliance in the permit to meet effluent limits that implement a narrative standard. See *In the Matter of Waste Discharge Requirements for Avon Refinery* (State Board Order WQ 2001-06 at pp. 53-55). See also *Communities for a Better Environment et al. v. State Water Resources Control Board*, 34 Cal.Rptr.3d 396, 410 (2005). The Basin Plan for the Sacramento and San Joaquin Rivers includes a provision that authorizes the use of compliance schedules in NPDES permits for water quality objectives that are adopted after the date of adoption of the Basin Plan, which was September 25, 1995. See Basin Plan at page IV-16. Consistent with the State Water Board’s Order in the CBE matter, the Central Valley Regional Board has the discretion to include compliance schedules in NPDES permits when it is including an effluent limitation that is a “new interpretation” of a narrative water quality objective.

**ENVIRONMENTAL PARTIES COMMENT # 6. Anti-backsliding.** The Draft Permit violates the anti-backsliding policy by relaxing the permit limits for several constituents. The Clean Water Act’s anti-backsliding policy was adopted to implement the CWA’s “national goal that the discharge of pollutants into the navigable waters be eliminated by 1985.” 33 U.S.C. § 1251; 49 Fed. Reg. 37,898, 38,019 (September 26, 1984)

(emphasis added). This policy prohibits a reissued permit from containing an effluent limit that is less stringent than that in the previous permit. 33 U.S.C. § 13429(o), 40 C.F.R. § 122.4(l)(1).

**RESPONSE:** The anti-backsliding provision of the Clean Water Act is not triggered because the draft permit does not contain effluent limits that are less stringent than the 2001 permit. It contains additional limits.

**6a. Discharge Prohibition.** The 2001 Permit was a no discharge permit except for seepage under the dam. Each of the permits adopted by the Regional Board since the inception of the WWTP were no discharge permits, except for seepage under the dam. The 2001 Permit contained inflow limits based on the actual capacity of the plant, and requirements to discharge excess wastewater via land irrigation. The Draft Permit prohibits land irrigation and is an outflow permit that turns an ephemeral stream into an effluent dominated stream. The Draft Permit therefore backslides and authorizes a significant change in the manner of discharge by Colfax by allowing a large increase in the discharge to a water of the United States. This backsliding is contrary to the Clean Water Act.

**RESPONSE:** The 2001 permit authorized a continuous discharge of treated seepage to surface waters. Finding 38 of that Order also recognized that there was inadequate capacity to contain wet weather flows within the land application area. Cease and Desist Order 5-01-181 required a capacity analysis be completed and an alternative to either keep all wastewater on land or comply with tertiary or equivalent standards and discharge all wastes to surface waters. The determination was made, based on these two Orders, to discharge all wastewater to surface waters.

The anti-backsliding provisions of the Clean Water Act do not restrict the Regional Board from issuing an NPDES permit. In addition, the proposed permit does not contain effluent limitations that are less stringent than the previous permit and, therefore, the anti-backsliding provisions of the Clean Water Act are not triggered.

**6b. Groundwater.** The 2001 Permit prohibited discharges from degrading groundwater quality. See 2001 Permit, Groundwater Limitations E.1. To ensure compliance with the groundwater limitation in the 2001 Permit, the permit required a groundwater monitoring and reporting program. The results of that program indicates that the Colfax treatment plant negatively impacts area groundwater. See Draft Permit, Fact Sheet F-37. The Draft Permit backslides and allows further degradation of groundwater by permitting the discharge of pollutants provided they are not above background levels. However, rather than rely on data produced from the 2001 Permit's groundwater monitoring program, the Draft Permit again requires monitoring and then submittal of a study 24 months from permit adoption setting forth the background levels. This allows Colfax to pollute, and likely increase those background levels, when the groundwater results are known from previous monitoring. The Draft Permit should not backslide by providing a 24 month window

to pollute, but instead should again prohibit discharges from degrading groundwater, and use the monitoring information gathered in the last six years.

**RESPONSE:** The anti-backsliding provisions of the Clean Water Act do not apply to the groundwater discharge. The proposed permit contains strict limits for coliform that implement the Basin Plan and requires the discharger to evaluate the discharge from the pond and to comply with all Basin Plan and permit requirements.

**6c. Chlorine Residual.** The 2001 CDO required Colfax to begin continuous Chlorine monitoring on June 14, 2006 if they chose to meet the requirement for upgrading the plant with a tertiary plant. Colfax installed a continuous Chlorine monitor. The Draft Permit requires only one grab sample per day rather than continuous monitoring. This backslides from the requirements of the 2001 Permit and the 2001 CDO and should be amended to require continuous Chlorine Residual monitoring.

