MARIPOSA COUNTY
AGENDA
BOARD OF SUPERVISORS
AGENDA ITEM NO. 7

DATE: January 7, 1992

RECOMMENDED ACTION AND JUSTIFICATION:
(Policy Item: Yes ___ No X __)
Pass and adopt the Resolution attached hereto supporting Merced Irrigation District’s request to the State Water Resources Control Board to amend a Proposed Order relative to the La Ventana Development Project. A letter from Counsel to the Board recommending approval of this action is also attached together with a copy of a letter from Edward J. Tiedemann, the County’s water attorney, and a copy of a letter from the Merced Irrigation District.

BACKGROUND AND HISTORY OF BOARD ACTIONS:
There has been no previous Board action.

LIST ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:
Do not approve Resolution.

COST: ( ) Not Applicable
A. Budgeted current FY __________
B. Total anticipated costs __________
C. Required add’l funding __________

SPECIAL INSTRUCTIONS:
List the attachments and number the pages consecutively:
Resolution
Letter from County Counsel to BOS
Letter from Ed Tiedemann to Counsel
Letter from MID to State Water Resources Control Board

SOURCE: ( ) 4/5ths Vote Required
A. Internal transfers __________
B. Unanticipated revenues __________
C. Reserve for contingency __________
D. Description: __________
Balance in Reserve for Contingencies, if approved: __________

CLERK’S USE ONLY:
Resolution No. 92-13
Ordinance No. __________
Vote: Ayes: ___ Noes: ___
Absent: ___ Abstained: ___
Approved: ( ) Denied: ___
( ) Minute Order Attached

The foregoing instrument is a correct copy of the original on file in this office.

DATE: __________

ATTEST: MARGIE WILLIAMS
Clerk of the Board of Supervisors
County of Mariposa, State of Calif.

By: __________
Deputy

ADMINISTRATIVE OFFICER’S RECOMMENDATION:
This item on agenda as:
☑ Recommended
☐ Not Recommended
☐ For Policy Determination
☐ Submitted with Comment
☐ Returned for Further Action

Comment: __________

A.O. Initials: __________

Action Form Revised 12/89
RESOLUTION NO. 92-13 OF
MARIPOSA COUNTY BOARD OF SUPERVISORS

WHEREAS, the Board of Supervisors of Mariposa County has reviewed the Proposed Order that was on the December 12, 1991 agenda of the State Water Resources Control Board (the "Proposed Order") regarding the petition of the Merced Irrigation District (MID) to change the place of use under its License 11395 (Application 16185) to allow the Lake Don Pedro Community Services District (the "CSD") to use water presently allocated to it pursuant to an agreement between the CSD and MID on additional lands within Mariposa and Tuolumne Counties adjacent to the CSD's present boundaries; and

WHEREAS, this Board has previously approved that portion of such additional lands located within Mariposa County for urban development and has found that such development will be in accordance with the general plan and in the best interests of Mariposa County; and

WHEREAS, the Proposed Order of the State Water Resources Control Board would severely burden the MID and add unreasonable conditions to the service of water already contracted for the CSD to such additional lands within Mariposa County which is a county of origin for waters appropriated under MID's License 11395;

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of Mariposa County that:

1. The State Water Resources Control Board is hereby asked to modify its Proposed Order by deleting any additional requirements or duties being placed upon MID as conditions for adding the aforementioned lands adjacent to the CSD to the place of use under MID's License 11395.
2. The State Water Resources Control Board is hereby also asked to modify the Proposed Order to give full recognition to the fact that Mariposa County’s needs as a county of origin for water for future development were intended to be preserved and protected at the time the State Board granted rights to MID under License 11395 and to reconsider these county of origin rights in determining whether the lands in Mariposa County proposed to be annexed to the CSD should be added to the place of use under License 11395 without additional conditions being placed upon MID.

The foregoing resolution was duly passed at a meeting of the Board of Supervisors of Mariposa County held on January 7, 1992, by the following vote on roll call:

AYES SUPERVISORS: BAGGETT, PUNTE, ERICKSON, RADANOVICH

NOES SUPERVISORS: NONE

ABSENT SUPERVISORS: TABER

Signed and approved by me after its passage this 7th day of January, 1992.

