

ATTACHMENT 2

Public Comments and Response



EDMUND G. BROWN JR.
GOVERNOR

STATE OF CALIFORNIA
GOVERNOR'S OFFICE *of* PLANNING AND RESEARCH



KEN ALEX
DIRECTOR

March 23, 2012

Ryan Lippincott
Merced Irrigation District
PO Box 2288
Merced, CA 95344

Subject: Arena Canal/Howard Lateral and McConnell Lateral Water Conservation Project
SCH#: 2012021047

Dear Ryan Lippincott:

The State Clearinghouse submitted the above named Mitigated Negative Declaration to selected state agencies for review. The review period closed on March 22, 2012, and no state agencies submitted comments by that date. This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality Act.

Please call the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process. If you have a question about the above-named project, please refer to the ten-digit State Clearinghouse number when contacting this office.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Morgan".

Scott Morgan
Director, State Clearinghouse

**Document Details Report
State Clearinghouse Data Base**

SCH# 2012021047
Project Title Arena Canal/Howard Lateral and McConnell Lateral Water Conservation Project
Lead Agency Merced Irrigation District

Type MND Mitigated Negative Declaration
Description The proposed McConnell Lateral Pipeline lies in Sec. 14, T6S, R11E. The proposed pipeline will be approximately 1,350 feet long starting at the McConnell Lateral and terminating at the Hammett Lateral. Arena Canal and Howard Lateral lie in Sec. 2, 3, 9 & 10, T7S, R11E. The project begins at Bell Road with the earthen Arena Canal, approximately 4,900 feet long; then transfers to a concrete lined channel for approximately one mile to a siphon at Sunset Avenue where it converts to the Howard Lateral. The Howard lateral runs approximately one mile to Atwater-Jordan Road which is where the project terminates.

Lead Agency Contact

Name Ryan Lippincott
Agency Merced Irrigation District
Phone (209) 722-5761 **Fax**
email
Address PO Box 2288
City Merced **State** CA **Zip** 95344

Project Location

County Merced
City Livingston
Region
Lat / Long
Cross Streets Cressey Way and Eucalytus Ave. / Washington Blvd. and Sunset Drive
Parcel No.
Township 6S **Range** 11E **Section** 14 **Base** MDB&M

Proximity to:

Highways Hwy 99
Airports No
Railways SPRR
Waterways Merced River
Schools No
Land Use General Agricultural Uses/A-1/General Agriculture

Project Issues Archaeologic-Historic; Biological Resources

Reviewing Agencies Resources Agency; Department of Fish and Game, Region 4; Delta Protection Commission; Office of Historic Preservation; Department of Parks and Recreation; Department of Water Resources; California Highway Patrol; Caltrans, District 10; CA Department of Public Health; State Water Resources Control Board, Division of Financial Assistance; Regional Water Quality Control Bd., Region 5 (Fresno); Native American Heritage Commission; Public Utilities Commission; Delta Stewardship Council

Date Received 02/22/2012 **Start of Review** 02/22/2012 **End of Review** 03/22/2012

GALLO CATTLE COMPANY

10561 West Highway 140

P.O. Box 775

Atwater, CA 95301

(209) 394-7984

April 30, 2012

Merced Irrigation District

Attn: Merced Irrigation District Board of Directors
744 W. 20th Street
Merced, CA 95340

Re: Arena Canal/Howard Lateral and McConnell Lateral Water Conservation Project

Dear Board Members:

Please let this letter serve as our objection to the above-referenced project and as comments on the inadequacy of the environmental review for the project. As you know, we own and operate the Bear Creek Ranch, which receives water under various rights from the Livingston Drain. The Bear Creek Ranch farms over 4,000 acres of land and also includes the Willow Slough, a 2,000 plus acre natural wildlife preserve that is managed in part by the California Department of Fish & Game. This wildlife preserve also receives its water supply from the Livingston Drain. As such, our initial impression, without a detail study of the projects, suggests these projects tend to severely and adversely impact our vested property rights and fish and wildlife habitats located on our property by providing a means of severely reducing our water supply that has furnished irrigation water to our land for approximately 90 years and provides water to the fish and waterfowl facilities on the property.

As a water right holder and legal user of water that may be adversely affected by this and other projects of the Board, the District should provide us with notice of any projects that could affect the availability of water to the Bear Creek Ranch or the Willow Slough. We must request that you provide us with such notice of any project. The Board has not done that.

It has become increasingly clear that projects such as this and previous projects like the effort to connect the Garibaldi Lateral with the McCoy Lateral are not nearly as much conservation projects designed to re-circulate water within your system as much as they are efforts to create water delivery efficiencies so that more water can be sold outside of the District's licensed and authorized place of use and away from growers within the district. Such efforts to increase the delivery and sale of water outside of the District undermines and injures the rights of the legal users of water of such water including Gallo Cattle.

Merced Irrigation District
April 30, 2012
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As property owners that are clearly affected by projects like this, we were entitled to receive notice of these projects and any and all environmental approvals sought or obtained for them. We have not been afforded such information. Accordingly, we have not been given adequate time to analyze the short term and potential long term impact of this and other projects within the District with respect to Gallo Cattle's operations and those of other legal users of water. We are not, therefore, prepared to submit any detailed comments on the project or the environmental documents prepared for it at this time. What is clear, however, is that projects that have the real world effect of reducing flows to other legal users of water in favor of creating water for transfer have impacts that were not disclosed or analyzed.

