

Central Valley Regional Water Quality Control Board  
30 November, 1-2 December 2011 Board Meeting

**Prosecution Team's  
Response to Comments**

Tentative Administrative Civil Liability Order  
for the  
City of Colfax Wastewater Treatment Plant  
Placer County

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The following are Central Valley Regional Water Quality Control Board (Central Valley Water Board) Prosecution Team responses to comments submitted by interested parties regarding the tentative Administrative Civil Liability Order (ACLO) for the City of Colfax Wastewater Treatment Plant. The Advisory Team extended the public comment deadline from 6 October 2011 to 13 October 2011.

Timely comments were received from the following Designated Parties:

- Save the American River Association (SARA)
- Friends of the North Fork (FONF)
- Allen Edwards (AE)

The deadline for rebuttal evidence was 3 November 2011. The only rebuttal evidence regarding the tentative ACL Order was submitted by the City of Colfax (City).

Comments are arranged and responded to by issue topic:

- Effluent limit violations
- Failure to conduct effluent monitoring or report effluent monitoring results
- Receiving water limit violations
- Failure to conduct receiving water monitoring or report results
- Failure to monitor the ponds
- Failure to monitor the UV disinfection system
- Groundwater limit violations
- Failure to monitor groundwater
- Effluent discharge diversion to Pond 3
- Spring 2011 bypass
- Additional enforcement should be considered
- Rebuttal evidence submitted by the City

**Background**

California Water Code (CWC) section 13385 was amended in 2000 to require that the Water Boards assess mandatory minimum penalties (MMPs) for serious and non-serious violations of NPDES permits.

A mandatory minimum penalty of \$3,000 must be assessed for each serious violation, defined, in part, as any waste discharge that violates the effluent limitations contained in the

applicable waste discharge requirements by either 40% or 20%, depending on the constituent. A mandatory minimum penalty of \$3,000 must also be assessed for each non-serious or chronic violation whenever an effluent limitation is exceeded four or more times in any period of six consecutive months, not counting the first three violations. In addition, the CWC establishes certain exceptions to the requirement to assess MMPs, including:

- Chronic or serious violations that occur within the first 90 days in which a new wastewater treatment plant begins discharging. For Colfax, this exemption occurred from 1 January through 1 April 2009. Any effluent limit violation during that time is not subject to MMPs. CWC section 13385(j)(1)(D)(i).
- Where the Discharger is in compliance with a time schedule order or cease and desist order. CWC section 13385(j)(2)(A).  
For Colfax, the Central Valley Water Board issued Cease and Desist Order (CDO) R5-2010-0001 on 28 January 2010. Because the Discharger could not consistently comply with the copper effluent limit in its NPDES permit, the CDO contains an interim copper effluent limit and a time schedule to come into compliance. As allowed by the CWC exemption, when copper concentrations exceed the permit effluent limit but remain below the CDO interim effluent limit, then MMPs are not assessed. This exemption remains in effect through the period that the CDO allows Colfax to come into compliance, which is 1 January 2014.

MMPs are also assessed for failure to file a monitoring report. However, MMPs are not assessed if a monitoring report is submitted but is incomplete (i.e., certain tests were not conducted or certain results not reported). When Board staff review monitoring reports and finds that they are incomplete, staff typically issues a Notice of Violation (NOV) and requires the Discharger to describe the steps it will take to come back into compliance. Unless noncompliance is egregious and sustained over a long period, Board staff does not typically propose a discretionary penalty for failure to submit a complete monitoring report.

MMPs only apply to effluent limit violations, and are not assessed for violations of any other limit defined in the NPDES permit, including surface water, groundwater, operational, or toxicity limitations.

The CWC recognizes that the imposition of MMPs may be financially burdensome to small communities with financial hardship<sup>1</sup> and allows the Water Boards to credit the MMPs toward a compliance project designed to correct the problem. The City of Colfax meets the definition of a small community with a financial hardship. Since the CWC was revised in 2000 to require imposition of MMPs, the City of Colfax has been issued two ACLOs:

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<sup>1</sup> Defined in the State Water Board's 2009 *Water Quality Enforcement Policy* as (a) having a population of less than 10,000 people or lying completely within a rural county, and (b) having a median household income of less than 80% of the California median household income, or the community has an unemployment rate of 10% or greater, or 20% of the population is below the poverty level.

- ACLO R5-2003-0167 was issued in December 2003, for \$351,000. This Order allowed the entire civil liability to be credited toward a compliance project.
- ACLO R5-2008-0534 was issued in September 2008 for \$234,000 and was for violations that occurred from 1 April 2003 through 31 December 2007. It allowed the entire \$234,000 in civil liabilities to be credited toward a compliance project, the construction of the new tertiary wastewater treatment plant.

The ACLO that is the subject of this hearing is for violations that occurred between 1 January 2008 and 30 June 2011. If adopted as proposed in the agenda package, it would allow \$153,000 to be applied to three different compliance projects, as described below. The City has not proposed any compliance projects for the remaining \$12,000 (four violations), so that portion of the penalty must be paid, per the CWC, to the State Water Board's Cleanup and Abatement Account.

- Compliance Project #1: Construction of the new tertiary treatment plant. The new treatment plant was completed on 1 January 2009. Therefore, civil liabilities for effluent limit violations which took place before the date of completion may be credited toward this compliance project. Between 1 January 2008 and 31 December 2008, the Discharger accrued 13 violations that are subject to MMPs. If adopted as proposed, the Order would allow \$39,000 of mandatory minimum penalties to be credited towards the construction of the new treatment plant.
- Compliance Project #2: Training and adding staff. After the tertiary wastewater treatment plant began operations, the City realized that it needed more experienced personnel to train operations staff and to trouble-shoot issues at the plant, especially in regard to the coliform and turbidity violations. Therefore, the City contracted with Water Pollution Control Services (WPCS) to operate the plant. The State Water Resources Control Board's Enforcement Policy (Enforcement Policy) defines several types of compliance projects, including "providing training", "adding staff", and "developing operation, maintenance, or monitoring procedures." The City has asked that the \$62,000 cost of contracting with WPCS for a 12 month period (ending 1 November 2010) be considered a compliance project to rectify the coliform and turbidity violations. Board staff evaluated the request and found that the Discharger accrued 19 coliform and turbidity violations prior to hiring WPCS, and no turbidity violations and only two coliform violations after that time. The proposed ACLO allows \$57,000 (for the 19 coliform and turbidity violations) to be credited toward Compliance Project #2.

