

RESOLUTION NO. 2001-043

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF JAN 16 2001

**APPROVAL OF MEMORANDUM OF AGREEMENT
WITH THE SACRAMENTO COUNTY WATER AGENCY,
EAST BAY MUNICIPAL UTILITY DISTRICT AND
THE UNITED STATES BUREAU OF RECLAMATION**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SACRAMENTO:

1. That the Mayor and City Manager are hereby authorized to execute the attached Memorandum of Agreement (MOA) with the Sacramento County Water Agency, East Bay Municipal Utility District (EBMUD) and the United States Bureau of Reclamation that commits the parties to certain actions until July 31, 2001, in order to further explore the feasibility of a joint water supply diversion project on the Sacramento River near the town of Freeport;
2. That the City of Sacramento is committed to a partnership relative to the Freeport Regional Diversion Project as described in, and subject to terms of, the MOA;
3. That pursuing a joint Freeport diversion as described in the MOA shall not prejudice the ability of EBMUD to pursue delivery of water pursuant to its Central Valley Project contract at Freeport or at other locations in the event a joint Freeport diversion project is not feasible, provided, further, that nothing contained in this Resolution or the MOA shall prejudice the ability of the City of Sacramento to challenge or contest EBMUD's presence at any other location; and
4. That nothing contained in the MOA shall prejudice the ability of EBMUD to challenge or contest actions by the City of Sacramento at any other location.


MAYOR

ATTEST:


CITY CLERK

FOR CITY CLERK USE ONLY

RESOLUTION NO.: 2001-043

DATE ADOPTED: JAN 16 2001

DRAFT

MEMORANDUM OF AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2001, by and between the City of Sacramento, a municipal corporation ("City"); the Sacramento County Water Agency, a special district operating pursuant to the Sacramento County Water Agency Act ("SCWA"); the County of Sacramento ("Sacramento County" and "SCWA" will be referred to collectively as the "County" and the "City" and "County" will be referred to, at times, collectively as the "Sacramento Parties"); the East Bay Municipal Utility District, organized and existing pursuant to the Municipal Utility Districts Act ("EBMUD"); and the United States Bureau of Reclamation, an agency of the United States Department of the Interior ("Reclamation").

Recitals

WHEREAS, EBMUD and Reclamation circulated a Draft Environmental Impact Report/Draft Environmental Impact Statement for the East Bay Municipal Utility District Supplemental Water Supply Project ("DEIR/DEIS") in 1997;

WHEREAS, the Sacramento Parties raised numerous concerns in their comments on that DEIR/DEIS;

WHEREAS, EBMUD and Reclamation circulated a Draft Amendatory Contract Between the United States and East Bay Municipal Utility District for Project Water Service;

WHEREAS, the Sacramento Parties raised numerous concerns in their comments on the draft amendatory contract;

DRAFT

Somach Re-Draft (Clean) — 1/5/01 (A.M.)
Somach Re-Draft (Redline) — 1/1/01
Somach Draft—12/4/00

WHEREAS, the parties to this Agreement have, over the past year, been involved in negotiations and discussions in an attempt to resolve the parties' differences with respect to the DEIR/DEIS as well as the draft amendatory contract;

WHEREAS, EBMUD and Reclamation circulated a Recirculated Environmental Impact Report/Supplemental Environmental Impact Statement for the East Bay Municipal Utility District Proposed Supplemental Water Supply Project ("REIR/SEIS") in 2000;

WHEREAS, the Sacramento Parties continued to raise concerns but committed to developing mutually acceptable solutions;

WHEREAS, a critical element of this preferred alternative from the Sacramento Parties' perspective is the elimination from the amendatory contract of the Nimbus point of diversion;

WHEREAS, EBMUD needs assurance that a Freeport delivery point of diversion for its CVP supply has all necessary permits;

WHEREAS, the prohibition in the Amendatory Contract on diversions from Nimbus is premised on timely completion of an alternative diversion and delivery project at the Freeport site for delivery of CVP water to EBMUD's service area, and it is of critical importance that certain timelines be adhered to in order to insure substantial progress on EBMUD's ability to complete a project for delivery of CVP Project Water to its service area;

