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19 UNITED STATES DISTRICT COURT  
 20 EASTERN DISTRICT OF CALIFORNIA

21 ALLEN EDWARDS, an individual; NANCY  
 EDWARDS, an individual; and  
 22 ENVIRONMENTAL LAW FOUNDATION, a  
 non-profit organization,

23 Plaintiffs,

24 v.

26 THE CITY OF COLFAX, a municipal corporation,

27 Defendant.

Civil Case No.: 2:07-CV-02153-GEB-EFB

**ORDER RE: COMPLIANCE  
 WITH SETTLEMENT AGREEMENT**

1 WHEREAS Defendant City of Colfax (“City”) is required to comply with the Settlement  
2 Agreement entered by this Court on January 23, 2009 (“Settlement Agreement”);

3 WHEREAS Plaintiffs Allen Edwards, Nancy Edwards, and Environmental Law Foundation  
4 (“Plaintiffs”) have moved for contempt, and to enforce the terms of the Settlement Agreement in this  
5 action;

6 WHEREAS in the interest of avoiding the costs of further litigation, and in resolving any  
7 Settlement Agreement compliance issues, Plaintiffs and the City (collectively, the “Parties”) have agreed  
8 to the following activities and schedules for achieving compliance, which will be overseen by the  
9 District Court;

10 WHEREAS, on June 16 through July 5, 2009, and August 29 through at least September 17,  
11 2009, the City re-routed flows from the wastewater treatment plant (“WWTP”) into Pond Nos. 2 and 3,  
12 thereby eliminating effluent flows to Smuthers Ravine Creek;

13 WHEREAS, the City’s Self Monitoring Reports document the discharge of approximately 66  
14 million gallons of wastewater to Pond No. 3 between 1 February 2009 and 30 June 2010;

15 THEREFORE; the Parties agree to, and the Court orders, the following:

16 **Stipulated Penalties**

- 17
- 18 1. As required by the Settlement Agreement, and within fifteen (15) days of the entry of this Order  
19 the City shall pay the Edwards \$10,000 in stipulated penalties for the spill from the seepage  
20 pump-back system at Pond No. 3 that occurred between September 29, 2009 through October 14,  
21 2009 at a reported volume of 11,200 gallons. Payment shall be via certified check made payable  
22 to “Lawyers for Clean Water Attorney Client Trust Account” addressed to 1004 O’Reilly  
23 Avenue, San Francisco, CA 94129, sent overnight delivery.
  - 24 2. The District Court will stay its decision on all other stipulated penalties sought by Plaintiffs,  
25 pending compliance with this Order. If the City complies with this Order, the Court’s decision  
26 on stipulated penalties through the date of this order will be permanently stayed.
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1 **Compliance Activities**

- 2 3. The purpose of this Order is to ensure compliance with the Settlement Agreement and NPDES  
3 Permit No. CA0079529 (“NPDES Permit”). Disputes regarding the City’s compliance with  
4 effluent and receiving water limitations contained in the NPDES Permit and required by the  
5 Settlement Agreement, except as provided for in paragraphs 5-9 below, shall be addressed via  
6 the process set forth in paragraph 25 below.
- 7 4. Disputes regarding the City’s compliance with its NPDES Permit Monitoring and Reporting  
8 Program (Attachment E to the NPDES Permit) as required by the Settlement Agreement, except  
9 as provided for in paragraphs 5-9 below, and the monitoring and reporting requirements of the  
10 Settlement Agreement, shall be addressed via the process set forth in paragraph 25 below.

11 **Copper WER Study**

- 12 5. The City shall submit a Water Effects Ratio (“WER”) study for copper to the California  
13 Regional Water Quality Control Board, Central Valley Region, (“RWQCB”) no later than March  
14 31, 2012.
- 15 6. If, prior to October 31, 2012, the RWQCB approves the WER study, resulting in modification of  
16 effluent limitations for copper set forth in the NPDES Permit, with which the City can  
17 consistently comply prior to December 31, 2012, the City shall comply with the revised  
18 limitations. If the WER study fails to result in modified effluent limits for copper with which the  
19 City can consistently comply, the City shall initiate a source reduction study no later than  
20 November 30, 2012, and shall thereafter implement identified source control actions required to  
21 ensure consistent compliance with final effluent copper limitations contained in NPDES No.  
22 CA0079529 by January 1, 2014. During this period, and provided the City complies with the  
23 actions required by paragraphs 5 and 6 of this Order and the requirements of Cease and Desist  
24 Order No. R5-2010-0001, the City shall not be deemed in violation of the Settlement Agreement  
25 for exceeding the NPDES Permit’s effluent limitations for copper.  
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1 **PCHP Sampling**

