

758
AGREEMENT BETWEEN MERCED IRRIGATION DISTRICT
AND THE COUNTY OF MARIPOSA
FOR SETTLEMENT OF WATER RIGHTS DISPUTE

PLF'S DEFT'S EXHIBIT # 4
DEPO. OF Mark Rowley
DATE 8-27-4
ANNA L. ESTRADA, CSR #7958

THIS AGREEMENT, made and entered into this 1st day
of March, 1960, by and between the MERCED IRRIGATION DISTRICT,
a public corporation organized and existing under and by virtue
of the California Irrigation District Act, hereinafter referred
to as "the District" and the COUNTY OF MARIPOSA, a political
subdivision of the State of California, hereinafter referred to
as "the County":

W I T N E S S E T H:

WHEREAS, the District has filed Application No. 16186
and Application No. 16187 with the California State Water Rights
Board for permits to appropriate unappropriated water of the
Merced River, reference to which said applications is hereby made
for further particulars; and

WHEREAS, a hearing on said applications has commenced
before said State Water Rights Board and the County has partici-
pated in said hearing, as an interested party, and in opposition
to the granting of said permits on said applications; and

WHEREAS, the District has filed an application with the
Federal Power Commission for license for a hydroelectric power
development entitled Project No. 2179, hereinafter called the
"project", and the County has been granted leave to intervene in
said Federal Power Commission proceedings in opposition to the
granting of said license; and

WHEREAS, the District and the County have agreed each
with the other, as to the matters hereinafter set forth, including
certain recommendations to be made to the State Water Rights Board
which it is believed will best develop, conserve and utilize in
the public interest the water sought to be appropriated; and

RECORDED
MERCED
MAR 12 1972
VOL 1885 PAGE 579
OFFICIAL RECORDS OF MERCED COUNTY, CALIF.
J. L. HALLORY, RECORDER

6592

RECORDED
MERCED
MAR 12 1972
VOL 1885 PAGE 579
OFFICIAL RECORDS OF MERCED COUNTY, CALIF.
J. L. HALLORY, RECORDER

WHEREAS, said recommendations to said State Water Rights Board are as hereinafter set forth in paragraph numbered 1 of this Agreement and it is the desire and intent of the District and the County to submit the same to the State Water Rights Board as on agreed statement of conditions to be incorporated in such permits or licenses as may be issued by the State Water Rights Board upon the conclusion of said hearing on said applications hereinabove mentioned and referred to,

NOW, THEREFORE, in consideration of the mutual covenants herein contained, it is agreed between the parties as follows:

1. The District and the County will jointly request the State Water Rights Board to grant and issue permits to the District under said Applications No. 16186 and 16187 subject to conditions to be set forth or incorporated by reference substantially as follows:

"The permits and all rights acquired or to be acquired thereunder are and shall remain subject to depletion of stream flow in the quantities set forth in sub-paragraphs (a), (b) and (c) by future appropriations of water for reasonable beneficial use within Mariposa County; provided such future appropriations shall be initiated and consummated pursuant to law.

"(a) From the South Fork of the Merced River a maximum of 500 cubic feet per second of water not to exceed a total of 112,000 acre-feet annually by direct diversion to beneficial use and/or by diversion to storage to be later applied to beneficial use; provided that such future appropriations shall not be made in whole or in part within the payout period of the bonds, by which permittee shall finance the project under these permits, but not to exceed a period of 55 years beyond

the date of the beginning of construction of the projects of permittee as allowed under the permits or extensions thereunder, unless the person or agency making such future appropriation shall compensate the permittee for the loss of power revenue resulting during said period from said appropriation.

"(b) From Maxwell Creek a maximum of 34,000 acre feet of water in any consecutive ten year period and a maximum of 4,000 acre feet of water in any one year to be directly diverted to beneficial use and/or diverted to storage to be later applied to beneficial use.

"(c) From Bean Creek a maximum of 10,000 acre feet of water in any consecutive ten year period and a maximum of 1,200 acre feet of water in any one year to be directly diverted to beneficial use and/or diverted to storage to be later applied to beneficial use."

