

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION
Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND
FRANK J. O'BRIEN AND JANICE C. O'BRIEN, TRUSTEES OF THE
FRANK AND JANICE O'BRIEN TRUST
DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
SETTLING WATER RIGHTS DISPUTES AND
PROVIDING FOR PROJECT WATER

Table of Contents

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
	Preamble	1
	Explanatory Recitals	2-3
1	Definitions.....	3-6
2	Term of Settlement Contract.....	7
3	Water to be Furnished to Contractor.....	7-11
4	Return Flow	11
5	Constraints on the Availability of Water	11-12
6	Integrated Water Management and Partnerships	12
7	Use of Water Furnished to Contractor	12-13
8	Rate and Method of Payment for Water	13-18
9	Agreement on Water Quantities.....	18-21
10	Measurement of Water.....	21-22
11	Rules and Regulations.....	23
12	General Obligation – Benefits Conditioned Upon Payment.....	23
13	Charges for Delinquent Payments	23-24
14	Quality of Water	24
15	Water and Air Pollution Control.....	24
16	Equal Opportunity.....	24-25
17	Compliance With Civil Rights Laws and Regulations.....	25
18	Mingling of Contractor’s Project and Non-Project Water	26-27

Table of Contents - continued

<u>Article No.</u>	<u>Title</u>	<u>Page No.</u>
19	Books, Records, and Reports	27
20	Change of Place of Use or Organization.....	27
21	Consolidation of Contracting Entities.....	27-28
22	Notices	28
23	Assignment Limited – Successors and Assigns Obligated	28
24	Officials Not to Benefit.....	28
25	Contingent Upon Appropriation or Allotment of Funds	29
26	Confirmation of Settlement Contract.....	29
27	Unavoidable Groundwater Percolation.....	29
28	Privacy Act Compliance	29-30
29	Water Conservation	30-32
30	Opinions and Determinations	32-33
31	Contractor to Pay Certain Miscellaneous Costs.....	33
32	Waiver of Default	34
33	Contract Assignment or Termination Upon Transfer of Land.....	34-35
34	Termination.....	35
	Signature Page	36
Exhibit A	Schedule of Monthly Diversions of Water	
Exhibit B	Map of Contractor’s Ownership	
Exhibit C	Unit Duty	
Exhibit D	Water Rates and Charges	

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7 Central Valley Project, California

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9 FRANK J. O'BRIEN AND JANICE C. O'BRIEN, TRUSTEES OF THE
10 FRANK AND JANICE O'BRIEN TRUST
11 DIVERTER OF WATER FROM SACRAMENTO RIVER SOURCES,
12 SETTLING WATER RIGHTS DISPUTES AND
13 PROVIDING FOR PROJECT WATER

14 THIS CONTRACT, hereinafter referred to as "Settlement Contract," is entered
15 into by THE UNITED STATES OF AMERICA, hereinafter referred to as the United States,
16 made this ____ day of _____, 2004, pursuant to the applicable authority
17 granted to it generally in the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or
18 supplementary thereto, including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844),
19 as amended and supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented,
20 including but not limited to Sections 9 and 14 thereto, July 2, 1956 (70 Stat. 483), June 21, 1963
21 (77 Stat. 68), October 12, 1982 (96 Stat. 1262), October 27, 1986 (100 Stat. 3050), as amended,
22 and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively hereinafter
23 referred to as Federal Reclamation law, and FRANK J. O'BRIEN AND JANICE C. O'BRIEN,
24 TRUSTEES OF THE FRANK AND JANICE O'BRIEN TRUST, hereinafter referred to as the
25 Contractor, a trust, acting pursuant to Sections 12003 and 12004 of the California Water Code,
26 with its principal place of business in California;

27 WITNESSETH, that:

EXPLANATORY RECITALS

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[1st] WHEREAS, the United States has constructed and is operating the Central Valley Project, California, for multiple purposes pursuant to its statutory authority; and

[2nd] WHEREAS, the Contractor has rights to divert, is diverting, and will continue to divert for reasonable beneficial use, water from the natural flow of the Sacramento River and tributaries thereto, that would have been flowing therein if the Central Valley Project were not in existence; and

[3rd] WHEREAS, the construction and operation of the integrated and coordinated Central Valley Project has changed and will further change the regimen of the Sacramento, American, San Joaquin, and Trinity Rivers and the Sacramento-San Joaquin Delta from unregulated flow to regulated flow; and

[4th] WHEREAS, the United States has rights to divert, is diverting, and will continue to divert waters from said Rivers and said Delta in connection with the operation of said Central Valley Project; and

[5th] WHEREAS, the Contractor and the United States had a dispute over the respective rights of the parties to divert and use water from the regulated flow of the Sacramento River which threatened to result in litigation, and as a means to settle that dispute entered into Contract No. 14-06-200-4105X, as amended, hereinafter referred to as the Existing Contract, which established terms for the delivery to the Contractor of Central Valley Project Water, and the quantities of Base Supply the United States and the Contractor agreed may be diverted by the Contractor from the Sacramento River pursuant to such contract; and

[6th] WHEREAS, the United States and the Contractor disagree with respect to the authority of the United States to change the quantities of Base Supply and/or Project Water

1 specified as available for diversion in this Settlement Contract from the quantities specified in
2 the Existing Contract, and other issues related thereto. That dispute was the subject of litigation
3 in a lawsuit entitled *Glenn-Colusa Irrigation District, et al. v. United States, et al.* [Civ. No. S-
4 01-1816 GEB/JFM (E.D. Cal.)], but that litigation was dismissed, without prejudice, pursuant to
5 a stipulation of dismissal filed by the parties thereto on August 29, 2002. Notwithstanding that
6 dismissal, the Contractor and the United States enter into this Settlement Contract to renew the
7 Existing Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and
8 the laws of the State of California; and

9 [7th] WHEREAS, to assure the Contractor of the enjoyment and use of the regulated
10 flow of the said Rivers and the Delta, and to provide for the economical operation of the Central
11 Valley Project by, and the reimbursement to, the United States for expenditures made for said
12 Project.

13 NOW, THEREFORE, in consideration of the performance of the herein contained
14 provisions, conditions, and covenants, it is agreed as follows:

15 DEFINITIONS

16 1. When used herein, unless otherwise expressed or incompatible with the intent
17 hereof, the term:

18 (a) “Base Supply” shall mean the quantity of Surface Water established in
19 Articles 3 and 5 which may be diverted by the Contractor from the Sacramento River each month
20 during the period April through October of each Year without payment to the United States for
21 such quantities diverted;

22 (b) “Basin-Wide Water Management Plan” shall mean the mutually agreeable
23 Sacramento River Basinwide Water Management Plan, dated _____, developed by

1 Glenn-Colusa Irrigation District, Maxwell Irrigation District, Natomas Central Mutual Water
2 Company, Pelger Mutual Water Company, Princeton-Codora-Glenn Irrigation District, Provident
3 Irrigation District, Reclamation District 108, Sutter Mutual Water Company, Anderson-
4 Cottonwood Irrigation District, Meridian Farms Water Company, Reclamation District 1004, and
5 the U.S. Bureau of Reclamation;

6 (c) “Charges” shall mean the payments for Project Water that the Contractor
7 is required to pay to the United States in addition to the “Rates” specified in this Settlement
8 Contract. The Contracting Officer will, on an annual basis, determine the extent of these
9 Charges. The type and amount of each Charge shall be specified in Exhibit D;

10 (d) “Contract Total” shall mean the sum of the Base Supply and Project Water
11 available for diversion by the Contractor for the period April 1 through October 31;

12 (e) “Critical Year” shall mean any Year in which either of the following
13 eventualities exists:

14 (1) The forecasted full natural inflow to Shasta Lake for the current
15 Water Year, as such forecast is made by the United States on or before February 15 and reviewed
16 as frequently thereafter as conditions and information warrant, is equal to or less than 3.2 million
17 acre-feet; or

18 (2) The total accumulated actual deficiencies below 4 million acre-feet
19 in the immediately prior Water Year or series of successive prior Water Years each of which had
20 inflows of less than 4 million acre-feet, together with the forecasted deficiency for the current
21 Water Year, exceed 800,000 acre-feet.