**RESPONSE:** Staff agrees with the comment. Table E-3 in the Monitoring and Reporting Program portion of the Order has been changed to require continuous monitoring for total residual chlorine concurrent with completion of construction of the new wastewater treatment plant.

**ENVIRONMENTAL PARTIES COMMENT # 7. New WWTP Provisions.** The Draft Permit contains numerous details and descriptions regarding Colfax's proposed new wastewater treatment plant ("New WWTP") that should instead be included in the CDO. See Draft Permit, p. 30, and Fact Sheet pp. F-14, F-35, F-46 and F-66. Requiring Colfax to build the New WWTP to meet specific parameters or requirements set forth in the Draft Permit may qualify as effluent limits pursuant to the Clean Water Act, but that argument might be difficult to argue and enforce. To streamline enforcement the Regional Board should simply move most of the discussion and description of the New WWTP to the CDO. Colfax has a demonstrated pattern of non-compliance with its prior NPDES permits, and Colfax's new permit and CDO should allow for swift enforcement for violations of the permit or CDO. This would be more easily accomplished if the CDO contained specific requirements and deadlines for compliance.

**RESPONSE:** Comment noted. The proposed permit includes a specific compliance schedule for completion of the new tertiary facility that includes interim dates for specific tasks and progress reports. As such, it is an enforceable requirement of the permit. Adoption of the renewed permit and new CDO does not absolve the City of its liability for non-compliance with the previous permit and CDO.

**ENVIRONMENTAL PARTIES COMMENT # 8. Factual Inaccuracies.** The following comments are provided to ensure that the facts stated in the Draft Permit are accurate.

**8a.** The Draft Permit, Page C-1, includes flow schematics for the interim system. The design description is incorrect, because as the Department of Health Services

("DHS") indicated in a letter to the Regional Board, the treatment train is backwards and dechlorination actually comes after the filters rather than as shown. The chlorination and polymer addition are simultaneous. .

**RESPONSE:** The process flow schematic diagram provided in Attachment C has been changed to reflect the correct configuration of the interim tertiary treatment plant.

**8b.** Information available to the Environmental Parties indicates that Pond #3 continues to leak around the interim treatment system to surface waters.

**RESPONSE:** Comment noted. The proposed CDO addresses potential leakage from the storage reservoir (Pond #3).

**8c.** Pond #3 continues to percolate to groundwater, which is not adequately reflected in the Draft Permit.

**RESPONSE:** The proposed permit includes groundwater limitations, groundwater monitoring and requires an extensive groundwater assessment.

**8d.** Draft Permit, p. F-4, section C and A.1. These statements are factually incorrect. The Regional Board granted Colfax's request to upgrade the current system with tertiary components for the sole purpose of dewatering the main storage pond in order to line the pond. Permission was not requested and has never been granted by the Regional Board, until the Draft Permit, to use this facility as an interim compliance facility. The Fact Sheet must be modified to reflect that Colfax has been discharging effluent since August 2005 without authorization from the Regional Board.

**RESPONSE:** While staff agrees that originally Colfax constructed the interim plant to allow it to dewater the storage reservoir, staff disagrees with the comment that Colfax has been discharging without authorization. The previous permit and CDO provided time schedules for Colfax to evaluate its ability to contain wastewater on land, and to upgrade the facility in order to discharge all wastewater to surface waters if it determined that it could not contain it all on land.

**8e.** Fact Sheet p. F-7, table F-2. The Fact Sheet and table incorrectly list violations only through October 2005. The table should have included all violations at the plant, including that the plant has been operating an incorrect treatment train since August 2005 without authorization.

**RESPONSE:** Comment noted. The intent of that section of the Fact Sheet is to be a general summary of compliance issues during the term of the permit that is up for renewal. It is not intended to be a detailed listing of all violations. A late revision is proposed to change the detailed listing of violations to a general summary

statement. (See response to Discharger Comment #3, Item 40 and Environmental Parties Comment # 8d above.)

**ENVIRONMENTAL PARTIES COMMENT # 9. Drafting Errors and Omissions.** The following typographical errors, drafting errors, or obvious omissions in the Draft Permit are noted:

**9a.** In the Fact Sheet on page F-52, the data used are summarized but the calculation isn't shown. This doesn't allow the public to determine whether the calculations are correct.

