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December 24, 2009

Submitted via email: [gperreira@waterboards.ca.gov](mailto:gperreira@waterboards.ca.gov)

Attn: Kenneth D. Landau, Asst Exec Officer  
California Regional Water Quality Control Board  
Central Valley Region  
11020 Sun Center Drive, # 200  
Rancho Cordova, CA 95670-6114

Ladies and Gentlemen:

RE: Comments—**TENTATIVE NEW CEASE AND DESIST ORDER (CDO) and  
TENTATIVE RESCISSION OF CDO NO. R5-2007-0131**

Thank you for the opportunity to submit comments on this important action regarding waste discharge into the American River Canyon and/or its tributaries as well as on to private property.

Colfax is a relatively small, historically rich, and beautiful city, as well as a tourist attraction. Its economic struggles are no less or greater than many other foothill communities and should not excuse Colfax from compliance with water quality regulations. We urge the California Regional Water Quality Control Board (CRWQCB or “Water Board”) to NOT capitulate in allowing additional time to comply (previous CDO deadline of Oct 1 09 conditions not met), to NOT allow any more wastewater seepage discharges (after decades of continuous noncompliance), and to NOT allow any further copper limit non-compliance discharges, or any other illegal discharges (violations), by postponing enforcement for four more years.

Immediate action must be taken to protect the health and safety of millions of citizens downstream from the wastewater facility and to enforce clean water mandates of a major watershed habitat and its riparian areas. Not only has Colfax had decades to address its illegal wastewater discharges and failed to do so, but also it has irresponsibly continued to allow hook ups even while the noncompliance issues were well known, and even after the CDO’s were issued, and the problems persisted. There has been little-to-no good faith effort to comply. Useless “promises and plans,” as seductive as they may be, have lulled the CRWQCB into a state of gullibility. “Good intentions” must not be substituted for mandated compliance and repeated “trust us” posturing.

We urge the CRWQCB to fulfill its responsibility and stop the procrastination. Because Colfax is either unwilling or unable to correct the constant sewage leakages, to line the pond (critical component for compliance) and upgrade the treatment plant along with additional capacity (both conditions previously required by the CRWQCB), and/or to pay the consequences for its non compliance/violations, then immediate CRWQCB orders must include:

1—a moratorium on all new hook ups, including any which may have been approved, and a rescission or cut off of any hookups since the previous Oct 09 CDO deadline.

2—a complete closure of the Colfax Sewage Treatment Plant (CSTP) via a halt of all effluent flows to the wastewater facilities, including a shut off or sealing of all trunk lines and current or potential laterals (potentially 707)

3—an installation of “porta potty” toilets (portable, chemical or other temporary self contained toilets) as a stop gap measure to handle human waste either for every equivalent dwelling unit (EDU) and/or shared EDU use, with the costs to be paid monthly to the provider by the landowner. Avoidance of the “porta potty” rental/lease fees should be granted only upon vacancy/boarding up of the EDU. Failure to comply by landowners should result in lien and legal action. Arrangements must and can be made for other household wastewater use and disposal.

4—a restoration of Smuthers Ravine

Only after a complete halt of any wastewater discharge(s) to the facility is implemented can serious work and good faith efforts to upgrade the facility for compliance be considered.

### **History of Noncompliance**

The current CDO seems to overlook over 30 years of repeated illegal discharges dating back as far as November 28, 1979. A “Cleanup and Abatement Order” resulted in a plan design but no installation; the CRWQCB excused the noncompliance with no enforcement or penalties. Hookups continued.<sup>1</sup>

More seepage problems were acknowledged in 2001. The CRWQCB again acquiesced and gave Colfax five more years to comply, repeating the intentions and mandate to line the primary pond, and again with no compliance as hookups continued. (see attached “Colfax Demographics document”).

In 2007, another CDO with an October 2009 deadline to stop all seepage discharges was issued. The modus operandi of intention was activated again. Plans and promises included the requirement to line the pond, which was apparently designed but never completed. The hookups continued with records indicating that Colfax approved more building permits in 2008 than in any other year that records were available.

This current CDO notice merely exacerbates decade-after-decade of never-ending violations, followed by stated intentions and idle promises to resolve the problem. Plans and designs are presented, followed by a vacuum of no action, all of which have allowed Colfax to avoid rightful consequences.