22 For the purpose of determining a Critical Year, the computation of inflow to
23 Shasta Lake shall be performed in a manner that considers the extent of upstream development

1 above Shasta Lake during the year in question, and shall be used as the full natural flow to
2 Shasta Lake. In the event that major construction has occurred or occurs above Shasta Lake after
3 September 1, 1963, and which has materially altered or alters the regimen of the stream systems
4 contributing to Shasta Lake, the computed inflow to Shasta Lake used to define a Critical Year
5 will be adjusted to eliminate the effect of such material alterations. After consultation with the
6 State of California, the National Weather Service, and other recognized forecasting agencies, the
7 Contracting Officer will select the forecast to be used and will make the details of it available to
8 the Contractor. The same forecasts used by the United States for the operation of the Project
9 shall be used to make the forecasts hereunder;

10 (f) "CVPIA" shall mean the Central Valley Project Improvement Act, Title
11 XXXIV of the Act of October 30, 1992 (106 Stat. 4706);

12 (g) "Eligible Lands" shall mean all lands to which Project Water may be
13 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982
14 (96 Stat. 1263), as amended, hereinafter referred to as RRA;

15 (h) "Excess Lands" shall mean all lands in excess of the limitations contained
16 in Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
17 Reclamation law;

18 (i) "Full Cost Rate" shall mean that water rate described in Sections 205(a)(3)
19 or 202(3) of the RRA, whichever is applicable;

20 (j) "Ineligible Lands" shall mean all lands to which Project Water may not be
21 delivered in accordance with Section 204 of the RRA;

22 (k) "Landholder" shall mean a party that directly or indirectly owns or leases
23 nonexempt land, as provided in 43 CFR 426.2;

1 (l) “Project” shall mean the Central Valley Project owned by the United
2 States and managed by the Department of the Interior, Bureau of Reclamation;

3 (m) “Project Water” shall mean all Surface Water diverted or scheduled to be
4 diverted each month during the period April through October of each Year by the Contractor
5 from the Sacramento River which is in excess of the Base Supply. The United States recognizes
6 the right of the Contractor to make arrangements for acquisition of water from projects of others
7 than the United States for delivery through the Sacramento River and tributaries subject to
8 written agreement between Contractor and the United States as to identification of such water
9 which water when so identified shall not be deemed Project Water under this Settlement
10 Contract;

11 (n) “Rates” shall mean the payments for Project Water determined annually
12 by the Contracting Officer in accordance with the then current applicable water ratesetting
13 policies for the Project, as described in subdivision (a) of Article 8 of this Settlement Contract;

14 (o) “Secretary” or “Contracting Officer” shall mean the Secretary of the
15 Interior, a duly appointed successor, or an authorized representative acting pursuant to any
16 authority of the Secretary and through any agency of the Department of the Interior;

17 (p) “Surface Water” shall mean only those waters that are considered as
18 surface water under California law;

19 (q) “Water Year” shall mean the period commencing with October 1 of 1 year
20 and extending through September 30 of the next; and

21 (r) “Year” shall mean a calendar year.

1 TERM OF SETTLEMENT CONTRACT

2 2. (a) This Settlement Contract shall become effective April 1, 2004, and shall
3 remain in effect until and including March 31, 2044: Provided, that under terms and conditions
4 mutually agreeable to the parties hereto, renewals may be made for successive periods not to
5 exceed 40 years each. The terms and conditions of each renewal shall be agreed upon not later
6 than 1 year prior to the expiration of the then existing Settlement Contract.

7 (b) With respect to Project Water and the portions of this Settlement Contract
8 pertaining thereto, upon written request by the Contractor of the Secretary made not later than 1
9 year prior to the expiration of this Settlement Contract, whenever, account being taken of the
10 amount then credited to the costs of construction of water supply works, the remaining amount of
11 construction costs of water supply work which is properly assignable for ultimate return by the
12 Contractor as established by the Secretary of the Interior pursuant to (3) of Section 1 of Public
13 Law 643 (70 Stat. 483), probably can be repaid to the United States within the term of a contract
14 under subsection 9(d) of the 1939 Reclamation Project Act (53 Stat. 1187), the relevant portions
15 of this Settlement Contract may be converted to a contract under said subsection 9(d) upon terms
16 and conditions mutually agreeable to the United States and the Contractor. The Secretary shall
17 make a determination 10 years after the date of execution of this Settlement Contract, and every
18 5 years thereafter, of whether a conversion to a contract under said subsection 9(d) can be
19 accomplished pursuant to Public Law 643. Notwithstanding any provision of this Settlement
20 Contract, the Contractor reserves and shall have all rights and benefits under Public Law 643.

21 WATER TO BE FURNISHED TO CONTRACTOR

22 3. (a) Subject to the conditions, limitations, and provisions hereinafter
23 expressed, the Contractor is hereby entitled and authorized to divert from the Sacramento River

1 at the locations shown in Exhibit A, for beneficial use within the area delineated on Exhibit B,
2 (both Exhibits are attached hereto and made a part hereof), the Contract Total designated in
3 Exhibit A, or any revision thereof, in accordance with the monthly operating schedule required
4 by Article 3(c) of this Settlement Contract. The quantity of any water diverted under this
5 Settlement Contract from the Sacramento River, during the period April through October, for use
6 on any lands delineated on Exhibit B, by the owner of such lands or otherwise shall constitute a
7 part of the Contract Total as shown on Exhibit A and shall be subject to all the provisions of this
8 Settlement Contract relating to such Contract Total as if such diversion were made by the
9 Contractor.

10 (b) The Contractor may have acquired rights to divert water from the
11 Sacramento River during the period April through October, that were obtained after the date of
12 execution of the Existing Contract, or the Contractor may acquire such rights in the future. All
13 diversions made from the Sacramento River, pursuant to such rights, during the period April
14 through October, shall not be considered a part of the quantity of Base Supply and Project Water
15 specified in Exhibit A; Provided, that the quantities diverted pursuant to the above rights shall be
16 identified on the schedule submitted pursuant to Article 3(c) below, and shall not be substituted
17 for any Base Supply or Project Water; Provided, further, that any such identified quantities of
18 other acquired rights may be diverted by the Contractor before incurring any fee pursuant to
19 Article 3(c)(1), below.

20 (c) Before April 1 and before the first day of each month thereafter when a
21 revision is needed, the Contractor shall submit a written schedule to the Contracting Officer
22 indicating the Contract Total to be diverted by the Contractor during each month under this
23 Settlement Contract. The United States shall furnish water to the Contractor in accordance with

1 the monthly operating schedule or any revisions thereof. However, the United States recognizes
2 the need of the Contractor to change from time to time its monthly diversions of water from the
3 quantities shown in Exhibit A; the Contractor may make such changes, provided:

4 (1) that for the quantity of Base Supply diverted in excess of the
5 monthly quantity shown in Exhibit A, and as may be reduced in accordance with Article 5(a),
6 during June, July, August, September, or October of any Water Year, the Contractor shall be
7 charged a rescheduling fee equal to 50 percent of the sum of the storage operations and
8 maintenance rate and the storage capital rate components of the Project ratesetting policy.

