

## **Exhibit E: Lease and Sale of Capacity, Sites Water Sales and Right of First Refusal**

This exhibit is intended to describe the Parties' understanding of the requirements related to Reclamation's possible future lease or sale of its Capacity Interest in the Sites Project. These requirements are generally consistent with the terms and conditions applied to all Storage Partners and may be modified in the future. As such modifications occur by the Reservoir Management Board and Sites Authority Board, as applicable, the Parties will meet and confer to modify this Exhibit to align Reclamation's lease or sale requirements to be generally consistent with all Storage Partners.

### **I. Lease of Capacity Interest**

Reclamation may lease Capacity Interest to other Storage Partners and to other entities subject to the following conditions:

- (a) Reclamation may negotiate in its discretion the commercial terms of the lease of its Capacity Interest ("Lease Negotiated Terms") provided that:
  - i. The Lease Negotiated Terms must not negatively impact Storage Partners rights to store or convey Sites Water in accordance with their respective agreements with the Sites Authority;
  - ii. Any lease of Capacity Interest must be consistent with the Sites Water Right, governmental approvals and applicable law;
  - iii. Subject to subsection (g) below, a lease of Capacity Interest shall not impact or limit a Storage Partner's rights or obligations to the Sites Authority under their respective agreements with the Sites Authority and Storage Partners shall remain responsible for their obligations to the Sites Authority under such agreements;
  - iv. No lease of Capacity Interest can cause or be construed to cause a reduction in any Sites Project obligation bond credit rating or put the tax exempt borrowing status of the Sites Authority in violation of the Internal Revenue Code of 1986, as amended, as reasonably determined by the Sites Authority;
  - v. If any lease of Base Facilities Capacity Interest is to a Participant with a Downstream Facilities Capacity Interest, the Sites Water may be conveyed on a first priority basis up to the Downstream Facilities Capacity Interest. Should the Participant wish to convey more Sites Water than its Downstream Facilities Capacity Interest allows, this would be on a second priority basis and would incur wheeling costs [on a per Acre-foot basis] determined as described in the Operations Plan. Leases to non-Participants would be

provided access to Downstream Facilities on a second priority basis and would incur wheeling fee [on a per Acre-foot basis] determined as described in the Operations Plan, which wheeling fee shall be credited to those holders of Downstream Facilities Capacity Interest who provided the Downstream Facilities capacity;

- vi. Prior to any lease by Reclamation of Base Facilities Capacity Interest and Downstream Facilities Capacity Interest, Reclamation shall provide to the Sites Authority information and documents as reasonably requested by the Sites Authority, except for any commercial terms which may be held confidential in accordance with applicable law; and
- (b) Any lease of Base Facilities Capacity Interest and Downstream Facilities Capacity Interest (as applicable) shall be confirmed with staff of the Sites Authority verifying that Sites Project operations and Sites Water accounting may be maintained;
- (c) Any lease agreement for Capacity Interest must acknowledge that conveyance constraints will limit releases from the Sites Project Facilities from time to time, and must specify how Sites Project Facilities losses will be accounted for; and such provisions shall be consistent with requirements established by the Reservoir Management Board and the Sites Authority;
- (d) As a condition of Reclamation leasing all or a portion of its Capacity Interest, Reclamation must first pay any Delinquent Payment Amount due to the Sites Authority under this Agreement;
- (e) Reclamation must provide notice to the Sites Authority of the final lease within 5 days of execution and shall ensure that appropriate communication protocols are in place so that the Sites Authority is able to convey water on behalf of the lessee.
- (f) In the event that Reclamation leases its Base Facilities Capacity Interest and Downstream Facilities Capacity Interest as described in subsection (a) above, Reclamation shall remain signatory to this Agreement and shall continue to be liable and responsible for all of its obligations under this Agreement, and shall not be relieved of any such obligations as a result of such lease or sharing.
- (g) Reclamation shall receive Sites Authority and Reservoir Management Board approvals, as necessary, prior to executing any agreements for lease of Capacity Interest requiring such approvals under this Agreement. The provisions for lease specified in this Section I constitute all provisions necessary for the Sites Authority Board and Reservoir Management Board approving a lease, and such approvals shall not be unreasonably withheld, conditioned or delayed.
- (h) Where a Participant (excluding Reclamation) proposes to lease Base Facilities Capacity Interest and Downstream Facilities Capacity Interest to a non-Storage Partner, and receives a bona fide offer for the same, the leasing Participant must

first provide written notice of such offer (“Lease Offer Notice”) to the other non-leasing Storage Partners holding a Capacity Interest in the same Sites Project Facilities (the Base Facilities or the Downstream Facilities, as applicable) including a term sheet with all material terms of the proposed lease, including, the duration of the lease. Reclamation, along with the Storage Partners shall have a “right of first refusal” with respect to the lease of such Capacity Interest on the terms provided in the Lease Offer Notice. Reclamation shall respond to such terms in writing within 60 days of receipt of the Lease Offer Notice or such longer time proposed by the leasing Participant, and a failure to so respond shall be deemed a waiver of such Storage Partner’s or Reclamation’s (as applicable) right to first refusal with regard to the transaction set forth in the Lease Offer Notice. If the terms presented in the Lease Offer Notice are changed in any material way following provision of the Lease Offer Notice, the leasing Participant will provide a revised Lease Offer Notice and Reclamation and the non-leasing Storage Partners shall again have a “right of first refusal” on the new terms in the revised Lease Offer Notice. In the event that more than one non-leasing Storage Partners timely notifies the leasing Participant of such non-leasing Storage Partner’s interest in leasing the Capacity Interest upon the terms set forth in the Lease Offer Notice, the Capacity Interest shall be apportioned pro rata based on the non-leasing Storage Partner’s applicable Capacity Interest in each of the Base Facilities and Downstream Facilities, as calculated in accordance with Exhibit J, unless the non-leasing Storage Partners agree otherwise;

