



SAN LUIS OBISPO COUNTY
DEPARTMENT OF PUBLIC WORKS

Paavo Ogren, Director

County Government Center, Room 207 • San Luis Obispo, CA 93408 • (805) 781-5252

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March 30, 2011

RECEIVED APR - 4 2011

Cantinas Ranch Foundation - Owner
Wayne Hughes, Jr.
22917 Pacific Coast Hwy. #300A
Malibu, CA 90265

Kirk Consulting - Agent
Rachel Kovesdi
8830 Morro Road
Atascadero, CA 93422

Subject: Lake Nacimiento Water Agreement

Dear Mr. Hughes:

Congratulations, your Agreement for the Sale of Nacimiento Water was approved. A copy of the executed agreement is enclosed for your records. You will be billed biannually for the water entitlement. Please include a record of your water usage with each payment. If you have any questions regarding the agreement, you can call me at (805) 781-5239.

Sincerely,

KARI GRATON
Utilities Staff

Enclosure

c: Wendy Hall, Administrative Services Officer

File: CF Dams/Nacimiento Water Contracts - Hughes (new)

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AGREEMENT FOR THE SALE OF NACIMIENTO WATER

THIS AGREEMENT by and between SAN LUIS OBISPO COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT, a public entity duly established under the laws of the State of California, hereinafter referred to as the "DISTRICT," and Cantinas Ranch Foundation, hereinafter referred to as the "BUYER";

WITNESSETH:

WHEREAS, DISTRICT, and the Monterey County Flood Control and Water Conservation District (now the Monterey County Water Resources Agency) on October 19, 1959, made and entered into an agreement which provides DISTRICT 17,500 acre-feet per year of Nacimiento Reservoir (hereafter "Nacimiento") water ; and

WHEREAS, for purposes of this Agreement, all persons and entities which have entered into contracts with the DISTRICT for Nacimiento Water, regardless of whether the contract was entered into before or after the effective date of this Agreement, shall hereafter be referred to as "Nacimiento Water Contractors"; and

WHEREAS, of the said 17,500 acre-feet per year of DISTRICT's water supply from the Nacimiento Reservoir, the DISTRICT's present policy is to use, in the vicinity of the Nacimiento Reservoir, 1,750 acre-feet per year; and

WHEREAS, the BUYER desires to contract with the DISTRICT for a supply of a portion of said water for use in the vicinity of the Nacimiento Reservoir;

NOW, THEREFORE, IT IS HEREBY MUTUALLY AGREED by the parties hereto as follows:

1. The BUYER shall be entitled to twenty-six (26) acre-foot of water from the DISTRICT's Nacimiento water entitlement, for each full water year during the existence of this Agreement. A water year shall commence on October 1st and end on the following September 30th.

2. Said entitlement shall be used solely on and for the benefit of that real property described in the attached Exhibit A and shall be used solely and only in conjunction with those land uses permitted on said real property by the land use and zoning plans and ordinances of the County of San Luis Obispo. Any use of said entitlement in conjunction with land uses which are not permitted by the said land use and zoning plans and ordinances of the said County shall constitute a breach of this Agreement and BUYER'S rights to the said water entitlement provided hereunder shall terminate.

3 This Agreement does not create any personal entitlement or right to water to any person. Any person who is not the current owner of the real property described in the attached Exhibit A (hereafter also the "Subject Property") has no rights or entitlements under this Agreement. Any successor in interest to the Subject Property must comply with the assignment provisions provided herein.

4. The entitlement provided to BUYER by this Agreement shall forever remain subject to the conditions provided herein and shall not ripen into a vested right for any reason whatsoever. This Agreement supersedes and replaces any prior agreement(s) relating to any entitlement, supply, or provision of Nacimiento water to the Subject Property.

5. In the event that BUYER does not, within five years from the date hereof, put to a beneficial use, on the said real property described in Exhibit A, the water entitlement contracted for herein, then this Agreement shall terminate and BUYER shall have no further rights hereunder. The San Luis Obispo County Director of Public Works shall have the discretion to extend the said five (5) year period if in the opinion of the San Luis Obispo County Director of Public Works the BUYER has made good faith efforts to put to a beneficial use the water entitlement granted hereunder, provided that there shall be only one such extension and said extension shall be for no longer than five (5) years.

6. The annual payment for said entitlement shall be a sum equal to the price per acre-foot established by the DISTRICT, multiplied by the full entitlement provided BUYER by this Agreement. Pursuant to DISTRICT Resolution No. 73-653 the current price established by the DISTRICT is twenty-six dollars (\$26.00) per acre-foot per year. The DISTRICT retains the right from time to time to unilaterally raise or lower the price per acre-foot for the entitlement provided hereunder and any DISTRICT resolution to such effect shall be binding upon BUYER.