9 (2) that in no event shall the total quantity scheduled for diversion by
10 the Contractor from the Sacramento River:

11 (i) During the period April through October exceed the
12 aggregate of the Contract Total for that period shown in Exhibit A or any revision
13 thereof;

14 (ii) During the period July through September exceed the
15 aggregate of the Contract Total for that period shown in Exhibit A or any revision
16 thereof.

17 (d) In the event conditions warrant, the Contracting Officer reserves the right
18 to require the Contractor to submit, at least 72 hours prior to the beginning of each weekly
19 period, its estimate of daily diversion requirements for each such period from the Sacramento
20 River: Provided, however, that changes during any such period may be made upon the giving of
21 72 hours' notice thereof to the Contracting Officer.

22 (e) No sale, transfer, exchange, or other disposal of any of the Contract Total
23 designated in Exhibit A or the right to the use thereof for use on land other than that shown on

1 Exhibit B shall be made by the Contractor without first obtaining the written consent of the
2 Contracting Officer. Such consent will not be unreasonably withheld and a decision will be
3 rendered in a timely manner. For short-term actions that will occur within 1 year or less, the
4 decision will be rendered within 30 days after receipt of a complete written proposal. For long-
5 term actions that will occur in a period longer than 1 year, the decision will be rendered within
6 90 days after receipt of a complete written proposal. For a proposal to be deemed complete by
7 the Contracting Officer, it must comply with all provisions required by State and Federal law,
8 including information sufficient to enable the Contracting Officer to comply with the National
9 Environmental Policy Act, the Endangered Species Act, and applicable rules or regulations then
10 in effect; Provided that, such consent does not authorize the use of Federal facilities to facilitate
11 or effectuate the sale, transfer, exchange, or other disposal of Base Supply. Such use of Federal
12 facilities will be the subject of a separate agreement to be entered into between the Contractor
13 and Reclamation.

14 (f) For the purpose of determining whether Section 3405(a)(1)(M) of the
15 CVPIA applies to the Contractor as a transferor or transferee of Project Water, the Contracting
16 Officer acknowledges that the Contractor is within a county, watershed, or other area of origin,
17 as those terms are utilized under California law.

18 (g) Nothing herein contained shall prevent the Contractor from diverting
19 water during the months of November through March for beneficial use on the land shown on
20 Exhibit B or elsewhere to the extent authorized under the laws of the State of California.

21 (h) The United States assumes no responsibility for and neither it nor its
22 officers, agents, or employees shall have any liability for or on account of:

23 (1) The quality of water to be diverted by the Contractor;

1 of the Critical Year occurs and, each monthly quantity of said period shall be reduced by
2 25 percent.

3 (b) The amount of any overpayment by the Contractor shall, at its option, be
4 refunded or credited upon amounts to become due to the United States from the Contractor under
5 the provisions hereof in the ensuing Year. To the extent of such deficiency such adjustment of
6 overpayment shall constitute the sole remedy of the Contractor.

7 INTEGRATED WATER MANAGEMENT AND PARTNERSHIPS

8 6. The Contractor and United States desire to work together to maximize the
9 reasonable beneficial use of water for their mutual benefit. As a consequence, the United States
10 and the Contractor will work in partnership and with others within the Sacramento Valley,
11 including other Contractors, to facilitate the better integration within the Sacramento Valley of
12 all water supplies including, but not limited to, the better management and integration of surface
13 water and groundwater, the development and better utilization of surface water storage, the
14 effective utilization of waste, seepage and return flow water, and other operational and
15 management options that may be identified in the future.

16 USE OF WATER FURNISHED TO CONTRACTOR

17 7. (a) Project Water furnished to the Contractor pursuant to this Settlement
18 Contract shall not be delivered or furnished by the Contractor for any purposes other than
19 agricultural purposes without the written consent of the Contracting Officer. For purposes of this
20 Settlement Contract, “agricultural purposes” includes, but is not restricted to, the irrigation of
21 crops, the watering of livestock, incidental domestic use including related landscape irrigation, or
22 underground water replenishment.

1 (b) The Contractor shall comply with requirements applicable to the
2 Contractor in biological opinion(s) prepared as a result of a consultation regarding the execution
3 of this Settlement Contract undertaken pursuant to Section 7 of the Endangered Species Act of
4 1973, as amended, that are within the Contractor’s legal authority to implement. The Contractor
5 shall comply with the limitations or requirements imposed by environmental documentation
6 applicable to the Contractor and within its legal authority to implement. The Existing Contract,
7 which evidences in excess of 40 years of diversions, for agricultural uses, of the quantities of
8 water provided for in Article 3, and the underlying water rights of the Contractor will be
9 considered in developing an appropriate base-line for the Biological Assessment prepared
10 pursuant to the Endangered Species Act, and in any other needed environmental review.
11 Nothing herein shall be construed to prevent the Contractor from challenging or seeking judicial
12 relief in a court of competent jurisdiction with respect to any biological opinion or other
13 environmental documentation referred to in this Article.

14 RATE AND METHOD OF PAYMENT FOR WATER

15 8. (a) The Contractor shall make payments to the United States as provided in
16 this Article for all Project Water shown in Exhibit A as follows:

17 (1) 75 percent of the amount shown as Project Water shall be paid for
18 by the Contractor in each Year; and in addition

19 (2) the Contractor shall pay for Project Water actually diverted in
20 excess of 75 percent of the amount shown as Project Water.

21 Such payments shall be at Rates and Charges established in accordance with: (i) the
22 Secretary’s then-current ratesetting policies for the Project; and (ii) applicable Reclamation law
23 and associated rules and regulations, or policies: Provided, that if the Contractor desires to use

1 Project Water for other than agricultural use the Rates and Charges set forth above will be
2 adjusted by the Contracting Officer to the applicable Rates and Charges for such use. The Rates
3 and Charges applicable to the Contractor upon execution of this Settlement Contract are set forth
4 in Exhibit D, as may be revised annually. The Secretary's ratesetting policies for the Project
5 shall be amended, modified, or superseded only through a public notice and comment procedure.
6 The Contracting Officer shall adjust the amount of Project Water for which payment is required
7 to the extent of any reduction in diversions of Project Water made in accordance with the water
8 conservation provisions of Article 29(e).

9 (b) The Contracting Officer shall notify the Contractor of the Rates and
10 Charges as follows:

11 (1) Prior to July 1 of each Year, the Contracting Officer shall provide
12 the Contractor an estimate of the Charges for Project Water that will be applied to the period
13 October 1, of the current Year, through September 30, of the following Year, and the basis for
14 such estimate. The Contractor shall be allowed not less than 2 months to review and comment
15 on such estimates. On or before September 15 of each Year, the Contracting Officer shall notify
16 the Contractor in writing of the Charges to be in effect during the period October 1 of the current
17 Year, through September 30, of the following Year, and such notification shall revise Exhibit D.

18 (2) Prior to October 1 of each Year, the Contracting Officer shall make
19 available to the Contractor an estimate of the Rates for Project Water for the following Year and
20 the computations and cost allocations upon which those Rates are based. The Contractor shall be
21 allowed not less than 2 months to review and comment on such computations and cost
22 allocations. By December 31 of each Year, the Contracting Officer shall provide the Contractor

1 with the final Rates to be in effect for the upcoming Year, and such notification shall revise
2 Exhibit D.

