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FRESNO, CALIF.

Dear Regional Water Control Board,

Regarding City of Livingston Domestic Waste Water Treatment Plant:

Dear City Manager Jose Ramirez, Mr. Davidson, Mr. Tommy Mejia, City of Livingston Attorney, Livingston City Council, City of Livingston Planning Commission,

At the City of Livingston September , 2014 City Council Meeting, I brought to the council's, the city attorney, Dave Davidson consultant for the DWWTP, and the City Manager Jose Ramirez's attention the City has not done the EIR and CEQA requirements to develop proposed percolation pond #9.

In response to my comments, I was told the proper EIR and CEQA had been completed. However, I was also told in 2010 the city had 90% completed the EIR for the DWWTP. If an adequate EIR was done in 2000 then why did the city start another EIR process in 2010? Which begs the question, why hasn't the city completed the EIR?

In response to the City's claim of the EIR completed and CEQA satisfied for the development of proposed percolation Pond #9, I did an oral public document request followed up by an email for the request asking for the EIR/CEQA documentation to back up the City's claim the proper EIR was done for the excavating/developing proposed percolation pond #9.. On Friday, Sept. 2014, the City of Livingston made available the CD titled *City of Livingston DWWTP Final EIR 9-29-2000*. The City of Livingston's position continues to be that the 2000 DWWTP allows for the excavation and development of proposed percolation pond #9.

In my cursory review of the documents, I find the documents contain evidence contrary to the City's claim. The City of Livingston's DWWTP Final EIR 2000, limits the development of its Wastewater Treatment Facility. It seems to contradict the development of proposed percolation pond #9.

Some of the reasons, the developing of proposed pond #9 is premature, are because it is growth inducing, not supported by the city's current General Plan, the environmental impact, the cumulative effect, and the direct and indirect impacts has not been properly reviewed/studied.

The following are quotes taken from the CD City of Livingston DWWTP Final EIR 9-29-2000,

Point 1. The purpose was to restore the existing facility to the 1989 rated capacity of the DWWTP. The City of Livingston was experiencing a significant reduction at its DWWTP. This reduction resulted in the City of Livingston to release wastewater solids into the Merced River. The purpose of acquiring 40 acres and developing percolation ponds #7 and #8 was to **RESTORE** the DWWTP to 1.8 mgd . The City was able to utilize a Negative Declaration because there will be **no** expansion of the DWWTP.

III Existing WWTP Facilities History *The rated capacities of the 1989 WWTP are: Average dry weather flow 1.8 MGD, Peak wet weather flow 4.0 MGD,...* (Preliminary Engineering Report on City of Livingston Wastewater Facilities Problems and Remedies July 1999, page 7) (page 347 of CD)

B-G. No Impact. There will not be an increase to the WWTP facility. The City of Livingston is not proposing to expand the facility in terms of treatment capacity, but regain what it has lost in terms of the WWTP percolation (Wastewater Treatment Facility Initial Study, September 28, 2000, page 27) (page 83 of CD)

A. No Impact. The proposed project will not exceed population projection. The WWTF was designed to accommodate 1.8 Millions Gallons per Day (MGD) based on preliminary engineering estimates by Dewante & Stowell in 1988, as a part of the plant expansion. The plant capacity at this point is .9 MGD. After the completion of this project, the Plant will be able to accommodate the building out of the 1999 Livingston General Plan Update. (Wastewater Treatment Facility Initial Study, September 28, 2000, page 21) (page 71 of CD)

Assessor's Parcel Number(s): Merced County, CA. APN(s): 047-160-001 Project Description: "The City of Livingston is rehabilitating the Wastewater Treatment Facility to restore the 1.8 mgd disposal capacity. The City of Livingston is acquiring approximately 40 acres and this land will be used for construction of 6 percolation ponds." (From the City of Livingston Proposed Negative Declaration filing with the County of Merced, State Clearinghouse Page 25 of CD)

15 PROJECT DESCRIPTION: Restore disposal capacity of the City of Livingston's wastewater treatment facility; the City requires 40 acres to be used for disposal by constructing six percolation ponds. Mailed to State Clearinghouse (Notice of Completion and Environmental Document Transmittal Form page 1 of CD)

Point 2. For the City of Livingston to utilize a Negative Declaration for the DWWTP EIR 2000, it had to mitigate the loss of agriculture land.

