

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.

(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.

(d) In the event that the California State Water Resources Control Board or a court of competent jurisdiction issues a Final Bay-Delta Water Right Decision, then the provisions of this Article 9(d) shall apply.

(1) Contractor and Reclamation shall meet and confer regarding the effect, if any, of a Final Bay-Delta Water Right Decision on the rights or responsibilities of Contractor or

Reclamation under this Settlement Contract and the need, if any, to modify the Settlement Contract in light of such Decision. If Contractor and Reclamation are unable to reach agreement regarding the matters described in the preceding sentence within 90 days following commencement of the meet and confer process, then Contractor and Reclamation shall retain a neutral mediator, experienced in the resolution of water disputes, for the purpose of resolving such matters through non-binding mediation. The cost of the mediator's services shall be shared as follows: 50 percent as to Reclamation and 50 percent as to the Contractors that participate in the mediation. Each party shall bear its own attorneys and expert consultant fees and costs.

(2) If Contractor and Reclamation are unable to reach agreement regarding the effect, if any, of a Final Bay-Delta Water Right Decision on the rights or responsibilities of Contractor or Reclamation under this Settlement Contract or the need, if any, to modify the Settlement Contract in light of such Decision within one year following commencement of the meet and confer process described in Article 9(d)(1), then Contractor and Reclamation shall submit the matter to binding arbitration in accordance with this Article 9(d)(2).

(i) The arbitration panel shall consist of three arbitrators, each of whom shall have experience in the resolution of water disputes in California. Reclamation shall select one arbitrator and the Contractors that participate in the arbitration shall select one arbitrator. The two arbitrators selected shall then select a third arbitrator. None of the arbitrators shall be or previously have been an officer, director, employee or independent contractor of any party to the arbitration. None of the arbitrators shall have previously served as a mediator in connection with the Settlement Contract.

(ii) An arbitration hearing will be conducted in accordance with written procedures established by the arbitrators prior to the commencement of the arbitration

proceeding, but such procedures will be consistent with Article 9 of this Settlement Contract.

Any offer of compromise or the details of the negotiation of the dispute made prior to the commencement of arbitration will be inadmissible at the arbitration hearing.

(iii) The arbitrators may modify the rights or obligations of Contractor or Reclamation under this Settlement Contract in a manner consistent with Article 9 but only to the extent necessary to reflect changed conditions arising from a Final Bay-Delta Water Right Decision. The arbitrators shall have no authority whatsoever to modify the rights or obligations of Contractor or Reclamation under this Settlement Contract in a manner that is inconsistent with Article 9, or based on considerations unrelated to a Final Bay-Delta Water Right Decision. The arbitrators may impose no other remedies (including, without limitation, damage remedies) beyond those specified in this sub-paragraph.

(iv) Judgment on the award rendered by the arbitrators may be entered in any court of competent jurisdiction and is final and binding upon the parties except to the extent it may be challenged on grounds that the judgment exceeds the authority of the arbitrators under this Settlement Contract.

(v) The cost of the arbitrators' services shall be borne as follows: 50 percent as to Reclamation and 50 percent as to the Contractors that participate in the arbitration. Each party shall bear its own attorneys and expert consultant fees and costs.

(vi) In the event of the imposition by the arbitrators of new terms and conditions of the Contract with respect to Base Supply, the Contracting Officer will not assess any charge for the rescheduling of any Base Supply as would otherwise be required under the provisions of Article 3(c) of this Settlement Contract.

(vii) This Article 9(d)(2) shall be narrowly construed. The only matters subject to binding arbitration under this Settlement Contract are matters concerning the effect, if any, of a Final Bay-Delta Water Right Decision on the rights or obligations of Reclamation or Contractor under this Settlement Agreement. All other disputes arising under this Settlement Contract shall be subject to judicial resolution and the parties reserve the right to pursue all remedies available under applicable law. Contractor and Reclamation each reserves all rights with respect to the authority of the United States to change the quantities of Base Supply and Project Water specified as available for diversion in this Settlement Contract from the quantities specified in the Existing Contract.

Note: The following definition will be added to Article 1:

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(i) “Final Bay-Delta Water Right Decision” means a decision of the California State Water Resources Control Board or a court of competent jurisdiction, from which all available appeals or other rights of review have been exhausted, that purports to modify the water rights of Contractor in order to impose an obligation to meet flow requirements associated with a Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. For purposes of this Settlement Contract, a “Final Bay-Delta Water Right Decision” includes only the incremental obligation imposed as a result of any modification of the California State Water Resources Control Board’s 1995 Water Quality Control Plan or the associated Revised Water Right Decision 1641 which, taken together, will be considered the baseline for application of Article 9(d). Any water right decision allocating responsibility to meet water quality requirements contained in the 1995 Water Quality Control Plan shall not be subject to the provisions of Article 9(d).

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