- **Compliance Project #3:** Perform a copper water effects ratio (WER) study. The City is completing a copper WER which will be used to refine the copper effluent limitations for the Colfax wastewater treatment plant. The Enforcement Policy considers “conducting water quality investigations or monitoring” to be an acceptable compliance project. The City will spend approximately \$70,000 on the WER Study and requests that \$57,000 of the cost be applied toward this compliance project. The Discharger accrued 19 copper violations, all of which are subject to MMPs. Therefore, the proposed ACLO allows \$57,000 to be credited toward Compliance Project #3.

On 23 March 2011, the Prosecution Team issued a tentative Administrative Civil Liability Order for the City of Colfax. The tentative ACLO was circulated for a 30-day public comment period. The tentative ACLO would have allowed the majority of the MMPs to be applied to the three compliance projects discussed above. Three comment letters were received during the public comment period. The City of Colfax agreed with the penalties and the compliance projects. Save the American River Association expressed concern over a lack of enforcement and asked for a Board hearing. Friends of the North Fork asked that the City be required to write a check each month that it is not in compliance and asked that the matter be heard before the Board. The Advisory Team reviewed the comments and determined that the Central Valley Water Board must hear this matter.

On 6 September 2011, the Prosecution Team re-issued the ACLO and scheduled it for the Board’s 30 November, 1-2 December 2011 meeting. Hearing Procedures were issued at the same time, and were subsequently amended by the Advisory Team. While re-issuing the ACLO, the Prosecution staff extended the review period for violations from 30 June 2011 (in the March version of the tentative ACLO) to 30 June 2011. This increased the MMP amount from \$114,000 to \$150,000. While Mr. Alan Edwards did not respond to the March 2010 tentative ACLO, he submitted the vast majority of the comments in response to the September 2011 tentative ACLO. While responding to comments, Prosecution staff found more violations; the penalty amount is now \$165,000.

The Prosecution Team’s response to comments follows. Each comment is summarized, and for ease of reference, is followed by the commentor’s initials and the document page on which it was found. When possible, similar concerns by various parties are grouped as one comment or topic. The Prosecution Team has also provided a summary at the end of this document.

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### **Issue No. 1: Effluent limit violations**

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**Background:** As described in the CWC, certain effluent limitations are subject to mandatory minimum penalties of \$3,000 per violation.

**Comment No. 1:** Four violations of the maximum daily and average monthly effluent limitations for ammonia occurred in January 2009 and February 2009. (AE bullet points 1, 2, 17, 18)

**Prosecution Team Response:** The tertiary treatment plant began operating in January 2009. The CWC considers the first 90 days that a new plant begins operations to be a “start up period” and does not require that MMPs be assessed during this time, as long as the discharger submits a start-up plan in advance. CWC section 13385(j)(1)(D)(i). The start-up plan was submitted on 14 August 2008, and subsequent information showed that the start-up date was 1 January 2009. The City reported these four violations, and they are not subject to MMPs because they occurred during the 90 day start-up period.

**Comment No. 2:** Two violations of pH effluent limitations occurred in February 2009 and August 2009 and were not self-reported by the Discharger. (AE bullet points 19, 23, 131)

**Prosecution Team Response:** Board staff reviewed the monthly self-monitoring reports and the violations alleged were determined not to be effluent violations. The daily average pH of 1.8 on 28 February 2009 was determined by Board staff to be a typographical error. The daily minimum pH of 6.18 on 16 August 2009 was reported as being due to maintenance on the meter and was not a valid measurement.

**Comment No. 3:** Six violations of chlorine effluent limitations occurred in March 2009, August 2009 and October 2009. (AE bullet points 25,36,120,152,153,154)

**Prosecution Team Response:** The permit requires that the Discharger monitor for total residual chlorine, even though this plant uses a UV disinfection system instead of chlorine. Board staff reviewed these three monthly self-monitoring reports and the Discharger reported that the six alleged violations occurred during maintenance of the chlorine meter. Maintenance activities have the potential to give a false signal. During maintenance activities, flows are diverted to the pond. Therefore, these are not violations.

**Comment No. 4:** The 63 ug/L result for manganese for the sample collected on 2 February 2010 was not reported and the result indicated a violation of the manganese effluent limitation. (AE bullet point 191)

**Prosecution Team Response:** Board staff reviewed the monthly self-monitoring report and the violation alleged was determined not to be an effluent violation. The laboratory sheet for the February manganese sample analysis provided by Mr. Edwards indicates a collection date of 3 February 2010. The Discharger correctly reported the result in the February 2010 monitoring report, which shows a manganese result of 63.9 ug/L on 3 February 2010. The WDRs state that the effluent limit for manganese is “*Based on a calendar year, the annual average total recoverable manganese concentration in the effluent shall not exceed 50 ug/l.*” Because the limit is expressed as an annual average, compliance is determined at the end of the calendar year, as the average of 12 monthly results. The annual average for 2010 was 10.5 ug/L and therefore the City complied with the WDRs. Prosecution staff also reviewed

the manganese annual average for 2009, which was 24 ug/L and in compliance with the permit.

**Comment No. 5:** A turbidity effluent violation in September 2009 was not self-reported by the Discharger. (AE bullet point 135)

**Prosecution Team Response:** Board staff reviewed the September 2009 monthly self-monitoring report. Mr. Edwards is correct in pointing out that there was a violation of the daily average turbidity effluent limitation on 26 September 2009, and that it was not self-reported by the Discharger. However, this effluent violation was previously identified by Board staff and is already included in the tentative ACLO.

**Comment No. 6:** Four coliform effluent violations that occurred in September 2009 were not self-reported by the Discharger. (AE bullet points 133, 134, 136, 137)

**Prosecution Team Response:** Board staff reviewed the September 2009 monthly self-monitoring report. Mr. Edwards is correct in pointing out that four violations of the total coliform 7-day median effluent limitation occurred in September 2009, but were not self-reported by the Discharger. However, these four effluent violations were previously identified by Board staff and are already included in the tentative ACLO.