D: Potentially Significant Unless Mitigated: This project will take 40 acres of agricultural land over the next 20 years. As a mitigation measure, the City will only take the land it needs for percolation ponds at that time it is needed. The City will take 20 acres initially and over the next twenty years use the rest of the property. An engineer's report as well as permitting from the California Regional Water Quality Board will be required when more than 20 acres is needed. (Wastewater Treatment Facility Initial Study, September 28, 2000, page 20) (page 69 of CD)

This project has a number of Mitigation Measures. All of the Mitigation Measures will be monitored by the City of Livingston and the California Regional Water Quality Control Board, Central Region.

Mitigation Measure 1 – Loss of Farmland- The City of Livingston will be using 20 acres for the first twenty years. The second 20 acres of land for disposal purposes will be leased back to the farmer until such time the City needs the land for disposal purposes. The City will not be able to use the additional 20 unless a number of circumstances comes to past. Those circumstances are:

1. The new ponds fail in terms of percolation capacity, in which case the Board will require the City to obtain more land.
2. The City of Livingston reaches population figures that would require additional ponding. Based on the scientific and population data, and normal operations occur, the second 20 acres shall not be brought into operation until the City reaches a population of 26,000 people. Based on the growth rate of the Livingston General Plan, those numbers will not be reached until year 2017-

2020. (Federal Environmental Review, *Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment*, page 21 of CD)

Point 3. The Engineer Report attached to the City of Livingston DWWTP EIR 2000 addresses the already existing percolation ponds. It does not address proposed percolation pond #9. Where is the engineer's report for the current build out of proposed percolation pond #9?

Pond 9 will be constructed as part of the next DWWTP expansion project. (6.1.1 Future Pond 9 – Stockpile Area, Carollo Engineers City of Livingston Basis of Design, October 2010 pg. 6)

Point 4. Where is the California Regional Water Quality Board permit for this? If a permit was issued, why was it issued before the required EIR, CEQA is completed?

1. *Mitigation Measure 3 – Water Quality – All of the requirements that the City of Livingston must comply with will be addressed by the Board as well as the permitting process for the new percolation ponds. (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment, page 21 of CD)*

Point 5. The 20 acres the City of Livingston is excavating to develop proposed percolation pond #9 and expand the DWWTP is currently supposed to be in agriculture.

Under Project Sponsor's Objective #3 "Construct a 2.0 mgd (1.8 mgd dry weather flow) extended aeration, activated systems within Pond A..." #5 Build percolation ponds on half of the 40-acre parcel. Remaining vineyards should be irrigated with treated effluent. Additional percolation ponds will be built in the future (10 to 20 years" (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment, page 9 of CD)

Mitigation Measure: 1. The first mitigation measure would consist of not using the land until actually necessary. There must be an engineer's report to expand the ponds. A permit must be obtained from the California Regional Water Quality Control Board." (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment page 15 of CD)

4.0 Summary of Mitigation Measures This project has a number of Mitigation Measures. All of the Mitigation Measures will be monitored by the City of Livingston and the California Regional Water Quality Control Board, Central Region.

Mitigation Measure 1 – Loss of Farmland- The City of Livingston will be using 20 acres for the first twenty years. The second 20 acres of land for disposal purposes will be leased back to the farmer until such time

the City needs the land for disposal purposes. The City will not be able to use the additional 20 unless a number of circumstances comes to past. Those circumstances are:

2. *The new ponds fail in terms of percolation capacity, in which case the Board will require the City to obtain more land.*
3. *The City of Livingston reaches population figures that would require additional ponding. Based on the scientific and population data, and normal operations occur, the second 20 acres shall not be brought into operation until the City reaches a population of 26,000 people. Based on the growth rate of the Livingston General Plan, those numbers will not be reached until year 2017-2020. (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment page 21 of CD)*

Point 6. The City of Livingston is supposed to be irrigating the 20 acres with treated effluent.

Point 7. The Mitigation Measures is the reason the City could do a Negative Declaration. The City of Livingston is not following its own Mitigation Measure.

(X) I find that although the proposed project could have a significant effect on the environment, there will not be a significant effect in this case because the mitigation measure described on an attached sheet have been added to the projects. A NEGATIVE DECLARATION will be prepared. (Wastewater Treatment Facility Initial Study, September 28, 2000, Page 51 of CD)

Point 8. The developing of proposed percolation pond #9 is premature. The California Department of Finance lists the City of Livingston (2013-2014) population at 13,793. The second 20 acres shall not be brought into operation until the population is 26,000. The City of Livingston is not close to 26,000. In 1990 Livingston population was 7,317. With historical growth rate and current economic and market conditions one could reasonably presume the Livingston population will not reach 26,000 for at least 14 more years.

