

# MARIPOSA PUBLIC UTILITY DISTRICT

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*water*

*wastewater*

*fire protection*

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The Mariposa Public Utility District (MPUD) was sued by Friends of Mariposa Creek (FMC) and Sarah Windsor for alleged violations of the Federal Clean Water Act (CWA) at the Wastewater Treatment Facility (WWTF) discharge to Mariposa Creek in 2014. FMC and Sarah Windsor were represented by Douglas Chermak with Lozeau Drury LLP.

- The existing WWTF was constructed in 1983.
- The MPUD WWTF discharges treated wastewater to Mariposa Creek.
- Mariposa Creek is a seasonal tributary to the San Joaquin River.
- The California Regional Water Quality Control Board (RWQCB) has issued Permits and Time Schedule Orders for the discharge, including final and interim effluent limitations.
- MPUD is in the process of constructing WWTF improvements for compliance with final effluent limits; however the existing facility currently meets the interim limits.
- The outcome of the lawsuit did not change the activities the District is currently undertaking to improve the WWTF treatment process other than diverting staff and financial resources.
- On April 19, 2016 Federal Magistrate in Fresno granted the plaintiffs motion regarding liability against MPUD.
- The cost to defend the lawsuit was \$64,521, not including MPUD staff time.

The MPUD WWTF operates under permits issued by the RWQCB. The RWQCB authority to issue the permit to MPUD is provided by the Federal CWA through the United States Environmental Protection Agency (USEPA). The basic permits are normally issued as National Pollution Discharge Elimination System (NPDES) permits. The NPDES permits establish, among other things, limitations on amounts of certain elements and compounds discharged to surface water, in this case, Mariposa Creek from the MPUD WWTF. The WWTF has discharged treated wastewater to Mariposa Creek since 1958.

The NPDES permit issued to MPUD in December of 2007 included new final effluent limitations for copper, zinc, nitrates and dichlorobromomethane (DCBM). DCBM is a byproduct from the chlorine disinfection process. The 2007 permit acknowledged it was

infeasible for the existing WWTF to achieve immediate compliance with some of the new effluent limitations, therefore compliance schedules were allowed in the NPDES permit. A time schedule for compliance was established for copper, zinc and DCBM with interim limits higher than the final limits, which expired in May 2010. The District managed to change the treatment process to meet the final limits for copper and zinc by May 2010. The District was unable to reduce the amount of DCBM to below the final limit. Extensive improvements to the WWTF will be necessary to consistently meet the final limitation for DCBM. On July 13, 2011 the RWQCB Executive Officer issued a Time Schedule Order including new interim limits for DCBM to expire on May 18, 2015. On April 17, 2015 the RWQCB adopted a Time Schedule Order extending the compliance date for DCBM final limitations to May 2020.

The RWQCB staff did issue an Administrative Civil Liability (ACL) Complaint for assessment of mandatory minimum penalties against MPUD on December 30, 2013 for the DCBM monitoring results of the effluent in excess of the final limitations from June of 2010 to July 2011 which is the period of time where technically there was no permitted interim limit for DCBM. The ACL included three exceedances of the copper final limit experienced in July 2012, November 2013 and February 2015 (the monthly average limit was 6.1 parts per billion (ppb), MPUD reported a monthly average of 9.0 ppb, 10.6 ppb and 8.5 ppb respectively) and one chlorine residual 1-hour average limit exceedance on January 30, 2013. (The discharge contained a chlorine residual for approximately 40 minutes).

Please refer to the Wastewater Treatment Facility Improvements Project, also on the web page for a description of work currently taking place.

MPUD has requested the RWQCB to allow MPUD to fund compliance projects in lieu of assessing mandatory minimum penalties listed in the ACL. This procedure is allowed under California Water Code. MPUD has expended funds for facility improvement plans, CEQA and NEPA compliance, engineering design and staff time well in excess of the penalty amount of \$93,000. RWQCB staff has approved the compliance project in lieu of penalties.