Chair, Board of Supervisors

ATTEST:

Clerk, Board of Supervisors
Mariposa County

38337.1
TO: Board of Supervisors  
FROM: Jeffrey G. Green, County Counsel  
RE: State Water Resources Control Board  
Proposed Order  

Dear Board Members:

The Merced Irrigation District (MID) has entered into a contractual relationship to provide water to the La Ventana Development Project in Northern Mariposa County. The State Water Resources Control Board has placed conditions upon the approval of the contract which both MID and La Ventana believe are unacceptable conditions.

One of the most difficult conditions is that the State Board requires MID to delete certain portions of its lands where it provides water in the Merced Valley. This matter has been discussed with our water attorney, Ed Tiedemann, and he has drafted a proposed Resolution. Mr. Tiedemann suggests, and I concur, that the Board adopt this Resolution to support MID's position.

Very truly yours,

Jeffrey G. Green  
County Counsel

sa
December 27, 1991

Mr. Jeffrey G. Green  
County Counsel  
Mariano County  
P. O. Box 189  
Mariano, California 9538

Re: State Water Resources Control Board Proposed Order  
Regarding La Ventana Development

Dear Jeff:

On December 23, 1991, Paul Minasian called and said he had been talking to you about the possibility of your Board of Supervisors adopting a resolution urging the State Water Resources Control Board to reconsider its Proposed Order regarding Merced Irrigation District's petition to add certain lands in Mariposa and Tuolumne Counties to the place of use under its License 11395 in order to allow MID water to be served to the proposed La Ventana development. The next day Paul faxed me a letter, excerpts from the State Board's Proposed Order, his brief objecting to the Proposed Order, MID's December 6, 1991 letter to the State Board and a proposed resolution for your Board. I reviewed these documents as well as Mariposa County's 1960 and 1990 contracts with MID. I also asked Adolph Moskowitz to review some of these documents because of his original involvement in the water rights settlement between Mariposa County and MID.

We see no harm to Mariposa County sending a resolution to the State Water Resources Control Board urging it to reconsider its Proposed Order and deleting from it those parts placing additional conditions on MID in order for MID to be allowed to supply water to the lands within Mariposa and Tuolumne Counties proposed for annexation to the Lake Don Pedro Community Services District for the La Ventana development. If your Board is inclined to adopt such a resolution, it should urge the State Board to give full consideration to your county of origin rights. I have taken the liberty to redraft Paul Minasian's proposed
December 27, 1991
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resolution to shorten it and to try to more strongly stress the county of origin issue. A copy of the new draft is enclosed.

I will be in the office on Monday and Tuesday, but I may be involved in conferences part of the time on both afternoons. If you have any questions, please call.

Very truly yours,

EDWARD J. TIEDEMANN

EJT:djc
Enclosure
38345.1

cc: Paul Minasian (w/enc.)
December 6, 1991

Murt K. Lininger, Program Manager
State Water Resources Control Board
Division of Water Rights
P. O. Box 2000
Sacramento, CA 95810

Re: Proposed Order Regarding
Petition to Change License
11395 (Application 16186) of
Merced Irrigation District
by Reference: 310:MLK

Dear Mr. Lininger:

In preparing our response to your Proposed Order of the Board, we have noticed several errors in the factual assumptions or determinations recited therein. As an example, your Proposed Order seems to assume that the Petition before the Board would result in additional water being diverted from the Merced River rather than a simple change in the place of use of current permitted water.

However, it is unnecessary to discuss those errors because of the conditions placed in the Proposed Order, which we discuss below.

1. DELETION OF THE CITY OF MERCED FROM THE PLACE OF USE:

For several reasons, the Merced Irrigation District cannot comply with the first condition of approval listed in the Proposed Order.

a. Potential loss of property tax allocation. Since the advent of Proposition 13 in 1977, the District has ceased to function as a tax levying public agency, but rather currently receives a portion of the Merced County Property Tax to supplement its operating revenue. That allocation is based upon an agreed formula which includes the assessed valuation of the property within the District. To delete the City of
Merced from the place of use definition is tantamount to de-annexation of the City from the District. The District is concerned that very good arguments could then be made by the City and County for an adjustment in the revenue sharing formulas which would put the District at risk of losing what can only be estimated to be three-quarters (3/4) of the property tax revenue share or about One Million One Hundred Thousand Dollars ($1,100,000) per year.