(b)(1)

## **//. Sale of Capacity Interest**

Reclamation may sell all or a portion of its Capacity Interest to other Storage Partners and to other entities subject to the following conditions:

- (a) Reclamation may negotiate in its discretion the commercial terms of the sale of its Capacity Interest (“Sale Negotiated Terms”) provided that:
  - (i) The Sale Negotiated Terms must not negatively impact the rights of other Storage Partners to store or convey Sites Water in accordance with their respective agreements with the Sites Authority;
  - (ii) Any sale of Capacity Interest must be consistent with the Sites Water Right, governmental approvals and applicable law;
  - (iii) Subject to subsection (i) below, a sale of the Capacity Interest shall not impact or limit a Storage Partners rights or obligations to the Sites Authority under their respective agreements with the Sites Authority and each Storage Partner shall remain responsible for all of its obligations to the Sites Authority under their respective agreements with the Sites Authority;
  - (iv) No sale of Reclamation’s Capacity Interest can cause or be construed to cause a reduction in any Sites Project obligation bond credit rating or put the tax exempt borrowing status of the Sites Authority in violation of the Internal Revenue Code of 1986, as amended, as reasonably determined by the Sites Authority; and
  - (v) Subject to subsection (j) below, prior to any sale by Reclamation of Capacity Interest, Reclamation shall provide to the Sites Authority such information and documents as reasonably requested by the Sites Authority, except for any commercial terms which may be held confidential in accordance with applicable law;
- (b) Any sale of Capacity Interest shall be confirmed with staff of the Sites Authority including (i) verifying that Sites Project operations and Sites Water accounting may be maintained; and (ii) providing notice of the proposed buyers credit rating. Any proposed sale by Reclamation to a party outside of the Federal Government must meet lender approval requirements of any loans for the project held by the Sites Authority or any Participant;
- (c) Any sale agreement for Capacity Interest must acknowledge that conveyance constraints will limit releases from the Sites Project Facilities from time to time, and must specify how Sites Project Facilities losses will be accounted for; and such provisions shall be consistent with requirements established by the Reservoir Management Board and the Sites Authority;

- (d) As a condition of Reclamation selling all or a portion of its Capacity Interest, and of the Sites Authority signing any contract with the purchaser of the Capacity Interest, Reclamation must first pay any Delinquent Payment Amounts due to the Sites Authority under this Agreement;
- (e) Where a Storage Partner proposes to sell Capacity Interest to a non-Storage Partner, and receives a bona fide offer for the same, the selling Storage Partner must first provide written notice of such offer ("Sale Offer Notice") to the other Storage Partners including a term sheet with all material terms of the proposed sale. Reclamation, along with the Storage Partners shall have a "right of first refusal" with respect to the sale of such Capacity Interest on the terms provided in the Sale Offer Notice. Storage Partners shall respond to such terms in writing within 60 days of receipt of the Offer Letter or such longer time proposed by the selling Storage Partner, and a failure to so respond shall be deemed a waiver of such Storage Partner's right to first refusal with regard to the transaction set forth in the Sale Offer Notice. If the terms presented in the Sale Offer Notice are changed in any material way following provision of the Sale Offer Notice, the selling Storage Partner will provide a revised Sale Offer Notice and the non-selling Storage Partners shall again have a "right of first refusal" on the new terms in the revised Sale Offer Notice. In the event that more than one non-selling Storage Partners timely notifies the selling Storage Partner of interest in purchasing the Capacity Interest upon the terms set forth in the Sale Offer Notice, the Capacity Interest shall be apportioned pro rata based on the non-selling Storage Partner's applicable Capacity Interest in each of the Base Facilities and Downstream Facilities, as calculated in accordance with Exhibit J,~~applicable Pro-rata Cost Share~~ unless the non-selling Storage Partners agree otherwise.
- (f) Reclamation must provide notice to the Sites Authority of the final sale within 5 days of execution;
- (g) Downstream Facilities Capacity Interest cannot be sold independently of the associated Base Facilities Capacity Interest.
- (i) In the event that Reclamation sells all or a portion of its Capacity Interest as described in subsection (a) above, Reclamation shall remain liable and responsible for all of its applicable obligations under this Agreement related to such Capacity Interest until such time as the purchaser of such Capacity Interest has entered into a contract with the Sites Authority.
- (j) Reclamation shall receive Sites Authority and Reservoir Management Board approvals, as necessary, prior to executing any agreements for sale of Capacity Interest requiring such approvals under this Agreement. The provisions for sale specified in this

Section II constitute all provisions necessary for the Sites Authority Board and Reservoir Management Board approving a sale, and such approvals shall not be unreasonably withheld, conditioned or delayed.

### **III. Sites Water Sales**

Reclamation may sell their Sites Water component of their Base Facilities Capacity Interest to other Storage Partners or other entities. The terms of sales of Sites Water are at the sole discretion of Reclamation, provided that:

- (a) Terms must not negatively impact the Sites Water Right or the rights of other Storage Partners as set out in their respective contracts with the Sites Authority;
- (b) Notice of any sale shall be provided to the staff of the Sites Authority so that Sites Project operations and Sites Water accounting may be maintained;
- (c) Any costs to the Sites Authority associated with any sale shall follow beneficiary pays principles; and
- (d) Reclamation may not transfer any other rights or obligations under this Agreement as part of any sale, except as set forth in this Exhibit.

