

STATE LAND DEPARTMENT
STATE OF ARIZONAWATER AGREEMENT

This agreement between the State Land Department of the State of Arizona, acting through the Arizona State Land Commissioner (hereinafter called the Department) and Cyprus Mines Corporation

(hereinafter called Buyer) is made this 19th day of March, 1987.

The Buyer and the Department hereby agree as follows:

1. That the Department does hereby convey to Buyer the right to WATER for the purpose(s) of domestic, municipal and industrial from the lands described in the supplement hereto (hereinafter called premises) for the term and in consideration of rents and/or payments as set forth herein and compliance by Buyer with provisions of the Groundwater Management Act and with the covenants and conditions contained herein which Buyer hereby agrees to faithfully keep and perform.

2. Term of Agreement

From the date hereof and until the 18th day of March, 1997 the Buyer shall have the right to extract, use, store, remove and dispose of the water found in the subsurface of the premises.

3. Use of Premises

A. Buyer shall, within 30 days from the date of this agreement, apply for the proper surface LEASE, EASEMENT or PERMIT allowing Buyer the right to use as much of the surface of the premises as is reasonably necessary for the extraction, use, storage, removal and disposition of the water together with the right of ingress to and egress from the premises across other State lands along designated routes PREVIOUSLY approved by the Department and necessary to carry out the purpose of this agreement.

B. No reimbursable improvements shall be authorized or recognized by the Department no matter by whom or for what purpose constructed insofar as the Buyer of this Agreement is concerned. Nothing in this provision, however, shall interfere with any rights to reimbursement for improvements which Buyer might have by virtue of its status as a lessee of the Department. Conditions for removal of improvements shall be covered under the surface lease, easement or permit.

C. Buyer may use, with predetermined rental, any and all improvements existing on the premises and not removed or to be removed by a prior maker or predecessor of such improvements which are owned by the Department. The nature and extent of existing improvements on the premises shall be determined by inventories or reports thereof in the files of the Department, including the Department's inspection and report of the premises after removal of improvements by a prior lessee, permittee or Buyer.

4. Use and Occupancy

No one other than the servants, employees, officers of Buyer, or approved sub-contractors of the Department shall have the right to enter upon the premises to use, extract, store, remove or dispose of the water therefrom. Buyer may assign its interest herein ONLY with the prior written approval of the Department.

5. Conduct of Operations

Buyer hereby agrees to conduct its operations on the premises in a workmanlike manner at all times, and to protect the premises and soils thereof.

6. Rents and Payments

A. In addition to the payments hereinafter provided, Buyer agrees to pay the Department annually in advance the sum of \$ N/A for rental of existing improvements on the premises described herein.

B. The Department offered the right to use water at public auction on the basis of a minimum advance payment of \$ 2,800.00 per year for the extraction of 80 acre feet of water per year for ten years, and a minimum payment per acre foot of water as follows:

Buyer bid an advance payment of \$ 2,800.00 per year (\$ 35.00 per acre foot) and Buyer agrees to pay annually in advance. The Department and Buyer agree that the advance payments shall be first credit for Buyer against payments due from Buyer for water used or removed, and that the entire portion of the advance payments unused upon the termination or expiration of this agreement shall be the sole property of the Department. Buyer agrees that the advance payments shall be paid each year regardless of use or removal of water.

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C. Non-use of water during any year of this agreement shall not entitle the Buyer to develop any credits for the succeeding year. Buyer has bid and agrees to pay the Department \$ 35.00 per acre foot for each additional acre foot of water withdrawn over the minimum amount.

7. Reappraisal and Production Reporting

A. The Buyer agrees to pay the Department such additional payment which when added to or subtracted from the payment agreed to in Section 6 above, equals the appraised value of water per acre foot as determined by the Department. Notwithstanding any rule or regulation to the contrary, the Buyer hereby expressly agrees that the notice of payment rate revision or revisions of minimum acre foot requirements shall be given in writing to the Buyer ninety (90) days in advance of the effective date of revision. The payment rate of this agreement shall not be revised more than once in any 12-month period unless a change of use is proposed by Buyer. The Department reserves the right not to reappraise in any given year and in that event, the existing payment shall continue to apply.

B. On or before the 15th day following each full month of this agreement, Buyer will report to the Department the total quantities in gallons or acre feet (325,851 gallons) of water extracted from the premises during that immediately previous full month; such report shall be made irrespective of water use or extraction. At any time the minimum number of acre feet purchased is exceeded, the Department shall compute the payment due from Buyer and such payment shall be due and payable within thirty (30) days of the mailing of the statement by the Department.

C. Notwithstanding any provision contained herein, if the use and purpose of the water is changed from that set forth in § 12, the Department shall have the right to immediately reappraise the rents and payments.

8. Related Expenses

There shall be a charge to the Buyer of ~~two percent (2.0%)~~ three percent (3.0%) of the first year's payment to cover contract administration/sales related expenses.

9. Water Records Metering

Prior to the extraction of water, the Buyer shall install a metering device at the well head of each well or at a location other than the well head if approved by the Department. Metering devices must meet the approval of the Department prior to installation, and shall be accessible for inspection by agents, employees or officers of the Department during reasonable hours.

Buyer shall keep accurate books and records showing all water extracted from the premises. The Department shall have the right to examine such books and records of Buyer during reasonable business hours, and Buyer shall maintain all such books and records for six (6) months after termination of this agreement.

10. Disposition of Advance Payment

In the event of termination of this agreement for any reason, the unused advance payment shall become the exclusive property of the Department. Any rights the Buyer may otherwise have shall be forfeited.

