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To Whom It May Concern:

**The City of Livingston in Merced County is unlawfully expanding its Domestic Wastewater Treatment Plant adjacent to Merced River violating CEQA Law.**

**The City of Livingston under the leadership of City Manager Richard Warne is intentionally and significantly expanding its Wastewater Treatment Plant with no Environmental Impact Review (EIR) in place.**

**The Livingston City Council under the leadership of City Manager Richard Warne approves design, construction engineering, management, and field inspection to expand its Domestic Waste Water Treatment Plant before even a basis of a design report is done.** Construction was approved before even a design report was completed. Funding for this project was approved all on the basis of a visual inspection. How can a project be approved before there is even a report on the project? How can the public comment on a project when there is not even the basis of a design report to review?

**The City of Livingston is creating a false need to expand its Domestic Waste Water Treatment Plant. The City of Livingston is using the “need” to fix the percolation pond that dumped 3.2 million gallons of treated wastewater into the Merced River as an excuse to expand its Domestic Wastewater Treatment Plant and unlawfully excavate, build, and develop new percolation pond #9 without an environmental impact review (EIR), with the full knowledge and consent of Carollo Engineers.**

Percolation Ponds 7 and 8 are dry even without using Pond #2. There is no need to expand. Yet the City of Livingston is using the mismanagement of its facility to deepen and convert ponds 1, 2, and 3 into one pond and excavate, build, and develop pond 9.

**Percolation Pond #9 Does Not Exist.** The City of Livingston and PMC in the draft Environmental Impact Report (EIR), for the Livingston Domestic Waste Water Treatment Plant (DWWTP) on its existing site refer to this area as **Proposed Percolation Pond #9.**

**In 2006, The City of Livingston started the illegal excavation of the soil where percolation pond #9 was proposed.** Even though this was river bluff virgin soil, where several Indian burial sites were found in the vicinity, and an Indian tribal site was just across the river, there were no biological or archeological studies done. There was no EIR. The need for these studies was brought to Livingston City Planner Donna Kenney. The claim was that the City of Livingston was exempt. The matter was taken to Merced County and the illegal excavation was stopped. The soil was sold to CALTRANS via a third party. The City of Livingston made hundreds of thousands of dollars on the sale of this soil. **There is no Percolation Pond #9, only a partially dug hole from an illegal excavation. There is no existing EIR for Pond #9.**

**In expanding its Domestic Waste Water Treatment Plant without an EIR the City of Livingston is Violating its own Public Hearing Notice.** The City of Livingston stated in its July 2, 2009, Notice of Public Hearing “The City is currently planning for an expansion to its Domestic Waste Water Treatment Plant (DWWTP) on its existing Site. The City has prepared an Environmental Impact Report.” Despite this statement the **City is expanding its DWWTP on its existing Site without an EIR in place.**

**Why has the City of Livingston failed to complete its EIR for the DWWTP? Why is the City of Livingston Expanding its DWWTP without an EIR when it has published documents stating it needs to have an EIR for the expansion?**

**The City of Livingston has failed to publish its EIR for its DWWTP. The City of Livingston has failed to adopt an EIR for its DWWTP.** Livingston received public comments on its Draft DWWTP EIR, May 11, 2009 to June 25, 2009. July 2, 2009, Livingston releases a public hearing notice stating the EIR for its DWWTP would be available July 16, 2009 and possibly adopt it on July 21, 2009. As of July 2010, The City of Livingston still had not released the EIR for its DWWTP and it has not gone before the Livingston City Council for adoption.

**City of Livingston is intentionally ignoring public comments on its expansion of its DWWTP.** Many concerns were brought to the City of Livingston during the public comment period of the Draft EIR DWWTP. When Livingston did not release the Final EIR for its DWWTP the City failed to adequately address the issues and concerns the public and a variety of agencies brought to Livingston’s attention. Livingston public noticed the EIR DWWTP would be available. A year later, Livingston still has not released it. When a copy of the EIR DWWTP was public document requested, the only item received was the draft EIR DWWTP. By its actions, the City of Livingston has demonstrated it has no intention of addressing or completing its EIR and addressing the comments received.

According to Exhibit A, City of Livingston and Carollo Engineers, **Regarding CEQA “It is assumed that this project will require the preparation of a categorical exemption and that it will be prepared by the owner.”** The City of Livingston and PMC published documents stating the need for an EIR to develop proposed percolation pond #9 and now the City of Livingston and Carollo Engineers are assuming it is CEQA exempt from needing an EIR.