**Comment No. 7:** Four coliform effluent violations occurred in October 2009. (AE bullet points 148,149,150,151)

**Prosecution Team Response:** Board staff reviewed the October 2009 monthly self-monitoring report. The Discharger did self-report the four violations of the total coliform instantaneous maximum effluent limitation that occurred in October 2009. However, Board staff neglected to include those violations in the tentative ACLO. Those four total coliform effluent violations have been added to the revised tentative ACLO.

**Comment No. 8:** The Discharger failed to report the 4 June 2009 effluent chlorine result as a violation. (AE bullet point 85)

**Prosecution Team Response:** Although the Colfax plant does not use chlorine disinfection to achieve tertiary treatment, the permit still contains chlorine effluent limitations and requires continuous chlorine monitoring. The City must monitor chlorine continuously, but the MRP requires<sup>2</sup> that only the daily maximum, daily minimum, and daily average values be reported. While this reporting method works well for constituents with a daily effluent limitation value, the effluent limit for chlorine is expressed as both a 1-hour average and a 4-day average. In this case, if the daily maximum value exceeds the 1-hour average, then staff must contact the Discharger for more information.

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<sup>2</sup> MRP Section X.B.4

The Discharger appropriately reported a daily maximum chlorine value of 0.285 mg/L for 4 June 2009. Board staff recently contacted the Discharger for additional information to determine whether this value exceeded any of the effluent limitations. On 24 October 2011, the City stated that a power outage occurred at the same time as the chlorine spike. It appears that the result is a false positive. However, even if it was not a false positive, the result is less than the 1-hour average limitation. The City provided the chlorine meter graph which shows the chlorine spike occurred for less than a minute, and that the 10-minute average concentration was 0.006 mg/l. This equates to a 1-hour average concentration of 0.001 mg/l. Both the 10-minute and the 1-hour chlorine concentrations are less than the 1-hour effluent limitation of 0.02 mg/l. Therefore, even if this was a true result, it is not a violation.

**Comment No. 9:** The August 2009 average monthly effluent limitation for copper was violated based on the 4 August 2009 result. (AE bullet point 130)

**Prosecution Team Response:** The violation of the copper average monthly effluent limitation was already included in the tentative ACLO with an occurrence date of 31 Aug 2009 (monthly averages are calculated on the last day of the month.)

**Comment No. 10:** The average monthly effluent limitation for copper was violated in January 2010, February 2010, March 2010, July 2010, August 2010, September 2010, October 2010 and April 2011. (AE bullet points 188,193,194,236,237,243, 252,282)

**Prosecution Team Response:** Board staff agrees that the Discharger violated the copper effluent limitations contained in the WDRs; however, these violations are not subject to MMPs because the Central Valley Water Board adopted CDO R5-2010-001 on 28 January 2010. This CDO contains an interim copper effluent limit. Because the copper results are less than the interim limit in the CDO, they are not subject to MMPs. For the January 2010 monthly copper value, it is noted that because monthly averages are calculated on the last day of the month, the violation of the WDR copper monthly effluent limitation in January 2010 was also protected from MMPs because the CDO was adopted prior to the last day of the month.

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## **Issue No. 2: Failure to conduct effluent monitoring or report effluent monitoring results**

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**Background:** MMPs do not apply to the failure to conduct monitoring or to report results. These actions are considered deficient monitoring violations or deficient reporting violations and are only subject to discretionary enforcement actions. In general, when Board staff reviews monitoring reports and discovers these types of violations, it responds by issuing an NOV. The NOV will require the discharger to describe the actions it will take to stop the violations identified by staff.

**Comment No. 1:** The Discharger collected an extra coliform sample on 29 July 2009. The result showed a violation, and the Discharger failed to report both the sample and the violation. (AE bullet point 107)

**Prosecution Team Response:** As required by the WDRs, the City reported three coliform results for the week of July 26-August 2, 2009. However, the July 29 coliform result provided by Mr. Edwards was not reported; therefore, this is a violation for failure to report additional results. Board staff recalculated the three coliform effluent limitations (instantaneous, 7-day and 30-day) using the 29 July 2009 result, and determined that none of the limits were violated.

**Comment No. 2:** The City failed to report effluent monitoring results for the week of 9-15 January 2011 for the parameters settleable solids, BOD, TSS, ammonia and TDS. (AE bullet points 266, 267, 268, 269, 270)

**Prosecution Team Response:** The required effluent monitoring was not reported, as identified in the comment. These are violations of the Monitoring and Reporting Program (MRP).

**Comment No. 3:** Mr. Edwards interprets the WDRs to require that when there is an intermittent discharge, samples must be collected on the first day that discharge resumes. Based on this, his comments are as follows: On the first day of operation after an intermittent discharge, effluent monitoring was not reported on 14 and 22 October 2009 for BOD, TSS and pH, as required by Appendix E.A.2 (sic). The Discharger also failed to report effluent monitoring results on the first day of an intermittent discharge on 6 June 2010 for settleable solids, BOD and TSS, as required by Attachment E.III.A.2 (sic) of the permit. The Discharger also failed to report effluent monitoring results on 28 July 2010 for TSS and BOD, the first day after resumption of flow. (AE bullet points 155,156,157,158,159,160, 208,209,210,229,230)

**Prosecution Team Response:** The comments seem to actually be referring to MRP Provision IV.A.2, which states in part: *“If the discharge is intermittent rather than continuous, then on the first day of each such intermittent discharge, the Discharger shall monitor and record data for all of the constituents listed above...”* This is a standard NPDES permit provision and only applies to discharges that are inherently intermittent, such as fire hydrant flushing, well rehabilitation, and discharges from food processors that only operate during harvest. Discharges from municipal wastewater treatment plants are not considered intermittent discharges. Board staff’s review of the monitoring reports found that the Discharger conducted the appropriate monitoring during the periods listed above.