3 (c) The Contractor shall pay the United States for Project Water in the
4 following manner:

5 (1) With respect to Rates, prior to May 1 of each Year, the Contractor
6 shall pay the United States one-half the total amount payable pursuant to subdivision (a) of this
7 Article and the remainder shall be paid prior to July 1 or such later date or dates as may be
8 specified by the United States in a written notice to the Contractor: Provided, however, that if at
9 any time during the Year the amount of Project Water diverted by the Contractor shall equal the
10 amount for which payment has been made, the Contractor shall pay for the remaining amount of
11 such water as shown in Exhibit A in advance of any further diversion of Project Water.

12 (2) With respect to Charges, the Contractor shall also make a payment
13 to the United States, in addition to the Rate(s) in subdivision (c)(1) of this Article, at the Charges
14 then in effect, before the end of the month following the month of delivery or transfer. The
15 payments shall be consistent with the quantities of Project Water delivered or transferred.
16 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment
17 of payments due to the United States for Charges for the next month. Any amount to be paid for
18 past due payment of Charges shall be computed pursuant to Article 13 of this Settlement
19 Contract.

20 (d) Payments to be made by the Contractor to the United States under this
21 Settlement Contract may be paid from any revenues available to the Contractor.

22 (1) All revenues received by the United States from the Contractor
23 relating to the delivery of Project Water or the delivery of non-Project Water through Project

1 facilities shall be allocated and applied in accordance with Federal Reclamation law and the
2 associated rules or regulations, and the then current Project ratesetting policies for irrigation
3 water.

4 (e) The Contracting Officer shall keep its accounts pertaining to the
5 administration of the financial terms and conditions of its long-term water service and Settlement
6 Contracts, in accordance with applicable Federal standards, so as to reflect the application of
7 Project costs and revenues. The Contracting Officer shall, each Year upon request of the
8 Contractor, provide to the Contractor a detailed accounting of all Project and Contractor expense
9 allocations, the disposition of all Project and Contractor revenues, and a summary of all water
10 delivery information. The Contracting Officer and the Contractor shall enter into good faith
11 negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
12 information.

13 (f) The parties acknowledge and agree that the efficient administration of this
14 Settlement Contract is their mutual goal. Recognizing that experience has demonstrated that
15 mechanisms, policies, and procedures used for establishing Rates and Charges and/or for making
16 and allocating payments, other than those set forth in this Article may be in the mutual best
17 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify
18 the mechanisms, policies, and procedures for any of those purposes while this Settlement
19 Contract is in effect without amendment of this Settlement Contract.

20 (g) For the term of this Settlement Contract, Rates under the respective
21 ratesetting policies for the Project will be established to recover only reimbursable operation and
22 maintenance (including any deficits) and capital costs of the Project, as those terms are used in
23 the then current Project ratesetting policies, and interest, where appropriate, except in instances

1 where a minimum Rate is applicable in accordance with the relevant Project ratesetting policy.
2 Proposed changes of significance in practices which implement the ratesetting policies for the
3 Project will not be implemented until the Contracting Officer has provided the Contractor an
4 opportunity to discuss the nature, need, and impact of the proposed change. The Contractor
5 retains all rights to challenge the validity of Rates and Charges imposed pursuant to this
6 Settlement Contract, including but not limited to operation and maintenance expenses and
7 operation and maintenance deficits, in an appropriate administrative or judicial proceeding.

8 (h) Except as provided in subsection 3405(a)(1)(B) of the CVPIA, the Rates
9 for Project Water transferred, exchanged, or otherwise disposed of, by the Contractor shall be the
10 Contractor's Rates adjusted upward or downward to reflect the changed costs of delivery (if any)
11 of the transferred, exchanged, or otherwise disposed of Project Water to the transferee's point of
12 delivery in accordance with the then-current ratesetting policies for the Project. Except as
13 provided in subsection 3407(d)(2)(A) of the CVPIA, the Charges for Project Water transferred,
14 exchanged, or otherwise disposed of, by the Contractor shall be the Contractor's Charges
15 specified in Exhibit D. If the Contractor is receiving lower Rates and Charges because of
16 inability to pay and is transferring, exchanging, or otherwise disposing of Project Water to
17 another entity whose Rates and Charges are not adjusted due to inability to pay, the Rates and
18 Charges for transferred, exchanged, or otherwise disposed of Project Water shall be the
19 Contractor's Rates and Charges unadjusted for ability to pay.

20 (i) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
21 Officer is authorized to adjust determinations of ability to pay every 5 years.

22 (j) Each payment to be made pursuant to subdivisions (a) and (b) of this
23 Article shall be made at the office of the Bureau of Reclamation, Mid-Pacific Region, File

1 No. 11546, P.O. Box 6000, San Francisco, California 94160-1546, or at such other place as the
2 United States may designate in a written notice to the said Contractor. Payments shall be made
3 by cash transaction, wire, or any other mechanism as may be agreed to in writing by the
4 Contractor and the Contracting Officer. In the event there should be a default in the payment of
5 the amount due, the delinquent payment provisions of Article 13 shall apply. The Contractor
6 shall not be relieved of the whole or any part of its said obligation by, on account of, or
7 notwithstanding, as the case may be:

8 (1) Its failure, refusal, or neglect to divert 75 percent of the quantity of
9 Project Water shown on Exhibit A;

10 (2) The default in payment to it by any water user of assessments,
11 tolls, or other charges levied by or owing to said Contractor;

12 (3) Any judicial determination that any assessment, toll, or other
13 charge referred to in subsection 8(c)(2) of this Settlement Contract is irregular, void, or
14 ineffectual; or

15 (4) Any injunctive process enjoining or restraining the Contractor
16 from making or collecting any such assessment, toll, or other charge referred to in subsection
17 8(c)(2) of this Settlement Contract.

18 AGREEMENT ON WATER QUANTITIES

19 9. (a) During the term of this Settlement Contract and any renewals thereof:

20 (1) It shall constitute full agreement as between the United States and
21 the Contractor as to the quantities of water and the allocation thereof between Base Supply and
22 Project Water which may be diverted by the Contractor from the Sacramento River for beneficial

1 use on the land shown on Exhibit B which said diversion, use, and allocation shall not be
2 disturbed so long as the Contractor shall fulfill all of its obligations hereunder;

3 (2) Neither party shall claim any right against the other in conflict with
4 the provisions of Article 9(a)(1) hereof.

5 (b) Nothing herein contained is intended to or does limit rights of the
6 Contractor against others than the United States or of the United States against any person other
7 than the Contractor: Provided, however, that in the event the Contractor, the United States, or
8 any other person shall become a party to a general adjudication of rights to the use of water of
9 the Sacramento River system, this Settlement Contract shall not jeopardize the rights or position
10 of either party hereto or of any other person and the rights of all such persons in respect to the
11 use of such water shall be determined in such proceedings the same as if this Settlement Contract
12 had not been entered into, and if final judgment in any such general adjudication shall determine
13 that the rights of the parties hereto are different from the rights as assumed herein, the parties
14 shall negotiate an amendment to give effect to such judgment. In the event the parties are unable
15 to agree on an appropriate amendment they shall, within 60 days of determining that there is an
16 impasse, employ the services of a neutral mediator, experienced in resolving water rights
17 disputes, to assist in resolving the impasse. The cost of the mediation will be shared equally. A
18 failure to reach agreement on an amendment within 60 days of the end of mediation will cause
19 the immediate termination of this Settlement Contract.