7. It is understood and agreed that BUYER must pay each and every payment provided for herein whether or not BUYER actually takes or uses any water during any particular water year. Payments hereunder shall commence on October 1st and shall subsequently become due on each April 1st and October 1st thereafter. Each payment shall be one-half of the annual payment and shall be paid to the DISTRICT for advance for each future semi-annual water entitlement. In the event this Agreement is executed during a fractional year preceding a full water year, BUYER shall make payment upon the execution of this Agreement in an amount equal to the product of one-twelfth of the annual payment multiplied by the number of months remaining in the fractional year preceding the first full water year.

8. The BUYER shall make all payments required hereby on or before the date such payments become due. A late payment penalty of one (1) percent per month on the unpaid balance shall accrue on all overdue payments.

9. In the event any payment required hereunder remains unpaid for a period of ninety (90) days, the DISTRICT at its discretion may suspend said entitlement of water and may physically interrupt the delivery of said water until full payment for all amounts due hereunder has been made to the DISTRICT. Should any said payment remain unpaid for a period of one year, all water entitlement established by this Agreement shall terminate and without right to re-establishment hereunder. Such interruption or termination shall not relieve the BUYER of BUYER's obligations to pay any amounts of money due the DISTRICT.

10. The delivery of water from BUYER's water entitlement to BUYER's real property shall be by means of facilities provided by the BUYER, provided that the plans and site location for such facilities shall be approved by both the Monterey County Water Resources Agency and the San Luis Obispo County Director of Public Works under a Checking and

Inspection Agreement before such facilities are established or operated. Said Checking and Inspection Agreement will provide for reimbursement to the County of San Luis Obispo of its actual cost in reviewing and checking plans and inspection of the site and installation of the water delivery facilities.

11. All water made available by such facilities shall be considered to be water having originated from that portion of the DISTRICT's Nacimiento water entitlement provided to BUYER by this Agreement, and no more than the amount entitled hereby shall be delivered by said facilities during any given water year.

12. In any year in which a shortage may occur for any cause so that the quantity of water available to the DISTRICT for distribution to the Nacimiento Water Contractors is less than the total of all quantities so contracted, the DISTRICT shall apportion any water otherwise due BUYER under this Agreement in the same proportion that the BUYER's normal entitlement has to the total entitlements of all Nacimiento Water Contractors. In the event that such a shortage occurs, no liability shall accrue against the DISTRICT or any of its officers, agents, or employees for any damage, direct or indirect, arising from such shortage. The DISTRICT shall give the BUYER written notice within a reasonable time after the DISTRICT receives written notice from MCWRA of any such shortage.

13. The DISTRICT makes no guarantee, expressed or implied, as to the quality of water to be delivered under the terms of this Agreement, and the BUYER takes all said water "as is". Use of said water for domestic purposes is subject to the approval of the San Luis Obispo County Department of Public Health.

14. Water furnished by said facilities shall be metered in a manner approved by the San Luis Obispo County Director of Public Works at locations mutually agreeable to the two parties. The metering equipment shall be maintained by the BUYER in good working order at all times; and all costs of said equipment, including the installation, operation, maintenance, repair, and replacement thereof, shall be borne by the BUYER.

Water supply and metering facilities will be inspected from time to time as deemed necessary by the San Luis Obispo County Director of Public Works. The cost of said inspections will be paid by the BUYER. Charges for periodic inspections will be billed at the actual cost of performing said inspections and may be included in the semi-annual payments for the allocation granted hereunder.

The BUYER shall maintain complete records for twelve months of each year indicating the amounts of said water being delivered by BUYER's facilities and used on BUYER's real property; and these records shall be transmitted to the DISTRICT with each semi-annual payment.

Any failure of the BUYER to maintain said metering equipment to the satisfaction of the San Luis Obispo County Director of Public Works, and any other breach of conditions provided herein shall, upon written notification of such failure or breach, be cured and rectified by BUYER as soon as reasonably possible. If the breach remains uncured for a period of ninety (90) days, the DISTRICT at its discretion may suspend said entitlement of water and may physically interrupt the delivery of said water until said breach is cured. Should any said breach remain uncured for a period of one year, all water entitlement established by this

Agreement shall terminate and without right to re-establishment hereunder. Such interruption or termination shall not relieve the BUYER of BUYER's obligations to pay any amounts of money due the DISTRICT.

15. The BUYER hereby grants the DISTRICT and its agents the unrestricted right of access to BUYER's real property to: (1) inspect said metering equipment from time to time to determine the accuracy thereof, (2) inspect the use being made of the water which is the subject of this entitlement, and (3) to interrupt and terminate the delivery of water as provided herein.