**Comment No. 4:** Colfax constructed its new tertiary treatment plant without an effluent flow meter, and a meter was not installed until July 2010. The Discharger reported effluent flow values from January 2009 through June 2010 without actually having an effluent flow meter. (AE bullet points 16,24,37,58,84, 95,115,129,147,171,177,183,187,190,199, 203, 207, 219)

**Prosecution Team Response:** The WDRs require that effluent flow be monitored using a meter. Board staff had been aware that there was no effluent flow meter prior to July 2010.

During the 17 November 2009 inspection of the Colfax wastewater treatment plant, it was noted that the reported effluent flow rate was based on measurement of the influent flow rate to the treatment plant's biological nutrient removal (BNR) process. In the inspection transmittal letter dated 2 February 2010, Board staff identified this issue, and on 24 February 2010, the Discharger responded that it was evaluating a location for an effluent flow meter. The effluent flow meter was subsequently installed on 28 July 2010. The Discharger's failure to comply with the effluent flow meter requirement in the WDRs is not subject to MMPs.

**Comment No. 5:** The Discharger failed to conduct two out of the four required follow-up chronic toxicity tests in January 2009. (AE bullet point 11)

**Prosecution Team Response:** On 27 January 2009, the Discharger notified Board staff of an elevated chronic toxicity for one out of three test species for effluent samples taken in early January 2009. WDRs Provision VI.C.2.a requires the Discharger to conduct four additional chronic toxicity tests every two weeks after an initial elevated chronic toxicity result. Board staff has reviewed the case file and agrees with Mr. Edwards that only two additional chronic toxicity tests were conducted (in February 2009 and March 2009). It is noted that even though there was one elevated chronic toxicity result, the individual analytical data for discharge was in compliance with all effluent limitations. The failure to conduct additional chronic toxicity testing is a monitoring and reporting violation but is not subject to MMPs. In addition, staff's review found that the two follow-up toxicity tests and the regular toxicity test conducted in August 2009 did not show chronic toxicity.

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### **Issue No. 3: Receiving water limit violations**

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**Background:** MMPs do not apply to violations of receiving water limitations. In general, when Board staff reviews monitoring reports and discovers these types of violations, it responds by issuing an NOV. The NOV will require the discharger to describe the actions it will take to stop the violations identified by staff.

The comments below pertain to the receiving water limitation for fecal coliform. The limitation states: "*... the discharge shall not cause the following in the receiving water: The fecal coliform concentration, based on a minimum of not less than five samples for any 30-day period, to exceed a geometric mean of 200 MPN/100 mL, nor more than ten percent of the total number of fecal coliform samples taken during any 30-day period to exceed 400 MPN/100 mL.*"

**Comment No. 1:** The City failed to report violations of the receiving water coliform geometric mean limitation for July 2009, August 2009, September 2009, October 2009, November 2009 and August 2010. The City failed to report violations of the receiving water fecal coliform limitation which requires that not more than 10% of samples shall exceed 400 mpn/100 ml during a 30 day period on 8 July 2009, 17 July 2009, 18 August 2009, 26 August 2009,

9 September 2009, 17 September 2009, 24 September 2009, 30 September 2009 and in November 2009 and August 2010. The limit refers to not less than 5 samples per month and Colfax only collected 4, therefore, either they violated the effluent violation, or they failed to collect sufficient samples. (AE bullet points 108,109,110,121,122,123,138,139,140,141, 142,161,162,238)

**Prosecution Team Response:** Please refer to the coliform receiving water limitation, above. Compliance with the first portion of this limitation is determined by reviewing the result from the day when a sample was collected, along with the results from the previous 29 days (i.e., a rolling 30-day period). There must be a minimum of five samples collected during the 30 day period to determine compliance. However, the Colfax MRP only requires that samples be collected once per week<sup>3</sup>. In many instances, this means that five samples are not collected within 30 days. Colfax has complied with the sample collection requirement but it is not possible to determine compliance with the first portion of the receiving water limitation. The City is not in violation.

However, in order to determine if the treatment plant discharge is adversely impacting water quality, Prosecution staff has also reviewed the data to determine if the *discharge from the wastewater treatment plant* has caused an exceedance in the fecal coliform concentrations in the receiving water. The City's monitoring reports for the dates listed in this comment have been reviewed, and staff find that the fecal coliform levels at the downstream receiving water monitoring point exceeded the 200 MPN/100 mL and/or 400 MPH/100 mL receiving water fecal coliform limitations during these periods. However, Board staff also reviewed the total coliform and fecal coliform levels reported for the effluent and the dam seepage to determine if the receiving water exceedances could be attributed to the discharge from the wastewater treatment plant. On many days when receiving water coliform levels were elevated, the coliform levels in the effluent and dam seepage was low (i.e., generally <2 MPN/100 mL). Conversely, on the few days when coliform levels were elevated in the effluent or dam seepage and receiving water was monitored, the receiving water levels were low. The data do not show that the discharge has caused an increased in the concentration of fecal coliform in the receiving water.

**Comment No. 2:** The receiving water coliform limit refers to not less than five samples per month and Colfax only collected four in October 2009 and August 2010, therefore, either they violated the effluent violation, or they failed to collect sufficient samples. (AE bullet points 161,238)

**Prosecution Team Response:** The MRP requires that the receiving water be monitored once per week. A review of the two monthly monitoring reports shows that the City completed the required monitoring, and therefore is not in violation. Furthermore, the reported effluent coliform levels during these periods were generally low (e.g., <2 MPN/100 mL). As stated above, the monitoring frequency required in the MRP does not match with the

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<sup>3</sup> In regard to the frequency of fecal coliform monitoring, the Colfax MRP is no different in than most MRPs adopted by the Board.

frequency discussed in the receiving water limitation. The Prosecution Team will ask that the Permitting group address this inconsistency during the 2012 Colfax NPDES permit revision.

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#### **Issue No. 4: Failure to conduct receiving water monitoring or report results**

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**Background:** MMPs do not apply to the failure to conduct monitoring or to report results. These actions are considered deficient monitoring violations or deficient reporting violations and are only subject to discretionary enforcement actions. In general, when Board staff reviews monitoring reports and discovers these types of violations, it responds by issuing an NOV. The NOV will require the discharger to describe the actions it will take to stop the violations identified by staff.

