

Friends of Mariposa Creek

VIA EMAIL

February 16, 2013

Aide Ortiz
California Regional Water Quality Control Board
Central Valley Region
1685 "E" Street
Fresno, California 93706

RE: Public Comment on Renewal of Waste Discharge Requirements and National Pollutant Discharge Elimination System Permit (NPDES NO. CA0079430) and Adoption of Time Schedule Order For Mariposa Public Utility District Wastewater Treatment Facility Mariposa County

Dear Ms. Ortiz,

Friends of Mariposa Creek appreciate the opportunity to express our concerns regarding the ongoing degradation of the Mariposa Creek by the Discharger, evident in the above mentioned documents. Our comments also include references to the Central Valley Regional Water Quality Control Board Administrative Civil Liability Complaint R5-2013-0590, dated December 20, 2013.

Environmental Justice mandate requires decision makers seek out and facilitate the involvement of *all* of those potentially affected by negative environmental consequences. "Due notice to the Discharger and all other affected persons" has not included *all* affected persons in this matter. Persons owning property, and persons living directly on the Mariposa Creek below the Wastewater Treatment Facility and beyond have been omitted as a group from meaningful involvement and fair treatment by the fact they were not sought out, or contacted directly by decision makers of proceedings potentially affecting them and therefore, have not had the opportunity to participate or contribute in the decision making process.

As stakeholders, we find the ongoing degradation of the Mariposa Creek by the Discharger to be in clear violation of the Clean Water Act, Porter-Cologne and the High Quality Waters Policy. Importantly, we consider these violations to be shared equally with the Water Quality Control Board as collective failures and violations of environmental laws. The above mentioned documents and prior violations records indicate the Discharger has been in violation and polluting the Mariposa Creek for many years. Administrative Civil Liability Complaint R5-2013-059 lists 29 serious and chronic water pollution violations over a recent fifteen month period. We can assume the

Discharger continues polluting the Mariposa Creek at the same rate or more today. Clearly, the Water Quality Control Board and staff have abandoned their responsibilities to prevent the degradation of the waters of the Mariposa Creek, resulting in the Discharger having no incentive to change "business as usual."

The Discharger has failed to comply with all of the milestones in TSO R5-2011-0905. For this reason, we strongly object to TSO R5-2014-XXX, Minimum Mandatory Penalties page 6, item 22., which *permits* the discharge of constituents with interim effluent limitations that "can significantly degrade water quality and adversely affect the beneficial uses of the receiving stream on a long-term basis." Staff's statement that this adverse degradation is in compliance, is permitted and has an "enforceable ceiling" is entirely preposterous and serves not to protect the creek, but to destroy it "on a long-term basis."

Referencing Page 8 of Time Schedule Order R5-2014-XXX, Item 1. (3), we strongly object to the allowance of an extension of five years beyond May 18, 2015 to comply with final effluent limitations. Extensions grant the Discharger a continuing "permit to pollute" allowing significant cumulative degradation of the Mariposa Creek. Such actions are not in keeping with the Clean Water Act, Porter-Cologne, High Quality Waters Policy or the Water Quality Control Board's mission statement.

We note the Regional Board's aerial reevaluation of the watershed confirms a direct connection via natural water bodies between the Mariposa Creek and the San Joaquin River proving the Mariposa Creek is a vital tributary to the San Joaquin River. As the Dischargers' contaminated effluent adversely affects the beneficial uses of the Mariposa Creek, any redesignation of the Mariposa Creek by the Water Board is not in keeping with High Quality Waters Policy. All current beneficial uses must be preserved, enhanced, and restored. Friends of Mariposa Creek object to State Water Board Order WQ-2002-0015, Order R5-2007-0171 which carries over the opportunity for the Discharger to pursue a designation study. Efforts of the Water Board and the Discharger must focus on attaining immediate compliance of required upgrades to the Dischargers' Waste Water Treatment Facility. In addition, the Discharger must be required to assume the full environmental costs of operations or they will have no incentive to maximize safety and prevent subsequent environmental violations.

While we greatly support the more stringent Water Quality Standards which have evolved over time, clearly evident in the documents under discussion are numerous schemes that defeat enforcement, and authorize the degradation of waters. The Water Quality Control Board, and the Regional Board is authorizing degradation of waters in violation of environmental law, contradictory to their mission statement "to preserve, enhance and restore the quality of California's water resources." This explains why, to date, enforcement efforts have done nothing to protect the Mariposa Creek from its primary polluter, the Discharger. What *has* been accomplished is a boondoggle of intentionally convoluted paperwork, rife with inconsistencies and contradictions designed to give the Discharger free passes, sugar-coated with contingencies, loopholes, exemptions, extensions, excuses, and hand-slapping. Friends of Mariposa Creek consider

this folly of paper-pushing to be an egregious violation of the Public Trust Doctrine. Extensive legal memorandum demonstrates the State, and the Water Quality Control Board by extension, owes a duty under the Public Trust Doctrine, to protect the State's waterways for the use and enjoyment of *all* the people of the State, including an affirmative duty to protect the biological integrity of the aquatic environment of the State's waterways. (*National Audubon Society v. Superior Court* (1983); *Marks v. Whitney* (1971).

The Water Quality Control Board's failure to enforce the law, has contributed to the contamination of natural resources that are finite and diminishing. With water more precious than gold, the degradation of one drop cannot be justified. Costs to the affected public, and damage to wildlife and the riparian corridor have yet to be calculated. Friends of Mariposa Creek have observed the significant decline of wildlife in the Mariposa Creek and riparian corridor for well over a decade. Species have disappeared altogether and more will follow. As a result of direct exposure to the polluted waterway, the negative impact on property values, and property rights for owners along the Mariposa Creek is collectively significant.

The colossal failure of the Water Quality Control Board to protect the Mariposa Creek from continuing degradation is unconscionable and illegal. When does it end? Who will pay for the costs to restore habitat and revitalize the waterway? The Discharger? The state agencies allowing the degradation of our most precious resource? Failing to enforce existing environmental laws, failing to take the necessary actions to provide the people protections from water pollution, and failing to protect the Mariposa Creek and the wildlife that depend on it is wholly contemptible. Friends of Mariposa Creek, and the taxpayers of the state have had enough. Failure can no longer be "business as usual."

Sincerely,

Sarah Windsor ~ Friends of Mariposa Creek

Cc; lgl file
frnds/lst

The Mariposa Creek ~ " Our Forgotten Waterway"