**How does the City of Livingston claim the expansion of its DWWTP would need “CEQA-Plus” Requirements and then assume the project is CEQA categorically exempt?** The following quote is on Page 19 of the City of Livingston’s NOP, EIR, DWWTP, "The project will be financed, in large part, by a State Revolving Fund (SRF) Loan, administered by the State Water Resources Control Board (SWRCB) Division of Financial Assistance. This program is partially funded by the Environmental Protection Agency (EPA) and is therefore subject to Federal environmental regulations. To comply, the City must to meet certain "CEQA-plus" requirements. These requirements will be met through the provision of separate documentation submitted with the loan application.")

**The Proposed Percolation Pond #9 is outside Livingston City limits and is in Merced County. Yet this issue has not gone before Merced County.** Part of the Livingston Domestic Waste Water Treatment Plant is in the city limits and part of it is in Merced County.

**The City of Livingston continually tries to create a false need for expanding its current DWWTP by stating it would max out its current facility because the city would be at 21,000 people by 2009-2010 and the projected population by 2013 would be 41,991 people.** The current facility was designed to accompany at least 21,000 people. Because of the sandy soil the new percolation ponds 7 & 8 are performing better than expected. Because of this “sugar sand” it is reasonable to assume the current facility will have a higher capacity than its design. The Livingston’s population is between thirteen and fourteen thousand. With the current state of the housing market, Livingston which is located in Merced County, (which unfortunately has one of the worst foreclosure rates in the nation) does not need to expand its Domestic Waste Water Treatment Plant.

**The City of Livingston cannot justify expanding its DWWTP on falsely inflated growth projections. It’s too absurd. Now Livingston is trying to expand its facility by claiming it need’s to “fix the problem” by moving the ponds away from the river.** Existing Ponds 7 and 8, which are empty, are farther away from the river than ponds 1, 2, and 3. Under task 2, the design is to convert ponds 1, 2, and 3 into one great big pond and deepen them. Pond # 2 is the one whose levee broke, dumping 3.2 million gallons of treated wastewater into the Merced River. **How is combining and deepening ponds 1, 2, and, 3 moving them away from the River?**

**How big of an expansion project is this? What will the capacity increase be?** Without a design report in place, there is no information on how big this project approved by the Livingston City Council is. Developing proposed percolation pond # 9 could increase the plant from 21,000 to of 42,000 people. How much more capacity will be added when Ponds 1, 2, and 3 are deepened and combined? **The City of Livingston has claimed growth projections of over 100,000 people. Livingston City Manager Richard Warne in his Staff Report states this project could avoid the purchase of future property. Does that mean this “assumed” CEQA exempt project will increase the capacity of the DWWTP from a capacity of 21,000 to over 100,000?**

**What is the actual cost of this project?** In his staff report, under Fiscal Impact, Livingston City Manager Richard Warne states the cost of this project is \$99,900. In the contract there is not a set total cost. Compensation is on a time-and-material basis, an hourly rate. Where is the guarantee this project is 99,900? What is the total cost of this project? This expansion project has to cost more than \$99, 900.

**How can the City of Livingston know the total cost of this project before there is even a project design?** The Livingston City Council approved a major construction project before there was even a Basis of Design Report, or a Design Plans and Specification. How can the actual cost of a project be known when there is not even a Plan in place?

**Could this expansion of Livingston’s Domestic Waste Water Treatment Plant be a Multi-Million dollar project?** In California State Water Board 2008/2009 Project Priority Lists for State Revolving Fund Program, the City of Livingston has two applications listed project # 4803-110 for 29 million dollars and 5155-110 for 17.2 million dollars. One of the above applications was set to expire. On May 5, 2009, the Livingston City Council passes a resolution authorizing the city manager to act on behalf of the City of Livingston for a financing agreement with the State Water Resources Control Board for the Planning, Design and Construction of the Domestic Wastewater Treatment Plant Expansion.

When Mrs. Colette Alvernaz asked Livingston City Manager Richard Warne during public comments at the July 6, 2010 City Council meeting if the City has pulled its application, Mr. Warne would not give a direct answer. How can this expansion project be less than one hundred thousand when Livingston has a multi-million dollar application out with the California State Water Board? What is the total cost of this project and who is going to fund it? Is the State Water Resource Control Board Financing the expansion of the City of Livingston's DWWTP?