**Comment No. 1:** Receiving water monitoring was not reported for the week of 4-10 January 2009 at monitoring locations R-001 and R-002 for the parameters pH, electrical conductivity, temperature, chlorine, dissolved oxygen and turbidity. In addition, required receiving water monitoring at monitoring location R-001 was not conducted during that week for the parameters coliform and ammonia. (AE bullet points 3,4,5,6,7,8,9,10)

**Prosecution Team Response:** Board staff's review of the monitoring reports shows that Mr. Edwards is correct, and that these are violations of the MRP.

**Comment No. 2:** Receiving water monitoring was not reported for the week of 24-31 March 2009 at monitoring locations R-001 and R-002 for the parameters pH, electrical conductivity, temperature, chlorine, dissolved oxygen, turbidity, coliform and ammonia. (AE bullet points 28,29,30,31,32,33,34,35)

**Prosecution Team Response:** Weekly monitoring requirements apply to calendar weeks (i.e., Sunday through Saturday, as shown on Table E-9 of the permit). Board staff's review of the monitoring reports shows that the City correctly monitored the receiving water on 23 March 2009 for the calendar week 22-28 March 2009 and then again on 2 April 2009 for the calendar week 29 March 2009 – 3 April 2009. Therefore, there are no violations.

**Comment No. 3:** Receiving water monitoring was not reported for the week of 23-30 April 2009 at monitoring locations R-001 and R-002 for the parameters pH, electrical conductivity, temperature, chlorine, dissolved oxygen and turbidity. (AE bullet points 38,39,40,41,42,43)

**Prosecution Team Response:** Weekly monitoring requirements apply to calendar weeks (i.e., Sunday through Saturday). The City conducted the required receiving water monitoring on 21 April 2009 for the calendar week of 19-25 April 2009. However, no receiving water monitoring was conducted for these parameters for the calendar week of 26 April 2009 through 2 May 2009. This is a violation of the MRP.

**Comment No. 4:** The City failed to report fecal coliform and ammonia at sites R-001 and R-002 for the week of 23-30 April 2009. (AE bullet points 44,45)

**Prosecution Team Response:** Weekly monitoring requirements apply to calendar weeks (i.e., Sunday through Saturday). Receiving water monitoring for coliform and ammonia was conducted on 21 April 2009 for the calendar week of 19-25 April 2009 and on 29 April 2009 for the calendar week of 26 April 2009 – 2 May 2009. Therefore, no violations occurred.

**Comment No. 5:** The City failed to report foam in the creek at monitoring location R-002 as a permit violation on 5 February 2010. (AE bullet point 192)

**Prosecution Team Response:** The self-monitoring report cover letter reported that trace amounts of foaming was observed on 5 February 2010; therefore, there was no failure to report.

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#### **Issue No. 5: Failure to monitor the ponds**

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***Background:***

MMPs do not apply to the failure to conduct monitoring or to report results. These actions are considered deficient monitoring violations or deficient reporting violations and are only subject to discretionary enforcement actions. In general, when Board staff reviews monitoring reports and discovers these types of violations, it responds by issuing an NOV. The NOV will require the discharger to describe the actions it will take to stop the violations identified by staff.

**Comment No. 1:** The City failed to conduct pond monitoring for pH and/or dissolved oxygen in Ponds 1, 2, or 3 for specific weeks in April 2009, May 2009, June 2009, July 2009, August 2009. (AE bullet points 47,48,49,50,51,52,59,60,61,62,63,64,65,66,67,68, 69,70,71,72,73, 74,97, 98,99,100, 101,102,103,104,105,106, 116,117,118,119)

**Prosecution Team Response:** The required pond monitoring was not conducted, as identified in the comment. These are violations of the MRP

**Comment No. 2:** The City failed to conduct pond monitoring for pH, dissolved oxygen, freeboard or odors in Ponds 2 or 3 for the first week of July 2010. (AE bullet points 220, 221, 222, 223, 224, 225, 226, 227, 228)

**Prosecution Team Response:** Weekly monitoring requirements apply to calendar weeks (i.e., Sunday through Saturday). The monitoring was conducted on 29 June 2009 for the calendar week of 27 June -3 July. Therefore, no violations occurred.

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## **Issue No. 6: Failure to monitor the UV disinfection system**

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**Comment No. 1:** The City failed to report UV transmission for 10 June 2009 even though the plant discharged 0.46 mg of effluent. (AE bullet point 86)

**Prosecution Team Response:** The MRP does not contain any requirements regarding the need to monitor or report UV transmission. The only section of the NPDES permit which contains any language about UV monitoring is in Attachment D, Standard Provision I.D.a., "Ultraviolet Disinfection (UV) System Operating Requirements". This section has general language about monitoring UV transmission, among other items, but is not specific about the frequency of monitoring. Therefore, the lack of reporting regarding the UV transmission on 10 June 2009 cannot be considered a violation due to the non-specificity of the permit. More recent permits include a detailed UV monitoring section in the MRP, and the Prosecution Team will recommend that the Permitting staff add this section when the Colfax permit is revised in 2012.

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## **Issue No. 7: Groundwater Limitation Violations**

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**Background:** MMPs do not apply to violations of the groundwater limitations.

The groundwater limitations contained in the WDRs state the following:

1. Release of waste constituents from any storage, treatment, or disposal component associated with the wastewater treatment plant, in combination with other sources, shall not cause the underlying groundwater to contain waste constituents in concentrations greater than background water quality. Any increase in Total Dissolved Solids (TDS) or Electrical Conductivity (EC) concentrations within the monitoring points, when compared to background, shall not exceed the increase typically caused by the percolation discharge of domestic wastewater, and shall not violate water quality objectives, impact beneficial uses, or cause pollution or nuisance. For purposes of this limitation, the monitoring points are defined by the monitoring well locations.
2. Release of waste constituents from any storage, treatment, or disposal component associated with the wastewater treatment plant shall not, in combination with other sources of the waste constituents, cause groundwater within influence of the wastewater treatment plant to contain waste constituents in concentrations in excess of natural background quality or that listed below, whichever is greater:
  - a. Total coliform organisms median of 2.2 MPN/100 mL over any 7-day period.