WHEREAS, the Sacramento Parties have stated their preference for the Freeport alternative and the Sacramento Parties have also identified a specific need for additional facilities to provide or distribute water for their needs; and

WHEREAS, the need identified by the Sacramento Parties is consistent in time with EBMUD's immediate need for CVP dry year delivery of surface water, thereby allowing for the development of joint project facilities at Freeport to support the needs of both regions;

WHEREAS, all of the parties recognize that a diversion at Freeport will meet the supplemental water supply needs of EBMUD and also address regional water management needs of the County and City;

WHEREAS, all of the parties agree that a regional approach through a Freeport Regional Diversion Project will not only meet their respective water supply needs, but may also reduce the environmental impacts and, as a consequence, the additional environmental and other analyses that would need to be undertaken if the parties proceed to address, through separate projects, their water needs;

WHEREAS, each of the parties signatory to this Memorandum of Agreement understands that time is of the essence and commits to undertake and complete each of the actions herein contained in as timely a manner as can be accomplished;

NOW, THEREFORE, in consideration of the promises, terms, conditions and covenants contained herein, the City, SCWA, County, EBMUD and Reclamation hereby agree as follows:

1. *Project Definition.* The parties acknowledge that more work will need to be undertaken prior to the time that a final project definition can be arrived at. Nonetheless, for the purpose of this Memorandum of Agreement ("MOA") and as a basis for additional work that will need to be undertaken until a more specific project definition can be agreed upon, the parties agree that the Project will consist of the following components:

(a) The Project shall be referred to as the Freeport Regional Diversion Project. It shall be a County/City/EBMUD joint project to construct a diversion structure near the City-owned property approximately one mile north of the Town of Freeport.

(b) The County/City/EBMUD all have a need for water supply which can be addressed through a diversion at this location. The County's need at this location appears to be for 45 mgd of diversion capacity immediately with an ultimate demand of up to 70 mgd. The City's need at this location appears to be from 10-15 mgd. The County's needs are variable from a high of 70 mgd in "wet" years to a low of 45 mgd in dry years. EBMUD has a need for a surface supply of CVP Project Water during dry years to supplement its Mokelumne supply. The parties believe that all of their needs can be accommodated through a Freeport regional project. The Sacramento Parties will identify those elements which must be added to the EBMUD project Alternative 6 to provide for operations and/or facilities specific to its needs.

2. *Additional Environmental Review.*

(a) The parties recognize that in the final development of a Freeport diversion additional environmental review may be required. In particular, there may be a need to undertake project level analysis of the Freeport diversion and the pipeline route that has been chosen. In the event of additional environmental review, the parties agree to tier off of the final EIR/EIS, including the REIR/SEIS for the East Bay Municipal Utility District Proposed Supplemental Water Supply Project, and to complete all environmental analysis within the time set forth below.

(b) The parties recognize that the Endangered Species Act ("ESA") consultations on the preferred alternative will not evaluate the specifics of any

diversion project. As a consequence, prior to proceeding with the Freeport diversion, site-specific consultation will be required.

3. Assurances. The parties recognize that a predicate for the success of the joint effort identified in this MOA is the existence of firm assurances with respect to interests of concern to the respective parties. The assurances provided in this Section 3 constitute the full and complete assurances required by all parties for their commitments to the development of a Freeport Regional Diversion Project under this MOA. The parties agree as follows:

(a) EBMUD shall, by January 16, 2001, by resolution, agree to forego the diversion of water at Nimbus subject to adherence to the timeline provided for in this paragraph and milestones contained within Paragraphs 4 and 6 as they may be modified or amended in the subsequent contract dealt with in Paragraph 5 hereto.

(b) Reclamation and the Sacramento Parties shall, by January 16, 2001, by letter, in the case of Reclamation, and by resolution, in the case of the Sacramento Parties, agree that pursuing the Freeport diversion, as provided for herein, shall not prejudice EBMUD's ability to later pursue the diversion of water in the event that the Freeport diversion is not feasible.

(c) EBMUD shall, by January 16, 2001, by resolution, agree that nothing contained herein shall prejudice the Sacramento Parties' ability to challenge or contest EBMUD's presence at any other location.