- 2 7. In September, October, and December 2010, and February, April, and June 2011, the City shall  
3 have its certified laboratory collect split effluent samples that will be analyzed under both EPA  
4 Method 8081A and mass spectrometry for the Persistent Chlorinated Hydrocarbon Pesticides  
5 (“PCHP”) set forth in NPDES Permit No. CA0079529. The City shall provide Plaintiffs with the  
6 results of all PCHP analyses, including chain of custody, laboratory data, and all Quality  
7 Control/Quality Assurance data within five (5) business days of receipt of such data by the City.
- 8 8. If the sampling and analysis described in paragraph 7 above determines that any PCHP is  
9 detected by both EPA Method 8081A and mass spectrometry, or that any PCHP is quantifiably  
10 detected by EPA Method 8081A at or above the Minimum Level or Reporting Level defined in  
11 the NPDES Permit, then, within sixty (60) days of that determination, the City shall initiate a  
12 pollutant minimization program (“PMP”) pursuant to Section IV.C.3.a. of the City’s NPDES  
13 Permit to determine the source of PCHP and the steps required to eliminate PCHP in the WWTP  
14 effluent. The pollution prevention study shall be completed by December 31, 2012, and the  
15 actions identified in the PMP to reduce and/or eliminate PCHP in the effluent shall be  
16 implemented. In this circumstance, the City shall not be required to perform additional analysis  
17 under paragraph 7 of this Order using mass spectrometry regarding PCHP.
- 18 9. If the conditions set forth in paragraph 8 above are not met, and if, in any of the six analyses  
19 conducted pursuant to paragraph 7 above, at least one specific PCHP is detected at a level above  
20 the method detection limit but below the Minimum Level or Reporting Level by EPA Method  
21 8081A, and that same PCHP is not detected by mass spectrometry in that sample, the City shall  
22 not be required to perform additional analysis under paragraph 7 of this Order using mass  
23 spectrometry regarding PCHP, and no further action to address previous PCHP sample results of  
24 “detected, not quantified” (“DNQ”) via analysis by EPA Method 8081A by the City is necessary  
25 under this Order. Similarly, if all six analyses result in none of the PCHP being detected by EPA  
26 Method 8081A or mass spectrometry, the City shall not be required to perform any additional  
27 analysis under this Order using mass spectrometry, and no further action to address previous  
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1 PCHP sample results of DNQ via analysis by EPA Method 8081A by the City is necessary under  
2 this Order. Nothing in this Order shall relieve the City of its responsibility to continue  
3 complying with the limit for PCHP contained in the NPDES Permit.

4 **Infiltration and Inflow (“I&I”)**

- 5 10. No later than February 14, 2011, the City shall complete the current collection system pipeline  
6 repair/rehabilitation/replacement work being conducted by independent contractor McGuire  
7 Hester pursuant to the December 22, 2009 contract (“McGuire Hester Contract”) with grant  
8 funds provided by the American Reinvestment and Recovery Act of 2009 (“ARRA”). The City  
9 shall use its best efforts to reallocate monies in the contract from sewer segments found not to  
10 require immediate repair through its condition assessment work to segments in need of  
11 immediate repair.
- 12 11. No later than February 14, 2011, the City shall remove obstructions from all sewer segments  
13 rated CI, as that term is defined in paragraph 26 of the Settlement Agreement, in its June 30,  
14 2010 Wastewater Collection Condition Assessment due to obstruction and shall complete  
15 condition assessment of those sewer segments.
- 16 12. If CI sewer segments remain in the City’s condition assessment after the City completes the  
17 work described in paragraphs 10 and 11 of this Order, the City will repair, replace, and/or  
18 rehabilitate those remaining segments by December 31, 2011. If repair, replacement, or  
19 rehabilitation of those segments is technically infeasible on or before December 31, 2011, the  
20 City may seek an extension of time from the Court to complete the collection system  
21 improvements. The City bears the burden of establishing such technical infeasibility. If the City  
22 lacks funding for, or ability to fund, the remaining repair, replacement, or rehabilitation of CI  
23 sewer segments, the City will address this issue in the April 15, 2011 monthly report to the  
24 Court, and shall document the costs associated with the remaining work.
- 25 13. Plaintiffs shall be added to the Interested Parties list for the CEQA process related to any project  
26 involving hookups to the City’s WWTP.  
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1 14. Within ten (10) calendar days of receipt, the City shall notify Plaintiffs of any application for  
2 building permits related to the Colfax Pines residential development project.