Point 9. The DWWTP Final EIR 2000, does not have a complete analysis on the capacity of proposed percolation pond #9. There is a reference to 3 mgd. This is a significant increase over the 1.8 mgd. How much more water would be required? Where will the water come from?

Land Requirements *Alternative 4 (Biolac) can be accommodated on the existing site which includes the proposed 40 acres. There is, in fact, excess land available so that the plant could expand to 3 mgd or slightly higher. (Carollo Engineers – Amendment to Preliminary Engineering Report page 16) (page 484 of CD)*

Point 10 In developing proposed percolation pond #9, the City of Livingston is expanding its DWWTP greater than its current General Plan requirements. (This is a little confusing the City of Livingston Final DWWTP EIR refers to the ponds by alphabet letters. At some point in time, the City of Livingston switches and refers to the ponds by numbers. Instead of constructing six (6) separate ponds, the City constructs two (2) large ponds. These ponds are known as Pond 7 and Pond 8.

The City of Livingston is negotiating to acquire a 40-acre site to construct new percolation ponds. A total of six (6) percolation ponds can be constructed on this site with a net pond bottom area of 28 acres...Actual percolation rates of the six-(6) ponds shall be determined once the ponds are constructed. (Wastewater Treatment Facility Initial Study, September 28, 2000,page 8) (45 of CD)

The water balance in Appendix A indicates the total capacity of the percolation ponds to be in excess of the 2.5 mgd ADMMF treatment plant expansion capacity after deepening Ponds B,C,D, E, F,G, (existing ponds and adding Ponds J, K, L, M, N, O (6 new ponds). Therefore, the City will have plenty of effluent disposal capacity. If finance is a concern, the City may opt to build only three of the six percolation ponds which allow the City to have enough disposal capacity for up to 10 to 15 years...(Wastewater Treatment Facility Initial Study, September 28, 2000,page 8) (45 of CD)

Point 11 The City of Livingston is excavating and mining the soil from the DWWTP. This is a resource worth hundreds of thousands of dollars. Does Merced County, State of California, or other agencies require a mining permit?

Point 12 Who is the City of Livingston selling the soil to?

Point 13 The City of Livingston wastewater expenses have exceeded its income in the past. Where is the money from the sale of the soil from the DWWTP going? How much does the City of Livingston owe on its existing debt on the DWWTP? To whom is it owed? How much money from the sale of the DWWTP soil is going to pay off the existing debt? How much is being saved for future costs of expanding the plant?

Point 14 Excavating proposed percolation pond #9 which is located in a bluff near Merced River requires deep soil removal. Yes, it had been farmed but the farming occurred in the top layers of the soil. The sight of proposed percolation pond #9 is essentially "virgin soil" When residents in the area heard the City of Livingston claims there are no potential historical Native American Indian artifacts where proposed percolation pond # 9 is, they went to the City orally and in writing with evidence that Indians were in the valley along the Merced River according to neighbor Jo Anne Wells who is working on information for the Livingston Historical Society, there are three books that documents Native American Indians here. Handbook of Yokuots Indians by Frank F. Latta published by Bear State Books. On the map in front of Mr. Latta's book the tribe in our area is referenced by number 23 on the map. Mr. Latta studied the tribes for 55 years. Mr. Latta found a man who wrote about the tribe along Merced River in the Livingston area. His book is Sam Ward in the Gold Rush by Carvel Collins. The Indian tribe was called the Ausmne. The third book is Handbook of the Indians of California by A.L. Kroeber. How is the City of Livingston mitigating this potential significant impact?

Point 15 The City of Livingston DWWTP EIR tied the site of proposed percolation pond #9 up with mitigation. The City has been excavating/developing that site up for several years now. The City has not kept it in vineyards or replaced the vineyards with any agriculture use. This is shown on the aerial photograph (2005) DWWTP map titled Proposed Pond Reconfiguration which is Attachment B to the California Regional Water Quality Control Board Central Valley Region, Waste Discharge Requirements Order R5-2014-XXXX For City of Livingston Domestic Wastewater Treatment Facility Merced County. This

aerial 2005 photograph of the DWWTP shows the absence of the vineyard and the movement of soil at the site of its mitigation measure 1 of its 20 acres of agriculture land. So less than five years of Livingston's DWWTP EIR to fulfill CEQA and NEPA the City is violating its mitigation measure. How is the City going to mitigate the loss of this mitigation?