**Comment No. 1:** The City failed to report violations of groundwater limitations for dissolved oxygen (i.e., values at monitoring well G-003 were higher than values at background monitoring well G-001) in January 2009, February 2009, April 2009, December 2009, January 2010, March 2010, April 2010, May 2010, November 2010, December 2010, February 2011 and March 2011. (AE bullet points 14,22,53,182,184,198,202,206,257,264,275,281)

**Prosecution Team Response:** Although the MRP requires that dissolved oxygen be monitored in the groundwater, the Prosecution Team will recommend that the Permitting group remove this constituent when the permit is updated in 2012. Some consultants measure dissolved oxygen while they purge a monitoring well because it is one of several parameters which can be used to determine when formation water is being recovered. It can also be used as a surrogate for petroleum hydrocarbon contamination, but that is not a concern at this facility. It is very unusual to require that dissolved oxygen be measured in the groundwater at wastewater treatment facilities, and it is not a “waste constituent” as described in the Groundwater Limitations. Prosecution staff disagree that there was any violation to report regarding dissolved oxygen.

**Comment No. 2:** The City failed to report violations of groundwater limitations for total Kjeldahl nitrogen and ammonia (i.e., values at monitoring well G-003 were higher than values at background monitoring well G-001) in January 2009, February 2009, April 2009, December 2009, January 2010, March 2010, April 2010, May 2010, November 2010, December 2010, February 2011 and March 2011. (AE bullet points 15,56,57,179,180,195,196,258,261, 262,277,278)

**Prosecution Team Response:** A violation of the groundwater limitations is determined if the increase can be shown to be caused by the discharge. Board staff agrees that the levels in monitoring well G-003 are greater than the levels in the monitoring well G-001 for the above parameters and periods. However, because the monitoring wells are located in fractured rock environment with known springs, groundwater in the vicinity of monitoring well G-001 may not be the upgradient source of groundwater in monitoring well G-003. It would be more appropriate to use an intra-well analysis (i.e., review each well individually to see if there are increasing constituent trends over time) instead of inter-well analysis (compare upgradient concentrations vs. downgradient concentrations). To summarize, it is not obvious to Board staff whether or not the discharge of waste caused the increased levels at well G-003 and therefore a violation of the Groundwater Limitations. However, the lining of Pond 3 is considered a corrective action with respect to groundwater and, if waste discharge is the cause of elevated parameters at well G-003, the pond lining should reduce the constituent concentrations found there.

**Comment No. 3:** The City failed to report violations of groundwater limitations for electrical conductivity and total dissolved solids (i.e., values at monitoring well G-003 were higher than values at background monitoring well G-001) in January 2009, February 2009, March 2009, April 2009, December 2009, January 2010, February 2010, March 2010, April 2010, May 2010, November 2010, December 2010, February 2011 and March 2011. (AE bullet points 12,13,20,21,26,27,54,55,181,185,186,189,197,200,201,204,205,259,263,265,274,279, 280)

**Prosecution Team Response:** With regard to electrical conductivity and TDS, the Groundwater Limitations include the phrase “...any increase in Total Dissolved Solids (TDS) or Electrical Conductivity (EC) concentrations... when compared to background, shall not exceed the increase typically caused by the percolation discharge of domestic wastewater and shall not violate water quality objectives, impact beneficial uses, or cause pollution or nuisance ...” A review of the

data shows that the salinity increase is no more than double between the upgradient and downgradient well, and is less than all water quality objectives. Board staff does not agree that the Discharger is in violation of the Groundwater Limitations for TDS and EC.

**Comment No. 4:** The City failed to report violations of groundwater limitations for total coliform in April 2009, May 2009, July 2009, October 2009, December 2009, June 2010, September 2010, December 2010 and April 2011. (AE bullet points 46,83,96,114,124,170, 178,218,251,260,284)

**Prosecution Team Response:** The groundwater violations alleged by Mr. Edwards are based on the result of a single sample. Because cross-contamination of groundwater samples for coliform is common, it is difficult to determine if the effluent limitation was actually violated. For example, the total coliform values for the upgradient monitoring well exceed the groundwater limitation in five of seven sampling events. This is not normal for a background well. A review of the total coliform data from downgradient well G-003 shows a wide scatter of results, which is also indicative of cross-contamination. Prosecution staff suggests that the Discharger prepare and submit a Sampling and Analysis Plan to ensure that there will not be any future false-positive coliform detections.

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#### **Issue No. 8: Failure to monitor the groundwater**

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**Background:** MMPs do not apply to the failure to conduct monitoring. These actions are considered deficient monitoring violations and are only subject to discretionary enforcement actions. In general, when Board staff reviews monitoring reports and discovers these types of violations, it responds by issuing an NOV. The NOV will require the discharger to describe the actions it will take to stop the violations identified by staff.

**Comment No. 1:** The City failed to report background groundwater monitoring for various parameters (electrical conductivity, TDS, pH, dissolved oxygen, TKN, ammonia, total coliform, nitrate) in May 2009, June 2009, July 2009, August 2009, September 2009, October 2009, November 2009, June 2010, July 2010, August 2010, September 2010, October 2010 and January 2011.

(AE bullet points 5,77,78,79,80,81,82,87,88,89,90,91,92,93,94,111,112,113,125,126, 127,128,143,144,145,146,163,164,165,166,167,168,169,173,174,175,176,211,212,213,214, 215,216,217,232,233,234,235,239,240,241,242,244,245,246,247,248,249,250,253,254,255, 256,271,272,273)

**Prosecution Team Response:** The monthly monitoring reports indicate that wells G-001 and G-002 were dry or did not have enough groundwater to sample for the above months. There is no violation if a discharger is physically unable to collect a sample.

**Comment No. 2:** Although well MW1 is dry for several months of the year, Colfax also has a water supply well on the plant site. It is unacceptable that Colfax simply avoids reporting

background water quality as a means of avoiding the appearance of violation. (AE footnote on page 1)

**Prosecution Team Response:**

While Colfax could sample its water supply well, that well is not defined in the MRP as a groundwater monitoring location, and is not required to be monitored. Furthermore, the analytical data would be of limited use because water supply wells are screened at a much deeper interval than groundwater monitoring wells, which are screened at the first water bearing zone. At Colfax, the groundwater monitoring wells are approximately 20 feet deep. Industrial water supply wells are required to have a 50 foot seal<sup>4</sup> and are drilled to a depth that produces a reliable water supply. It is not logical to compare the results from the Colfax wastewater treatment plant's water supply well to the downgradient monitoring well to determine whether or not discharge of wastewater has impacted groundwater.