**RESPONSE:** Section IV.E.1 of Fact Sheet portion of the Order explains how the interim limitations were calculated. The data used to calculate the mean, standard deviation, and interim limitations are included in the record.

**9b.** Page 11 – 2.a: strike "...for discharges from the new treatment plant..."

**RESPONSE:** Staff disagrees with the suggested language change.

**9c.** Compliance Schedule – page 30, if the Regional Board adopts the compliance schedules:

- 7.a.i should read: The Discharger shall complete construction of the new wastewater treatment plant and comply with Special Provision VI.C.6 **and the effluent limitations contained in Section 2** by no later than 1 January 2009.
- Shouldn't 7.a.ii require timely submittal of such changes and approval by the Regional Board.

**RESPONSE:** Staff disagrees with the suggested language change, as Section IV.A.2.a of the Limitations and Discharge Requirements specifically requires compliance with the effluent limitations for the new wastewater treatment plant by 1 January 2009. Staff believes that no further changes to special provision VI.C.7.a.ii are warranted. As written, the Discharge is responsible for initiation of operation of the new wastewater treatment plant by 1 January 2009. It is therefore contingent on the Discharger to ensure timely submittal of such changes to the Regional Water Board to ensure that the 1 January 2009 deadline is met.

**9d.** Table E-8, page E-11: The water level monitoring (freeboard and water elevation) in the treatment ponds has been reduced from once per day to once per week. The Fact sheet page 59 says once per week, but no rationale is given.

**RESPONSE:** Staff agrees with the comment and acknowledges the error in the pond monitoring requirements. Table E-8 (and the supporting rationale in Section VI.E.3 of the Fact Sheet) has been revised to be consistent with the monitoring requirements (constituents and frequency) from the previous Order.

**9e.** Table E-10, page E-15. The Environmental Parties cannot understand the compliance schedule reporting for ammonia and 4,4-DDE. In the Order itself, it appears that DDE and ammonia have final effluent limits required by 1/1/09, and this table doesn't address reporting on compliance measures for copper.

**RESPONSE:** Staff agrees with the comment and acknowledges the omission of copper in Table E-10. The appropriate changes to the table have been provided in the Order.

**9f.** The Draft Permit, p. E-3, Table E-3 has been changed from monitoring Ammonia twice a week to once a week without explanation. Also, the footnote attached to table makes no sense and needs further clarification.

**RESPONSE:** Due to the concerns over the presence of ammonia in the discharge, the monitoring frequency was increased from monthly (as is required under the existing Order) to weekly. Staff believes that this monitoring frequency is adequate to monitor for compliance with the effluent limitations established in the Order.

Staff agrees with the comment regarding the footnotes. Footnote 5 is not applicable to ammonia and has been removed; Footnote 6 has been clarified and now cross-references the Section V.A.1 requirements contained in the Monitoring and Reporting Program.

**9g.** The Draft Permit, p. E-9, Table E-6 removed the once per year priority pollutant analysis without explanation.

**RESPONSE:** The Order requires groundwater monitoring for several constituents of concern consistent with the existing Order. The annual priority pollutant analysis was included in Table E-6 in error, and was therefore removed.

**9h.** The Draft Permit, p. E-9, table E-6 has been changed from monitoring Ammonia twice a week to once a week without explanation.

**RESPONSE:** The monitoring frequency for ammonia, nitrate, and total kjeldahl nitrogen in Table E-6 in the tentative Order is quarterly, consistent with the frequency required in the previous Order for nitrates. Staff believes that this monitoring frequency is adequate to monitor nitrogen compounds in groundwater in the Order.

**ENVIRONMENTAL PARTIES COMMENT # 10. General CDO Comments.** The Regional Board must construct a CDO that ensures Colfax's compliance with the Draft Permit and the Clean Water Act. The efforts of the Regional Board did not work the last time they renewed the permit, or the time before, or the time before, all the way back to 1979. Wastewater leaking from the interim treatment system is not the only outstanding issue at the WWTP, but it is the only problem addressed by the CDO. Other problems

include: the WWTP's tertiary treatment system is installed backwards; Pond #3 continues to discharge to groundwater; Pond 3 has recently discharged over the spillway; Colfax has not secured final funding for building the WWTP; the Colfax collection system spills raw sewage; and Colfax is not addressing its infiltration and inflow issues that create capacity issues at the plant.