3 **Flow Meter**

4 15. The City has certified that an effluent flow meter has been installed, calibrated, and is in  
5 continuous operation at the City's WWTP.

6 16. The Parties understand that the United States Environmental Protection Agency ("U.S. EPA")  
7 and/or its contractor, PG Environmental, plans to conduct a follow-up inspection of the City's  
8 WWTP in November or December 2010. If this inspection is conducted by February 1, 2011,  
9 the City shall provide Plaintiffs a copy of the resulting inspection report within ten (10) calendar  
10 days of receipt. If, however, the inspection by U.S. EPA and/or PG Environmental does not  
11 occur by February 1, 2011, Plaintiffs shall be entitled to a visual physical inspection of the City's  
12 WWTP to confirm the location and function of the effluent flow meter, UV intensity meter,  
13 chlorine residual meter, and turbidity meter, and of the pipeline infrastructure at the City's retired  
14 interim wastewater treatment facility to confirm the facility's inability to discharge. Plaintiffs'  
15 inspection, if it is to occur, will be conducted by Plaintiffs' expert, Dr. Bruce Bell, to occur as  
16 soon as practicable, but no later than May 1, 2011. Fees or costs related to the inspection shall  
17 be paid from the compliance oversight budget set forth in paragraph 33 below.

18 17. Plaintiffs Allen and Nancy Edwards agree to allow all applicable statute(s) of limitations to  
19 expire on the Government Claims Act claims presented to the City and dated March 23, 2010  
20 and July 5, 2010 ("2010 Claims"), and agree that once the statute(s) of limitation expire, all  
21 claims set forth in the 2010 Claims are extinguished.

22 **Format of Continuous Monitoring Data**

23 18. Beginning with the August 2010 Self-Monitoring Report provided to Plaintiffs pursuant to  
24 paragraph 74 of the Settlement Agreement, data from continuous flow, total residual chlorine,  
25 Ultra Violet intensity, and turbidity meters shall be provided in tabular format at no more than 15  
26 minute intervals.  
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1 **Pond No. 3**

2 19. The City shall install a liner in Pond No. 3 to line Pond No. 3 in its entirety.

3 20. The City shall have adequate financing in place and shall advertise for bids for a contract for  
4 construction of the Pond No. 3 liner and all auxiliary work no later than March 31, 2012. At the  
5 time the City advertises for bids, the City shall concurrently provide Plaintiffs a copy of the  
6 Request for Proposal that contains the preliminary design for the Pond No. 3 liner.

7 21. The City shall award a contract for construction of the Pond No. 3 liner and all auxiliary work no  
8 later than May 31, 2012 and initiate construction no later than July 1, 2012.

9 22. The City shall complete construction of the Pond No. 3 liner no later than November 30, 2012,  
10 unless rainfall during the preceding twenty-four (24) months meets or exceeds the rainfall  
11 expected in return periods shown in the table below:

<b>Precipitation (inches)</b>	<b>Return Period</b>	<b>Dewater Pond No. 3 with</b>
<b><u>2010-11/2011-12</u></b>	<b><u>2010-11/2011-12</u></b>	<b><u>ADWF of 0.465 mgd</u></b>
59.3/74.9	5yr/25yr	August 2011
66.6/59.3	10 yr/5 yr	September 2011
74.9/59.3	25 yr/5 yr	July 2012
74.9/66.6	25 yr/10 yr	October 2012
80.5/59.3	50 yr/5 yr	August 2012
86.2/59.3	100 yr/5 yr	October 2012

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19 23. In the event that rainfall meeting or exceeding the return periods in paragraph 22 above occurs,  
20 as demonstrated by the City, the City shall complete the Pond No. 3 liner by November 30, 2013.  
21 Should additional excessive rainfall occur in the 2012/2013 wet season that precludes ability to  
22 comply with the November 30, 2013 deadline, the Parties shall meet and confer to attempt to  
23 agree upon a final completion date for lining the required volume of Pond No. 3.

24 **Funding of Pond No. 3 Liner**

25 24. To ensure timely funding of lining of Pond No. 3, the City shall meet the following interim and  
26 final milestones:  
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1 A. The City shall immediately take all steps to apply for a State Revolving Fund (“SRF”)  
2 loan.

3 B. If, by November 30, 2011, the City does not have a commitment of sufficient funds to  
4 complete the Pond No. 3 liner project on or before November 30, 2012, the City shall  
5 pursue funding via a municipal bond.

6 i. The City shall complete and submit all funding Requests for Proposals on or  
7 before December 1, 2011.