2. In the event, and only in the event, that the State Water Rights Board shall grant and issue to the District permits under said Applications No. 16186 and 16187, substantially as applied for by the District, and subject to the conditions substantially in conformity with paragraph numbered 1 as hereinabove set forth, and in the event that the District shall pursuant to said permits proceed to construct and constructs a project or portion of project from which power is developed on the Merced River substantially as contemplated by the District, as provided and set forth in its said Applications No. 16186 and 16187, and the proposed amendments thereto, then and in such event the District will pay to the County for use in water development within Mariposa County or investment by the County of such funds and the earning of interest thereon during the period in which proper disposition of said funds is under study, the amounts of

money at the times and in the manner as specified either in paragraph (a) or (b) of this paragraph numbered 2 at the District's option:

(a) The sum of \$5,000,000 in annual installments of not less than \$100,000, with the first payment to be made one year from the date on which the District receives the first payment for power developed by the project; provided that, in the event the County should levy any taxes or assessments on water rights, or interest in water rights, now owned or hereafter acquired by the District in Mariposa County, payment of said taxes or assessments by the District during any year shall be credited to the annual installment due the County for such year under this paragraph.

(b) The sum of \$2,148,000 in one payment at any time prior to the date for beginning of installment payments under paragraph (a) of this paragraph numbered 2; provided that, in the event the County should levy any taxes or assessments on water rights, or any interest in water rights, now owned or hereafter acquired by the District in Mariposa County, the County shall repay to the District an amount each year equal to the taxes or assessments so paid by the District in such year, as a refund or offset of said total sum of \$2,148,000; provided further that the total repayments or offsets by the County in the aggregate shall not exceed said total sum of \$2,148,000.

3. Beginning one year from the date of final payment of all bonds sold by the District to finance the project under said applications No. 16186 and No. 16187, the District will make annual payments to the County each year in the amount and for the

period as described in paragraphs (a) and (b) of this paragraph numbered 3.

(a) Each such payment shall be the greater of either (1) 20% of the gross power revenues from the District's completed project on the Merced River earned during the year preceding such payment or (2) 25% of the amount of said gross power revenue after first deducting the actual operation and maintenance costs and expenses of the Merced Irrigation District in its entirety during said preceding year.

(b) Said annual payments shall continue for either (1) a period of 50 years from their commencement or (2) until the cost of financing construction of a project by the County to fully exercise and utilize the water from the South Fork of the Merced River as set forth in paragraph numbered 1 hereof, has been repaid, whichever occurs first.

4. The District agrees, upon condition that permits be issued to it as herein contemplated, not to protest or to oppose any application for permit or license which may be filed by the County in the future for the appropriation of water as set forth and contained in the permit conditions set forth in paragraph numbered 1 hereof.

5. The District will not protest or oppose any application to appropriate water of the Merced River or its tributaries for use within Mariposa County by diversion to storage of an annual amount not greater than 50 acre feet, unless studies show, that use under such application will encroach upon the then existing and prior water rights of the District, or reduce the power revenues to be received by the District from the project.

6. The County will forthwith withdraw its opposition before the State Water Rights Board to the granting of permits to

the District pursuant to Applications No. 16186 and No. 16187, providing that the permits issued by said State Water Rights Board contain conditions substantially as provided in Paragraph numbered 1 hereof. The County will also dismiss its intervention in opposition to the granting of license to the District in Project No. 2179 before the Federal Power Commission. The County agrees further that it will not oppose the granting of a contribution to the District from the Federal Government for flood control benefits resulting from the District's proposed project.

7. This agreement shall be submitted to the Federal Power Commission for its approval as to any provisions requiring its approval relating to the license period for Project No. 2179. The District will use every reasonable effort to secure the approval of the Federal Power Commission to such provisions, if any, as the Federal Power Commission determines require its approval.

8. The parties, singly and cooperatively, will promptly at all times necessary or proper make such presentations or representations to the State Water Rights Board and the Federal Power Commission as may be needed to accomplish the results specified in this Agreement.

9. It is understood and agreed by and between the parties hereto that in the event the State Water Rights Board shall not grant and issue to the District permits under said applications No. 16186 and 16187, substantially as applied for by the District, and subject to the conditions substantially in conformity with paragraph numbered 1 as hereinabove set forth this agreement shall terminate and be at an end.

10. Time is of the essence in this agreement.

IN WITNESS WHEREOF, the parties hereto, each by its officers thereunto duly authorized, have executed this Agreement as of the 1st day of March, 1960.

MERCED IRRIGATION DISTRICT

BY George J. Malton
Chairman, Board of Directors

BY Carl W. ...
Secretary, Board of Directors

COUNTY OF MARIPOSA

BY Francis M. ...
Chairman, Board of Supervisors

BY Patricia Wilson
Clerk, Board of Supervisors