The current CDO is especially egregious and unacceptable in that it appears the lining of the pond is no longer mandated. Thus, the message to other wastewater facility operators, when confronted with CRWQCB CDO’s or other orders, is to stall, pretend, posture, ultimately ignore, and continue with “business as usual.” The message to the public is that

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<sup>1</sup> From a population of 1,496 (2000 census data), to 1,738 on July 1, 2008 (a 16% increase<sup>1</sup>), to its current population of approximately 1,825, it is obvious more hookups have probably occurred during the 30-year history of noncompliance and violations. Placer County Facility Services has informed us that Colfax has 707 lots with hookups, with some probably being commercial. However, using the standard 2.6 persons per household, a population of 1825 would indicate 702 EDU’s, indicating the data (of continuing hook ups) is reliable. Obviously, Colfax continues to allow hook ups and leaves a distinct impression that it prefers to snooker the CRWQCB time after time. Why hasn’t a mandatory moratorium been imposed, as was suggested years ago?

public is that the CRWQCB is no longer enforcing regulations to protect human health and safety or riparian habitats when it comes to our watersheds.

Since the CSTP began operation in 1979, designed as a land-disposal plant, it has always had significant environmental and water discharge pollution issues. From pond “leaks” to altering flow regimes of Smuthers Creek (seasonal/perennial), the CSTP has had literally thousands of known permit violations—with spills or leaks of effluent both onto private properties and into the American River watershed (via the North Fork American River). Colfax has repeatedly failed to comply or ignored orders from the CRWQCB. Levied fines have been unpaid or avoided and/or penalties deferred in conjunction with other options for resolution, but procedures have not solved the effluent noncompliance issues.

Citizens have submitted comments, spoken publicly, and initiated litigation, apparently to no avail. In a letter to the CRWQCB, May 8, 2006, the Placer Group Sierra Club expressed grave concerns regarding the ongoing pollution of land, ground water, and the American River watershed. The Mother Lode Chapter of the Sierra Club submitted additional comments on December 1, 2006, reiterating the unacceptability of the illegal raw discharges. (Both attached).

If the CRWQCB eases its requirements for seepages, spills, copper/coliform levels, and other unacceptable, problematic, and potentially dangerous effluent discharges from the Colfax facility, it will have abandoned its public mandate. The current proposed tentative CDO must be **rejected**. Instead, the full extent of enforcement practices allowed by law must be imposed on Colfax to immediately prohibit any and all sewage leaks from the ponds or from any other areas of the sewage system.

#### **CRWQCB CDO No. R5-2010-0XXX Findings**

We respectfully submit the following comments on the items found in the CDO:

In item 1, the CDO states that Colfax is a “disadvantaged community.” Disadvantaged community means the service area of a public water system where at least fifty-one percent of the customers are at or below eighty percent of the county median household income as defined annually by the Federal Department of Housing and Urban Development. Because Colfax’s median household income is listed as \$44,200 per year, we find the “disadvantage label” perplexing. Nevertheless, a \$3.04 per month rate increase (2.8%) for 2010 is hardly a realistic fee increase considering the challenges, and is not indicative of a good faith attempt to resolve the noncompliance issues facing Colfax.

In items 2 through 4, the CDO summarizes the conditions and the problems. We question the intent of one phrase in Item 3: “...; consequently, the collection system experiences excessive rain-induced and groundwater-induced infiltration and inflow (I&I).” The average rainfall for Colfax is approximately 45 to 47.92 inches per year<sup>2</sup>. It is our understanding that precipitation amount has been fairly constant and known for decades. The word “excessive” implies that somehow the CSTP is not responsible for the seepages and leaks due to “excessive” I&I, with the subtle insinuation that excessive precipitation is the culprit; we submit that this is not a valid argument.

If the original collection system was built in the early 1900’s, it may have been situated in a poor location. When the treatment plant became operational in the 1970’s, it was permitted for a land fill function and was to have no downstream impacts. Seepage and effluent leaks appear to have occurred on a regular basis. The remedies on other CDO’s have

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<sup>2</sup> As indicated from various websites, including <http://www.colfaxarea.com/fastfacts.php>.

CDO's have included lining the storage reservoir, which has never been completed. Thus, it appears Colfax has a poorly sited sewage treatment plant, being used in a manner it was not designed for, fraught with violations, with mandated upgrades or remedial measures not being completed, and now yet another request to line the reservoir again. How many more times will the CRWQCB require a completed activity, have it presented to them on paper but never completed physically, and merely issue another extension via a CDO?

In Item 9, the reliance seems to be on the Discharger's [Colfax] commitments to perform in 2010. We have lost count as to how many times the public and the CRWQCB have been duped by such flimsy and unenforceable promises. The commitment from a known violator is meaningless. How can the CRWQCB justify compliance in this case?