8 ii. The City shall secure a strong indication of interest from either a bank or an  
9 underwriter by January 15, 2012 and provide confirmation to Plaintiffs; and

10 iii. The City shall secure municipal bond funding by March 1, 2012.

11 **Quarterly Status Conferences**

12 25. Beginning on November 10, 2010, the Parties shall participate in quarterly status conferences  
13 with the Court (Magistrate Judge Brennan presiding) to discuss the City’s ongoing ability to  
14 comply with the requirements of this Order. These conferences shall be held at 10:00 a.m. on  
15 November 10, 2010, February 16, 2011, May 11, 2011, August 17, 2011, November 16, 2011,  
16 February 15, 2012, May 16, 2012, August 15, 2012, and November 14, 2012, and continuing  
17 quarterly until the activities required by this Order are completed. The status conferences shall  
18 be held telephonically, unless either Party or the Court requests an in-person conference. To  
19 arrange telephonic appearance, the Parties shall contact Courtroom Deputy Nic Cannarozzi at  
20 (916) 930-4172, at least forty-eight hours prior to the status conference. A joint status report  
21 shall be filed by the Parties five (5) court days prior to each quarterly status conference.

22 26. Following completion of the Pond No. 3 liner, the Parties may stipulate to, or the City may  
23 request the Court for, a reduction or elimination of the quarterly status conferences.

24 **Reservation of Authority to Issue Injunction**

25 27. The Court specifically reserves the authority to issue an injunction or other appropriate relief to  
26 ensure the City’s compliance with the federal Clean Water Act, NPDES Permit No. CA0079529,  
27 the Settlement Agreement, and this Order. The Parties agree and stipulate that the Court has the  
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1 jurisdiction to issue injunctive or other relief necessary to achieve compliance with this Order,  
2 the Settlement Agreement, and the NPDES Permit No. CA0079529. The City specifically agrees  
3 it shall not challenge the Court's jurisdiction or authority to issue injunctive relief necessary to  
4 achieve compliance with this Order as it pertains to the Settlement Agreement and the NPDES  
5 Permit.

6 **Monthly Reporting**

7 28. Beginning on November 10, 2010, and on or before the 10<sup>th</sup> of each month thereafter until the  
8 activities required by this Order are completed, the City shall file a status report with the Court  
9 and shall serve a copy of the status report on Plaintiffs. The reports shall include progress  
10 towards compliance with each of the elements of this Order, and any events that have occurred  
11 since the prior month's status report that may affect compliance with the Order's requirements.  
12 The reports shall include electronically-filed, certified copies of the City's Self Monitoring  
13 Reports ("SMRs") required by the NPDES Permit, and shall include the following specific  
14 reporting:

- 15 a. Certification that the effluent flow meter is operational, and that the reported flow rate is  
16 true and correct.
- 17 b. Certification that all reports and other documents provided to Plaintiffs pursuant to the  
18 Settlement Agreement and this Order are complete and accurate.
- 19 c. Certification that the City has submitted a WER study to the RWQCB by March 31,  
20 2012.
- 21 d. Certification that by October 31, 2012, the RWQCB has approved the WER and modified  
22 the City's effluent limits for copper such that the City can consistently comply with the  
23 modified effluent limits, or that the City has initiated by November 30, 2012 a source  
24 reduction study in accordance with this Order.
- 25 e. The results of PCHP sampling and analysis prescribed by this Order and whether based  
26 thereon, the City must, and has, prepared a PMP and timely initiated and completed  
27 activities identified therein.
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- 1 f. Certification that the collection system sewer pipeline repair/replacement/rehabilitation  
2 work being performed pursuant to the McGuire Hester Contract is completed by February  
3 14, 2011.
- 4 g. Certification that by February 14, 2011, the obstructions from CI sewer segments have  
5 been removed sufficient to allow a Closed Circuit Television (“CCTV”) camera to pass  
6 through, and that the condition assessment, including CCTV, of those sewer segments is  
7 complete.
- 8 h. Certification by December 31, 2011, that all sewer segments still rated CI on December  
9 31, 2010 have been repaired/rehabilitated or replaced, unless an extension is granted by  
10 this Court.
- 11 i. Certification that construction of the Pond No. 3 liner was completed by November 30,  
12 2012, unless rainfall precludes such installation, in which case, the City shall include  
13 details regarding any proposed revised schedule for completing the Pond No. 3 liner  
14 consistent with paragraphs 22 and 23 above.
- 15 j. Assuming no modifications to the November 30, 2012 completion date for the Pond No.  
16 3 liner, certification that financing was secured for the Pond No. 3 liner by March 31,  
17 2012, that advertisement for bids were complete by March 31, 2012, that a contract for  
18 construction of the Pond No. 3 liner was awarded by May 31, 2012, and that construction  
19 activity for the Pond No. 3 liner commenced July 1, 2012. If modifications to the  
20 completion date occur, as specified in paragraphs 22-23 above, monthly reports will  
21 include the revised schedule and information on financing, bid advertisement and  
22 contract award, as appropriate.
- 23 k. Until completion of the Pond No. 3 liner, quarterly reports describing applications  
24 submitted to the City for building permits and/or other applications for new or additional  
25 sewer service.
- 26 l. Any additional reporting that may be required by specific paragraphs of this Order.  
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1 29. Upon completion of the Pond No. 3 liner, the City can request, or the Parties can stipulate to,  
2 reduction or elimination of the categories and/or frequency of reporting.