11. Prior to Commencement of Operation - Archaeological Sites

Before significant earth movement may commence, the Buyer shall satisfy the Department in writing that no significant cultural, historical, antiquity or archaeological values will be destroyed, and, in the event such values will be destroyed, that proper mitigation measures have been agreed upon between said Buyer and the Department, and further the Buyer shall report all of such values as they are later discovered after such approval is given initially.

12. Proposed Use

Buyer has proposed to use this water for the purpose(s) of domestic ~~municipal and industrial~~.

Any use of this water which is inconsistent with the proposed use will require prior written approval by the Department. Application must be made for a change of use at least 120 days prior to proposed change. Failure to receive prior approval shall result in automatic cancellation of this agreement.

13. Removal of Protected Native Plants

If the removal of plants protected under the Arizona native plant law is necessary to enjoy the privilege of this document, the Buyer hereunder must previously acquire the written permission of the Arizona State Land Department and Arizona Commission of Agriculture and Horticulture to remove those plants.

14. Protection of all Dangerous Workings

Buyer agrees to fence all dangerous workings and otherwise appropriately protect livestock, humans and property.

15. Right to Lease Reserved to the Department

The Department reserves the right to assign, lease and issue permits for the use of the premises both surface and subsurface to other persons for use or purposes not inconsistent with Buyer's right herein.

16. Subject to Eminent Domain or Condemnation Proceedings

If at any time during the duration of this agreement, the whole or any part of the premises shall be taken for any quasi-public or public purpose by any person, private or public corporation or by any governmental agency having authority to exercise the power of eminent domain or condemnation proceedings pursuant to any law, general, special or otherwise, this agreement shall expire on the date when the premises shall be taken or acquired, and all compensation and damages awarded for rights or interests in the premises being condemned and all compensation and damages awarded for rights or interests in severance which may accrue to the remaining premises shall be the sole property of the Department; however, in the event of such taking, advance payments prepared and unused by Buyer shall be returned to the Buyer to the extent, if any, that such taking makes it impossible for Buyer to enjoy the rights hereby purchased.

17. Hold the Department Harmless

The Buyer agrees to save, hold harmless and indemnify the Department and all of its agencies, officers and employees against any and all claims, costs, damages, expenses or charges arising out of, incidental to, or resulting in any way from Buyer's operations pursuant to or in violation of this agreement.

18. Termination and Restoration

Upon termination of this agreement for any reason, Buyer agrees to leave the surface of the land in a reasonable condition as close to original conditions as possible, in accordance with safety practices in the area in which the premises are located.

Well closures, temporary or permanent abandonment of wells shall comply with rules and regulations established by the Department of Water Resources and any special stipulations agreed to by this Department and Buyer.

19. Payment for Loss or Damage

Buyer shall promptly pay the Department (and lessees of the Department where applicable) for any loss to the Department or its lessees caused by the Buyer or by Buyer's servants, agents, employees or contractor to the premises, its grasses, forage, crops and improvements.

20. Termination by the Department

Upon thirty (30) days prior written notice to Buyer, the Department, shall have the right to terminate this agreement at any time for the failure or neglect of the Buyer to perform any of the provisions hereof. Failure to make payments when due or failure to report timely and accurately shall be REASON TO TERMINATE THIS AGREEMENT IMMEDIATELY.

21. Notice of State Authority to Cancel this Contract

A. The State may cancel any contract, without penalty or further obligation, made after September 4, 1978 by the State or any of its departments or agencies, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the State or any of its departments or agencies is, at any time while the contract or any extension of the contract is in effect, an employee of any other party to the contract in any capacity or a consultant to any other party of the contract with respect to the subject matter of the contract.

B. The cancellation shall be effective when written notice from the Governor is received by all other parties to the contract unless the notice specifies a later time.

22. Bonding

A performance or cash bond in the amount of \$ N/A will be required within thirty (30) days of the date of this agreement. Assignment of this Agreement will not relieve the assignor of any obligation as principal under the bond, unless the Commissioner approves the posting of a replacement bond.

23. Attorney's Fees and Cost

IN THE EVENT A DISPUTE BETWEEN THE DEPARTMENT AND BUYER RESULTS IN LEGAL ACTION, THE PREVAILING PARTY SHALL HAVE THE RIGHT TO RECOVER REASONABLE ATTORNEY'S FEES AND COSTS INCURRED IN THE PROCEEDING.

24. Other Provisions

The State of Arizona saves and reserves the right to relinquish to the Federal Government at any time, the State's right or claim to any part of the land described herein, and thereupon this (lease) (permit) will be null and void insofar as it relates to the land the State relinquished.

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This document is submitted for examination. This is not an option or offer to lease or grant a permit. This document shall have no binding effect on the parties unless and until executed by the Lessor (after execution by the lessee or permittee), and a fully executed copy is delivered to the lessee or permittee.

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ADDITIONAL WATER CONDITIONS

- a. A minimum charge for groundwater used in the conduct of lessee's business will be assessed each year. This charge will be subject to annual reappraisal.
- b. Lessee agrees to pay the Department for all water withdrawn over the minimum amount.
- c. Monthly reports of water must be submitted to the Department on standard forms supplied by the Department.
- d. Lessee is required to measure withdrawals if groundwater is pumped from a non-exempt well. However, if well has been granted a Type 2 Grandfathered Right or a groundwater withdrawal permit for ten acre feet or less, there is no requirement to measure withdrawals.
- e. The Arizona Department of Water Resources requires an annual report of groundwater pumped from non-exempt wells within Active Management Areas and Irrigation Non-Expansion Areas. The annual report and any withdrawal fee should be submitted to the Land Department in a timely manner, as set by the Department.
- f. If groundwater is pumped off State land or is used for purpose(s) different from the lease, then lessee must immediately notify the Department to hold a public auction sale for the water.
- g. Department personnel will have access to well(s) during reasonable hours.