The Environmental Parties are in the same position as six years ago when the Regional Board adopted the 2001 Permit and the 2001 CDO. The 2001 Permit and the 2001 CDO provided a mechanism to force Colfax to fully comply with its permit and the Clean Water Act and set a compliance deadline of June 14, 2006. As of June 2007, Colfax still cannot comply with the terms of the 2001 CDO and now the Regional Board proposes to give Colfax an additional year and a half to build a new treatment plant. This is the same requirement the Regional Board included in the 2003 ACL – that Colfax build a treatment system that achieves full compliance with the 2001 Permit - and the CDO now proposes to forgive. Because the CDO specifically rescinds the 2001 CDO, the Regional Board is forgiving six-years of failures by Colfax to comply with the 2001 CDO, the 2001 Permit and the Clean Water Act. Further, the Regional Board did not draft a new CDO that corrects past failures. The CDO must set forth explicit requirements, tied to compliance, that allow for easy enforcement by the Regional Board if Colfax is not complying with the Draft Permit, the CDO, and the Clean Water Act.

**RESPONSE:** See response to Environmental Parties Comment # 7 above.

**ENVIRONMENTAL PARTIES COMMENT # 11. Backwards Treatment Train.** The new CDO should require a solution to Colfax's interim treatment system problem. As noted in the Draft Permit, DHS does not believe that the treatment plant as currently constructed is protective of water quality. See Draft Permit, Fact Sheet pp. 10. Colfax must change the treatment system to reflect industry practice and ensure that discharges from the treatment plant are protective of water quality. By not requiring Colfax to fix the treatment train and comply with the tertiary treatment limits until January 1, 2009, the Regional Board is authorizing the discharge of wastewater that negatively impacts beneficial uses and does not comply with the Clean Water Act.

**RESPONSE:** The sequencing problems with the interim treatment system will be corrected with construction of the new tertiary facility. The proposed permit includes a compliance schedule for completion of the new facility.

**ENVIRONMENTAL PARTIES COMMENT # 12. Lining of Pond #3.** The CDO addresses possible leakage from the interim treatment to surface waters of the United States but it does not require Colfax to prevent seepage to area groundwater. The CDO contains a factual error regarding Pond #3. It claims that Colfax has not dewatered Pond #3, but information available to the Environmental Parties indicates that Colfax dewatered Pond #3 in the summer of 2005 and 2006. Lining Pond #3 will prevent seepage to groundwater if done correctly. The Regional Board should require



that Colfax complete the project Colfax proposed originally in its March 2004 request to the Regional Board to dewater and line the pond and stop the seepage from the Pond #3.

**RESPONSE:** The Discharger began dewatering the storage reservoir (Pond #3) after installation of the interim treatment system. It is staff's understanding that the dewatering was nearly complete when the unusually heavy storms of late December 2005/early January 2006 occurred and refilled the storage reservoir. Addressing the seepage to surface water as required by the CDO should also address seepage to groundwater. (See the response to Discharger Comments # 1 & # 2 above.)

**ENVIRONMENTAL PARTIES COMMENT # 13. Funding for New WWTP.** The CDO must contain compliance dates regarding Colfax building the new WWTP. As the Draft Permit explains, Colfax has not secured final funding and State Board approval for building the WWTP. Draft Permit, Fact Sheet p. The Draft Permit requires Colfax to build the plant and meet final effluent limits by January 1, 2009, however the 2001 Permit required Colfax to build a treatment system that achieves full compliance with the permit by June 14, 2006 and six years later Colfax still has not begun building a plant that will comply with that mandate.

The Regional Board must insert specific dates for construction of the WWTP into the CDO, and the CDO should then include heavy stipulated penalties for not meeting those dates. As explained above, Colfax has a thirty-year history of non-compliance with its NPDES permits, and all enforcement attempts by the Regional Board have failed to bring Colfax into compliance with its permit and the Clean Water Act. The CDO should set forth specific construction dates and easily enforceable penalties for non-compliance. As currently drafted, the Draft Permit and the CDO do not adequately protect water quality and the environment because the CDO does not contain severe penalties for non-compliance by Colfax. The CDO must do what the 2001 Permit, the 2001 CDO, and the 2003 ACL did not do, ensure that Colfax build a WWTP that complies with the terms of its permit and the Clean Water Act.

