

## AGREEMENT ON WATER QUANTITIES

9. (a) During the term of this Settlement Contract and any renewals thereof:

(1) It shall constitute full agreement as between the United States and the Contractor as to the quantities of water and the allocation thereof between Base Supply and Project Water which may be diverted by the Contractor from the Sacramento River for beneficial use on the land shown on Exhibit B which said diversion, use, and allocation shall not be disturbed so long as the Contractor shall fulfill all of its obligations hereunder;

(2) Neither party shall claim any right against the other in conflict with the provisions of Article 9(a)(1) hereof.

(b) Nothing herein contained is intended to or does limit rights of the Contractor against others than the United States or of the United States against any person other than the Contractor: Provided, however, That in the event the Contractor, the United States, or any other person shall become a party to a general adjudication of rights to the use of water of the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position of either party hereto or of any other person and the rights of all such persons in respect to the use of such water shall be determined in such proceedings the same as if this Settlement Contract had not been entered into, and if final judgment in any such general adjudication shall determine that the rights of the parties hereto are different from the rights as assumed herein, the parties shall negotiate an amendment to give effect to such judgment. In the event the parties are unable to agree on an appropriate amendment they shall, within 60 days of determining that there is an impasse, employ the services of a neutral mediator, experienced in resolving water rights

disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A failure to reach agreement on an amendment within 60 days of the end of mediation will cause the immediate termination of this Settlement Contract; Provided, further, that if the California State Water Resources Control Board or a court of competent jurisdiction issues a decision ~~substantially~~ modifying the terms and conditions of the water rights of either party to this Settlement Contract of the Bay-Delta Water Quality Control Plan as it applies to the parties, the Contractor and the United States shall promptly meet to determine whether or not to modify any of the terms of this Settlement Contract to comply with such final decision. If within 60 days of the date of the issuance of such final decision ~~In the event that~~ the parties are not able to reach agreement regarding either the need to modify this Settlement Contract or the manner in which this Settlement Contract is to be modified on such modification(s), the parties shall promptly retain a neutral mediator, experienced in resolving water right disputes, to assist the parties in resolving their dispute. attempt to develop mutually agreeable modification(s). The cost of the mediator shall be shared equally. In the event that either of the parties to this Settlement Contract determines that the parties will not be able to ~~are unable to~~ develop mutually-agreeable modification(s) to this Settlement Contract even with the assistance of a mediator, either of the parties to this Settlement Contract may attempt, all parties reserve the right to resolve the impasse by seeking appropriate judicial relief including, but not limited to filing commencing a general adjudication of the rights to the use of water ~~of in~~ the Sacramento River system, or may provide notice to the other party of that party's intent to terminate this Settlement Contract effective the following October 31<sup>st</sup>, if said notice is given during the period April 1 through August 31, or 60 days from

the date of the notice if said notice is given between September 1 and March 31;

Provided, further That the immediately preceding proviso shall not apply ~~to~~ if a final decision of the California State Water Resources Control Board or a court of competent jurisdiction requires the United States to continue to implement any obligations imposed with respect to the implementation of the State Water Resources Control Board's Revised Water Right Decision 1641, dated March 15, 2000 or its associated 1995 Water Quality Control Plan, as they are currently written. ~~if, during the term of this Contract, the Contractor's or the United States' water rights are adjusted or affected, or the responsibility to meet flow, water quality and/or environmental requirements under those water rights is modified (e.g., changes to the Delta Water Quality Control Plan and associated water right actions), by or through any final administrative or judicial proceeding, the Contractor and the United States shall negotiate appropriate adjustments to this contract. In the event the parties are unable to agree on an appropriate amendment they shall, within 60 days of determining that there is an impasse, employ the services of a neutral mediator to assist in resolving the impasse. The cost of the mediation will be shared equally. A failure to reach agreement on an amendment within 60 days of the end of mediation will cause the immediate termination of this Settlement Contract.~~

(c) In the event this Settlement Contract terminates, the rights of the parties to thereafter divert and use water shall exist as if this Settlement Contract had not been entered into; and the fact that as a compromise settlement of a controversy as to the respective rights of the parties to divert and use water and the yield of such rights during the term hereof, this Settlement Contract places a limit on the Contract Total to be diverted annually by the Contractor during the Settlement Contract term and segregates it

into Base Supply and Project Water shall not jeopardize the rights or position of either party with respect to its water rights or the yield thereof at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all times will first use water to the use of which it is entitled by virtue of its own water rights, and neither the provisions of this Settlement Contract, action taken thereunder, nor payments made thereunder to the United States by the Contractor shall be construed as an admission that any part of the water used by the Contractor during the term of this Settlement Contract was in fact water to which it would not have been entitled under water rights owned by it nor shall receipt of payments thereunder by the United States from the Contractor be construed as an admission that any part of the water used by the Contractor during the term of this Settlement Contract was in fact water to which it would have been entitled under water rights owned by it.