Point 16 On the DWWTP map titled Proposed Pond Reconfiguration which is Attachment B to the California Regional Water Quality Control Board Central Valley Region, Waste Discharge Requirements Order R5-2014-XXXX For City of Livingston Domestic Wastewater Treatment Facility Merced County, there is no pond 9 on the map. The City of Livingston is actively developing pond 9 and its DWWTP. Where is pond 9 in the plan? Why isn't pond 9 on the map?

Point 17 Residents have gone before the City of Livingston orally and in writing about the City's excavating/developing proposed percolation pond #9 for several years. The City claims it is following CEQA law. We type up facts and present them to the City. Then the City stops excavating and developing proposed percolation pond #9. A couple of years later the City starts excavating the soil of proposed pond #9. Back in we go and tell the City it has not done the EIR for pond #9. The cycle just keeps continuing. Why does the City keep disregarding the information? Why does the City keep developing proposed percolation pond #9? The City of Livingston has been informed of the lack of an EIR and CEQA several times. Why does the City stop the development and then go back and start the development a couple of years later?

Point 18 According to the DWWTP map titled Proposed Pond Reconfiguration which is Attachment B to the California Regional Water Quality Control Board Central Valley Region, Waste Discharge Requirements Order R5-2014-XXXX For City of Livingston Domestic Wastewater Treatment Facility Merced County, ponds 1, 2, 3, 4, 5, 6, are to be decommissioned. These ponds are very close to the Merced River. After ponds 1, 2, 3, 4, 5, 6 are decommissioned the ponds basins should be cleaned and backfilled in with soil so the elevation of the decommissioned ponds are returned to their former elevation. Where is the soil going to come from to fill in these hollow basins along the Merced River? Or will the City leave big holes along the Merced River? What is the cost to purchase soil and truck it in? In the City's premature development of proposed percolation pond #9, it is selling the soil and allowing it to be trucked off the DWWTP site. Would it not be better and more cost efficient if the City waited to develop the proposed percolation pond #9 and used the soil to help return the ponds after they are decommissioned to their original habitat/state as much as possible?

Point 19 The City of Livingston does not have enough water to justify the development of proposed percolation pond #9. Recently, the City has legal proceedings against it due to its water issues. The State of California has issued several letters and warnings to the City. Livingston has a serious water problem. What and where is the water source to justify the development of proposed percolation pond #9? How much water increase are we talking about?

Point 20 The City of Livingston has not complied with Merced County Grand Jury over the illegal 42-inch sewer trunk line. The City has not satisfied the court on its proposed 2025 General Plan. The City had released raw sewage into the Merced River. The City had breaks that have allowed effluents into the

Merced River. The City purchases land (Horta Property) near the Merced River which is outside the City's proposed 2025 General Plan Sphere of Influence and outside its Master Plans 50 year boundary to expand its current DWWTP boundaries. The City hires a land assessor to assess county agriculture land under the Williamson Act which is out of the City's proposed 2025 General Plan Sphere-of-Influence and outside its Master Plans 50 year boundary for the "possible procurement" of the land to expand its DWWTP. The City states in its NOP and NIR that it is pursuing grant-funding for a future regional wastewater treatment plant. Then the City denies it is pursuing funding. Adjacent to its DWWTP, the City "plans" a bridge over Merced River to make the City's circulation plan to go with its proposed 2025 General Plan work. The City issues a draft EIR that purposes possible gas stations in the 100 year flood plain of the Merced River. The City approves a developer to install a "sewer trunk line" through county agriculture land prior to plans for development in the area, prior to an EIR, prior to public comments, did not notify the land owner, allowed construction workers in deep trenches with sandy loam sides and heavy equipment on the edge with no shields to prevent cave ins, these deep trenches were left uncovered and unattended and evidence of paintballing around these trenches was brought to the city's attention and the trenches were still left open. The City refuses to do an EIR on the illegal sewer trunk line, for weeks if not months the man hole cover is left off on the "illegal sewer trunk line" In the past the City refused to give copies of its draft master plans to the Merced County Farm Bureau Director (at that time) Diana Westmoreland Pedrozo and me. The numbers in the City's master plans do not match. The City has a history of documents going missing. The City has been behind on its Urban Water Management Plan. The City has had several cease and desist orders. The City fails to comply with its own EIR on the DWWTP. The City loses three years of email records on its DWWTP. Meeting minutes have been lost. The City is renting land at its DWWTP to a cement plant. The City is using its DWWTP as a dump. The City of Livingston has a history of mismanagement. What will it take for the City to do things right?