We ask at this time for a postponement of these proceedings to allow more time for our organization and other interested parties and legal users of the water such as managers of habitat critical to support of wildlife species to review the project documents and environmental analysis prepared for the project and prepare and submit more detailed comments. We also ask that the District disclose to its members and all other legal users of water its long-term plan for the distribution and marketing of water outside its licensed boundaries. The public cannot be adequately informed of the potential impacts of the District's projects until the District identifies the purpose and scope of these projects.

Sincerely,



Gallo Cattle Company, a California Limited Partnership

MDG/db



MERCED IRRIGATION DISTRICT

May 25, 2012

Gallo Cattle Company
Mr. Michael Gallo
P.O. Box 775
Atwater, CA 95301

Subject: Arena Canal/Howard Lateral and McConnell Lateral Water Conservation Project – Merced Irrigation District Response to Gallo Cattle Company Comment Letter Dated 04/30/12

Dear Mr. Gallo:

This letter is in response to your comments on the Merced Irrigation District's ("District") environmental documentation prepared pursuant to the California Environmental Quality Act ("CEQA") for the Arena Canal/Howard Lateral and McConnell Lateral Water Conservation Project ("Project").

Aside from notice and timing concerns, your letter generally outlines matters that relate to the District's broader scope of management activities for water operations, and the Livingston Drain facility in particular. Neither the larger scope of District water operations nor the Livingston Drain is part of the Project. Although your letter does not appear to provide specific comments on, or request clarification of the Initial Study/Proposed Mitigated Negative Declaration for the Project, the District nonetheless provides the following responses to your comments.

Paragraph/Comment 1: The first paragraph of your letter references the Gallo Cattle Company's Bear Creek Ranch, which you indicate receives water through the Livingston Drain. This paragraph indicates that it is your impression that the Project will tend to severely reduce the water supply to your property for agricultural irrigation and fish and wildlife habitats.

Response 1: The Project is intended to reduce the District's operational spills to the Merced River, and provide a reduction in the loss of District water through seepage because of broken, or the lack of, concrete lining in District conveyance facilities. The Project does not reduce the ability of the District to move irrigation waters through its distribution system, rather the Project is intended to benefit in-District customers through increased water use and efficiency.

Paragraph/Comment 2: The second paragraph of your letter refers to the District's public noticing of the Project, and requests future Project notices.

Response 2: The District disagrees with your assertion that it has not complied with legal noticing requirements for the Project. Pursuant to CEQA Guidelines §15072, the Initial Study/Proposed Mitigated Negative Declaration for the Project was posted at the Merced County Clerk's office on February 24, 2012. The notice indicated that the document was available for public review at the Main Office of the District. In addition, the Initial Study/Proposed Mitigated Negative Declaration was submitted to the State Clearing House for comments from interested state and local agencies. Also, two public notices were placed in the Merced Sun Star on February 29, 2012 and March 7, 2012 advertising the dates of public hearings on the Project.

The document was appropriately noticed and available for public review and comment from February 24, 2012 through the date of the Board's meeting on May 2, 2012, in accordance with CEQA Guidelines §15105(b). The District mails notices to the last known name and address of all organizations and individuals who have *previously requested such notice in writing*, pursuant to the notice requirements set forth in CEQA Guidelines §15072(b). The District acknowledges your written request for future Project notices.

Paragraph/Comment 3: The third paragraph of your letter states that the Project, as well as previous projects such as the District's project to connect the Garibaldi Lateral with the McCoy Lateral, are "efforts to create water delivery efficiencies so that more water can be sold outside of District's licensed and authorized place of use". Your letter indicates that such efforts are injurious to you and your property.

Response 3: This comment does not address the subject of the notification for the Initial Study/Mitigated Negative Declaration. Contrary to your assertions, the purpose of the Project is to conserve water lost to operational spill leaving the basin and seepage, and improve the District's efficiency and responsiveness in providing water to its customers. Efforts like this provide a direct benefit to the District and its customers and the basin at large especially during critically dry years similar to the one we are experiencing now.

Paragraph/Comment 4: The fourth paragraph is, for the most part, duplicative of Comment 2, in that the comment speaks again to noticing of the Project. Your comment requests additional time for review and comment.

Response 4: Please refer to Response 2 above for the times and dates the documents were made available for review. The Board has taken action at its May 2, 2012 meeting to adopt the Mitigated Negative Declaration for the Project.

Paragraph/Comment 5: The fifth, and final paragraph in your comment letter is duplicative of Comment 4, in that the comment speaks again to noticing of the Project and asks for additional time for review and comment. Your comment also refers to other matters not related to the Project or the documents for Project approval.

Response 5: Please refer to Responses 2 and 4 above for the times and dates the documents were made available for review. The Board has taken action at its May 2, 2012 meeting to adopt the Mitigated Negative Declaration for the Project. Also, to the extent that references are made to other matters not related to the Project or the Initial Study/Mitigated Negative Declaration, the District does not have further response.

Very truly yours,

Phillip R. McMurray
General Counsel

Cc: John Swaigard, General Manager (by email only)
Hicham Eltal, Deputy General Manager, Water Resources (by email only)
John Wiersma, PE, Senior Engineer
David Harris, Miller Starr Regalia (by email only)