20 (c) In the event that the California State Water Resources Control Board or a
21 court of competent jurisdiction issues a final decision or order modifying the terms and
22 conditions of the water rights of either party to this Settlement Contract in order to impose Bay-
23 Delta water quality obligations, the Contractor and the United States shall promptly meet to

1 determine whether or not to modify any of the terms of this Settlement Contract to comply with
2 the final decision or order, including, but not limited to, the applicability of the rescheduling
3 charge in Article 3(c)(1) of this Settlement Contract. If within 60 days of the date of the issuance
4 of the final decision or order the parties are not able to reach agreement regarding either the need
5 to modify this Settlement Contract or the manner in which this Settlement Contract is to be
6 modified, the parties shall promptly retain a neutral mediator, experienced in resolving water
7 right disputes, to assist the parties in resolving their dispute. The cost of the mediator shall be
8 shared equally. In the event that either of the parties to this Settlement Contract determines that
9 the parties will not be able to develop mutually-agreeable modification(s) to this Settlement
10 Contract even with the assistance of a mediator, either of the parties to this Settlement Contract
11 may attempt to resolve the impasse by seeking appropriate judicial relief including, but not
12 limited to, filing a general adjudication of the rights to the use of water in the Sacramento River
13 system. The foregoing provisions of this sub-article shall only apply to the incremental
14 obligations contained within a final decision or order of the State Water Resources Control
15 Board that reflects a modification to the obligations imposed in State Water Resources Control
16 Board Revised Water Rights Decision 1641 dated March 15, 2000, and its associated 1995 Water
17 Quality Control Plan which, taken together, will be considered the baseline for the application of
18 the provisions of this sub-article.

19 (d) In the event this Settlement Contract terminates, the rights of the parties to
20 thereafter divert and use water shall exist as if this Settlement Contract had not been entered into;
21 and the fact that as a compromise settlement of a controversy as to the respective rights of the
22 parties to divert and use water and the yield of such rights during the term hereof, this Settlement
23 Contract places a limit on the Contract Total to be diverted annually by the Contractor during the

1 Settlement Contract term and segregates it into Base Supply and Project Water shall not
2 jeopardize the rights or position of either party with respect to its water rights or the yield thereof
3 at all times after the Settlement Contract terminates. It is further agreed that the Contractor at all
4 times will first use water to the use of which it is entitled by virtue of its own water rights, and
5 neither the provisions of this Settlement Contract, action taken thereunder, nor payments made
6 thereunder to the United States by the Contractor shall be construed as an admission that any part
7 of the water used by the Contractor during the term of this Settlement Contract was in fact water
8 to which it would not have been entitled under water rights owned by it nor shall receipt of
9 payments thereunder by the United States from the Contractor be construed as an admission that
10 any part of the water used by the Contractor during the term of this Settlement Contract was in
11 fact water to which it would have been entitled under water rights owned by it.

12 MEASUREMENT OF WATER

13 10. (a) All water diverted by the Contractor from the Sacramento River will be
14 diverted at the existing point or points of diversion shown on Exhibit A or at such other points as
15 may be mutually agreed upon in writing by the Contracting Officer and the Contractor.

16 (b) All water diverted from the Sacramento River pursuant to this Settlement
17 Contract will be measured or caused to be measured by the United States at each point of
18 diversion with existing equipment or equipment to be installed, operated, and maintained by the
19 United States, and/or others, under contract with and at the option of the United States. The
20 equipment and methods used to make such measurement shall be in accordance with sound
21 engineering practices. Upon request of the Contractor, the accuracy of such measurements will
22 be investigated by the Contracting Officer and any errors appearing therein will be corrected.

1 (c) The right of ingress to and egress from all points of diversion is hereby
2 granted to all authorized employees of the United States. The Contractor also hereby grants to
3 the United States the right to install, operate, maintain, and replace such equipment on diversion
4 or carriage facilities at each point of diversion as the Contracting Officer deems necessary.

5 (d) The Contractor shall not modify, alter, remove, or replace diversion
6 facilities or do any other act which would alter the effectiveness or accuracy of the measuring
7 equipment installed by the United States or its representatives unless and until the Contracting
8 Officer has been notified with due diligence and has been given an opportunity to modify such
9 measuring equipment in such manner as may be necessary or appropriate. In the event of an
10 emergency the Contractor shall notify the United States within a reasonable time thereafter as to
11 the existence of the emergency and the nature and extent of such modification, alteration,
12 removal, or replacement of diversion facilities.

13 (e) The Contractor shall pay the United States for the costs to repair, relocate,
14 or replace measurement equipment when the Contractor modifies, alters, removes, or replaces
15 diversion or carriage facilities.

16 (f) Contractor and Contracting Officer shall develop a mutually agreeable
17 surface water delivery water measurement program which shall be implemented by the
18 Contractor, and such measurement program shall be consistent with the conservation and
19 efficiency criteria for evaluating water conservation plans as provided in Article 29(a).

20 (g) All new surface water delivery systems installed within the lands
21 delineated on Exhibit B after the effective date of this Settlement Contract shall also comply with
22 the measurement provisions described in this Article.

1 RULES AND REGULATIONS

2 11. The parties agree that the delivery of Project Water for irrigation use or use of
3 Federal facilities pursuant to this Settlement Contract is subject to Federal Reclamation law,
4 including but not limited to, the Reclamation Reform Act of 1982 (43 U.S.C. 390aa et seq.), as
5 amended and supplemented, and the rules and regulations promulgated by the Secretary of the
6 Interior under Federal Reclamation law.

7 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

8 12. (a) The obligation of the Contractor to pay the United States as provided in
9 this Settlement Contract is a general obligation of the Contractor notwithstanding the manner in
10 which the obligation may be distributed among the Contractor's water users and notwithstanding
11 the default of individual water users in their obligations to the Contractor.

12 (b) The payment of Charges becoming due hereunder is a condition precedent
13 to receiving benefits under this Settlement Contract. The United States shall not make water
14 available to the Contractor through Project facilities during any period in which the Contractor
15 may be in arrears in the advance payment of water Rates due the United States. The Contractor
16 shall not furnish water made available pursuant to this Settlement Contract for lands or parties
17 which are in arrears in the advance payment of water rates levied or established by the
18 Contractor.

19 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
20 obligation to require advance payment for water Rates which it levies.

21 CHARGES FOR DELINQUENT PAYMENTS

22 13. (a) The Contractor shall be subject to interest, administrative and penalty
23 charges on delinquent installments or payments. When a payment is not received by the due
24 date, the Contractor shall pay an interest charge for each day the payment is delinquent beyond
25 the due date. When a payment becomes 60 days delinquent, the Contractor shall pay an
26 administrative charge to cover additional costs of billing and processing the delinquent payment.
27 When a payment is delinquent 90 days or more, the Contractor shall pay an additional penalty
28 charge of six percent per year for each day the payment is delinquent beyond the due date.
29 Further, the Contractor shall pay any fees incurred for debt collection services associated with a
30 delinquent payment.

31 (b) The interest charge rate shall be the greater of the rate prescribed quarterly
32 in the Federal Register by the Department of the Treasury for application to overdue payments,
33 or the interest rate of one-half of one percent per month prescribed by Section 6 of the

1 Reclamation Project Act of 1939 (Public Law 76-260). The interest charge rate shall be
2 determined as of the due date and remain fixed for the duration of the delinquent period.

3 (c) When a partial payment on a delinquent account is received, the amount
4 received shall be applied, first to the penalty, second to the administrative charges, third to the
5 accrued interest, and finally to the overdue payment.

6 QUALITY OF WATER

7 14. The operation and maintenance of Project facilities shall be performed in such
8 manner as is practicable to maintain the quality of raw water made available through such
9 facilities at the highest level reasonably attainable as determined by the Contracting Officer. The
10 United States does not warrant the quality of water and is under no obligation to construct or
11 furnish water treatment facilities to maintain or better the quality of water.

12 WATER AND AIR POLLUTION CONTROL

13 15. The Contractor, in carrying out this Settlement Contract, shall comply with all
14 applicable water and air pollution laws and regulations of the United States and the State of
15 California, and shall obtain all required permits or licenses from the appropriate Federal, State,
16 or local authorities.