Point 21 The City of Livingston DWWTP EIR is limited to 20 year growth projection because it is tied to Federal Funds. The development of proposed percolation pond #9 exceeds the needs of the City's 20 year growth projection

13 Funding (approx..) Federal \$8,620,000, (Notice of Completion and Environmental Document Transmittal Form page 1 of CD)

The USDA Funding allows 20 years of growth projection from the start up of the new facilities. (Carollo Engineers – Amendment to Preliminary Engineering Report Page 6) (page 467 of CD)

Additional areas of inconsistencies, concerns, and areas that need further investigation before the development of proposed percolation pond #9.

Project Sponsor's Objective 5. Build percolation ponds on half of the 40-acre parcel. Remaining vineyards should be irrigated with treated effluent. Additional percolation ponds will be built in the future (10 to 20 years). (From the Wastewater Treatment Facility Initial Study September 28, 2000 page 5) (page 39 of CD)

The recommended project is sized to service Livingston's growth needs until year 2017. As shown in Chapter 2, Table 1, the population at that time is estimated to be 21,610. This represents a 3.82 percent growth rate consistent with the General Plan. (From the Wastewater Treatment Facility Initial Study September 28, 2000 page 5) (page 39 of CD)

Six new percolation ponds will be added to increase the effluent disposal capacity. These percolation ponds will be on a 40-acre site purchased by the City and located adjacent to the existing WWTF....
Effluent Disposal (Wastewater Treatment Facility Initial Study, September 28, 2000, page 6)(page 41 of CD)

Proposed improvements to the WWTP plant will consist of alternative 4....The capacity of this alternative would be 2.5 mgd (ADMMF)...New percolation ponds would be built on the 40 acres being negotiated for purchases..." **Proposed WWTP Physical Plant Improvement** (Wastewater Treatment Facility Initial Study, September 28, 2000, page 6) (41 of CD)

Design Year 2022, Projection Population 26,060, Average Dry Weather Flow (ADWF) (mgd) 2.11, Average Annual Wastewater Flow (AAWF) (mgd) 2.22 **Under Table 2** (Wastewater Treatment Facility Initial Study, September 28, 2000, page 9) (page 47 of CD)

2) All answers must take account of the whole action involved, including off-site as well as on-site, cumulative as well as project-level, indirect as well as direct, and construction as well as operational impacts. (Wastewater Treatment Facility Initial Study, September 28, 2000, page 29) (page 87 of CD)

Table 6 Recommended Project Biolac Design Criteria (2.0 mgd) Wastewater Treatment Facility P.E.R. Amendment City of Livingston Design Year 2017, Projected Population 21,610, Average Dry Weather Flow (ADWF) (mgd), Average Annual Wastewater Flow (AAWF) (mgd) 1.84....(Carollo Engineers – Amendment to Preliminary Engineering Report page 23) (page 491 of CD)

Under **Project Sponsor's Objective #3** "Construct a 2.0 mgd (1.8 mgd dry weather flow) extended aeration, activated systems within Pond A..." "#5 Build percolation ponds on half of the 40-acre parcel. Remaining vineyards should be irrigated with treated effluent. Additional percolation ponds will be built in the future (10 to 20 years)" (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment, page 9 of CD)

"The recommended project is sized to service Livingston's growth needs until year 2017. As shown in Chapter 2, Table 1, the population at that time is estimated to be 21,610. This represents a 3.82 percent growth rate consistent with the General Plan."

Under **Effluent Disposal**: "Six new percolation ponds will be added to increase the effluent disposal capacity. These percolation ponds will be on a 40-acre site purchased by the City and located adjacent to the existing WWTF." (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment page 11 of CD)

"After reviewing the cost and the short and long-term issues concerning the Wastewater Treatment Facility, the City is using Alternative 4 for the rehabilitation of the Wastewater Treatment Facility due to the fact that less land will be required now and in the future." (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment Page 13 of CD)

"Alternative 4—Construct a new extended aeration, mechanical treatment plant. Pond A would be converted to a process such as Biolac. The capacity would be 2.5 mgd (ADMMF). The high quality effluent would be percolated in restored Ponds B, C, D, E, F, and G. New percolation ponds would built on 40 acres being negotiated for purchase by the City." (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment Page 11 of CD)

Currently, the property has vineyards on them. Based on the Department of Conservation Farmlands Map, this property is recognized as Farmland with State Importance." (Federal Environmental Review, Environmental Report Checklist For Projects With a CEQA Document And USDA Rural Development is Required to Prepare a NEPA Environmental Assessment page 13 of CD)

The DWWTP EIR 2000 does not support the development of proposed percolation pond #9 at this time.

Thank you,


Mrs. Colette Alvernaz