(d) EBMUD, the County and the City shall adopt, by January 16, 2001, a formal resolution that they are committed to a partnership on the Freeport Regional Diversion Project that is defined herein.

4. Immediate Milestones. The parties agree that they will adhere to the following immediate Milestones:

(a) Completion of the above referenced ESA consultation within a time period which allows for a Record of Decision on the preferred alternative as set forth in Paragraph 4(c) below.

(b) The resolution and assurance letter and resolutions provided for in Paragraph 3 above by January 16, 2001.

(c) A Record of Decision and the release by the USBR of a Draft Amendatory Contract which conforms with the preferred alternative by January 16, 2001.

(d) Development of a subsequent contract (dealt with in Paragraph 5 below) among the parties hereto to cover all aspects of the project not dealt with herein by July 31, 2001.

5. Subsequent Contract. This MOA is intended to commit the parties to certain actions through July 31, 2001. Among those actions is the development of a Project Implementation Agreement to be executed by all of the parties to the MOA that would facilitate funding and completion of all necessary documentation, engineering and environmental work, associated with the development of the Freeport Regional Diversion Project and, if appropriate, the construction of the project. That future agreement shall supersede this MOA.

6. Project Implementation Agreement Among the Parties and Additional Milestones.

(a) The Parties intend that this MOA be superseded not later than July 31, 2001, by a Project Implementation Agreement that will cover all future aspects

of work on the Freeport Regional Diversion Project and for the purpose, among other things, of more clearly defining the project, allocating responsibilities among the parties, and developing final timelines for project design, construction, startup and operation.

(b) The parties understand and agree that time commitments and effective coordination are essential in order to allow the parties to succeed at their joint efforts. The parties shall therefore make good faith efforts and devote adequate resources as specified in this MOA, and as more specifically provided for in the Project Implementation Agreement, to complete the following tasks within the specified time frames.

- (i) Select by March 1, 2001, an outside consultant or consultants to undertake work needed to complete the milestones in this sub-paragraph 6(b).
- (ii) Identify and agree upon necessary environmental work and permits by March 31, 2001.
- (iii) Development by March 31, 2001, of a public outreach program.
- (iv) Agree upon all assurances and final timelines by April 30, 2001.
- (v) Develop and agree on cost-share proposals, including identification of how often costs are to be paid for by June 30, 2001.
- (vi) Develop preliminary design and construction schedules by June 30, 2001.

- (vii) Execute a cost-share agreement including assurances by July 30, 2001.
- (viii) Complete and certify all necessary environmental documentation, including NEPA/CEQA compliance and ESA permitting and secure all necessary permits by July 31, 2002.
- (ix) Complete design work by July 31, 2003.
- (x) Award construction contracts by September 30, 2003.
- (xi) Complete construction by September 30, 2005.

(c) Notwithstanding the parties' good faith efforts to achieve the milestones set forth above, the parties recognize that delays may occur. If significant delays occur in connection with any of the components of the work described in subsection (b) above, the matter shall be referred to the Policy Group created by this MOA for resolution.

7. *Policy Group*. The parties shall each designate one representative to participate in a Joint Project Policy Group. The Policy Group shall meet as necessary and shall be responsible for determining overall policy direction relating to all aspects of the work identified herein. Policy representatives shall also be responsible for handling media requests and public presentations relating to the work identified herein.

8. *Technical Coordination Team*. The parties shall each designate representatives to participate on a Technical Coordination Team. The Technical Coordination Team shall meet not less frequently than once every two weeks and shall be responsible for coordinating and performing engineering development activities, environmental and permitting work, managing the work of engineering and

environmental consultants, reviewing and approving work products relating to engineering and environmental work, providing technical input on engineering and environmental issues, and responding to directives and requests of the Policy Group relating to the engineering and environmental aspects of the Regional Freeport Diversion Project.

9. Legal Team. The Parties shall each designate one or more representatives to a legal team to confer as appropriate and support the work of the policy and technical teams.