17 EQUAL OPPORTUNITY

18 16. During the performance of this Settlement Contract, the Contractor agrees as
19 follows:

20 (a) The Contractor will not discriminate against any employee or applicant for
21 employment because of race, color, religion, sex, or national origin. The Contractor will take
22 affirmative action to ensure that applicants are employed, and that employees are treated during
23 employment, without regard to their race, color, religion, sex, or national origin. Such action
24 shall include, but not be limited to, the following: Employment, upgrading, demotion, or
25 transfer; recruitment or recruitment advertising; layoff or termination, rates of payment or other
26 forms of compensation; and selection for training, including apprenticeship. The Contractor
27 agrees to post in conspicuous places, available to employees and applicants for employment,
28 notices to be provided by the Contracting Officer setting forth the provisions of this
29 nondiscrimination clause.

1 (b) The Contractor will, in all solicitations or advertisements for employees
2 placed by or on behalf of the Contractor, state that all qualified applicants will receive
3 consideration for employment without discrimination because of race, color, religion, sex, or
4 national origin.

5 (c) The Contractor will send to each labor union or representative of workers
6 with which it has a collective bargaining agreement or other contract or understanding, a notice,
7 to be provided by the Contracting Officer, advising the said labor union or workers'
8 representative of the Contractor's commitments under Section 202 of Executive Order No. 11246
9 of September 24, 1965, as amended, and shall post copies of the notice in conspicuous places
10 available to employees and applicants for employment.

11 (d) The Contractor will comply with all provisions of Executive Order No.
12 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of
13 the Secretary of Labor.

14 (e) The Contractor will furnish all information and reports required by said
15 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
16 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting
17 Officer and the Secretary of Labor for purposes of investigation to ascertain compliance with
18 such rules, regulations, and orders.

19 (f) In the event of the Contractor's noncompliance with the nondiscrimination
20 clauses of this Settlement Contract or with any of the said rules, regulations, or orders, this
21 Settlement Contract may be canceled, terminated, or suspended, in whole or in part, and the
22 Contractor may be declared ineligible for further Government contracts in accordance with
23 procedures authorized in said amended Executive Order, and such other sanctions may be
24 imposed and remedies invoked as provided in said Executive Order, or by rule, regulation, or
25 order of the Secretary of Labor, or as otherwise provided by law.

26 (g) The Contractor will include the provisions of paragraphs (a) through (g) in
27 every subcontract or purchase order unless exempted by the rules, regulations, or orders of the
28 Secretary of Labor issued pursuant to Section 204 of said amended Executive Order, so that such
29 provisions will be binding upon each subcontractor or vendor. The Contractor will take such
30 action with respect to any subcontract or purchase order as may be directed by the Secretary of
31 Labor as a means of enforcing such provisions, including sanctions for noncompliance:
32 Provided, however, that in the event the Contractor becomes involved in, or is threatened with,
33 litigation with a subcontractor or vendor as a result of such direction, the Contractor may request
34 the United States to enter into such litigation to protect the interests of the United States.

35 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

36 17. Omitted.

1 MINGLING OF CONTRACTOR’S PROJECT AND NON-PROJECT WATER

2 18. (a) Project Water must of necessity be transported by the Contractor to its
3 water users by means of the same works and channels used for the transport of its non-Project
4 Water including Base Supply. Notwithstanding such mingling of water, the provisions of Article
5 11 hereof shall be applicable only to Project Water, and such mingling of water shall not in any
6 manner subject to the provisions of Article 11 hereof the Contractor’s non-Project Water
7 including Base Supply.

8 (b) If required in accordance with subdivision (c) of this Article, the
9 Contractor shall install and maintain such measuring equipment and distribution facilities and
10 maintain such records as may be necessary to determine the amounts of water delivered to
11 Excess Lands served by the Contractor. The Contractor shall not within any month deliver to
12 Ineligible Lands water in excess of the non-Project Water, including Base Supply, for that
13 month. The Contracting Officer or authorized representative shall have the right at all
14 reasonable times to inspect such records and measuring equipment.

15 (c) The Contractor will not be considered in violation of the requirement that
16 Project Water be delivered only to Eligible Lands during any month of the irrigation season that
17 the water requirement for beneficial use on Eligible Lands for that month is equal to or in excess
18 of the Project Water for that month as shown on Exhibit A or any revision thereof pursuant to
19 subdivision (c) of Article 3. The water requirement for beneficial use on Eligible Lands will be
20 determined by multiplying:

21 (1) the number of irrigable acres of the particular types of crops grown
22 in that year on the acreage designated as eligible by

1 (2) the Unit Duties as set forth in Exhibit C attached hereto and made
2 a part hereof, or by such other Unit Duties mutually agreed upon by the Contractor and the
3 Contracting Officer. In order to make the computation of the water requirement for Eligible
4 Lands, on April 1 of each Year and concurrently with its order for water for the irrigation season,
5 the Contractor shall designate the acreage of and type of crops to be grown on its Eligible Lands
6 that irrigation season. During any month the water requirement as above determined for crops
7 growing on Eligible Lands during such month is equal to or in excess of the Project Water for
8 that month as provided herein the Contractor shall not be required to measure the water delivered
9 to Excess Lands. Any month the said water requirement is less than the amount of Project Water
10 as provided herein, the Contractor will be required to measure water delivered to excess land in
11 accordance with subdivision (b) hereof.

12 **BOOKS, RECORDS, AND REPORTS**

13 19. The Contractor shall establish and maintain accounts and other books and records
14 pertaining to administration of the terms and conditions of this Settlement Contract, including:
15 the Contractor's financial transactions, water supply data, and Project land and right-of-way
16 agreements; the water users' land-use (crop census), land ownership, land-leasing and water use
17 data; and other matters that the Contracting Officer may require. Reports thereon shall be
18 furnished to the Contracting Officer in such form and on such date or dates as the Contracting
19 Officer may require. Subject to applicable Federal laws and regulations, each party to this
20 Settlement Contract shall have the right during office hours to examine and make copies of each
21 other's books and official records relating to matters covered by this Settlement Contract.

22 **CHANGE OF PLACE OF USE OR ORGANIZATION**

23 20. (a) Unless the written consent of the United States is first obtained no change
24 shall be made in the place of water use shown on Exhibit B.

25 **CONSOLIDATION OF CONTRACTING ENTITIES**

26 21. Consolidation of Contractors may be approved by the Contracting Officer
27 provided: (i) the Contracting Officer approves the form and organization of the resulting entity

1 and the utilization by it of the Contract Total; and (ii) the obligations of the Contractors are
2 assumed by such entity.

3 No such consolidation shall be valid unless and until approved by the Contracting
4 Officer.

5 NOTICES

6 22. Any notice, demand, or request authorized or required by this Settlement Contract
7 shall be deemed to have been given, on behalf of the Contractor, when mailed, postage prepaid,
8 or delivered to the Area Manager, Northern California Area Office, Bureau of Reclamation,
9 16349 Shasta Dam Boulevard, Shasta Lake, California 96019, and on behalf of the United States,
10 when mailed, postage prepaid, or delivered to Janice C. and Frank J. O'Brien, 1528 Frost Drive,
11 San Jose, California 95131. The designation of the addressee or the address may be changed by
12 notice given in the same manner as provided in this Article for other notices.

13 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

14
15 23. (a) The provisions of this Settlement Contract shall apply to and bind the
16 successors and assigns of the parties hereto, but no assignment or transfer of this Settlement
17 Contract or any right or interest therein shall be valid until approved in writing by the
18 Contracting Officer.