16. The use by either party of any remedy specified herein for the enforcement of this Agreement is not exclusive and shall not deprive the party using such remedy of, or limit the application of, any other remedy provided by law.

17. Any waiver at any time by either party hereto of its rights with respect to a breach or default, or any other matter arising in connection with this Agreement, shall not be deemed to be a waiver with respect to any other breach, default, or matter.

18. All notices that are required either expressly or by implication to be given by either party to the other under this Agreement shall be deemed to have been given and delivered personally if enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail. Unless and until formally notified otherwise, all notices shall be addressed to the parties at the following addresses:

BUYER: Cantinas Ranch Foundation
22917 Pacific Coast Hwy, Suite 300A
Malibu, CA 90265

DISTRICT: San Luis Obispo County Flood Control
and Water Conservation District
Department of Public Works
County Government Center
San Luis Obispo, CA 93408

19. The BUYER shall defend, indemnify, and save the DISTRICT and its officers, agents, and employees harmless from any and all claims, demands, liability, costs, expenses, damages, causes of action, and judgments which might arise against the DISTRICT because of the quality or quantity of water made available to the BUYER under the terms of this Agreement, or which might in any manner arise out of this Agreement or be occasioned by the performance or attempted performance of the provisions hereof, including but not limited to any act or failure to act on the part of the BUYER or of agents, employees, or independent contractors directly responsible to the BUYER.

20. This Agreement shall not be assigned by BUYER without the express written consent of the DISTRICT, nor shall it be assigned except in conjunction with the transfer of BUYER's interest in the real property described in the attached Exhibit A, and then only to BUYER's successors interest to the said real property.

21. For purposes of this paragraph, the following definitions apply: the "Subject Water" refers to the water which BUYER is contracting for under this Agreement; and "Independent Rights" refer to any and all rights held by a party that are separate and independent of this Agreement, including but not limited to any groundwater rights or any other water rights that a party may hold that originate separately and independently of this Agreement.

(a) BUYER and DISTRICT each respectively reserve any and all water rights held by each party prior to the execution of this Agreement, including, but not limited to, any groundwater rights. Nothing in this Agreement shall be deemed to constitute a waiver or relinquishment of any water rights so held by either party. Similarly, nothing in this Agreement shall constitute any type of acknowledgment or admission by either party that the other party holds any such water rights.

(b) If at any time BUYER believes that it has Independent Rights to the Subject Water that are superior to any DISTRICT Independent Rights, the BUYER shall have the right to apply to the DISTRICT's Public Works Director ("Public Works") for a mutual rescission of this Agreement. Said application shall state the reason why BUYER contends that it has Independent Rights to the Subject Water that are superior to any DISTRICT Independent Rights, and shall include copies of any and all evidence to support the BUYER's position. The burden shall be on the BUYER to show that it has Independent Rights to the Subject Water that are superior to any DISTRICT Independent Rights.

(c) If the BUYER is not satisfied with Public Works' decision on its application for mutual rescission, the BUYER may appeal the Public Works decision to the DISTRICT's Board of Supervisors by submitting a written notice of appeal with Public Works and the County Clerk within ten (10) days of the date the Public Works decision was mailed to BUYER. Said appeal shall state the grounds upon which BUYER is challenging the Public Works' decision.

(d) In the event Public Works or the DISTRICT Board grants BUYER's application for mutual rescission, the parties agree that the effective date of such mutual rescission shall be no earlier than the date of such application. The BUYER also agrees that under no circumstances shall BUYER be entitled to any refund or reimbursement of any payment(s) made by BUYER under this Agreement prior to the date of said application. Each party shall bear its own attorneys' fees and costs in any administrative or judicial proceedings relating to this Agreement, including but not limited to, any administrative or judicial proceedings relating to an application by the BUYER for mutual rescission of this Agreement. BUYER agrees that prior to initiating any judicial proceedings that relate in any way to whether BUYER's rights to any portion of the Subject Water are superior to any DISTRICT rights, the BUYER agrees that it will exhaust the administrative process set forth in this Agreement prior to initiating any such judicial proceedings.

22. This Agreement may be amended by mutual written agreement properly executed by the DISTRICT and the BUYER.

23. This Agreement shall become effective immediately upon execution by both parties and shall remain in effect at all times thereafter unless terminated as provided herein.

IN WITNESS WHEREOF, the parties have executed this Agreement this 9th day of March, 2011.

BUYER:

CANTINAS RANCH FOUNDATION

BY: [Signature]

DISTRICT:

BY: [Signature]

Paavo Ogren
Director of Public Works
San Luis Obispo County Flood Control
and Water Conservation District

APPROVED AS TO FORM AND LEGAL EFFECT:

Warren R. Jensen
County Counsel

By: [Signature]

Deputy County Counsel

Dated: 3/25/11