The FMC complaint includes a portion of the limitation violations listed in the RWQCB ACL. In addition, the FMC complaint claims or alleges the final effluent limits in an NPDES permit must be complied with even though the permitting agency, RWQCB, has issued interim limits for a specified time by adopting Time Schedule Orders. FMC and their attorney do not consider the interim effluent limits established by the permitting agency as acceptable and are alleging the discharge violates the Federal Clean Water Act for DCBM and copper, based on final limits listed in the NPDES permits only. The Federal Magistrate agrees with FMC, Sarah Windsor and their attorneys and has found the District Liable for exceeding the final limitations for DCBM and copper.

The District's liability insurance does not provide coverage for defense or indemnity for an alleged pollution claim. Therefore, the expense for defense and whatever penalties are assessed by the Magistrate comes from user fees/monthly service charges for

public sewer service. The District has been required to commit limited staff and financial resources in its response to the complaint. It is ironic, the plaintiff indicates a desire for the District to proceed with treatment facility improvements to meet final limitations of the NPDES permits, yet take action that requires diverting time and financial resources of the District which could be better utilized in proceeding with a construction project.

At their regular meeting October 4, 2016, the Board of Directors approved a “Consent Decree” which is an agreement between FMC and MPUD, to be approved by the Federal Court, settling the lawsuit. The basic terms of the Consent Decree include:

- MPUD will pay Friends of Mariposa Creek Attorneys \$170,000
- MPUD will pay The Rose Foundation for Communities and the Environment \$80,000 for use for environmentally beneficial projects in the Mariposa Creek watershed. (The intent of MPUD and FMC is to direct these funds to projects proposed by Sierra Foothill Conservancy.)
- MPUD agrees to comply with interim limits established for DCBM as permitted in Time Schedule Orders by the RWQCB (which the District has never exceeded anyway) until May of 2020.
- Comply with final limits for DCBM and copper as documented in the 2014 NPDES permit by May of 2020.
- Send copies of progress reports prepared for the RWQCB to FMC until a compliance project is complete and the WWTF is in compliance with final limitations.
- Friends of Mariposa Creek releases MPUD from claims, liabilities and damages which could arise from addressing the Districts exceedance of final limits for DCBM and copper until May 18, 2020.

Note the terms of the Consent Decree are no different than what the District is required to comply with in permits and time schedule orders (for which the District does comply) issued by the RWQCB, other than the payments of money to FMC attorneys and the Rose Foundation. The Board of Directors are motivated to accept the Consent Decree in light of several other agencies are or have been involved in similar lawsuits which resulted in paying all the plaintiff’s legal costs regardless of whether penalties were assessed or not. The District is also concerned about the cost to the public in proceeding to trial when the Federal Court clearly does not consider permitting agency actions as acceptable enforcement of the CWA. Most important is the District’s WWTF improvement project now estimated at \$9,651,000, is under construction funded through a \$6,000,000 grant, \$3,030,000 loan and \$621,000 MPUD funds. The funding approval requires a legal opinion that there is no action, suit, proceeding or investigation before any court pending or threatened against MPUD that would result in material change in MPUD assets or financial condition, which was not attainable until the lawsuit was settled.

MPUD has used existing reserve funds to pay the settlement dollar amounts. This will require cancelation and deferment of some scheduled equipment replacements and

delay filling employee positions resulting in impacts to the level of service provided to the public. The Boards goal is to avoid sewer service charge increases until after the first year of operation for the WWTF improvements. Clearly the cost of the lawsuit will accelerate the need to increase rates in the future.

MPUD Board and staff perceive an obligation to the industry to provide information on the outcome of the lawsuit to the public, legislators, California state regulators, USEPA, public wastewater service providers and wastewater associations. It is clear; relying on permit conditions established by State regulators may not be adequate to implement treatment facility operations without the risk of Federal Court actions and citizen complaint lawsuits.

Please be aware of news accounts or discussions concerning this amazing circumstance as some quotes may be repeated out of context and misinformation begins to circulate. For current information please refer to the MPUD website [mariposapud.org](http://mariposapud.org), or contact the MPUD office (see letter head information).

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