**RESPONSE:** See response to Environmental Parties Comment # 7 above.

**ENVIRONMENTAL PARTIES COMMENT # 14. Infiltration and Inflow.** Information available to the Environmental Parties indicates that many of the Colfax spills at the WWTP occur because of excess infiltration and inflow ("I&I") from Colfax's collection system. Although the Draft Permit contains a prohibition on spills from the collection system, it does not require Colfax to address I&I issues. Even if Colfax finally builds a plant that complies with its permit, Colfax will still discharge to waters of the United States via its collection system. The CDO should set a compliance schedule that requires Colfax to make significant capital improvements to the collection system to address I&I and comply with the Clean Water Act.

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Further, the Colfax WWTP has capacity related spills during the wet season, including a 17-day spill over the spillway on Pond #3 in April 2006. The Draft Permit will not ensure that Colfax will not continue to have capacity related spills. The CDO should institute a hookup moratorium on new hookups until the new plant is built and can demonstrate that the new plant will not have capacity related spills.

**RESPONSE:** The proposed Order includes Special Provision C.5.e. regarding the collection system. It requires proper operation and maintenance of the collection system. In addition, Special Provision VI.C.5.e in the Limitations and Discharge Requirements requires the Discharger to apply for coverage under the 2 May 2006 State Water Board Order 2006-0003, a Statewide General WDR for Sanitary Sewer Systems. The purpose of this general WDR is to ensure proper operation of the Discharger's collection system, including development of programs and procedures to minimize the occurrence of sanitary sewer overflows.

Staff acknowledges that spills have occurred during the wet season, and believes that the combination of compliance with the State Water Board general WDR for collection systems and the new wastewater treatment plant should result in improvements in treatment plant operations and reductions in capacity related spills.

**ENVIRONMENTAL PARTIES COMMENT # 15. Payment of 2003 ACL.** The Draft Permit asserts that the current treatment system was built to meet the requirements of the ACL, which required full compliance with requirements of the 2001 Permit. Draft Permit, Fact Sheet p. 6. The interim treatment facility does fully comply with the 2001 Permit, the 2001 CDO, and the 2003 ACL, and therefore the Regional Board should require full payment of the ACL fine. Further, the system was not built to comply with the ACL and therefore it was not money spent towards completion of a compliance project pursuant to Water Code Section 13385(k).

Information available to the Environmental Parties indicates in March 2004, in a letter from Colfax to the Regional Board, Colfax requested a modification of its effluent limits for Biochemical Oxygen Demand ("BOD") and Total Suspended Solids ("TSS") to allow the facility to dewater Pond #3, to allow Colfax to line the pond to prevent the seepage under the pond. In response to Colfax's request, the Regional Board authorized a *temporary* modification of the BOD and TSS limits in Colfax's Permit to allow Colfax to dewater Pond #3 and line the pond to prevent future seepage under the pond. The Regional Board notified Colfax that the remaining limitations in the Permit still apply and exceedences of those limits would be a violation of the Permit. Colfax applied the Regional Board's temporary modification as though it was a permanent modification, and the Draft Permit supports that fiction. Draft Permit, Fact Sheet p. 6. The Regional Board's letter authorizing a temporary modification of the effluent limits in the Permit was not a permanent modification. Any such modification would require notice and comment as required by the Clean Water Act and Porter Cologne. See 40 C.F.R. § 122.63 & § 124.10. Therefore, the interim facility was not built to comply with the ACL

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and the \$351,000 fine should still be assessed against Colfax because it still has not complied with the 2001 CDO and the ACL.

**RESPONSE:** Comment noted. Staff is evaluating the City's compliance with the ACL Order, current permit and CDO and the City's request to reconsider the Executive Officer's demand for payment of the ACL. Resolution of the ACL Order is independent of the permit renewal and new CDO. Adoption of the renewed permit and new CDO does not absolve the City of its liability for non-compliance with those orders.

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### **FRIENDS OF NORTH FORK (FNF) COMMENTS**

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**FNF – COMMENT # 1. Monitoring Requirements.** FNF requests that the following monitoring requirements be added to the permit and monitoring program:

- a. Water quality of Colfax collection system infiltration and inflow, collection system leakage/discharge, system area groundwater, and at the systems point of entry to treatment operation.
- b. Flows in each watercourse that may contain water from the collection system and of watercourse water quality.
- c. Flows in the unnamed tributary to Smuthers Ravine above each reservoir if there is such a watercourse, the unnamed tributary to Smuthers Ravine below the dam, Bunch Canyon, Live Oak Ravine Canyon, and the North Fork American River at Bunch Canyon.
- d. Water quality in each of the three ponds, in Smuthers Ravine, in Bunch Canyon above and below Smuthers Ravine, in Live Oak Ravine right above where it enters Bunch Canyon, the North Fork American River above and below where Bunch Canyon enters it.
- e. E-coli included as a parameter in all monitoring.
- f. Monitoring for these parameters at the above monitoring locations: e-coli, fecal coliform, total coliform, nitrogen, phosphorous, dissolved oxygen, pH, temperature, total suspended solids, turbidity.
- g. Design, implementation and reporting on this monitoring by a neutral party.