3 30. Certifications in the reports shall be under the penalty of perjury and shall be made by: a grade II  
4 or higher licensed WWTP operator for all operational and permit compliance reporting; and a  
5 professional engineer licensed in California for all reporting related to engineering and collection  
6 system improvements; and a Certified Independent Public Finance Advisor for all financial  
7 reporting.

8 31. For purposes of this Order, financial inability to pay shall not be considered Force Majeure.

9 32. Plaintiffs' request for fees and costs incurred to date is deemed submitted and will be addressed  
10 in a separate order.

11 33. To compensate Plaintiffs for time to be spent by legal staff and/or technical consultants related to  
12 overseeing and enforcing the City's compliance with this Order, and participating in joint reports  
13 and quarterly status conferences, the City shall reimburse Plaintiffs' counsel a total sum not to  
14 exceed Forty Thousand Dollars (\$40,000) for the life of this Order as follows: \$3,000 on  
15 November 1, 2010, \$3,000 on February 1, 2011, \$3,000 on May 1, 2011, and \$3,000 on August  
16 1, 2011 (all for work September 2010 – August 2011), \$10,000 on September 1, 2011 (for  
17 September 2011 – August 2012), \$10,000 on September 1, 2012 (for September 2012 – August  
18 2013), and \$8,000 on September 1, 2013 (for September 2013 through conclusion of activities  
19 prescribed by this Order detailed below). Each payment shall be made via certified check  
20 payable to "Lawyers for Clean Water Attorney Client Trust Account" addressed to 1004  
21 O'Reilly Avenue, San Francisco, CA 94129, sent overnight delivery. Should all actions required  
22 by this Order in paragraphs 5-12, 16, and 19-24 be complete prior to the timeframes applicable to  
23 the payment deadlines specified above, the City shall not be obligated to pay the remaining sums  
24 set forth in this paragraph (*e.g.*, if all specified activities are complete prior to September 2013,  
25 no payment is due September 1, 2013). Should significant non-compliance with this Order  
26 occur, or a significant change in circumstances related to the Pond No. 3 liner occur, Plaintiffs  
27 may move this Court to award fees and costs above the cap specified.  
28

1 The Parties hereby enter into this Agreement.

2 Date: \_\_\_\_\_ signature on original  
3 \_\_\_\_\_  
4 Allen Edwards  
5 Edwards Family Farm

6 Date: \_\_\_\_\_ signature on original  
7 \_\_\_\_\_  
8 Nancy Edwards  
9 Edwards Family Farm

10 Date: \_\_\_\_\_ signature on original  
11 \_\_\_\_\_  
12 Daniel Cooper  
13 Attorney for Environmental Law Foundation

14 Date: \_\_\_\_\_ signature on original  
15 \_\_\_\_\_  
16 Bruce Kranz  
17 City of Colfax, City Manager

18 APPROVED AS TO FORM:

19 Dated: \_\_\_\_\_, 2010 Respectfully Submitted,  
20 LAWYERS FOR CLEAN WATER, INC.

21 signature on original  
22 \_\_\_\_\_  
23 Daniel Cooper  
24 Layne Friedrich  
25 Attorneys for Allen Edwards, Nancy Edwards,  
26 and Environmental Law Foundation

27 Dated: \_\_\_\_\_, 2010 LAW OFFICES OF DONALD B. MOONEY

28 signature on original  
\_\_\_\_\_  
Donald B. Mooney  
Attorneys for Allen Edwards and Nancy Edwards

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Dated: \_\_\_\_\_, 2010

DOWNEY BRAND LLP

signature on original

\_\_\_\_\_  
Nicole Granquist  
Attorneys for City of Colfax

IT IS SO ORDERED.

Dated: November 2, 2010.

  
\_\_\_\_\_  
EDMUND F. BRENNAN  
UNITED STATES MAGISTRATE JUDGE