Item 12 appears to excuse the violations with "...has completed several efforts to attain compliance...." but cannot consistently comply with the copper effluent limitations. Since it is admitted that the additional treatment facilities which may be necessary cannot be designed, installed, and put into operations within 30 calendar days, it behooves the CRWQCB to completely shut down the treatment facility.

Although Item 13 thru 17 cites exemptions from mandatory minimum penalties for discharger violations, we fail to see the nexus between CWC section 13385(j)(3). There has not been compliance with either a CDO or a time schedule order, and all the requirements have not been met. Item 17 concedes the likely water quality degradation and negative impacts to the receiving stream. However, instead of taking immediate action, an interim effluent limitation is hyped as establishing an enforceable ceiling concentration until compliance with the final effluent limitation can be achieved. We have a discharger with a track record of being unable to comply with previous requirements, now being given a ceiling that we are to believe will be "enforceable." We submit that this leniency borders on negligence with all parties involved. Anyone who knows the history of this treatment plant cannot fathom the logic behind this condition nor its loophole-laden wording.

Item 18 gives full authority to the CRWQCB to direct compliance "forthwith" and to take appropriate remedial or preventative action. We submit that the only reasonable and responsible action at this time is to prohibit the volume of wastewater—to stop the flow of effluent altogether until compliance is no longer speculative.

### **Final CRWQCB Order**

1—We object to the rescission of the CDO R5-2007-0131, the new extended time schedule, and the "Task" assignments which are merely annual paper reports with no enforcement provisions.

2—We object to the Task assignments again due to the first two being merely annual reports with no enforcement incentives, provisions or consequences. We especially object to a mandate of compliance four years out with no enforcement authority. Four years of environmental degradation and public health threats is not acceptable.

3 & 4—We strongly object to language that again relies on paper pushing. However, when noncompliance is reported, the Discharger merely states the reasons and estimates the date when compliance will be obtained. This is a prescription for further noncompliance.

Item 6 (and 10) hints that in the event of noncompliance, the Executive Officer "may" apply to the Attorney General for judicial enforcement or issue a complaint for Administrative Civil Liability. (Item 10 states that failure to comply "may" result in fines). This must appear promising on paper to the unsuspecting, but judging from the Colfax facility's non compliance history, it appears to be simply more saber rattling.

## In Summary

Continued use of the American River Watershed as a private outhouse for poorly planned and implemented wastewater management practices and a failing treatment facility, resulting in destroyed habitat, contaminated riparian areas, and potentially harmful impacts upon millions of citizens' health and properties down stream, cannot be allowed with yet another CDO and potentially four more years of non compliance (January 2014).

We realize the CRWQCB has volumes of issues to contend with, but when it comes to public health and environmental degradation, let alone water pollution with state and federal mandates to enforce, how much leniency or forgiveness or ignoring of blatant and repeated violations can be tolerated? When the CRWQCB hesitates decade after decade to impose its lawfully granted enforcement authority to take the necessary steps to stop the violations, it breeds contempt from law-abiding Dischargers, sets precedence to encourage a lack of compliance (a "thumbing of the nose") by making noncompliance attractive and profitable.

As stated in the attached Sierra Club Mother Lode Chapter letter of December 1, 2006:

If the Board accepts the Colfax position and forgives the fines, even though the City has not fully complied with the Board's order to reconstruct, the Board will be sending a powerful and very disturbing message to all current and future facilities within its jurisdiction. Permittees will assume that they can avoid or ignore permit requirements with no adverse consequences. Forgiving the fines issued to Colfax in the absence of compliance will undermine the Board's enforcement authority with all its permittees.

Whether the source of pollution is a municipality or an industry, it makes no difference in the threat to public health. The Colfax treatment plant has a long history of raw sewage discharges, accompanied by promises of treatment plant upgrades that never seem to get accomplished. Meanwhile raw sewage continues to threaten the health of downstream residents and pollute a tributary to the North Fork American River, a federally designated Wild and Scenic River.

Any and all harmful effluent discharges to watersheds are critical, but we urge the board to consider this project as having extraordinary, unacceptable and continuous discharges to an important watershed having Wild and Scenic designations. The CRWQCB must fulfill its mandate and act aggressively with regard to the failing Colfax treatment plant.

Thank you for your attention to this matter.

Sincerely,



Marilyn Jasper, Chair, Placer Group

Cc City of Colfax  
Bureau of Reclamation  
Mike Lynch, Acting Superintendent, Auburn State Recreation Area  
Don Mooney, Esq.  
Friends of the North Fork American River Association  
Placer County Board of Supervisors  
Placer County Environmental Health