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**Issue No. 9: Effluent discharge diversion to Pond 3**

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**Background:** City staff monitors the quality of the effluent treated by the tertiary treatment plant, and if it does not meet the turbidity limit contained in the permit, or if the plant has an upset, then the effluent is diverted into Pond 3 instead of being discharged to surface water. The wastewater in Pond 3 is then re-treated in the tertiary treatment plant before discharge. Pages F-5 and F-6 of the Fact Sheet acknowledge this practice and state *"In case of an operational problem, wastewater from the treatment system is diverted to the storage reservoir. The stored waste is later returned into Pond 2 of the treatment system."*

**Comment No. 1:** The Discharger failed to report violations of Provision VI.A.2.u when discharge was diverted to Pond 3 on the last three days of August 2009 and for the first 27 days of July 2010, thereby resulting in Smuther's Ravine going dry. (AE bullet points 132, 231)

**Prosecution Team Response:** Provision VI.A.2.u is a standard item in NPDES permits. It states, in part, *"...prior to making any change in the point of discharge...that results in a decrease of flow in any portion of a watercourse, the Discharger must file a petition with the State Water Board, Division of Water Rights, and receive approval for such a change..."* This provision applies to long-term or permanent discharge diversions which would raise water rights issues for downstream users, and does not apply to short-term diversions. Hence the requirement that Division of Water Rights be notified rather than the Regional Board.

In this particular case, the City of Colfax discharges to an un-named tributary to Smuther's Ravine. Prior to year-round discharges from the treatment plant, the un-named tributary dried up every summer. The City of Colfax's NPDES Permit is specifically crafted to protect water quality. Because the Fact Sheet states that effluent may be diverted into Pond 3 instead of discharged to the unnamed tributary to Smuthers Ravine – a provision clearly designed to protect water quality - the Central Valley Water Board's specific findings in this

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<sup>4</sup> DWR Bulletin 74-90, California Well Standards

case must override the standard or general language found in Provision VI.A.2.u. See *Scudder v. Perce* (1911) 159 Cal. 429, 433; *Olmstead v. City of San Diego* (1932) 124 Cal.App. 14, 21-22 [when the specific language of an instrument or statute appears to conflict with general language, the specific language must control]. Therefore, diverting effluent to Pond 3 is not a violation. The Prosecution Team feels compelled to note that Mr. Edward's claim that diverting effluent to Pond 3 when it does not meet permit standards is a violation of the City of Colfax's NPDES permit directly contradicts the comments he has submitted in response to the CDO, in which he requests that the Board prevent discharges that are not fully tertiary treated.

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### **Issue No. 10: Spring 2011 bypass**

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**Background:** On 16 March 2011, the City notified Board staff that Pond 3 was near capacity, even though the City had attempted to empty it prior to the rainy season. The City stated that approximately 1.9 mgd of wastewater was entering the treatment plant during storm events, but that the plant is only allowed to discharge 0.5 mgd. The remainder of the influent flow was directed to Pond 3. The City was concerned that rainfall predicted in late March 2011 would cause an uncontrolled overflow from the storage reservoir, potentially causing property damage or creating a health and safety risk. In its March 16 notice to Board staff, the City identified three alternatives for managing discharges from the storage reservoir to minimize impacts to the public and environment.

By letter dated 18 March 2011, Board staff acknowledged the concerns if an uncontrolled overflow were to occur, and stated that the City should take all steps possible to avoid a bypass. However, if a bypass were necessary, then Board staff recommended that the City implement its Alternative 2 or 3. Between 20 March and 8 April 2011, the City discharged approximately 25 million gallons of wastewater from the storage reservoir. The City proactively implemented Alternatives 2 and 3, and installed a temporary treatment plant. All bypassed water was disinfected by chlorination and then dechlorinated prior to discharge. In addition, the wastewater was filtered using pressure sand filters from 3 April 2011 through 8 April 2011.

**Comment No. 1:** The Discharger failed to report the late March 2011 and early April 2011 bypasses from Pond 3 as violations of the WDRs. (AE bullet points 276, 283)

**Prosecution Team Response:** The WDRs require the Discharger to notify the Central Valley Water Board in advance of an anticipated bypass and as soon as they have knowledge of potential noncompliance. See Standard Provisions I.G(5)(a), (b). The Discharger provided proper notification regarding plans to conduct the bypasses and provided weekly updates to Board staff during the bypass event. Accordingly, there was no reporting violation associated with the bypass. Moreover, the bypass violations themselves are not subject to mandatory minimum penalties under Water Code sections 13385(h) or (i).

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### **Issue No. 11: 2008 self-monitoring reports**

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**Comment No. 1:** Given the large number of violations that were found in the self-monitoring reports for the period January 2009 through June 2011 that were missed by Board staff, there should be a re-examination of the self-monitoring reports from 2008 (AE 1)

**Prosecution Team Response:** The Prosecution Team re-reviewed the 2008 self-monitoring reports and determined that staff had overlooked one violation. The discharge exceeded the manganese annual average effluent limitation for 2008. This violation is subject to MMPs and has been included in the revised tentative ACLO. It is noted that the self-monitoring reports indicated there was no discharge to surface water from May 2008 through August 2008 due to construction of the new wastewater treatment plant. Prosecution staff also noted that the discharge complied with both the final effluent limitations for the interim tertiary treatment system (Section IV.A.1 of the permit), as well as the interim limitations for copper, ammonia, 4,4-DDE and electrical conductivity, which were in effect through 31 December 2008 (Section IV.A.3). The final effluent limitations for the new treatment plant became effective on 1 January 2009 (Section IV.A.2).