The District does not have revenue sources or reserves capable of covering the income loss.

b. Future water use. To delete the City of Merced from the place of use contained in the permit without notice to the City probably violates constitutional standards of due process. To do so with notice is considered to be practically and politically impossible.

It is no secret that the City of Merced continues to experience ground water contamination in its domestic water wells. While current supplies are adequate even for short term growth, the City will almost certainly look to surface water at some future date to assist its water problems.

While no such request has been made and no discussions are currently underway between the District and the City with regard to this problem, we are aware of the commissioned study by the City of Merced evaluating surface water availability. Under these circumstances, it is highly unlikely that the City would cooperate in any "de-annexation" plan. Indeed, quite the opposite is anticipated.

If forced to elect between the service area requested in the current petition and the potential service to the City of Merced, the sheer magnitude of the City, its economic link to the District, as well as the current status as potential water user by the City will dictate the District's choice of the City of Merced.

c. Continued maintenance: It appears that under the terms of the Proposed Order, the District might have some continuing obligation to further amend the place of use definition in the license as each annexation to the City of Merced is completed. Even if only periodically required, procedural impact on the District and its license would far out weigh any gain to the District from the granted petition.
2. IMPOSSIBLE COMPLIANCE WITH DOWNSTREAM FLOW REQUIREMENTS:

While it is absolutely true that virtually every year no downstream flow reduction would occur by the granting of the subject petition, it is theoretically possible such would occur in heavy water years. Currently, any part of the allocation of up to 5,000 acre feet of surplus water to Don Pedro Community Services District, which is for some reason not used, can be maintained in storage at Lake McClure for annual carry over for some other licensed use. Because these waters are not required to meet the stream flow requirements of the Merced River, it may be either used or stored without decreasing the downstream flow of the Merced River.

However, in heavy water years when the lake is full or when flood releases are underway, no further storage is possible. In those few years, during those rare weeks, any water which would not have been used, but for the inclusion of the La Ventana Project and the Don Pedro Community Services District service area, would have been diverted down the river because of the inability to store it. During those rare times, water diverted to the La Ventana would cause a minute reduction in the downstream flow which would have occurred without such diversion, assuming Don Pedro District would not otherwise have put the water to beneficial use.

It appears ironic that a minute reduction could occur during heavy water seasons when we might be looking for alternative places to divert water to prevent flooding downstream; but a technical violation of the Proposed Order could then occur.

Finally, I am not sure that any measurable "return" from the water use proposed actually exists. However, I am informed that the La Ventana property is actually north of the crest of hills defining the Merced River watershed. Consequently, any return, if it exists, would be to the Tuolumne Watershed, again technically violates the Proposed Order.

3. THE DISTRICT HAS RESPONSIBLE POLICING AUTHORITY FOR IMPLEMENTATION OF ENVIRONMENTAL MITIGATION PLAN IS UNACCEPTABLE:

The Proposed Order establishes no fewer than seven (7) environmental categories of action required of the District presumably gleamed from the Environmental Impact Report submitted with respect to the Project.
While directing its Order on this matter at the La Ventana Land and Cattle Company for compliance planning (page 41 of the Proposed Order), actual compliance, reporting of progress and certification of completion is directed at the District (page 43).

This heavy burden would put the District into the unacceptable position of, among other things, monitoring for reporting purposes, the implementing of a plan to avoid disturbing identified archeological sites. This is a burden for which the District is neither staffed, trained, or funded. It further puts the board in a position through its border of attempting to enforce the provisions of an environmental impact report to which it is neither a party nor approving authority. It further assumes by apparent appropriation, the authority of approving counties to which such authority was statutorily given.

4. Small place of use change does not justify the burden of added licensed conditions:

The additional standard terms required in the Proposed Order as well as in the continuing Board jurisdiction and its resultant potential for administrative impact on the District are not warranted by the small change requested in the District's Petition.

For the legal, financial, technical, and administrative reasons set forth above, the conditions precedent to the issuance of the Board's favorable order in the matter of the District's Petition are unacceptable. The District cannot, at this time, comply. We therefore request the Board issue its order accordingly. If you wish to discuss the Proposed Order or this response thereto, please do not hesitate to contact me by phone or mail.

If you have any further comments or requests with regard to this matter, please do not hesitate to contact me.

Very truly yours,

[Signature]

Ross Rogers, Manager
Merced Irrigation District