19 (b) The assignment of any right or interest in this Settlement Contract by
20 either party shall not interfere with the rights or obligations of the other party to this Settlement
21 Contract absent the written concurrence of said other party.

22 (c) The Contracting Officer shall not unreasonably condition or withhold his
23 approval of any proposed assignment.

24 OFFICIALS NOT TO BENEFIT

25 24. (a) No Member of or Delegate to Congress, Resident Commissioner, or
26 official of the Contractor shall benefit from this Settlement Contract other than as a water user or
27 landowner in the same manner as other water users or landowners.

28 (b) No officer or member of the governing board of the Contractor shall
29 receive any benefit that may arise by reason of this Settlement Contract other than as a
30 landowner within the Contractor's service area and in the same manner as other landowners
31 within the said service area.

1 CONTINGENT UPON APPROPRIATION OR ALLOTMENT OF FUNDS

2 25. The expenditure or advance of any money or the performance of any obligation of
3 the United States under this Settlement Contract shall be contingent upon appropriation or
4 allotment of funds. Absence of appropriation or allotment of funds shall not relieve the
5 Contractor from any obligations under this Settlement Contract. No liability shall accrue to the
6 United States in case funds are not appropriated or allotted.

7 CONFIRMATION OF SETTLEMENT CONTRACT

8 26. The Contractor, after the execution of this Settlement Contract, shall promptly
9 seek to secure a decree of a court of competent jurisdiction of the State of California, if
10 appropriate, confirming the execution of this Settlement Contract. The Contractor shall furnish
11 the United States a certified copy of the final decree, the validation proceedings, and all pertinent
12 supporting records of the court approving and confirming this Settlement Contract, and
13 decreeing and adjudging it to be lawful, valid, and binding on the Contractor. This Settlement
14 Contract shall not be binding on the United States until such final decree has been secured.

15 UNAVOIDABLE GROUNDWATER PERCOLATION

16 27. To the extent applicable, the Contractor shall not be deemed to have delivered
17 Project Water to Excess Lands or Ineligible Lands if such lands are irrigated with groundwater
18 that reaches the underground strata as an unavoidable result of the delivery of Project Water by
19 the Contractor to Eligible Lands.

20 PRIVACY ACT COMPLIANCE

21 28. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
22 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et
23 seq.) in maintaining Landholder acreage certification and reporting records, required to be
24 submitted to the Contractor for compliance with Sections 206 and 228 of the Reclamation
25 Reform Act of 1982 (96 Stat. 1266), and pursuant to 43 CFR 426.18.

26 (b) With respect to the application and administration of the criminal penalty
27 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees
28 responsible for maintaining the certification and reporting records referenced in (a) above are
29 considered to be employees of the Department of the Interior. See 5 U.S.C. 552a(m).

30 (c) The Contracting Officer or a designated representative shall provide the
31 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau
32 of Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--
33 Interior, Reclamation-31) which govern the maintenance, safeguarding, and disclosure of
34 information contained in the Landholder's certification and reporting records.

1 (d) The Contracting Officer shall designate a full-time employee of the
2 Bureau of Reclamation to be the System Manager who shall be responsible for making decisions
3 on denials pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The
4 Contractor is authorized to grant requests by individuals for access to their own records.

5 (e) The Contractor shall forward promptly to the System Manager each
6 proposed denial of access under 43 CFR 2.64; and each request for amendment of records filed
7 under 43 CFR 2.71; notify the requester accordingly of such referral; and provide the System
8 Manager with information and records necessary to prepare an appropriate response to the
9 requester. These requirements do not apply to individuals seeking access to their own
10 certification and reporting forms filed with the Contractor pursuant to 43 CFR 426.18, unless the
11 requester elects to cite the Privacy Act as a basis for the request.

12 WATER CONSERVATION

13 29. (a) Prior to the diversion of Project Water, the Contractor shall be
14 implementing an effective water conservation and efficiency program based on the Basin-Wide
15 Water Management Plan and/or Contractor's water conservation plan that has been determined
16 by the Contracting Officer to meet the conservation and efficiency criteria for evaluating water
17 conservation plans established under Federal law. The water conservation and efficiency
18 program shall contain definite water conservation objectives, appropriate economically feasible
19 water conservation measures, and time schedules for meeting those objectives. Continued
20 diversion of Project Water pursuant to this Settlement Contract shall be contingent upon the
21 Contractor's continued implementation of such water conservation program. In the event the
22 Contractor's water conservation plan or any revised water conservation plan completed pursuant
23 to subdivision (c) of Article 29 of this Settlement Contract have not yet been determined by the
24 Contracting Officer to meet such criteria, due to circumstances which the Contracting Officer
25 determines are beyond the control of the Contractor, Project Water deliveries shall be made
26 under this Settlement Contract so long as the Contractor diligently works with the Contracting
27 Officer to obtain such determination at the earliest practicable date, and thereafter the Contractor

1 immediately begins implementing its water conservation and efficiency program in accordance
2 with the time schedules therein.

3 (b) The Contractor shall submit to the Contracting Officer a report on the
4 status of its implementation of the water conservation plan on the reporting dates specified in the
5 then existing conservation and efficiency criteria established under Federal law.

6 (c) At 5-year intervals, the Contractor shall revise its water conservation plan
7 to reflect the then current conservation and efficiency criteria for evaluating water conservation
8 plans established under Federal law and submit such revised water management plan to the
9 Contracting Officer for review and evaluation. The Contracting Officer will then determine if
10 the water conservation plan meets Reclamation's then current conservation and efficiency
11 criteria for evaluating water conservation plans established under Federal law.

12 (d) If the Contractor is engaged in direct ground-water recharge, such activity
13 shall be described in the Contractor's water conservation plan.

14 (e) In order to provide incentives for water conservation, the Contractor may
15 reduce the amount of Project Water for which payment is required under Article 8(a) in
16 accordance with the provisions of this Article 29(e).

17 (1) On or before February 15 of any Water Year, the Contractor may
18 file with Reclamation an offer to reduce Project Water use, hereinafter referred to as Offer. The
19 Offer shall specify the maximum quantity of Project Water to be diverted by the Contractor for
20 each month that Project Water is available for that Water Year under this Settlement Contract.
21 The Contracting Officer shall provide the Contractor with a decision, in writing, to the Offer on
22 or before March 15 of that Water Year. The dates specified in this Article 29(e)(1) can be
23 changed if mutually agreed to, in writing, by the Contractor and Contracting Officer.

1 (2) If Reclamation accepts the Offer, the Contractor’s payment
2 obligation under Article 8(a)(1) shall be reduced to the maximum quantity of Project Water to be
3 diverted by the Contractor as specified in the Offer. The Contractor shall not divert Project
4 Water in excess of the quantities set forth in the Offer: Provided, however, if the Contractor’s
5 diversions of Project Water exceed the quantities set forth in the Offer, the Contractor shall pay
6 to Reclamation the applicable Rates and Charges plus an amount equal to the applicable Rates
7 and Charges, unadjusted for ability to pay, for each acre-foot of Project Water diverted in excess
8 of the quantities set forth in the Offer.

9 (3) If Reclamation decides not to accept the Offer, the Contractor’s
10 payment obligation will remain as specified in Article 8(a)(1).

11 (4) The provisions of this Article 29(e) shall be in addition to and shall
12 not affect the provisions of Article 3(e) pertaining to the sale, transfer, exchange, or other
13 disposal of the Contract Total designated in Exhibit A.