**The Cost of this project will place an undue financial hardship on the citizens of Livingston.** The City of Livingston recently raised its water and wastewater rates. The citizens of Livingston are having trouble paying their bills with the new increase. Lawns are turning brown. Many residents have been complaining. Why would the City of Livingston vote to spend the money on a new expansion project when there is plenty of room at the current facility? Even without using Pond 2, Percolation Ponds 7 & 8 are empty. Many of the families are of modest means. This unnecessary expansion will increase the already taxing financial burden on the Livingston residents.

**Why spend more money expanding Livingston's DWWTP when the plant was recently expanded and Livingston still owes close to Nine Million dollars?** The City of Livingston completes upgrade at its DWWTP in 2004. As of 2008 Livingston owes approximately nine million dollars. With the state of the economy and how tight money is for Livingston, why spend more money to expand a DWWTP that has plenty of room when Livingston already has a large debt?

**The City of Livingston is refusing to look at alternative sights for this expansion.** Foster Farms is in the process of building its own on site waste water facility. Foster Farms has been using a waste water facility on City of Livingston land. This site is on the northern half of the City. The existing DWWTP that the City of Livingston is planning on expanding is on the south side of Hwy 99. Hwy 99 divides the City. Foster Farms is cleaning up the City of Livingston industrial waste water facility it has been using and will be returning it to the City of Livingston for the City's use. The City of Livingston continues to refuse to consider this former waste water treatment facility as an alternative site. We have brought the possibility before the City of Livingston in numerous of ways. Instead of pumping waste water across the Merced River and Hwy 99, it makes sense to use this already established site as a waste water facility for the North side of town. Would it not be easier and cheaper in the long run? What is the additional cost to pump waste water uphill and across Hwy 99 and/or the Merced River? Also, mitigation measure 4.13.7.1b on the City's draft General Plan EIR says they need to explore other options such as different location for expansion.

**Where is the water going to come from to produce the materials for the waste water? The City of Livingston has serious water problems. The State of California has ordered one well to be cleaned up. Another well had to be temporarily shut down leaving a business without water.**

**The City of Livingston refuses to state what "additional future recreational opportunities along the Merced River" will be.** At the July 6, 2010, City Council meeting, Mrs. Gerri Martin asked, "What are the additional future recreational opportunities?" The Livingston City Council, City Manager, and City Attorney did not answer the question. Mrs. Martin's question was met with silence. The public still does not know what the City of

Livingston's plan for additional future recreational opportunities along Merced River? What are the plans?

**No Public Notices were sent to surrounding property owner.** The City of Livingston approved this project expansion: a Basis of Design Report, design, construction engineering, construction management and field inspection without sending out notices to property owners within 300 feet. I do not remember seeing a public notice posted on this project.

**The City of Livingston knowingly continues to violate the law and refuses to heed the opinion of others.**

The Grand Jury told Livingston it violated CEQA law with the illegal 42-inch sewer trunk line and "the City must ensure that all environmental laws are complied with and permit procedures are adhered to." (Complaint 06-07-15: City of Livingston, Sewer Trunk Line) Merced County on several occasions, (stop work order, county counsel, planning department, LAFCO) tells the City of Livingston it has to adhere to the environmental laws.

On November 30, 2009, Superior Court Judge, the Honorable Carol K. Ash finds against the City of Livingston, "In summary, the Court finds the City's approval of the GPU and certification of the EIR violated CEQA and the Open Space Plans Act for the reasons stated herein, and orders a peremptory writ of mandate issue directing the City to set aside its approval and certification of those documents." (Merced County Farm Bureau vs City of Livingston, Case No. CU151754) **The City of Livingston continues to demonstrate by its actions that it will not listen to: Merced County Grand Jury, Merced County Planning Dept., County Counsel, LAFCO, or Superior Court Judge Ash and comply with all environmental laws, permit procedures and obey CEQA Law.**

This project reminds of that illegal 42-inch sewer trunk line the City of Livingston allowed developer Ranchwood Homes to partially install. Livingston approved that project without a plan in place or any EIR, claiming it was CEQA exempt. When I complained, one of the replies was, "Haven't you heard it is easier to apologize than ask permission?" **It seems City of Livingston is continuing with its pattern of approving projects without a design in place or an EIR. Assume it is CEQA exempt. If the City gets caught apologize, but the project is already built. What can be done about it after the fact? Will anyone make the City take it out? It seems the City of Livingston's motto is, "It is easier to apologize than obey the law."**

**Respectfully Submitted,  
Mrs. Colette Alvernaz  
Mrs. Gerri Martin**