**RESPONSE:** Comment noted. The monitoring and reporting program (MRP) in the proposed permit renewal complies with Federal regulations and is adequate to determine compliance with permit limits and conditions. The discharge from the Colfax WWTP is classified as a minor municipal discharge, the monitoring and reporting requirements are commensurate with that designation, and are similar to MRP requirements in NPDES permits adopted by the Regional Water Board for similar facilities. With regard to the collection system, the discharger is required to enroll in the Statewide General WDR for Sanitary Sewer Systems adopted by the State Water Resources Control Board. In addition, the collection system is considered part of the treatment system subject to the proposed permit. As such, pursuant to federal regulations, the Discharger must properly operate it collection

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system, report any non-compliance and mitigate any discharge from the collection system in violation of the proposed permit (See permit item VI.C.5.e).

**FNF – COMMENT # 2. Notification Program.** FNF states that the permit needs to contain a notification program for downstream users, including residents on watercourses, water supplies, and recreation users, that informs them when their water quality may be impacted by dischargers from the Colfax wastewater collection and treatment operation.

**RESPONSE:** State Water Board Order No. 2006-0003-DWQ contains Statewide General Waste Discharge Requirements for Sanitary Sewer Systems, and the City of Colfax is required to comply with this General Order in addition to its NPDES permit. The General Order includes a requirement to develop an Overflow Emergency Response Plan, including procedures to ensure prompt notification of potentially affected entities.

**FNF – COMMENT # 3. CEQA.** FNF states that the public and the Board do not have the necessary CEQA analysis with which to make a properly informed decision on this project. FNF also states that the Colfax CEQA documents do not fulfill the Board's needs regarding project aspects not exempted from CEQA by Water Code section 13389 and lists a number of analyses that are needed. FNF states that the Board must consider the appropriate mechanisms to see to it that its CEQA issues are addressed as part of its Public Resources Codes section 21080.5 Certification, and for aspects of the project that are not exempt from CEQA, actions such as: (1) Assuming lead agency status, (2) Subsequent or supplemental EIR, or (3) At a minimum assuring the preparation and circulation of an Addendum to the EIR covering these Board issues by Colfax, or by the Board.

**RESPONSE:** The action the Regional Board proposes to take is to adopt an NPDES permit and a cease and desist order. Those actions are exempt from CEQA. Even if CEQA applied, the Regional Board is a responsible agency and no further action with respect to CEQA is required. As a responsible agency, the Regional Water Board is required to presume that the CEQA document is valid for its purposes unless the CEQA document is finally adjudged in a legal proceeding not to comply with CEQA or a subsequent EIR is made necessary by Section 15162 of the CEQA guidelines. See Title 14 CCR Section 15231. In this case, there is no pending litigation, as no one challenged the EIR after its certification by the City, and, therefore, the Regional Water Board must presume that the EIR is valid. Section 15162 of the CEQA guidelines states that no subsequent CEQA document shall be prepared unless the lead agency determines that there are substantial changes in the project or substantial new

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**CALIFORNIA CITIZENS FOR ENVIRONMENTAL JUSTICE (CCEJ) AND KEN BERRY COMMENTS**

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**CCEJ AND KEN BERRY – COMMENT # 1. CEQA Exemption.** The commenter states that adoption of the proposed CDO is not lawful because an environmental analysis pursuant to California Public Resources Code, section 21000, has not been performed. The commenter states that use of a Categorical Exemption in this case is unlawful because the Regional Water Board's 14 June 2001 action to adopt CDO No. 5-01-181 for the Colfax WWTP placed the project site on the Cortese List.

**RESPONSE:** The Regional Board does not agree that that Health and Safety Code 65962.5 applies to the action to adopt a cease and desist order for this facility. The issuance of the order is not expected to cause a significant impact on the environment. Taking the action required by the Order will reduce impacts to the environment. In addition, the City of Colfax did, in fact, certify an Environmental Impact Report that evaluated the lining of Pond 3. A late revision to CDO Finding # 7 is proposed to provide clarification.