10. Participation by Potentially Affected Parties. It is intended that this MOA and the Project Implementation Agreement be implemented in a manner that is open and includes the views of all interested and potentially affected parties. As a consequence, the Parties agree that, as appropriate, they will include, within their subsequent negotiations and discussions, other interests, including members of the environmental community and the Central Valley Project water users community. In any event, the Parties agree to develop a public outreach program as an essential element of this MOA and the Project Implementation Agreement.

11. Funding. The Parties acknowledge that the respective costs of elements of the Freeport Regional Diversion Project have not yet been developed and that each party's participation must be predicated upon their determination, in writing, that their respective allocated costs for any activity are economically feasible and a cost that they are willing to bear.

12. Construction and Interpretation. It is agreed and acknowledged by the parties hereto that the provisions of this MOA have been arrived at through negotiation, and that each of the parties has had a full and fair opportunity to revise the

provisions of this MOA and to have such provisions reviewed by legal counsel. Therefore, the normal rule of construction that any ambiguities are to be resolved against the drafting party shall not apply in construing or interpreting this MOA.

13. Effective Date. This MOA shall be effective upon its full execution by the parties hereto.

14. Term of Agreement. The term of this MOA shall be through July 31, 2001. This MOA shall automatically expire when such term ends, unless amended or terminated in accordance with the provisions herein.

15. California Law. This MOA is made in and shall be governed by the laws of the State of California.

16. Notice. Any notice which County, City, EBMUD or Reclamation may desire or is required to give or serve on another party hereto may be delivered personally, or sent by United States mail, postage prepaid, to the following representatives:

City Representative: Jim Sequeira, Director
City of Sacramento Utilities Department
1395 – 35th Avenue
Sacramento, CA 95822

County Representative: Keith DeVore, Chief
Department of Water Resources
County of Sacramento Public Works
827 Seventh Street, Room 301
Sacramento, CA 95814

EBMUD Representative: John Lampe
Water and Natural Resources Department
East Bay Municipal Utility District (EBMUD)
375 – 11th Street, MS 305
Oakland, CA 94623-1055

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Reclamation Representative: Lester Snow, Regional Director
United States Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Any party hereto shall have the right to change the address where it will receive such notices by giving fifteen (15) days advance notice to the other parties. Any notices transmitted pursuant to this section shall be deemed received upon delivery, if personally delivered, or on the third day following deposit in the mail, if sent by mail.

17. Entire Agreement. This MOA constitutes the sole, final, complete, exclusive and integrated expression and statement of the terms and conditions of this Agreement among the parties concerning the subject matter addressed herein, and supersedes all prior negotiations, representations or agreements, oral or written, that may be related to the subject matter of this Agreement.

18. Assignment. This Agreement shall not be assigned by any party without prior written approval of the other parties.

IN WITNESS WHEREOF, the parties hereto execute this MOA.

CITY OF SACRAMENTO

By: _____
Heather Fargo, Mayor

By: _____
Robert P. Thomas, City Manager

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Somach Draft—12/4/00

Attest:

City Clerk

Approved as to Form:

Deputy City Attorney

COUNTY OF SACRAMENTO

By: _____
Chairperson, Board of Supervisors

By: _____
Terry Schutten, County Executive

Attest:

Clerk of the Board of Supervisors

Approved as to Form:

County Counsel

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Somach Draft—12/4/00

SACRAMENTO COUNTY WATER AGENCY

By: _____
Chairperson, Board of Directors

Attest:

Clerk of the Board of Supervisors of
Sacramento County, California, and
Ex-officio Secretary of the Board of
Directors of the Sacramento County
Water Agency

Approved as to Form:

County Counsel

EAST BAY MUNICIPAL UTILITY DISTRICT

By: _____
Chairperson, Board of Directors

By: _____
Dennis Diemer, General Manager

Approved as to Form:

EBMUD General Counsel

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Somach Draft—12/4/00

UNITED STATES BUREAU OF
RECLAMATION

By: _____
Lester Snow, Regional Director

Approved as to Form:

Solicitor

**The report referenced in Resolution 2001-033
is found in the file, “Annexation No. 2 to the
North Natomas Neighborhood Landscaping
Community Facilities District No. 1999-02”**