14 OPINIONS AND DETERMINATIONS

15 30. (a) Where the terms of this Settlement Contract provide for actions to be
16 based upon the opinion or determination of either party to this Settlement Contract, said terms
17 shall not be construed as permitting such action to be predicated upon arbitrary, capricious, or
18 unreasonable opinions or determinations. Both parties, notwithstanding any other provisions of
19 this Settlement Contract, expressly reserve the right to seek relief from and appropriate
20 adjustment for any such arbitrary, capricious, or unreasonable opinion or determination. Each
21 opinion or determination by either party shall be provided in a timely manner. Nothing in
22 subdivision (a) of Article 30 of this Settlement Contract is intended to or shall affect or alter the

1 standard of judicial review applicable under Federal law to any opinion or determination
2 implementing a specific provision of Federal law embodied in statute or regulation.

3 (b) The Contracting Officer shall have the right to make determinations
4 necessary to administer this Settlement Contract that are consistent with the provisions of this
5 Settlement Contract, the laws of the United States and of the State of California, and the rules
6 and regulations promulgated by the Secretary of the Interior. Such determinations shall be made
7 in consultation with the Contractor to the extent reasonably practicable.

8 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

9 31. (a) In addition to all other payments to be made by the Contractor pursuant to
10 this Settlement Contract, the Contractor shall pay to the United States, within 60 days after
11 receipt of a bill and detailed statement submitted by the Contracting Officer to the Contractor for
12 such specific items of direct cost incurred by the United States for work requested by the
13 Contractor associated with this Settlement Contract plus indirect costs in accordance with
14 applicable Bureau of Reclamation policies and procedures. All such amounts referred to in this
15 Article shall not exceed the amount agreed to in writing in advance by the Contractor. This
16 Article shall not apply to costs for routine contract administration.

17 (b) All advances for miscellaneous costs incurred for work requested by the
18 Contractor pursuant to Article 31 of this Settlement Contract shall be adjusted to reflect the
19 actual costs when the work has been completed. If the advances exceed the actual costs incurred,
20 the difference will be refunded to the Contractor. If the actual costs exceed the Contractor's
21 advances, the Contractor will be billed for the additional costs pursuant to Article 31 of this
22 Settlement Contract.

1 WAIVER OF DEFAULT

2 32. The waiver by either party to this Settlement Contract as to any default shall not
3 be construed as a waiver of any other default or as authority of the other party to continue such
4 default or to make, do, or perform, or not to make, do, or perform, as the case may be, any act or
5 thing which would constitute a default.

6 CONTRACT ASSIGNMENT OR TERMINATION UPON TRANSFER OF LAND

7 33. (a) The rights and obligations of the Contractor may be transferred in
8 connection with the transfer of title to the land or any portion thereof delineated on Exhibit B on
9 the following terms and conditions:

10 (1) A voluntary inter vivos transfer may be made, upon mutual
11 agreement of the United States and the Contractor, to a person eligible to hold title to the land as
12 a nonexcess landowner:

13 (2) A voluntary inter vivos transfer may be made to a person ineligible
14 to hold title to the land as a nonexcess landowner provided that no Project Water may thereafter
15 be used on Excess Lands and the assignee shall not be privileged to obtain such use of Project
16 Water on Excess Lands.

17 (3) In the event the title of the Contractor to such land, or any portion
18 thereof, is transferred by operation of law, such as by conveyance in satisfaction of a mortgage,
19 by inheritance, or by devise, the rights and obligations of the Contractor shall pass with the title
20 and the land shall be subject to provisions of Reclamation law pertaining to such transfers. Any
21 transfer of the rights and obligations of this Settlement Contract by the person acquiring title by
22 operation of law shall be in accordance with provisions of subsection (1) or (2) above.

1 (b) The Contractor shall notify the Contracting Officer in writing of any
2 proposed transfer of this Settlement Contract. In addition, in the case of a partial assignment the
3 Contractor shall:

4 (1) Designate the proportionate quantities of Base Supply and Project
5 Water which it desires to assign;

6 (2) Furnish the United States with a copy of the deed transferring title.

7 (c) No transfer of this Settlement Contract shall be effective unless and until
8 approved by the Contracting Officer, and, if approved, shall be effective from the date of such
9 approval.

10 (d) Upon mutual agreement between the United States and the Contractor, this
11 Settlement Contract or a portion thereof may be terminated and the new landowner will have the
12 privilege of entering into a Settlement Contract for water service for a proportionate share of the
13 Contract Total provided he is duly qualified to receive water for such land.

14 TERMINATION

15 34. This Settlement Contract will terminate upon mutual agreement of the parties
16 prior to the end of the term or any renewal thereof.

1 IN WITNESS WHEREOF, the parties hereto have executed this Settlement
2 Contract as of the day and year first hereinabove written.

3 THE UNITED STATES OF AMERICA

4 By: _____
5 Regional Director, Mid-Pacific Region
6 Bureau of Reclamation

7 (SEAL)

8 FRANK AND JANICE O'BRIEN TRUST

9 _____
10 Frank J. O'Brien

11 _____
12 Janice C. O'Brien

13 (I:\Sac River Drafts\04-04-03 O'Brien, Frank and Janice Final Draft Contract with exhibits.doc)

Exhibit A

Frank and Janice O'Brien Trust
Sacramento River

SCHEDULE OF MONTHLY DIVERSIONS OF WATER

	<u>Base Supply</u> (acre-feet)	<u>Project Water</u> (acre-feet)	<u>Contract Total</u> (acre-feet)
April	<u>75</u>	<u>0</u>	<u>75</u>
May	<u>90</u>	<u>0</u>	<u>90</u>
June	<u>140</u>	<u>39</u>	<u>179</u>
July	<u>75</u>	<u>100</u>	<u>175</u>
August	<u>90</u>	<u>100</u>	<u>190</u>
September	<u>40</u>	<u>50</u>	<u>90</u>
October	<u>40</u>	<u>0</u>	<u>40</u>
Total	<u>550</u>	<u>289</u>	<u>839</u>

Irrigable Acres: 290

Points of Diversion: 58.3L

Dated:

Exhibit B

(Map to be inserted to identify area covered by contract)

Frank and Janice O'Brien Trust
Sacramento River

Exhibit C

Frank and Janice O'Brien Trust
Sacramento River

UNIT DUTY

(In Acre-Feet Per Acre)

	<u>Rice</u>	<u>Alfalfa and Irrigated Pasture</u>	<u>General Crops</u>
June	1.80	0.80	0.60
July	2.00	1.00	0.70
August	1.90	0.80	0.70
September	0.50	0.60	0.40

Dated:

Exhibit D
Frank and Janice O'Brien Trust
 Sacramento River
WATER RATES AND CHARGES

Note: Rates and Charges shown are 2003 rates. This exhibit will be updated prior to execution of the contract to reflect the Rates and Charges for 2004.

COST OF SERVICE RATES:	<u>Per Acre-Foot</u>
Capital Rates	
Storage	\$4.35
O&M Rates:	
Water Marketing	\$6.28
Storage	\$5.57
Deficit Rates:	
Interest Bearing	\$0.00
CFO/PFR Adjustment Rate 1/	\$1.20
TOTAL	<u>\$17.40</u>

FULL-COST RATES:

Section 202(3) Rate is applicable to a Qualified Recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$22.67
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Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$25.23
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CHARGES UNDER P.L. 102-575 TO THE RESTORATION FUND 2/

Restoration Payments (3407(d)(2)(A))	<u>\$7.69</u>
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1/ Chief Financial Officer (CFO) adjustment and Provision for Replacement (PFR) expense is being distributed over a 5-year period beginning in FY 2003 for those contractors that requested those costs be deferred.

2/ Restoration fund charges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund charges are on a fiscal year basis (10/1 - 9/30).