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### **Issue No. 12: Additional enforcement should be considered**

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**Comment No. 1:** The City of Colfax has committed many violations over a period of several years; however, the Central Valley Water Board has been forgiving to a fault in the face of the numerous effluent violations with the reasons given being the small size of the City and the financial hardships it faces to deal with a complex and potentially expensive situation. (SARA). The proposed waiver of penalties is inadequate and excessive (FONF).

**Prosecution Team Response:** The Central Valley Water Board's ultimate goal is the protection of water quality and beneficial uses of waters of the State. To this end, the Board uses a number of regulatory approaches to ensure compliance at hundreds of wastewater treatment plants we regulate. Board staff acknowledges that the City of Colfax has had a long history of violations; however, this has also been the case for a number of other facilities because of the Board's limited resources and need to prioritize. Prior to 2001, the Board addressed the problems at Colfax through requirements in its NPDES permits. In 2001, the Board renewed Colfax's NPDES permit and issued a companion CDO to bring Colfax's discharge into compliance. Subsequent CDOs issued in 2007 and 2010 were intended to keep the City under a regulatory structure to keep it on a path to compliance in light of the unique factors and circumstances that have kept the City from achieving compliance.

In 2000, the CWC was amended to include MMPs for effluent violations. The CWC also authorized the Board to require publicly owned treatment works serving a small community with financial hardship to apply MMPs towards a compliance project designed to correct violations in lieu of assessing MMPs. In 2003, the Board issued an ACLO which required Colfax to spend a total of \$351,000 on a compliance project in lieu of assessing MMPs. In 2008, the Board issued an ACLO for additional effluent violations and required Colfax to spend a total of \$234,000 on a compliance project. Recognizing that Colfax is a small

community with financial hardship, and allowing the MMPs to be applied to the compliance projects is a practical approach taken by the Board and is specifically authorized by the Legislature.

In January 2009, Colfax's new wastewater treatment plant started operations and the effluent quality discharged from the new plant is significantly improved compared to Colfax's previous treatment facility. It is Board staff's opinion that Colfax has expended considerable efforts to come into compliance over that last several years and has made significant progress towards resolving all issues at its facilities. Board staff acknowledges that the regulatory process has been slower than all parties involved anticipated and much work still remains; however, much has also been accomplished towards full compliance and the Board's ultimate goal of protecting water quality and beneficial uses of the receiving water.

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### **Issue No. 13: Rebuttal evidence**

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**Comment:** The City states that most of Mr. Edwards' alleged violations have already been raised at the District Court level and the judge "stayed any and all stipulated penalties pertaining to these." With regard to groundwater monitoring and receiving water monitoring, the City points out that it has not been shown that the discharge from the wastewater treatment plant caused any impacts. (City rebuttal 14-15)

**Prosecution Team Response:** The Central Valley Water Board is not a party to any Federal Court settlement between Mr. Edwards and the City. However, it is interesting to note that the judge did not find any new violations. As stated in the summary below, Prosecution staff reviewed all 284 alleged violations and found an additional five violations that were subject to MMPs. Four of those violations were reported by the City but had been overlooked by Board staff. With regard to groundwater and receiving water monitoring (Issues 3 and 7, above), Prosecution staff had previously reviewed the monitoring reports and determined, as did the City, that there is no evidence that the discharge of treated wastewater caused the alleged violations.

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### **SUMMARY**

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Mr. Edwards states that the 284 violations he identifies in his comment letter are subject to MMPs. Board staff has carefully reviewed all the alleged violations and found that:

- Four of the violations are subject to MMPs. The Discharger properly reported these four violations but they were overlooked by Board staff during preparation of the tentative ACLO. The violations have been added to the revised ACLO.
- Four of the violations which are subject to MMPs were not self-reported by the Discharger. However, Board staff previously identified these violations and they are included in the tentative ACLO.

- An additional violation for 2008 (manganese annual limit) was identified by staff and has been added to the revised ACLO.
- The wastewater treatment plant did not have an effluent flow meter from 1 January 2009 through 28 July 2010. Effluent flows were estimated based on a flow meter within the treatment plant. This was a permit violation but is not subject to MMPs. The City is now in compliance and Prosecution staff does not recommend further discretionary enforcement actions.
- There were several periods in early 2009 in which receiving water and pond samples were not collected. These are violations of the MRP, but are not subject to MMPs. However, these violations have ceased since the City hired WPCS to operate the treatment plant. Because the City is now in compliance, Prosecution staff does not recommend further discretionary enforcement actions.
- The majority of the alleged violations are not violations.

If adopted as proposed, the ACLO would allow \$153,000 in MMPs to be applied to three compliance projects. No comments were submitted regarding the specifics of the compliance projects. However, there appears to be concern about the general practice of allowing the City of Colfax to apply its penalties towards compliance projects instead of paying the penalty to the State. Within the area covered by the Central Valley Water Board, there are 23 NPDES dischargers who have been identified as a “Small Community with Financial Hardship”. The City of Colfax is one of the 23 small communities that has been allowed to apply their MMPs towards compliance projects in amounts comparable to other small communities in the region, as shown in the table below<sup>5</sup>. The Prosecution Team believes that it is reasonable and fair to allow Colfax to apply its MMPs toward the three compliance projects.

<b>Small Community</b>	<b>MMPs applied toward compliance project, 2000- 2011</b>
Chester	\$3,000
Corning	\$3,000
Quincy	\$27,000
Delleker	\$39,000
Shasta	\$54,000
Portola	\$78,000
Nevada City	\$87,000

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<sup>5</sup> All documents may be found on the Central Valley Water Board’s website at:  
[http://www.waterboards.ca.gov/centralvalley/board\\_decisions/adopted\\_orders/](http://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/)

Biggs	\$108,000
Olivehurst	\$132,000
San Andreas	\$135,000
Alturas	\$156,000
Willows	\$216,000
Donner Summit	\$248,000
Placer County, Sheridan	\$270,000
Placerville	\$348,000
Cascade Shores	\$483,000
Planada	\$517,000
Colusa	\$567,000
City of Jackson	\$657,000
Colfax	\$738,000 *
Malaga	\$1,107,000
Live Oak	\$1,122,000
Williams	\$2,235,000
Maxwell	\$3,306,000

\* includes the 2011 tentative ACLO